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September 30, 2005

Via Electronic and US Mail

Public Utility Commission

Attn: Filing Center

550 Capitol St. NE #215

P.O. Box 2148

Salem OR 97308-2148

Re: In the Matter of Northwest Independent Power Producers Coalition Petition for an Investigation Regarding Competitive Bidding.
Docket No. UM 1182

Dear Filing Center:

Enclosed please find the original and two copies of the Opening Comments of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely,

/s/ Christian Griffen

Christian W. Griffen

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Opening Comments of the Industrial Customers of Northwest Utilities upon the parties on the service list by causing the same to be sent via electronic mail and to be mailed, postage-prepaid, through the U.S. Mail. Parties who have waived paper service have only been provided with an electronic copy.

Dated at Portland, Oregon, this 30th day of September, 2005.

/s/ Christian Griffen
Christian W. Griffen

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1182

In the Matter of)
)
an Investigation Regarding Competitive) THE INDUSTRIAL CUSTOMERS
Bidding.) OF NORTHWEST UTILITIES'
) OPENING COMMENTS
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_____)

I. INTRODUCTION

Pursuant to Administrative Law Judge (“ALJ”) Logan’s September 6, 2005 Memorandum, the Industrial Customers of Northwest Utilities (“ICNU”) submits these Opening Comments regarding the Oregon Public Utility Commission’s (“OPUC” or the “Commission”) investigation into electric utility competitive bidding. ICNU generally supports the expanded use of competitive bidding new resource acquisitions by electric utilities because it has the potential to lower power costs and promote the development of a competitive generation market. However, any new rules should not limit the Commission’s discretion to disallow costs in future rate proceedings or usurp the responsibility of utility management to make new resource decisions.

Any new competitive bidding rules must recognize that competitive bidding has failed to produce meaningful results when electric utilities have been allowed to include self-build or affiliate resources in the bidding process. ICNU urges the Commission to adopt meaningful requirements to remedy the problem of electric utilities

biasing the competitive bidding process in favor of their own and their affiliates' resources. Likewise, in order to allow utilities to make resource decisions and to ensure that the Commission retains its discretion, the Commission should not insert itself into the competitive bidding process, or approve the results of competitive bids.

II. BACKGROUND

The Commission first adopted competitive bidding guidelines for electric utilities in 1991. Re an Investigation into Competitive Bidding by Investor-Owned Elec. Utility Cos., OPUC Docket No. UM 316, Order No. 91-1383 (Oct. 18, 1991). The competitive bidding process was intended to establish a fair bidding process and to determine whether a proposed project was consistent with a utility's least cost plan. Id. at 1, 7. The Commission prohibited a utility or its affiliate from participating in its own supply-side or demand-side bid solicitation and directed the utilities to obtain a portion of their new resources through competitive bidding. Id. at 1-2. The Commission did not intend for the competitive bidding process to alter the basic roles of the Commission and the utilities, and determined that it should not become directly involved in bid evaluation and selection. Id. at 7-8. The Commission specifically reiterated its previous conclusions that "[u]tility management is fully responsible for making decisions and accepting the consequences of those decisions." Id. at 19.

On December 2, 2004, the Northwest Independent Power Producers Coalition ("NIPPC") filed a petition requesting an investigation to develop a new competitive bidding rule. At its January 4, 2005 Open Meeting, the Commission opened an investigation into the adoption of new competitive bidding requirements. The

Commission has stated that it intends to revise the competitive bidding process to ensure that “resources are considered on an equal basis.” Re an Investigation into Regulatory Policies Affecting New Resource Development, OPUC Docket No. UM 1066, Order No. 05-133 at 2 (Mar. 17, 2005). ALJ Logan has adopted the parties’ proposed issues list and specifically directed the parties to consider: 1) how a utility or its affiliate resources are considered in the bidding process; 2) the Commission’s role in reviewing bids; 3) the criteria for scoring bids and the role of an independent monitor; and 4) whether there is a role for an auction process. Re an Investigation Regarding Competitive Bidding, OPUC Docket No. UM 1182, Memorandum (June 6, 2005).

The parties to this proceeding have participated in numerous workshops in an effort to jointly develop new competitive bidding rules. Some parties have presented “straw proposals” outlining their visions for how competitive bidding would work in Oregon. On September 26, 2005, the Commission Staff emailed to the parties its final straw proposal (“Staff Straw Proposal”) asking the parties to use its proposal as a point of departure for the opening comments. It is ICNU’s understanding that some parties that had previously presented their own straw proposals will adopt much of the Staff Straw Proposal, with some modifications. ICNU appreciates the efforts that all the parties have put into this proceeding and believes that many aspects of the Staff Straw Proposal may result in significant improvement to the competitive bidding process. However, ICNU is not confident that electric utilities will be prevented from biasing the competitive bidding process outlined in the Staff Straw Proposal, and recommends that the Commission not

take a direct role in the competitive bidding process and refrain from acknowledging the results of any specific competitive bids.

III. COMMENTS

1. ICNU Supports Staff's Proposal to Require Competitive Bidding for Most New Major Resources

Staff is proposing significant changes in the competitive bidding process that are intended to increase the use of competitive bidding and limit the ability of the utilities to bias the results. Staff's proposal dramatically alters the existing requirements by requiring the utilities to conduct a competitive bidding process through a request for proposals ("RFP") for all new major resources of 50 megawatts or larger and durations greater than five years. The utilities would be allowed limited exceptions to the requirement to conduct an RFP for major new resources, including emergencies or time limited resource opportunities of unique value to customers. Since the Staff Straw Proposal would require competitive bidding to become a part of the utilities' resource procurement process, Staff would allow the utilities and their affiliates to participate in RFPs. In order to mitigate against the utilities' bias in favor of their own and their affiliates' resources, Staff would require an independent evaluator ("IE") to review the RFP when the utilities or their affiliates participate in the competitive bid.

ICNU supports Staff's proposal to more broadly require utilities to engage in competitive bidding when they acquire new major resources. Competitive bidding, if fairly and properly performed, should lower overall resource costs. In addition to lowering power costs, competitive bidding is consistent with the requirements of Senate

Bill 1149, which directs the Commission to adopt policies designed to mitigate the market power of electric utilities by promoting the development of a competitive generation market. See ORS § 757.646.

The Staff Straw Proposal also appropriately allows the utilities to retain the ultimate decision making authority regarding new resource acquisitions. Staff specifically proposes that the “utility conducts the RFP process, scores the bids, selects the initial and final short-lists, and undertakes negotiations with bidders.” Staff Straw Proposal at § 13. The utilities, and not the Commission, should retain the responsibility to plan, develop, and acquire the necessary resources to serve their customers at the overall least cost. The Commission should not inappropriately usurp this role by requiring the utilities to select any specific resources, or by pre-approving the resource selection process and its results.

2. The Commission Should Not Approve or Acknowledge Utility RFPs Outside of a Rate Proceeding

ICNU generally supports Staff’s proposal to allow utilities and their affiliates to participate in the competitive bidding process. However, allowing utilities to include their own resources and the resources of their affiliates in the competitive bidding process provides the utilities with an incentive to bias the process in favor of their own resources. Staff proposes to remedy this bias by requiring an IE for all RFPs that include a utility or utility affiliate resource, and establishing a Commission review process for the proposed utility RFP. Id. at §§ 5-7, 11. Staff’s proposal may not effectively mitigate this bias, and the Commission should not restrict its ability to disallow the costs of resources

acquired through an RFP by approving proposed RFPs or acknowledging the results of any RFPs.

Allowing the utilities to include their own and their affiliates' resources in competitive bids provides the utilities with an incentive to use the competitive bidding process to support their own resources. Utilities can eliminate potential competing resources or promote their own resources by limiting the size, location, and duration of proposed resources that can bid, scheduling the competitive bid at a time when only their resource will have a realistic opportunity to be the "low" bid, and selectively authorizing rebids. Other examples of the utilities biasing the competitive bid include drafting the scoring criteria to favor their own resources, unfairly evaluating resources, and preventing non-utility parties from accessing the scoring criteria.

Staff proposes that an IE assist in the drafting of the RFP, validate the utilities' scoring of the bids, and independently review all or some of the bids. Id. at §§ 9, 12-13. ICNU agrees with Staff that a strong independent evaluator, as opposed to simply an independent monitor, should participate in the development of the scoring criteria, review the utility's scoring, and independently score proposed bids in any RFP that includes a utility self-build or affiliate resource. Even with the protections of an IE, the Commission should not limit its own ability to disallow resources acquired in a competitive bid evaluated by an IE, because an IE may not be able to anticipate or address the myriad of creative methods that the utilities have developed, or may develop, to bias the competitive bidding process.

The IE should also review any bidder updates or rebids to determine if they unfairly benefited the utility or its affiliates resource. The Staff Straw Proposal allows rebids or bidder updates if “the utility and the IE determine that bidder updates are appropriate” Id. at § 12. If updates are allowed, all bidders, not only the utility or affiliate, should be provided the opportunity to resubmit their bids. In addition, the IE should evaluate whether allowing an update or rebid resulted in favoring the utility or affiliate resource.

While ICNU generally supports Staff’s proposed role for the IE, ICNU proposes some minor changes to the Staff Straw Proposal to better ensure that the IE remains independent of the utilities. ICNU proposes that only Staff, with input from non-bidding interested parties, should select the IE. See id. at § 7. The IE should also independently review, instead of “validate,” the utilities’ scoring. See id. at § 13(b). In addition, the IE should be under no obligation to work to reconcile any differences between its scoring and the utilities’ scoring. See id.

ICNU believes that Staff’s proposal for the Commission to review the proposed RFP is insufficient to protect against utility bias and could unduly limit the Commission’s future ability to disallow the costs associated with resources acquired pursuant to an unfair competitive bidding process. Staff proposes that the Commission review a proposed RFP and issue an order within 45 days regarding whether: 1) the RFP is consistent with the utility’s integrated resource plan; 2) the RFP is consistent with the competitive bidding guidelines; and 3) “the overall fairness of the proposed RFP

process.” Id. at § 11. The Staff Straw Proposal would allow the Commission to impose modifications or conditions on the draft RFP.

ICNU is concerned that any Commission ruling regarding the fairness of the draft RFP will unduly limit the Commission’s ability to disallow the costs associated with resources acquired through an RFP process. Staff’s proposed 45-day process, under which discovery is not available and the Commission takes public comment, is not vigorous enough to assure the RFP will be fair. It is also unclear what issues would be appropriate to raise in the Commission’s review of the RFP. For example, many of the methods the utilities use to bias the results of a competitive bidding, including the timing of the RFP and the size and duration of the selected resource, may be difficult to remedy by imposing modifications or conditions on the RFP. In addition, it may not be possible for the Commission, Staff, or interested parties to understand whether the RFP was biased or unfair until well after the competitive bidding process has been completed.

The Staff Straw Proposal further limits the Commission’s future discretion by authorizing the utilities to request that the Commission acknowledge the utility’s final selection of its RFP resources. Id. at § 16. The utility’s selected short list of RFP resources would be found to “seem reasonable.” Id.; see Re the Investigation into Least-Cost Planning for Resource Acquisitions by Energy Utilities in Oregon, OPUC Docket No. UM 180, Order No. 89-507 at 11 (Apr. 20, 1989). This proposal does not appear to be designed to limit utility bias or otherwise improve the process, but to only provide the utilities with greater assurance that their resource procurement process will be found reasonable in a rate proceeding. If the Commission is inclined to acknowledge the results

of the RFPs, then the Commission should defer resolution of this issue until it has been proven that the utilities are not biasing the results of the RFP process.

3. Independent Power Producers Should Be Permitted to Submit Bids to Build on the Utilities' Sites

Independent power producers should be provided an equal opportunity to submit bids on all resource types that are included in the RFP. Under the Staff Straw Proposal, the utilities are permitted to include a self-build option as a “Benchmark Resource” that is a cost based alternative for customers. Staff Straw Proposal at § 6. ICNU does not oppose utilities including a self-build option; however, independent power producers should be provided an opportunity to submit bids to build the proposed “Benchmark Resource” on the utilities’ site. These bids could be for turn key or independently owned resources.

4. The Utilities Should Not Be Permitted to Utilize Debt Imputation to Unfairly Penalize Independent Power Producers

Staff proposes that debt imputation be considered during the selection of the final bids in the RFP process. Id. at § 8(c). ICNU is concerned that the utilities may utilize debt imputation to inappropriately discriminate against independent power producers. This is especially true if the risks associated with utility ownership, including cost overruns and outages, are not considered in the scoring criteria. ICNU recommends that, if debt imputation is considered, the utilities and IE consider the risks associated with utility ownership on a comparable basis with debt imputation in their evaluations.

IV. CONCLUSION

ICNU supports increased use of competitive bidding to acquire new utility resources and believes that a strong IE should participate in all RFPs that include utility owned or affiliate resources. ICNU is concerned that the end result of adopting the Staff Straw Proposal may be a competitive bidding process that does not remove utility bias, but allows the utilities a better opportunity to obtain rate recovery of their own resources. If the Commission adopts the Staff Straw Proposal, it may be impossible to challenge resource decisions in rate proceedings because the utilities will point to an RFP process that the Commission has found fair and seemingly reasonable. In addition to being unable to effectively challenge new resource decisions, customers will not benefit from lower prices or a more vibrant generation market if the utilities remain able to bias the results. ICNU recommends that the Commission proceed cautiously when deciding to limit its future discretion, and decline to insert itself into the competitive bidding process by acknowledging its results or ruling on the RFP's fairness outside of a rate proceeding.

Dated this 30th day of September, 2005.

Respectfully submitted,

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