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October 21, 2005

VIA Electronic Mail & U.S. Mail

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St NE #215
PO Box 2148
Salem OR 97308-2148

Re: UM 1182; NIPPC Reply Comments

Enclosed for filing is an original of NIPPC's Reply Comments in this docket. A hard copy of these comments will follow in the U.S. Mail.

Please call me if you have any questions.

Very truly yours,

/s/ Susan K. Ackerman

Susan K. Ackerman
Attorney for NIPPC

Enclosures

Certificate of Service

I certify that I have this day served the foregoing document upon all parties of record in UM 1182 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 860-13-0070, to all parties or attorneys of parties, attached below.

Dated this 21st day of October, 2005.

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BEFORE THE OREGON PUBLIC UTILITY COMMISSION

In the Matter of)
NORTHWEST INDEPENDENT POWER)
PRODUCERS COALITION) **UM 1182**
Petition for an Investigation Regarding)
Competitive Bidding)
_____)

**NORTHWEST INDEPENDENT POWER PRODUCERS COALITION
REPLY COMMENTS**

Pursuant to the procedural schedule in this docket, Northwest Independent Power Producers Coalition (NIPPC) files these Reply Comments.

General Remarks

Based on a review of the opening comments of Staff and other parties, there appears to be commonality regarding key elements in proposed updates to the Commission’s existing competitive bidding guidelines. The parties appear to agree: (1) that with limited exceptions utility and affiliate projects should participate in competitive solicitations as “benchmark resources” that are subject to evaluation according to the same scoring and evaluation criteria as non-affiliated bidders; (2) that an Independent Evaluator that reports to the Commission¹ must be employed in any competitive solicitation in which a utility proposes to include its own self-build resource (“benchmark resource”); (3) that a resource size and duration threshold should be established in which competitive bidding is conducted

¹ PacifiCorp appears to support use of an IE, but does not appear to support the idea that the IE reports to Commission or Commission Staff.

(although the exact threshold is not agreed upon); and (4) that the Commission's existing preferences regarding its and the utilities' respective roles should not change as a result of competitive bidding guidelines. NIPPC's reply comments address only important differences among the parties.

NIPPC's Reply to Parties' Issues

1. The RFP Threshold. PGE, PacifiCorp, and Idaho Power raise various concerns regarding the guideline that resource acquisitions of greater than 50 MW quantity and 5-year duration should be acquired through the use of a competitive solicitation, or request for proposals (RFP). The utilities' objections regarding the threshold size and duration guideline, however, are not consistent with actual experience or are already addressed by Staff's proposed RFP exceptions and waivers opportunities.

PacifiCorp states that a 50 MW/5-year threshold (1) creates a bias for short-term power purchases; (2) would impair PacifiCorp's ability to actively hedge its position in forward markets, and therefore would increase consumer costs; and (3) is too small given the time and resource commitment required to conduct an RFP. PacifiCorp, pp. 3-5. Regarding PacifiCorp's first claim, it appears that what PacifiCorp is really saying is that the duration threshold encourages utilities to engage in only short-term purchases, because in this way a competitive solicitation can be avoided. Certainly, those parties advocating competitive resource solicitations do not wish to inflict undue burdens on the utilities. On the other hand, if PacifiCorp and PGE's proposed threshold (100 MW quantity and 10-year term) were enacted, it could encourage the utilities to acquire significant resources without a competitive solicitation at all. For example, the

PacifiCorp-PGE proposal would permit an Oregon utility to acquire a 500 MW resource for nine years, and such an acquisition could be accomplished without an RFP. And, a utility could engage in a series of such acquisitions, each less than ten years, and thereby never have to use the RFP process even though substantial resource acquisitions have occurred.

Even if PacifiCorp's assertion is correct and the five-year threshold encourages short-term power purchases, this is not necessarily a bad result. Shorter-term power purchases, particularly where they represent only a portion of a diversified portfolio, act as a hedge for utilities because shorter-term purchases provide flexibility in the event that market conditions change dramatically. A well-managed portfolio is certain to retain a range not only of fuel types but also of contracts types with varying durations. The ratepayers are well served when utilities are not excessively committed to a fuel type and/or technology that could become burdensome over the long term. NIPPC strongly recommends that the Commission support its and Staff's position by retaining the five-year minimum duration threshold for acquisitions that should be subject to a competitive solicitation.

NIPPC believes, along with most other parties in this proceeding, that it is in the interest of Oregon energy customers that major resource acquisitions are subjected to competitive challenge. The debate over what constitutes "major" need not be as tortuous as PacifiCorp would have it. NIPPC does not believe that a five-year term should be considered a "short" time frame for a resource purchase. Monthly, seasonal, or yearly market purchases are commonplace and considered "short" in the power industry. Five years, however, falls well within the middle range of purchasing durations, and in some jurisdictions may even be considered a long-term purchase.

PacifiCorp's second claim is that the threshold impairs the utility's ability to "actively hedge its positions in forward markets." *Id.*, 4. PacifiCorp asserts that the near and mid term market is very liquid, sold easily in 25 MW increments, and therefore PacifiCorp believes that requiring an RFP for small increments (such as 50 MW) means that the utility would be effectively precluded from that market as sellers would not want to participate in an RFP for quantities as small as 50 MW. NIPPC views this argument as one challenging the quantity threshold of Staff's (and NIPPC's) proposed guideline, as compared to PacifiCorp's prior objection, which related primarily to the duration threshold that Staff proposes. NIPPC suggests that the market offers opportunities for smaller capacity purchases. The recent auction for a share of Grant PUD's hydro capacity is an example. NIPPC members with operating power plants have contracted out for increments of their capacity while others have proposed base load biomass project in the 50 MW range.

PacifiCorp's last claim, that the Staff threshold is too small to permit a complicated and potentially long RFP process is not convincing. In this objection, PacifiCorp appears to argue that a 5-year duration is too short to accommodate a potentially protracted RFP. First, the guidelines Staff proposes (and NIPPC supports), call for a fairly brisk Commission review of a proposed RFP, with Commission action within 45 days of the filing. Staff Guideline 11 (RFP Approval). This appears achievable given that the streamlined RFP process (i.e., without utility resource included) will be employed. It may be constructive to add minor extensions to this schedule but such adjustments, should they prove to be necessary, will undoubtedly fall far short of the wholesale changes PacifiCorp argues are necessary. NIPPC expects that the turnaround time for RFPs will shorten as utilities

grow more comfortable hosting them and as participants gain familiarity with Oregon's RFP guidelines and utility practices. Last, PacifiCorp itself has issued RFPs for small quantities and small time frames. In its recent September 1, 2005, RFP for demand side resource (DSM)², PacifiCorp sought two 40-megawatt acquisitions of DSM, for a three-year period each, which indicates that the 50 MW quantity and 5-year duration threshold is not unreasonably small as PacifiCorp suggests.

PGE states that resource opportunities less than or equal to 100 MWa³ quantity and 10-year duration tend to be related to existing resources and therefore will be driven by near-term market conditions rather than long-term fundamentals. PGE, p. 3. The objection here seems to be that shorter terms and smaller quantities may be more price volatile than longer term acquisitions. While this may be true, it does not necessarily mean that the price will be higher than a cost-of-service purchase since market prices may well fall below the utility's cost, to the advantage of consumers. In addition, shorter-term acquisitions are more easily price hedged than longer-term acquisitions, since the derivatives markets do not deal over the longer terms due to increasing market and credit risk. Therefore, NIPPC does not agree with the apparent suggestion that purchases "driven by near term market conditions rather than long-term fundamentals" is, in and of itself, a negative assessment.

PGE also states that a higher threshold permits them to take advantage of mid-term opportunities and market dynamics, which are likely to be time-

² PacifiCorp RFP No. MSD20050003.

³ PGE notes that the megawatt threshold should be stated in average megawatts, not simple megawatts. Depending on the resource however, use of "average megawatts" could in practicality mean a large project. For example, a wind project of hundreds of megawatts could be only a few average megawatts, which should be considered a major resource.

sensitive. PGE, p. 3. PGE may be correct that mid-term opportunities tend to be time-sensitive, but since Staff's proposed guidelines permit exceptions to RFP requirements for time-sensitive opportunities, the threshold itself does not need to be increased to accommodate this particular concern.

Idaho Power also suggests that the 50 MW, 5-year threshold is too low, as some resource opportunities, such as a multi-party cooperation and ownership of a thermal resource, may not lend themselves to RFPs. Idaho, p. 3. Again, because the Staff proposed guidelines permit exceptions and waivers for unique circumstances, a guideline that NIPPC generally supports, this particular Idaho Power concern is already adequately addressed in the Staff guidelines.

NIPPC supports a size and duration threshold for resource acquisitions that would as a general rule require an RFP because Oregon customers are best served when resources are competitively tested and acquired. NIPPC has not opposed reasonable but limited exceptions to the size and duration threshold, because we think a threshold will assure the integrity of the guidelines and thereby help mitigate utility bias for its own resources while assuring that Oregon's competitive bidding process remains flexible. At the end of the day, Oregon consumers should have the opportunity to benefit from their utilities' engagement of the widest plausible variety of resource options. None of the objections raised by utilities regarding the 50 MW, 5-year RFP threshold are substantial enough to warrant raising the threshold to a higher level.

2. Exempting Self-Build Options From RFP Requirements.

PacifiCorp objects that Staff's proposed exceptions to general guidelines favoring RFPs do not permit the utility to "self-build" in an emergency situation. PacifiCorp, p. 5. PacifiCorp states that the Staff proposed

exceptions inappropriately limit options available to utilities for solving emergency situations or for taking advantage of time limited opportunities that may involve a self-build solution where, for example, multiple parties may develop or joint ownership options may be presented. *Id.* PacifiCorp proposes a replacement guideline that permits the utility to request a waiver for Major Resource acquisitions for emergencies, time-limited opportunities, and a showing that the public interest would be served by the waiver. PacifiCorp, Attachment A (“Waiver of RFP Requirement”).

NIPPC generally does not oppose PacifiCorp’s alternative presentation of a combined exception and waiver guideline, with one very big caveat. NIPPC questions how a utility self-build option could ever be utilized in response to an emergency, or how a self-build resource could ever be a “time-limited” opportunity. Independents in the West have observed utility self-build resources mysteriously arrive on the scene just in time to forestall serious consequences that the utility should have anticipated in any event.⁴ It is utterly self-serving when an “emergency” or “time-limited” resource turns out to be just the very resource that utility has long planned but not actively sought through conventional procedures.

As well, PacifiCorp seems to assume that only utilities may be presented with opportunities to participate in “time-limited, joint-ownership” opportunities. PacifiCorp, p. 5.⁵ With the recent changes by Congress⁶ to the Public Utility Holding Company Act (PUHCA), NIPPC anticipates that new entrants and new investors may be interested in participating in large, multi-party electric generating projects. Utilities will not be the only entities

⁴ This phenomenon is also known as “blackout blackmail.”

⁵ Idaho Power raises a similar objection. See discussion, *infra*, at p. 8.

⁶ Energy Policy Act of 2005, P.L. No. 109-58, 119 Stat. 594 (2005)

presented with these potential investments, although utilities will be in a good position to buy the output of these projects. The Commission should reject utility claims that an RFP waiver for self-build options in cases of emergencies or “time-limited, multi-party” opportunities is a good idea except in the most extreme of circumstances.

NIPPC strongly urges that the Commission retain Staff’s proposed guideline that precludes exceptions for self-build options. If the Commission determines to accept PacifiCorp’s argument, then NIPPC urges that waivers to RFPs should not be available for self-build options except upon a very compelling showing that the resource is in the public interest, has unique advantage to customers, and could not be acquired through competitive means such as an RFP. PacifiCorp’s rendition of the waiver requirement would then be modified as follows:

3. Waiver of RFP Requirement: A utility may request that the Commission grant a waiver for Major Resource acquisitions. A waiver may be granted upon a finding of an emergency situation, a time-limited resource opportunity, or other showing that the public interest requires such a waiver. The Commission discourages waiver requests for Major Resources that are utility self-build resources. Any waiver request for a utility self-build resource must be accompanied by a compelling showing of the need for and unique value of the resource to customers. Any waiver request will be served on all participants in the utility’s most recent rate case and in the utility’s most recent all-source RFP. The Commission will issue an Order addressing such requests within 120 days, or earlier, if the Commission finds that good cause exists for an expedited process, taking such oral and written comments as it finds appropriate under the circumstances.

Of course, the Commission’s competitive bidding guidelines do not now, nor are the new proposed guidelines intended to, usurp utility management prerogative. Therefore, if an “emergency” truly must be solved

with a self-build option, or a “time-limited” self-build opportunity arises, the utility may act outside of the Commission’s guidelines. Needless to say, if such an instance arises, NIPPC encourages the Commission to be profoundly skeptical in any cost recovery proceeding of utility claims that an emergency or time-limited opportunity was actually present and necessitated a self-build solution.

3. Considerations of Imputed Debt. Both PGE and PacifiCorp agree that considerations of imputed debt are appropriate in an RFP, but they take issue with Staff’s limitation that imputed debt be considered only in the final round, following the compilation of a short list of bidders. PacifiCorp, p. 9; PGE, pp. 3-4. Both utilities prefer that imputed debt be utilized in bid evaluation from the very beginning.

NIPPC strongly opposes any consideration of imputed debt when evaluating competitive bids, particularly when one of the resources evaluated is the utility’s “benchmark” resource. In a situation where both utility and non-utility bids are evaluated, the utility will not be able to resist the temptation of biasing bid scoring and evaluation away from purchased power opportunities and in favor of utility resource and using imputed debt as the vehicle for the bias. NIPPC testified before the Commission in this proceeding and Docket No. UM 1056 on June 6, 2005⁷, that there is a wide range of risk and benefit associated with both power purchases and utility self-build options, and that imputed debt should not be overstated such that utility resources are overvalued when compared to a non-affiliated option. To allow bid evaluations that consider imputed debt for power purchases

⁷ Oregon Public Utilities Commission, Dockets Nos. UM 1182 and UM 1056, Northwest Independent Power Producers Coalition, Comments on “Debt Equivalency,” June 6, 2005.

without a comparable evaluation of the risks associated with utility self-builds, would seriously bias the results of any bid evaluation.

There are two preferred solutions to this question. First, as CUB, RNP, and NWEAC urge, imputed debt should be one component of an IRP analysis in which the risks and rewards of owning vs. renting resources are evaluated. CUB, RNP, NWEAC, pp. 4-5. In such an analysis, all advantages and disadvantages of purchases and ownership options may be evaluated comparably, in a public forum, and the impact of such an evaluation would inform the utility, the Commission, and consumer advocates regarding the value of the two alternatives. A second option, which is not incompatible with the first, is for the question of imputed debt to be considered in the context of a cost recovery proceeding for the resource, when actual facts are available to the Commission, rather than the utility's assertion that debt will be imputed and costs will rise.

A third option is for the Commission's guidelines to direct that the Independent Evaluator (IE) to comparably evaluate all risks and benefits associated with utility purchases along side those associated with power purchases. NIPPC's Opening Comments proposed this language as a direct addition to Staff's Straw Proposal, Guideline 8.c. NIPPC, pp. 10-13.

4. Independent Evaluator Qualifications. PacifiCorp objects to language in Staff's proposal that an IE not have provided consulting services to market participants in western markets recently. PacifiCorp, pp. 7-8. The utility's objection is that this requirement goes to the issue of whether the IE is independent, and that independence can be assured through a simple guideline, without prescriptively eliminating technically competent IEs that may have provided consulting services in the west. PacifiCorp states that it

may be difficult to find any technically competent, experienced IEs that have not provided consulting services in the west.⁸ *Id.*

NIPPC generally agrees with PacifiCorp that the requirements for an IE should be technical competence, experience, and independence. However, NIPPC supports the concept Staff is seeking to establish in the guidelines. Staff is trying to achieve the goal of independence which may require that some limits are placed on the types of consulting services an IE may perform for a reasonable period before and after a competitive solicitation.

Such a limitation is important for other relevant reasons. IPPs have had the experience (as have utilities) of seeing highly sensitive market information, acquired through consultant review of detailed bid information, used to their detriment in subsequent competitive situations. It is highly important to the independents that information acquired by the IE in the IE role may be used to a competitor's advantage following the RFP. This may require a time limit on the ability of the IE to provide consulting services for competitors for a period of time following the RFP.⁹

NIPPC recommends that the Staff guideline be mostly retained. NIPPC proposes the following edits to PacifiCorp's draft:

7. Independent Evaluator (IE): The utility and Commission staff select an IE from a qualified slate of candidates. The IE must demonstrate sufficient qualifications, expertise, and experience to

⁸ NIPPC is familiar with experienced and technically competent firms who are *making it their business model* to provide IE services in competitive solicitations; as a consequence these firms do not undertake clients or work that would result in a conflict of interest with bidders or utilities in RFPs.

⁹ This is a concern NIPPC has about consultants even for non-bidding intervenors if the consultants then provide consulting services to competitors for whom the information gained in an RFP would be valuable. NIPPC thinks that these issues may be resolved by appropriate protective orders.

perform all of the functions of the IE as contemplated by the Commission and these Guidelines. Specifically, the IE must be independent of the soliciting utility and likely, potential bidders and also be experienced and competent to perform all functions of the IE as contemplated by this Commission and these Guidelines. The IE should not be currently providing development-oriented consulting services to participants in western energy markets, and may be required to agree to reasonable restrictions on the IE's ability to use information gained in the RFP in western energy markets for a period of time following the RFP. The IE should report to the Commission staff. The IE should be paid by the utility through assessments on all bidders including the utility. The bidding fees will be based on the anticipated costs of the IE's services as established between the IE and Commission staff.

5. The IE Reports to the Commission or Staff. PacifiCorp's edits to Staff's Straw Proposal delete the following sentence from Staff's proposed guideline 7: "The IE should report to the Commission staff." PacifiCorp, Attachment A, p. 2. NIPPC strongly opposes this proposed change to the Staff guidelines about the IE. The importance of an IE is its independence, and independence most importantly *from the utility conducting the RFP*. PacifiCorp's deletion confuses the issue of where the IE's fiduciary responsibility lies. The guidelines should be very clear that the IE is responsible to the Commission or Commission staff, as the Commission directs. There should be no hint that the IE has any obligation to the utility, other than the intellectual fairness and honesty that should be accorded to all involved in the RFP.

6. Utility Bid Fees. Idaho Power takes the position that bid fees should not be required of bidders, since this will tend to drive away potential bidders who may not feel able to invest in a sizeable bid fee. Idaho, pp. 4-5. PacifiCorp takes the opposite position, that utilities should not be required to

pay any bid fees in situations where a utility benchmark resource is also evaluated.

Regarding Idaho Power's position, and based on Idaho Power's Opening Comments, it appears as though Idaho rules do not allow utility self-build resources to be considered in competitive solicitations. As well, Idaho Power utilizes consultants to assist in all of their competitive bids. NIPPC respectfully suggests that in Idaho Power's case, assessing bid fees on bidders to pay for the costs of an independent consultant's participation in the RFP is not necessary. NIPPC strongly supports the use of an Independent Evaluator in competitive solicitations where a utility benchmark resource will also be considered and evaluated along side market bids. In these instances, paying for the IE through bid fees assessed on bidders primarily (and the utility) helps assure the independence of the IE because the IE is not on the utility's payroll.

Regarding PacifiCorp's position, that utilities should not be assessed bid fees because they are not "bidders," this statement is correct only in the most technical sense. In competitive solicitations involving utility benchmark resources, the utility resource effectively "bids" into the RFP. It may not be a market bid per se, but the utility's resource is being evaluated alongside market bids in as comparable a fashion as possible. Therefore, the utility resource itself will require the resource and time of an Independent Evaluator, and the utility may fairly pay its share of the costs of the IE through a bid fee.

NIPPC has no quarrel with PacifiCorp's observation that remaining costs that are not fully funded through bid fees, which will necessarily be estimated and may exceed expectation, may be recovered from customers.

NIPPC does suggest by the same token that should fees fall short of that budgeted, that bidders receive refunds of their pro rata shares.

Conclusion

For the reasons stated in NIPPC's Opening Comments and in these Reply Comments, NIPPC recommends that the Commission adopt the competitive bidding guidelines proposed by Staff, as amended by NIPPC's Opening Comments. The proposed changes to the guidelines as identified by Staff and as supported by the preponderance of the parties will go a long way toward mitigating utility bias in major resource acquisition and thereby improve ratepayers' overall prospects for a diversified, affordable and reliable sources of electric power.

DATED this 21st day of October, 2005.

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