

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1182
PHASE I**

In the Matter of Public Utility Commission
of Oregon's Investigation Regarding
Competitive Bidding.

STAFF'S COMMENTS

Background:

The Public Utility Commission of Oregon (Commission) issued Order No. 06-446 in this docket on August 10, 2006. Order No. 06-446 set out competitive bidding guidelines for investor-owned utilities' acquisitions of new supply-side resources. Later in August 2006, the Commission opened Docket UM 1276 to "address the bias inherent in the utility resource procurement process that favors utility ownership of generation assets over Power Purchase Agreements (PPAs) with third parties."¹

On January 3, 2011, the Commission issued Order No. 11-001 (in UM 1276). In this order, the Commission concluded that the competitive bidding guidelines established in Order No. 06-446 needed to be improved to better address the utility self-build bias issue. The Commission then reopened Docket UM 1182 to "further examine issues related to our competitive bidding guidelines."² Three specific issues were identified: "(1) whether the role of the independent evaluator should be expanded by retaining the independent evaluator 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 analytic framework and methodologies to use to evaluate and compare resource ownership to purchasing power from an independent power producer (Guideline 10(d))."³

At a prehearing conference on January 26, 2011, the issues were divided into two phases. Phase I was to address the first two issues; Phase II was to address the third issue. The following parties submitted comments in Phase I: Commission Staff (Staff), Portland General Electric Company (PGE), PacifiCorp, dba Pacific Power (Pacific Power), Idaho Power Company IPC, the Citizens' Utility Board of Oregon (CUB), the Industrial Customers of Northwest Utilities

¹ Order No. 11-001 at 1.

² Order No. 11-001 at 6.

³ Order No. 11-340 at 1-2.

(ICNU), the Renewable Northwest Project (RNP), the NW Energy Coalition, and the Northwest and Intermountain Power Producers Coalition (NIPPC).

On September 1, 2011, the Commission issued Order No. 11-340 (in UM 1182). In this order, the Commission resolved the first issue by “concluding that the role of the independent evaluator (IE) does not need to be expanded through negotiations and final resource selection in all cases,”⁴ but reserved the “right to require increased IE involvement on a case-by-case basis.”⁵ The Commission resolved the second issue by “declining to lower the threshold for a ‘major resource’ to include more projects in the competitive bidding process.”⁶ However, the Commission also found that the “problem of a utility sizing projects to avoid the competitive bidding requirements needs to be further addressed.”⁷ The Commission then provided a straw proposal to guide further discussion and requested that “interested parties participate in a workshop to discuss this straw proposal and submit one round of comments for the Commission’s consideration.”⁸

Staff hosted a workshop on October 25, 2011 to discuss the Commission’s straw proposal. CUB, IPC, NIPPC, Pacific Power, and PGE also participated. Parties discussed all aspects of the Commission’s proposal, particularly the two criteria that would be used to designate two or more small projects as a “major resource.”⁹

Recommendations:

The Commission’s straw proposal is the following:

If multiple small generating projects totaling 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 generating plants are located on one or more adjacent parcels of land or on parcels within a five-mile radius; 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.

The utility bears the burden of rebutting this presumption. If multiple 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 quali[f]y as a major resource. If the utility proceeds without making this request and

⁴ Order No. 11-340 at 2.

⁵ Id. at 2.

⁶ Id. at 2.

⁷ Id. at 2.

⁸ Id. at 6.

⁹ Order 06-446 at 3.

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.¹⁰

Staff has two recommendations to clarify the straw proposal and make it more consistent with related Commission orders. Staff also has a comment concerning a utility's burden of rebutting the major resource presumption.

First, Staff recommends that the first sentence, which now reads "If multiple small generating projects totaling 100 MW or more . . .," be modified to read "If multiple small generating projects totaling more than 100 MW" Essentially, "more than 100 MW" replaces "100 MW or more." This would make the straw proposal consistent with Guideline 1 of Order 06-446, which used the phrase "greater than 100 MW."¹¹

Second, Staff recommends that the straw proposal's first criterion be changed to read as follows:

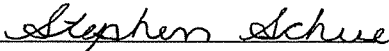
- 1) The generating plants are located on the same parcel of land, or on two or more adjacent parcels of land, or on parcels within five miles of at least one other parcel. Two or more parcels of land are adjacent if they adjoin each other so that they touch along a common boundary or in an unbroken sequence. Two or more parcels are considered adjacent even if there is an intervening public or railroad right of way; and

The first criterion as currently drafted includes "or on parcels within a five-mile radius." This leaves the question "five mile radius of what?" Staff's recommendation is intended to be "inclusive," i.e. to make the five-mile standard as broad as possible. Staff's recommendation also provides clarity by defining the term "adjacent." Attachment 1 provides a revised version of the straw proposal, including all of Staff's recommended changes.

Finally, even with an "inclusive" set of criteria, Staff does not anticipate frequent utility requests for Commission findings that particular projects not qualify as major resources. Given that the circumstances leading to such requests should be infrequent, Staff does not recommend setting a specific timeframe for Commission consideration of these requests. The Commission should consider the requests as quickly as is practicable.

This concludes Staff's comments.

Dated at Salem, Oregon, this 1st day of November, 2011.


Stephen Schue
Senior Economist

¹⁰ Order No. 11-340 at 5-6.

¹¹ See Order 06-446 at 3 and Order 11-340 at 4.

Attachment 1

Staff Comments – UM 1182 – Phase I

Under Staff's recommendations, the Commission's straw proposal would read as follows:

If multiple small generating projects totaling more than 100 MW 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 generating plants are located on the same parcel of land, or on two or more adjacent parcels of land, or on parcels within five miles of at least one other parcel. Two or more parcels of land are adjacent if they adjoin each other so that they touch along a common boundary or in an unbroken sequence. Two or more parcels are considered adjacent even if there is an intervening public or railroad right of way; 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.

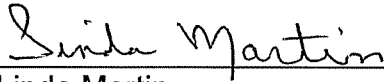
The utility bears the burden of rebutting this presumption. If multiple projects meet these criteria, but the utility believes that other factors show that each plant is a separate and distinct facility, then the utility may request that the Commission find that the projects do not qualify as a major 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.

CERTIFICATE OF SERVICE

UM 1182

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 1st day of November, 2011 at Salem, Oregon



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