

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1182(1)**

In the Matter of The
Public Utility Commission of Oregon's
Investigation regarding Competitive Bidding

STAFF'S OPENING COMMENTS AND
RECOMMENDATIONS

In Order No. 11-001, the Public Utility Commission of Oregon (Commission) reopened UM 1182 to "further examine issues related to our competitive bidding guidelines."¹ The Commission identified three specific issues to be addressed: (1) whether the role of the independent evaluator (IE) should be expanded by retaining the IE through negotiations and final resource selection (Guideline 11); (2) whether the threshold for a "major resource" should be lowered to include more projects in the competitive bidding process (Guideline 1); and (3) 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)).

The parties in this docket, the Citizens' Utility Board of Oregon (CUB), the Industrial Customers of Northwest Utilities (ICNU), the Northwest and Intermountain Power Producer's Coalition (NIPPC), PacifiCorp, Portland General Electric (PGE), Idaho Power, Renewable Northwest Project (RNP), Northwest Energy Coalition (NVEC), and TYR Energy agreed to divide these proceedings into two phases. Phase I will address the Commission's first two issues and Phase II will address the third issue.

Summary Recommendation

In Order No. 11-001, the Commission invited comment on whether the role of the IE should be expanded to retain the IE through utility negotiations and final resource selection. Due to the additional cost of an extended IE role and limited expected benefit, Staff does not recommend that the Commission expand the role of the IE through utility negotiations and final resource selection.

Guideline 1 established the expectation that the utility will issue Request for Proposals (RFP) for major resources. The Commission has defined a major resource as having generating capacity greater than 100 MW and an operating life longer than five years. Staff recommends that the Commission more clearly define a major resource to be a single resource based on proximity, construction, and phasing considerations. Staff does not recommend lowering the threshold below the current 100 MW of generating capacity for a single major resource for inclusion in the competitive bidding process.

¹ See UM 1276, Order No. 11-001 at 6.

Background

On December 3, 2004, NIPPC filed a petition asking the Commission to open an investigation regarding competitive bidding requirements for new supply-side resource acquisitions applicable to Oregon's investor-owned electric utilities. In 2006, the Commission adopted what we now refer to as Competitive Bidding Guidelines (Guidelines). These Guidelines were established to "promote and improve the resource actions identified in the utility's Integrated Resource Plan (IRP) Action Plan."²

Staff believes that the established Guidelines have furthered the Commission's goals to:

1. Provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints;
2. Complement Oregon's IRP process;
3. Not unduly constrain utility management's prerogative to acquire new resources;
4. Be flexible, allowing the contracting parties to negotiate mutually beneficial exchange agreements; and
5. Be understandable and fair.

What the Commission is now considering, extending the role of the IE and amending the definition of a major resource, should be considered in the context of whether the Commission believes that these enhancements to the Guidelines will further the above stated goals.

Independent Evaluator

Guideline 11 states that the IE will prepare a Closing Report for the Commission after the utility has selected the final short-list. In addition, the IE will make available any detailed scoring and evaluation results to all non-bidding parties in the RFP docket, subject to the terms of the protective order. Order No. 11-001 invites comment on whether the role of the IE should be expanded by retaining the IE through the utility's negotiations and final resource selections to further address the utility preference to build its own resources.

In Dockets UM 1368 and UM 1429, the Commission directed the selected IE, Boston Pacific Company, to continue to serve as independent evaluator through the end of the contract negotiation stages for both PacifiCorp's 2009R RFP and 2008R-1 RFP. Staff's experience with the extended IE role in these dockets was that, while it was informative, it did not provide information that would have much evidentiary value in a subsequent ratemaking proceeding.

² See Order No. 06-446, at 2.

Oregon does not have a pre-approval process for new resources; it requires the utility to make its case for cost recovery at the time of ratemaking proceeding. At the time of ratemaking, Staff reviews the history of the resource, from an acknowledged Action Plan Item, to an RFP shortlist, and further through actual acquisition. This review evaluates any significant deviations from not only the IRP, but also from the assumptions that were used to qualify the resource as a short-listed bid. The standard of review is whether a reasonable person would have made the same resource decisions based on the information known and knowable at the time of the decision was made.

If Staff finds that the resource deviates significantly from what was acknowledged in the short-list of bids, whether it is a different resource or has different cost characteristics, the burden of proof that the resource is prudent and in the best interest of customers is on the Company. In fact, if a benchmark resource, or self-build option, which was not the top bidder going into negotiations were to be selected and the top bidder were to fall-out of the process, Staff would focus considerable effort in determining the reasoning behind this development and whether this was in the best interest of customers. Staff believes that the information it can obtain from the utility through data requests, testimony, and workshops is sufficient to make a prudency determination. An IE report on final negotiations would likely provide limited benefit in a prudency determination.

One of the goals of the Guidelines is to be flexible and allow the contracting parties to negotiate mutually beneficial exchange agreements. Staff believes that including the IE in final negotiations may hinder the Company's ability to negotiate and may unduly influence negotiations in a way that hinders the best outcome on behalf of ratepayers.

For example, at a workshop in UM 1182, held on March 11, 2011, PGE and PacifiCorp stated that the timing and complexity of final negotiations already presents significant challenges. Typically, the utility is negotiating with bidders that are in differing time zones and are unfamiliar with our regulatory processes. Trying to get all of the parties, plus the IE's, included in every discussion with the bidder may significantly prolong the time it would take to conclude negotiations. In addition, the utilities have stated that there may be the perception that the bidder cannot fully disclose information to the IE, or it is reluctant to do so.

Lastly, there is additional cost in requiring an extended role of the IE. According to PacifiCorp, this extended role has added as much as 20 percent onto the total cost of the IE. At this time, Staff believes that the utilities self-build bias has been significantly mitigated with the adoption of the current guidelines; an extended role of the IE will provide limited benefit beyond the current measures and it not worth the additional cost.

Major Resource

Guideline 1 established the expectation that the utilities will issue RFPs for major resources having generating capacity greater than 100 MW and an operating life longer than five years. At the time these Guidelines were adopted, parties did not contemplate that a utility may attempt to avoid this requirement by artificially sizing a resource below the 100 MW threshold in order to avoid having to issue an RFP. Docket No. UE 200 presented an example of this where PacifiCorp sized its wind resources (i.e. Rolling Hills 99 MW, Glenrock I 99 MW, Glenrock III 39 MW, Seven Mile Hill Wind 99 MW and Seven Mile Hill Wind II 19.5 MW) as several separate less-than-100 MW resources.

It was Staff's contention in docket UE 200 that PacifiCorp should have conducted an RFP for the single resource that was Rolling Hills, Glenrock I and Glenrock III, which has a total resource capacity of 237 MW. The proximity of these resources was less than five miles, their on-line date was within three weeks of each other, and they were all built by the same contractor. The defining point that the Company believed distinguished these as separate resources was that they were separately metered. At the time of ratemaking for these resources it was difficult for Staff to determine that PacifiCorp had acquired the best resource available at that time, without the benefit of the Company conducting an RFP.

Staff does not believe that lowering the generating capacity in the definition of the major resource will avoid the problem described above in the future. It will still be possible for the utility to purposely size a facility just under whatever resource size the Commission determines. Therefore, Staff's recommendation is to define what a single major generating resource is and not lower the size below 100 MW.

Staff recommends the following criteria be applied when determining a single major resource:

1. The generating plants are located on one or more adjacent parcels of land or on parcels within a five mile radius;
2. The construction of the generating plants is performed by the same general contractor, or under the same contract, or multiple contracts entered into within two years of each other.
3. If facilities will be completed in phases over time, the utility must demonstrate that each of the phases of the facility would independently qualify as a single facility.
4. Other factors or considerations which demonstrate that each generating plant is not a separate and distinct facility based on its construction, operation, on-line date, or maintenance agreements.

The distinction of a single resource is not recommended as a penalty on the Company. The primary benefit of an RFP is that it provides greater assurance that the Company has obtained the least-cost resource on behalf of customers. It

is with this in mind that Staff hopes to provide additional transparency in the utilities future acquisition of resources and further the Commissions ability to meet its goals in our competitive bidding process.

This concludes Staff's comments.

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



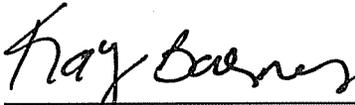
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CERTIFICATE OF SERVICE

UM 1182(1)

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-001-0180, to the following parties or attorneys of parties.

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



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UM 1182 (1)
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