

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 1182

PHASE 1

**In the Matter of
NORTHWEST AND INTERMOUNTAIN
POWER PRODUCERS COALITION**

**Petition for an Investigation Regarding
Competitive Bidding**

) JOINT COMMENTS OF THE
) NORTHWEST AND INTERMOUNTAIN
) POWER PRODUCERS COALITION,
) INDUSTRIAL CUSTOMERS OF
) NORTHWEST UTILITIES, AND
) CITIZENS' UTILITY BOARD OF
) OREGON
)

INTRODUCTION

Pursuant to Prehearing Conference Memorandum issued in this case on September 28, 2011, the Northwest and Intermountain Power Producers Coalition (“NIPPC”), the Industrial Customers of Northwest Utilities (“ICNU”), and the Citizens’ Utility Board of Oregon (“CUB”) (collectively, the “Joint Parties”) hereby file Joint Comments in Phase 1 of this case. The Public Utility Commission of Oregon (“Commission”) directed stakeholders to comment on the Commission’s straw proposal for criteria to be adopted that clarify when multiple small projects should be considered a “major resource” under the Commission’s request for proposal guidelines (“RFP Guidelines,” or “Guidelines”). The Joint Parties respectfully recommend that the Commission adopt its straw proposal along with modifications detailed below, and amend Guideline 1 accordingly.

COMMENTS

The remaining unresolved issue in Phase 1 of this docket is the Commission's examination of whether the 100 megawatt ("MW") threshold for a "major resource" in Guideline 1 should be lowered or modified to include more projects in the competitive bidding process. The Commission determined that "the definition of major resource needs to be modified to address the problem of a utility sizing projects to avoid competitive bidding requirements." *In the Matter of Northwest and Intermountain Power Producers Coalition: Petition for an Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 11-340, p. 5 (Sept. 1, 2011). The Commission provided a straw proposal that would create a rebuttable presumption of the applicability of the Guidelines to multiple small projects collectively exceeding 100 MW if they are: (1) within five miles of each other; and (2) use the same contractor, construction contract, or multiple contracts entered into within two years. *Id.* at pp. 5-6.

The Joint Parties support this revision because it would deter utilities from avoiding the Guidelines. For example, PacifiCorp avoided the Guidelines for its Rolling Hills and Glenrock projects, which were sized at 99 MW each and separated by one mile, and also avoided the Guidelines by breaking apart the 118 MW Seven Mile Hill project into the 99 MW Seven Mile Hill I, and the 19 MW Seven Mile Hill II, which was only a mile away. *Re PacifiCorp 2009 Renewable Adjustment Clause*, Docket No. UE 200, Order No. 08-548, pp. 3, 6, 19-22 (Nov. 14, 2008). The Commission's proposal would deter such conduct by clarifying the applicability of the Guidelines. PacifiCorp's Rolling Hills and Glenrock projects demonstrate that a utility may be able to space two 99 MW

projects one mile apart. The straw proposal's use of a five mile separation rule will make avoidance of the Guidelines more difficult than a lesser distance separation requirement.

The Commission's criteria would also provide flexibility for a utility to demonstrate under unique circumstances that multiple projects should not be considered a single "major resource." For example, at the workshop on October 25, 2011, Portland General Electric Company ("PGE") raised a unique hypothetical scenario whereby the Commission's straw proposal may preclude an independent developer with a single project over 100 MW from selling incremental outputs of less than 100 MW to separate utilities. The Commission's straw proposal allows the affected utilities to petition the Commission with the necessary documentation demonstrating the reasons why the utility believes such projects should not be considered a "major resource."

The Commission's short list of conditions – a five mile radius within other project sites and the same or close-in-time construction arrangements – is a simple and straightforward approach that provides necessary clarity. At the workshop, PGE proposed a much longer list of seven conditions that it stated were part of a proposal to the Oregon Energy Facility Siting Council to more clearly define a single energy facility under O.R.S. 469.300(11). The Oregon Energy Facility Siting Council, however, is not attempting to address the problem of utility self-build bias. PGE's longer list of conditions will only provide more loopholes through which a creatively designed set of projects can avoid triggering the Guideline's applicability. A utility's ability to demonstrate that its projects do not meet any one of the seven conditions proposed by PGE would absolve the utility of the need to follow the Guidelines, and defeat the purpose of further clarifying the meaning of a major resource. Finally, as explained

above, the Commission's straw proposal already provides the utilities with the ability to petition the Commission with additional information that would justify treating the plant as a separate and distinct facility. Relevant information in any such petition could include determinations by other local, state or federal agencies, including the Oregon Energy Facility Siting Council.

The Joint Parties agree, however, with some concerns raised at the workshop regarding potential ambiguities in the Commission's straw proposal. The Joint Parties respectfully recommend that the final Guideline 1 include the following revisions (additions in bold and underlined):

If multiple small generating projects totaling more than 100 MW ~~or more~~ meet the following criteria, then there is a rebuttable presumption that the multiple projects are a "major resource" and the competitive bidding guidelines apply:

(1) The ~~plants~~ small generating projects are located on one or more adjacent contiguous parcels of land or ~~on~~ parcels within a five-mile radius the generation equipment of any small generating project is within five miles of the generation equipment of any other small generating project; and

(2) Construction of the plants is performed by the same contractor, or under the same contract, or under multiple contracts entered into within two years of each other.

For purposes of item (1), a single parcel of land is considered to be "contiguous" if it is under common ownership even if there is an intervening public or railroad right of way.

The utility bears the burden of rebutting this presumption. If multiple small projects meet these criteria, but the utility believes that other factors show that each plant is a separate and distinct facility, then the utility may request that the Commission find that the projects do not qualify as a major resource. If the utility proceeds without making this request and without following the competitive bidding guidelines, then the utility may attempt to rebut the presumption that it should have followed the

guidelines when the utility seeks recovery of the costs of the project in rates.

The modification to the first sentence assures consistency with the existing Guidelines. *See In the Matter of Northwest and Intermountain Power Producers Coalition: Petition for an Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 06-446, p. 3 (Aug. 10, 2006). The modifications to condition (1) limit ambiguity as to the five mile separation measurement, and provide further clarity as to when a parcel is one contiguous parcel.

CONCLUSION

For the reasons set forth above, the Joint Parties respectfully request that the Commission adopt the Commission's straw proposal with the modifications proposed above.

RESPECTFULLY SUBMITTED this 1st day of November, 2011.

/s/ Gregory M. Adams

Gregory M. Adams (OSB No. 101779)
Richardson & O'Leary PLLC
515 N. 27th Street
P.O. Box 7218
Boise, Idaho 83702
(208) 938-2236 phone
(208) 938-7904 facsimile
greg@richardsonandoleary.com

Attorney for Northwest and Intermountain
Power Producers Coalition

/s/ Irion A. Sanger

Irion A. Sanger
Davison Van Cleve, P.C.
333 S.W. Taylor Street, Suite 400
Portland, Oregon 97204
(503) 241-7242 phone
(503) 241-8160 facsimile
ias@dvclaw.com

Of Attorneys for Industrial Customers of
Northwest Utilities

/s/ Catriona McCracken

Catriona McCracken
General Counsel/Regulatory Program Director
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 400
Portland, OR 97205
(503) 227-1984 phone
(503) 274-2596 facsimile
catriona@oregoncub.org

Attorney for the Citizens' Utility Board of
Oregon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of November, 2011, a true and correct copy of the within and foregoing JOINT COMMENTS OF THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION, INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, AND CITIZENS' UTILITY BOARD OF OREGON was served as shown to:

G. Catriona McCracken
CITIZENS' UTILITY BOARD OF OREGON
610 SW Broadway Ste 400
Portland OR 97205
catriona@oregoncub.org

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Gordon Feighner
Robert Jenks
CITIZENS' UTILITY BOARD OF OREGON
610 SW Broadway Ste 400
Portland OR 97205
gordon@oregoncub.org
bvc@dvclaw.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

S. Bradley Van Cleve
Irion Sanger
Davison Van Cleve
333 SW Taylor Ste 400
Portland OR 97204
las@dvclaw.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Janet L Prewitt
Assistant AG
Department of Justice
Natural Resources Section
1162 Court St NE
Salem OR 97301-4096
janet.prewitt@doj.state.or.us

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Michael Parvinen
Dennis Haider
Cascade Natural Gas
8113 W Grandridge Blvd
Kennewick WA 99336
michael.parvinen@cngc.com
dennis.haider@mdu.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Maury Galbraith
PUBLIC UTILITY COMM. OF OREGON
PO Box 2148
Salem OR 97308
maury.galbraith@state.or.us

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

John W. Stephens
Esler Stephens & Buckley
888 SW Fifth Ave Ste 700
Portland OR 97204-2021
stephens@eslerstephens.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

PacifiCorp DBA Pacific Power
Oregon Dockets
825 NE Multnomah St Ste 2000
Portland OR 97232
oregondockets@pacificcorp.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Megan Walseth Decker
Renewable Northwest Project
421 SW 6th Ave #1125
Portland OR 97204-1629
megan@rnp.org

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Michael Early
Industrial Customers of NW Utilities
333 SW Taylor Ste 400
Portland OR 97204
mearly@icnu.org

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Natalie Hocken
Vice President & General Counsel
PacifiCorp
825 NE Multnomah Ste 2000
Portland OR 97232
natalie.hocken@pacificcorp.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Patrick G Hager
V. Denise Saunders
Portland General Electric
121 SW Salmon St 1WTC-0702
Portland OR 97204
pge.opuc.filings@pgn.com
denise.saunders@pgn.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Michael T Weirich
Business Activities Section
Department of Justice
1162 Court St NE
Salem OR 97301-4096
janet.prewitt@doj.state.or.us

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Matt Hale
Vijay A Satyal
Oregon Department of Energy
625 Marion St NE
Salem OR 979301
matt.hale@state.or.us
vijay.a.satyal@state.or.us

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Ann L Fisher
AF Legal & Consulting Services
PO Box 25302
Portland OR 97298-0302
ann@annfisherlaw.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

David J Meyer
Patrick Ehrbar
Avista Corporation
PO Box 3727
Spokane WA 99220-3727
david.meyer@avistacorp.com
pat.ehrbar@avistacorp.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Christa Bearry
Lisa D Nordstrom
Idaho Power Company
PO Box 70
Boise ID 83707-0070
cbearry@idahopower.com
lnordstrom@idahopower.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Lisa A. Rackner
McDowell Rackner & Gibson PC
419 SW 11th Ave Ste 400
Portland OR 97205
lisa@mcd-law.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

David E Hamilton
Norris & Stevens
621 SW Morrison St Ste 800
Portland OR 97205-3825
davidh@norrstev.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Alex Miller
Director Regulatory Affairs
Northwest Natural Gas Company
220 NW Second Ave
Portland OR 97209-3991
alex.miller@nwnatural.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Wendy Gerlitz
NW Energy Coalition
1205 SE Flavel
Portland OR 97202
wendy@nwenergy.org

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Mary Wiencke
Pacific Power
825 NE Multnomah St Ste 1800
Portland OR 97232-2149
Mary.wiencke@pacificorp.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Robert Kahn
Executive Director
NW Independent Power Producers
1117 Minor Ave Ste 300
Seattle WA 98101
rkahn@nippc.org
rkahn@rdkco.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Signed /s/ Gregory M. Adams

Gregory Adams