

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 1182

PHASE 2

**In the Matter of
NORTHWEST AND INTERMOUNTAIN
POWER PRODUCERS COALITION**

**Petition for an Investigation Regarding
Competitive Bidding**

)
) NORTHWEST AND INTERMOUNTAIN
) POWER PRODUCERS COALITION'S
) REQUEST FOR ALJ CERTIFICATION
) FOR THE COMMISSION'S
) CONSIDERATION
)
)

The Northwest and Intermountain Power Producers Coalition (“NIPPC”) hereby respectfully submits this Request that Administrative Law Judge (“ALJ”) Traci Kirkpatrick certify the ALJ’s May 30, 2012 Ruling (the “ALJ’s Ruling” or “Ruling”) for the consideration and disposition by the Public Utility Commission of Oregon (“OPUC” or “Commission”). *See* O.A.R. § 860-001-0110. The ALJ’s Ruling addressed the issue of which of a list of 12 issues should be addressed first in this docket. The ALJ’s Ruling adopted OPUC Staff’s recommendation to first address three items: (1) Cost Over- and Under-Runs, (2) Counterparty Risk, and (3) Heat Rate Degradation. NIPPC appreciates the ALJ’s consideration of the issues presented. However, NIPPC submits that “good cause” exists in this case for the entire Commission’s consideration of which items to address in phase 2 of this docket. *See* O.A.R. § 860-001-0110(2)(c). NIPPC suggests that the Commission should remove Counter Party Risk from the list and replace it with Wind Capacity Factors. The Citizens Utility Board of Oregon (“CUB”) and the Industrial Customers of Northwest Utilities (“ICNU”) support this Request for

ALJ Certification. ICNU and CUB support this Request because the purpose of this proceeding is to produce a fairer competitive bidding process, and the Commission should only consider issues that will reduce utility bias if the number of issues in this phase of the proceeding is going to be limited.

The OPUC's administrative rules provide, "A party may request that the ALJ certify an ALJ's written or oral ruling for the Commission's consideration." 860-001-0110(1). The administrative rules further provide:

The ALJ must certify the ruling to the Commission under OAR 860-001-0090 if the ALJ finds that:

- (a) The ruling may result in substantial detriment to the public interest or undue prejudice to a party;
- (b) The ruling denies or terminates a person's participation; or
- (c) Good cause exists for certification.

860-001-0110(2).

In this case, "good cause" exists for certification to ensure that the items to be addressed are the items the Commission is most interested in pursuing under 860-001-0110(2)(c). NIPPC understood the Commission's clear intent in re-opening this docket to consider quantitative enhancements to Guideline 10(d) was to *reduce* utilities' self build bias in Oregon Request for Proposals ("RFPs"). In Order 11-001 which reopened this docket, the Commission declined to adopt prior proposals to address self build bias in long-running dockets UM 1066 and UM 1276, but the Commission stated, "We do, however, take action to address the concerns raised about

the self build bias.”¹ NIPPC is concerned that OPUC Staff’s recommendation, adopted in the ALJ’s Ruling, is contrary to the Commission’s intent because that list includes “Counter Party Risk” – an issue that does not focus on the Commission’s stated concern that the competitive bidding process is currently prejudiced in favor of utility ownership. Instead, Counter Party Risk appears to be a metric the utilities intend to develop in a manner that would increase self build bias. Counter Party Risk is also already addressed in Oregon RFPs through existing mechanisms.² If only a limited number of items will be addressed at this time, the list should focus solely on those issues that will reduce utility bias. For example, in this docket instead of Counterparty Risk, NIPPC and ICNU proposed developing a utility plant bid adder based upon evidence that on average PacifiCorp’s utility-owned wind plants have performed at a capacity factor of 15% less than initially expected by PacifiCorp.³

NIPPC has already incurred substantial expense in responding to the Commission’s directive in Order No. 11-001. The analytical methods required for this docket require technical consultants. In an effort to cooperate in good faith in workshops, NIPPC had its consultant complete a “White Paper,” which presented approaches for using available national data in order to develop methodologies for accounting for potential risks similar to those described in Order No. 11-001.⁴ Proceeding with analysis of Counter Party Risk, an item that will not reduce self build bias would be a waste of Commission and intervenor resources if the Commission is not interested in developing another mechanism to favor utility ownership in Oregon RFPs – such as Counter Party Risk. Good cause exists to ensure that the items to be addressed are in fact the

¹ Order No. 11-001 at 6.

² See *NIPPC’s Comments* at 9-10 (March 19, 2012).

³ See *id.* at Attachment No. 1 at 17-19 (containing analysis by MRW and Associates).

⁴ NIPPC’s consultant’s work is presented in Attachment No. 1 to NIPPC’s Comments filed March 19, 2012.

issues which the Commission itself would prioritize based upon the comments submitted thus far in this docket.

Responding to the Commission's directive to develop an analytic method to address self build bias in RFP Guideline 10(d) need not be a complicated or lengthy process – indeed, NIPPC has already provided much of the necessary analysis for the bid adders it recommended. Development of further mechanisms to disadvantage IPPs should not be the focus of this docket. Finally, if only three items addressing self build bias are selected for Phase 2, NIPPC does not believe there need be multiple rounds of items addressed. For the reasons stated above, NIPPC hereby respectfully requests that ALJ Kirkpatrick certify the ALJ's May 30, 2012 Ruling for the consideration and disposition by the Commission pursuant to O.A.R. § 860-001-0110(2)(c). NIPPC suggests that the Commission should remove Counter Party Risk from the list and replace it with Wind Capacity Factors.

RESPECTFULLY SUBMITTED this 14th day of June, 2012.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of June, 2012, a true and correct copy of the within and foregoing THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION'S REQUEST FOR ALJ CERTIFICATION FOR THE COMMISSION'S CONSIDERATION was served as shown to:

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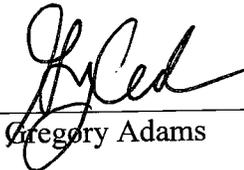
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