

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 1182 (Phase II)

4 In the Matter of

5 PUBLIC UTILITY COMMISSION OF
6 OREGON

STAFF REPLY BRIEF

7 Investigation Regarding Competitive Bidding

8 **1. INTRODUCTION**

9 Staff of the Public Utility Commission of Oregon (Staff) submits its brief in reply to the
10 prehearing briefs submitted by Idaho Power Company (Idaho Power), PacifiCorp, Portland
11 General Electric Company (PGE), the Northwest and Intermountain Power Producers Coalition
12 (NIPPC), and the Citizens' Utility Board of Oregon (CUB). Because the parties determined to
13 waive cross examination at an evidentiary hearing, and the Commission did not have questions
14 for the parties, the hearing was canceled. Under these circumstances, Staff's Reply Brief will
15 address only those selected matters which were highlighted by the parties in their respective
16 prehearing briefs. Staff incorporates its Prehearing Brief as its response to matters not
17 specifically addressed in its Reply Brief.

18 **2. STAFF RECOMMENDS THE COMMISSION CONCLUDE THIS DOCKET**
19 **AFTER REACHING A DECISION ON THE FOUR RISK FACTORS AT ISSUE**

20 PacifiCorp correctly notes that there remain eight other issues which the parties
21 previously identified for review in this docket. The company then sets forth its proposals for
22 how this review may be accomplished. See PacifiCorp Prehearing Brief at 8-10.

23 In response, Staff does not support PacifiCorp's recommended proposals. Staff set forth
24 its recommended framework for this Phase in its opening testimony as follows: (1) determine
25 how the risks are addressed in bid evaluation; (2) determine what bias exists; and (3) recommend
26 adjustments to Guideline 10(d) to account for that bias. See Staff/100, Procter/3. Staff does not

1 support a continuation of this docket to review the remaining eight issues since no party has yet
2 provided sufficient evidence of bias in the bid evaluation process in Phase II to justify additional
3 phases of inquiry in UM 1182.

4 However, should the Commission decide to continue with this docket, Staff does not
5 believe it is appropriate to try to create through this briefing process a review structure for the
6 remaining eight issues. If the Commission desires to have the parties address the remaining eight
7 issues, Staff requests that the Commission direct the parties on how it wishes to accomplish this
8 in its Order in Phase II or instruct the parties to convene a workshop to further discuss the matter
9 and present the results of that workshop to the Administrative Law Judge.

10 **3. WIND CAPACITY FACTOR**

11 PacifiCorp recommends that the Commission modify the “request for proposal” (RFP)
12 process to expressly require the use of a Wind Capacity Factor Expert (WCFE) to review each
13 project on the initial short list, including utility benchmark resources. *See generally* PacifiCorp
14 Prehearing Brief at 11-12, 16. PGE supports that recommendation. PGE Prehearing Brief at 5,
15 25-28. PacifiCorp and PGE state that the use of a WCFE negates any possible need for NIPPC’s
16 proposed adder which is structured to effectively reduce the utility benchmark resource’s
17 expected wind capacity factor. *Id.*

18 For its part, NIPPC endorses the concept of a WCFE but states that its adder would still
19 be required. NIPPC Prehearing Brief at 16-17. CUB also supports the use of a WCFE but
20 agrees with NIPPC that an adder is still needed. However, CUB states that it is not prepared to
21 recommend a specific adjustment. CUB Prehearing Brief at 12-13.

22 To the extent that a WCFE results in a check on the assumptions used in the analysis,
23 Staff agrees this should help to ensure that the correct expected value is used in the bid
24 evaluation process. Accordingly, Staff also supports PacifiCorp’s proposal for a WCFE to
25 review each project on the initial short list. Having said that, Staff continues to stand by its
26

1 testimony concerning wind capacity factor risk in all other respects and recommends the
2 Commission not adopt NIPPC's proposed adder.

3 **4. HEAT RATE DEGRADATION**

4 NIPPC proposed a bid adder to heat rate degradation estimates for gas-fired "utility-
5 owned generation" (UOG) plants so that the average expected plant heat rate over the course of
6 the analysis period would be at least 8.0% above the starting heat rate. NIPPC justified its
7 proposed adder, in part, on the basis that ratepayers are liable for heat rate degradation for UOG
8 projects but not for those provided under a typical "independent power producer's" (IPP) "power
9 purchase agreement" (PPA).

10 Staff and the other parties explained in their prehearing briefs how NIPPC's analysis
11 supporting its specific adder is flawed. Briefly summarized, adopting either NIPPC's calculation
12 or its methodology is likely to introduce bias into the bid evaluation process rather than account
13 for the risk of heat rate degradation. See Staff Prehearing Brief at 10-12; PacifiCorp Prehearing
14 Brief at 18-23; PGE Prehearing Brief at 13-16; Idaho Power Prehearing Brief at 13-16; CUB
15 Prehearing Brief at 13-14. Staff continues to recommend that the Commission not adopt
16 NIPPC's proposed heat rate adder.

17 Further, PGE, PacifiCorp and Idaho Power each testified that the best source for heat rate
18 degradation estimates is the value provided by the turbines' "original equipment manufacturer"
19 (OEM), adjusted for site-specific characteristics and design. PacifiCorp Prehearing Brief at 18-
20 23; PGE Prehearing Brief at 13-16; Idaho Power Prehearing Brief at 13-16. Each utility
21 recommends that the Commission or the independent evaluator accept the OEM data as a valid
22 estimate and for that reason, along with the identified flaws with NIPPC's analysis, conclude that
23 there is no basis to adopt NIPPC's proposed bid adder. *Id.*

24 NIPPC's primary response to the utilities' use of the OEM heat rate degradation values is
25 that it they are "very low projections...for purposes of selling the equipment." NIPPC
26 Prehearing Brief at 14. In support of its "very low" assertion, NIPPC cites to testimony provided

1 by PacifiCorp witness Kusters. *Id.* NIPPC's citation to PacifiCorp's testimony is puzzling
2 because it does not support its "very low projection" claim at all.

3 Based on the state of this record, Staff concludes that the utilities' use of the OEM values
4 are reasonable and supports their use.

5 **5. CONSTRUCTION COST OVER/UNDER-RUNS**

6 NIPPC proposes a 7.0% cost over-run adder for utility benchmark resources and an
7 incremental adder of 5.7% per year for the first five years for deferred construction costs. Staff,
8 PacifiCorp, PGE and Idaho Power summarized their opposition to NIPPC's proposed adder, and
9 the reasons for that opposition, in their prehearing briefs. *See* Staff Prehearing Brief at 2-10,
10 PacifiCorp Prehearing Brief at 25-30; PGE Prehearing Brief at 17-24 and Idaho Power
11 Prehearing Brief at 5-11.

12 NIPPC in turn attempts to rebut aspects of the parties' presentations. On one particular
13 issue, the utilities' witnesses testified that an adder is not needed for UOG projects with an
14 overall plant construction cost guarantee from an "engineering, procurement and construction"
15 (EPC) contract. PGE also recommends that any bid, including an EPC proposal, that includes an
16 overall plant construction cost guarantee should receive a higher bid score than a proposal that
17 contains no such guarantee. NIPPC urges the Commission to reject the utilities'
18 recommendations on the EPC issues and asserts that, even with an EPC, risks remain for change
19 orders, cost overruns exceeding the EPC contract's damages cap, etc. *See* NIPPC Prehearing
20 Brief at 11.

21 In short reply, staff notes that, depending upon its terms, the same risks may exist with
22 the IPP's PPA. *See also* PacifiCorp Prehearing Brief at 29-30; PGE Prehearing Brief at 23-24.
23 Further, while risks may remain regarding all types of bids, NIPPC ignores the potential for costs
24 savings from the utility benchmark bids. *Id.*

25 ///

26 ///

1 **6. COUNTERPARTY RISK**

2 Staff has nothing further to add on this issue and stands by its recommendation that the
3 Commission not adopt any adder for counterparty risk proposed by any of the parties. *See* Staff
4 Prehearing Brief at 13.

5 **7. CONCLUSION**

6 For the reasons stated, Staff recommends the Commission not adopt any of the adder
7 proposals presented by the parties. Staff further recommends the Commission conclude this
8 docket and not investigate the remaining potential eight risk factors.

9
10 DATED this 11th day of March 2013.

11 Respectfully submitted,

12 ELLEN F. ROSENBLUM
13 Attorney General

14 

15 Michael T. Weirich, #82425
16 Assistant Attorney General
17 Of Attorneys for Staff of the Public Utility
18 Commission of Oregon
19
20
21
22
23
24
25
26

1 **CERTIFICATE OF SERVICE**

2 I certify that on March 11, 2013, I served the foregoing Staff Reply Brief upon all parties
3 of record in this proceeding by delivering a copy by electronic mail only as all parties waive
4 paper service.

5 **W**
6 ***OREGON DEPARTMENT OF ENERGY**
7 MATT HALE (C)
8 MANAGER ENERGY TECHNOLOGY
9 625 MARION ST NE
10 SALEM OR 97301
11 matt.hale@state.or.us

12 VIJAY A SATYAL (C)
13 SENIOR POLICY ANALYST
14 625 MARION ST NE
15 SALEM OR 97301
16 vijay.a.satyal@state.or.us

17 **W**
18 **AVISTA CORPORATION**
19 DAVID J MEYER
20 VICE PRESIDENT & CHIEF COUNSEL
21 PO BOX 3727
22 SPOKANE WA 99220-3727
23 david.meyer@avistacorp.com

24 **W**
25 **AVISTA UTILITIES**
26 PATRICK EHRBAR
MANAGER, RATES & TARIFFS
PO BOX 3727
SPOKANE WA 99220-3727
pat_ehrbar@avistacorp.com

W
CASCADE NATURAL GAS
MICHAEL PARVINEN
MANAGER - REGULATORY AFFAIRS & GAS SUPPLY
8113 W GRANDRIDGE BLVD
KENNEWICK WA 99336
michael.parvinen@cngc.com

W
CITIZENS' UTILITY BOARD OF OREGON
OPUC DOCKETS
610 SW BROADWAY, STE 400
PORTLAND OR 97205
dockets@oregoncub.org

ROBERT JENKS (C)
610 SW BROADWAY, STE 400
PORTLAND OR 97205
bob@oregoncub.org

W
CITIZENS' UTILITY BOARD OF OREGON
G. CATRIONA MCCrackEN (C)
610 SW BROADWAY, STE 400
PORTLAND OR 97205
catriona@oregoncub.org

W
DAVISON VAN CLEVE
IRION A SANGER (C)
333 SW TAYLOR - STE 400
PORTLAND OR 97204
ias@dvclaw.com

W
DAVISON VAN CLEVE PC
S BRADLEY VAN CLEVE (C)
333 SW TAYLOR - STE 400
PORTLAND OR 97204
bvc@dvclaw.com

W
ESLER STEPHENS & BUCKLEY
JOHN W STEPHENS
888 SW FIFTH AVE STE 700
PORTLAND OR 97204-2021
stephens@eslerstephens.com;
mec@eslerstephens.com

W
IDAHO POWER COMPANY
REGULATORY DOCKETS
PO BOX 70
BOISE ID 83707-0070
dockets@idahopower.com

LISA D NORDSTROM (C)
PO BOX 70
BOISE ID 83707-0070
lnordstrom@idahopower.com

W
LEGAL & CONSULTING SERVICES
ANN L FISHER
PO BOX 25302
PORTLAND OR 97298-0302
ann@annfisherlaw.com

W

MCDOWELL RACKNER & GIBSON PC
LISA F RACKNER (C)
419 SW 11TH AVE., SUITE 400
PORTLAND OR 97205
dockets@mcd-law.com

W

MRW & ASSOCIATES, LLC
WILLIAM A MONSEN (C)
1814 FRANKLIN ST SUITE 720
OAKLAND CA 94612
wam@mrwassoc.com

W

NORRIS & STEVENS
DAVID E HAMILTON
621 SW MORRISON ST STE 800
PORTLAND OR 97205-3825
davidh@norrstev.com

W

NORTHWEST NATURAL GAS COMPANY
ALEX MILLER
220 NW SECOND AVE
PORTLAND OR 97209-3991
alex.miller@nwnatural.com

W

**NW & INTERMOUNTAIN POWER PRODUCERS
COALITION**
ROBERT D KAHN
1117 MINOR AVENUE, SUITE 300
SEATTLE WA 98101
rkahn@nippc.org;rkahn@rdkco.com

W

NW ENERGY COALITION
WENDY GERLITZ
1205 SE FLAVEL
PORTLAND OR 97202
wendy@nwenergy.org

W

OREGON DEPARTMENT OF JUSTICE
RENEE M FRANCE (C)
NATURAL RESOURCES SECTION
1162 COURT ST NE
SALEM OR 97301-4096
renee.m.france@doj.state.or.us

W

PACIFIC POWER
MARY WIENCKE (C)
825 NE MULTNOMAH ST, STE 1800
PORTLAND OR 97232-2149
mary.wiencke@pacificorp.com

W

PACIFICORP, DBA PACIFIC POWER
OREGON DOCKETS
825 NE MULTNOMAH ST, STE 2000
PORTLAND OR 97232
oregondockets@pacificorp.com

W

PORTLAND GENERAL ELECTRIC
STEFAN BROWN (C)
121 SW SALMON ST - 1WTC1711
PORTLAND OR 97204
stefan.brown@pgn.com

RATES & REGULATORY AFFAIRS - PATRICK
HAGER (C)
121 SW SALMON ST 1WTC-0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com

W

PORTLAND GENERAL ELECTRIC COMPANY
DAVID F WHITE (C)
121 SW SALMON ST., 1WTC1301
PORTLAND OR 97204
david.white@pgn.com

W

PUBLIC UTILITY COMMISSION
ROBERT PROCTER (C)
PO BOX 2148
SALEM OR 97308-2148
robert.procter@state.or.us

W

RENEWABLE NORTHWEST PROJECT
MEGAN WALSETH DECKER
421 SW 6TH AVE #1125
PORTLAND OR 97204-1629
megan@rnp.org

W

RICHARDSON & O'LEARY
GREGORY M. ADAMS (C)
PO BOX 7218
BOISE ID 83702
greg@richardsonandoleary.com



Neoma Lane
Legal Secretary / Department of Justice
Business Activities Section