

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1182(1)

In the Matter of

NORTHWEST INDEPENDENT POWER
PRODUCERS COALITION

Petition for an Investigation Regarding
Competitive Bidding

Opening Comments of Renewable
Northwest Project

Renewable Northwest Project (RNP) appreciates the opportunity to comment on two of the three questions that the Public Utilities Commission (PUC or “Commission”) raised in Order No. 11-01 in UM 1276.¹ They are whether, in order to mitigate bias favoring utility-owned resources over PPAs in the utility procurement process, the Commission should (1) retain the independent evaluator (IE) through negotiation and final resource selection; and (2) lower the 100 MW major resource threshold to include more projects. The Commission asked “whether these changes might help further ensure that the utility self-build bias does not result in the acquisition of higher cost utility-owned resources.”

RNP predicates its comments upon the Commission’s recognition of, and stated desire to correct, a bias in the existing procurement process. RNP’s diverse membership represents different points of view on the issue of utility self-build bias. This includes consumer and environmental advocates who strongly support renewables, but are concerned about customer risks and rate impacts; independent power producers who want to compete fairly with utility-owned resources; and developers who prefer the utility

¹ The third question—whether better guidelines might improve the IE’s comparative assessment of the risks and benefits of utility benchmark resources—will be addressed in a subsequent phase of this proceeding.

ownership model because they primarily develop and sell renewable projects to utilities. On the whole, RNP's goal is finding least cost, least risk resources that have withstood a fair and unbiased evaluation process. Hopefully, that results in not only a diversity of resource types, but also in a diversity of ownership models that will benefit utility customers over time. The Commission's objective to introduce greater balance into the procurement process is consistent with RNP's broader objectives.

In that light, the Commission's concepts for improving the balance in the RFP process appear to have merit. Negotiation with short-listed bidders is the critical stage of the procurement process; if the Commission's goal is to ensure that utilities give equivalent consideration to diverse types of bids in their ultimate resource selections, the benefits of retaining the IE through negotiation and final resource selection would appear to overcome the inconvenience and marginal cost increases. And RNP would support lowering the major resource threshold for certain generation types, as well as adoption of a framework for determining when related generation resources should be combined in applying the threshold.

I. To promote comparable negotiating treatment of short-list bidders for major resources, IE oversight is neither too cumbersome nor too costly.

The March 11 workshop revealed some uncertainty about the nature and benefits of IE involvement through negotiation, as well as significant concern on the part of the utilities that IE involvement would make the negotiation process too cumbersome. As RNP understands the role of the IE in negotiation and final resource selection, it does not appear that the inconvenience would be significant enough to prevent IE involvement from being a useful tool to promote comparable negotiating treatment of short-list bidders through final resource selection.

Thus far, RNP's understanding of how the IE would operate is based largely on what it has learned about the California Public Utilities Commission's (CPUC's) IE requirement for resource procurement in connection with California's Renewable Portfolio Standard (RPS).² RNP is well aware that procurement for the California RPS differs in many ways from general procurement of generating resources for utilities serving Oregon. But the California example can help to illuminate how an IE might participate during negotiation and how at least one developer member of RNP has experienced such IE involvement. The California example also demonstrates that a large number of contracts can be consummated successfully, despite whatever minimal inconvenience IE involvement during negotiation might create.³

From what RNP understands of the California process, the IE participates in negotiations primarily as an observer while continuing to serve as a touchpoint for regulatory principles and balance for both sides in the negotiation. The parties dial in or

² In Decision No. 06-05-039 (May 25, 2006) (http://docs.cpuc.ca.gov/published/FINAL_DECISION/56685-03.htm - P332_79201), the CPUC adopted an IE requirement for the major IOUs' annual RPS procurement solicitations:

"Because of the complexity, importance, and potential for conflicts and disputes, we also require each IOU to use an Independent Evaluator to separately evaluate and report on the IOU's entire solicitation, evaluation and selection process for this and all future solicitations. This will serve as an independent check on the process and final selections."

Bilateral contracting is also permitted for RPS procurement under certain conditions, but any bilateral contracts now must also be reviewed by the IE. CPUC Decision No. 09-06-050 (June 18, 2009) (http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/102666.pdf). See also generally <http://www.cpuc.ca.gov/PUC/energy/Renewables/> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/procurement.htm>.

³ The spreadsheet available at http://www.cpuc.ca.gov/NR/rdonlyres/7394E05A-8FA8-4093-B24F-3E16D07835EF/0/RPS_Project_Status_Table_2011_March.XLS contains links to numerous CPUC orders approving RPS contracts. See, e.g., Resolution E-4293 (December 17, 2009). The decisions approving procurement generally make a note like the following: "[T]he IE monitored [the utility's] short-listing discussions, contract negotiations and meetings with management where [the utility] made decisions regarding bid prioritizations and negotiation positions. [The IE] says that the [] PPA was negotiated fairly and appropriately, and the IE does not believe that there is any material issue or deficiency that would warrant the CPUC's rejection of any of this PPA." *Id.* at 12.

invite the IE to negotiating sessions, although inability to secure IE attendance at a few negotiating sessions does not prevent them from going forward. At first, for a developer not accustomed to having an IE present, hesitation about negotiating in the presence of a third party is natural. Quickly, however, the IE explains and establishes caveats for its presence and then can blend into the background and negotiation can proceed normally. The ongoing presence of the IE may mitigate some of the very “worst” negotiating behavior on *both* sides of the transaction, but not to the detriment of both sides pushing hard to reach their best deal. Although the IE is not a referee, the IE can sometimes test new concepts useful to the negotiations for both sides. In one developer’s experience, the IE was also able to provide reassurance that negotiating parties were being treated consistently with respect to particular contracting points.

In California, the IE’s final report following resource selection becomes part of the package presented to the CPUC for preapproval. But the benefit of having an IE present during negotiations may be less in the IE’s final product and more in what the IE’s presence prevents and facilitates during negotiations. When an IE understands the biases that careful regulation of the short list was intended to alleviate, and can continue to observe through the negotiation, the parties are less likely to allow those biases to come back into their more subjective decisionmaking at the final, critical stage of resource procurement. In addition, the IE can be a resource to both utilities and developers for reassurance that, though intense, the negotiations are fair. In the event that they are not, the IE can serve as an objective third party and the IE’s signaling can give the parties the opportunity for mid-stream course correction.

Questions were raised in the workshop about what procedural role the IE's final report following negotiation and resource selection would play in Oregon. Currently, as RNP understands it, the RFP docket is closed following filing of the IE's short-list report and Commission acknowledgment of the short list—although such acknowledgment is grounded on the reasonableness of the utility's continued negotiation with short list bidders, insofar as is known at the time of acknowledgment. No Commission review of the selected resource is made until later cost recovery proceedings.

RNP does not view IE involvement through negotiation as requiring a major change to Oregon's sequence of events. The Commission could continue to acknowledge the short list conditionally, with the proviso that any irregularities reported in the later-filed IE report on final negotiation and resource selection would prompt a reopened Commission review of the reasonableness of the utility's procurement process. Negative IE final negotiation and resource selection reports would not be anticipated to occur frequently. Again, the strong likelihood is that the IE's presence and ability to report irregularities in its report to the Commission would prevent them from occurring in the first place.⁴

It is difficult to quantify the benefits of IE involvement through negotiation, but the costs of this measure do not appear to be unreasonably high. Based on PacifiCorp's Response to NIPPC's Data Request No. 1, the incremental cost of retaining the IE through negotiation in UM 1368 was approximately 16 percent of the total cost of the IE. When compared with the cost of the resource, or with the cost of the approaches to alleviating bias considered in UM 1276 (such as a 10 percent adder to the PPA cost), retaining the IE

⁴ RNP is not aware of a contract in the spreadsheet of California projects cited above, in footnote 3, that resulted in a negative final IE report.

through negotiation appears to be a modestly priced way to continue to further the Commission's objectives.

Finally, RNP responds to the question whether involving an IE through negotiation will further reduce the pool of developers interested in bidding into the RFP process. No certain answer to this question is available. RNP does not dispute the utilities' contention that some developers prefer bilateral negotiations to participating in RFPs. Participating in any RFP is a time-consuming and costly endeavor, and some developers will always look for alternative ways to sell projects. However, involving an IE in negotiations is not likely to be so cumbersome as to fundamentally change the nature of Oregon's RFP process to discourage developers who otherwise would have bid in the RFP. Moreover, given that Oregon is committed to the RFP process, making that process fair and transparent for those who choose to participate is more important than streamlining the process for those disinclined to participate in RFPs in the first place.

In sum, RNP is inclined to support retention of the IE through negotiation and final resource selection. The IE does not unduly burden the process, and in fact can help to facilitate negotiation for both sides. The IE's presence can prevent the final stage of procurement from undoing the hard work that the IE and Commission have done to try to eliminate bias from the short list decision.

II. The 100 MW major resource threshold could be improved to ensure that significant acquisitions are captured, and should be lowered for certain resource types.

A. Threshold size

In considering the Commission's concept to lower the major resource threshold to include more projects in the RFP process, RNP has considered whether 100 MW represents

a “major” resource across renewable technologies. For wind energy, a 100 MW threshold seems appropriate. However, for solar, geothermal, or perhaps even biomass technologies in the service territory of the Oregon IOUs, a project significantly smaller than 100 MW would be considered a “major” resource.⁵ We understand that, currently, the only technology-specific RFPs the utilities are issuing are to fulfill the Oregon solar capacity standard, which totals around 10 MW for each utility and is planned to be procured in smaller pieces over time. RNP also understands that smaller-than-100MW resources can be included in all-renewables RFPs even at a 100 MW major resource threshold. However, given the likelihood that utilities may acquire utility-scale solar or geothermal resources before the Commission again revisits the RFP guidelines, RNP would recommend that the major resource threshold be lowered when utility IRP action plans call for acquisition of solar, geothermal, and perhaps biomass resources. RNP has no final conclusion about an appropriate threshold at this time, but for purposes of these Opening Comments a resource threshold of 20 MW to 30 MW seems reasonable to capture “major” solar and geothermal resources within the service territories of the Oregon IOUs.

B. Application of threshold to multiple projects

RNP supports the concept of the Commission applying a consistent framework to determine when a group of related projects, each less than 100 MW, should be considered as a group for purposes of applying the major resource threshold. This can help ensure

⁵ The Solar Energy Industries Association maintains a nationwide list of utility-scale solar projects, available at <http://www.seia.org/galleries/pdf/Major%20Solar%20Projects.pdf>. No utility-scale solar PV project in operation or construction is larger than 60 MW, though some under development (mainly in the desert southwest) have exceeded 100 MW. NV Energy has a significant utility-scale geothermal portfolio, and its largest operating plants are around 50 MW with a 62 MW plant in development. See NV Energy Geothermal Projects at <http://www.nvenergy.com/renewablesenvironment/renewables/geothermal.cfm>.

that significant resource additions are not organized to avoid the threshold and to give parties advance information to avoid the type of post hoc dispute that occurred in UE 200.

At the same time, determining which projects should be considered separate and which combined for purposes of promoting a particular regulatory objective is not a simple task. RNP recently researched a variety of different project characteristics that different regulatory agencies and their staff have used to consider this question.⁶ Many substantive factors are similar, but widely varying amounts of flexibility and discretion are allowed in applying different sets of factors across regulatory schemes. The question should always be which factors and methods for determining separate project status best promote the purposes of the particular regulatory scheme.

The most important objectives in applying the major resource threshold for RFPs are (1) to ensure that utilities do not make significant financial commitments without considering resource options with lower costs and risks for consumers; and (2) to give utilities clear guidance for when they can move forward with resources below the major resource threshold. To achieve those goals, the framework adopted here should be relatively rigorous (*i.e.*, should not be overly concerned about capturing projects that could in other circumstances be considered separate), because the utility is making a large resource commitment to the group of projects regardless of the precise degree of relationship between the projects. Also, to give timely and fair guidance so that utilities can pursue smaller resources with certainty, the framework should either be unambiguous in its application (*i.e.*, contain very clear, non-discretionary criteria) or, if using factors that

⁶ The project characteristics considered included the following: Ownership, location, timing, financing, siting applications, purchase of generating equipment, PPA and transmission agreements, expenses and revenues, transmission infrastructure, construction contracts, staffing/personnel, operations and dispatch decisions, control room and equipment, and related and supporting facilities.

are more discretionary or difficult to apply, should involve a process for timely determination by the PUC. When multiple projects would exceed the threshold if combined, the fundamental inquiry should be whether the projects bring the utility similar generation qualities or require the utility to make similar financial commitments, as compared with the single projects that would emerge from a competitive solicitation.

To answer this question, the most relevant project characteristics would seem to be the timing of acquisition, on-line date and project life span, common dispatch regimes, and interrelated financial arrangements. However, the ability to evaluate these factors depends on whether the PUC will adopt a process to make a discretionary determination. If it does, as appears to be proposed in Staff's Opening Comments, then each of the above factors could be considered within Staff's proposed framework. If not, then the PUC would need to eliminate some subtlety from the analysis and adopt clearer criteria that would sweep in more projects. Location and timing are examples of less discretionary criteria,⁷ but others could be formulated as well.

In sum, ensuring that the major resource threshold is applied effectively is important, and RNP supports a thorough discussion of the best way to accomplish competitive procurement of all major resources while giving utilities a clear path to acquire smaller resources. RNP looks forward to hearing other parties' thoughts on this issue.

⁷ For example, a location and timing standard could be: "Multiple projects of the same generating type that are located within five miles of one another and acquired, constructed, or placed on-line within 24 months of one another shall be considered a single project for purposes of applying the major resource threshold."

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **OPENING COMMENTS OF RENEWABLE NORTHWEST PROJECT** on the following persons on March 31, 2011, by hand-delivering, faxing, e-mailing, or mailing (as indicated below) to each a copy thereof, and if mailed, contained in a sealed envelope, with postage paid, addressed to said attorneys at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

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