

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1429

In the Matter of)
)
PACIFICORP, dba PACIFIC POWER)
)
2009 Solicitation for New Renewable)
Resources.)
_____)

**NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION
COMMENTS ON FINAL DRAFT RFP**

Pursuant to the procedural schedule in this matter, the Northwest and Intermountain Power Producers Coalition (“NIPPC”) submit the following comments regarding PacifiCorp’s Final Draft Request for Proposals for New Renewable Resources (“RFP”).

Comments

NIPPC has reviewed the RFP and the Oregon Independent Evaluator’s (“OIE”) assessment of the RFP. Not surprisingly, the facts that this RFP substantially overlaps with the company’s recent 2008R RFP and that the company will insert a Benchmark Resource into the new RFP raise serious doubts for NIPPC about the potential fairness to bidders in *both* RFPs. The OIE has already raised this issue for the Commission, stating that the overlap “may lead” to the idea that this RFP and PacifiCorp’s 2008R RFP are attempts to “test the market” for information, with the goal of benefiting the company’s Benchmark Resource. NIPPC assures the Commission that PacifiCorp’s past actions regarding competitive solicitations, and its current actions in overlapping these RFPs and in adding a Benchmark Resource, *have actually led* to the

view among bidders that the company uses the RFP process to acquire competitive information from bidders, to the advantage of its projects and shareholders. The OIE has therefore correctly identified this as the biggest substantive issue with PacifiCorp's 2009R RFP.

The OIE recommends that the Commission (1) condition approval of the 2009R RFP on PacifiCorp's commitment to negotiate with 2008R short-listed bidders in the three- to six-month time frame PacifiCorp indicated it would require for such negotiations, and (2) require PacifiCorp to file updates and justifications with the Commission if the company does not complete negotiations with 2008R bidders in such time frame or if the company drops all short-listed bidders from the 2008R RFP.¹ Finally, the OIE recommends that the Commission advise the company that any company Benchmark Resource chosen over short-listed 2008R bids will face "substantial public skepticism" and therefore the company will be required to prove that the Benchmark was "clearly superior."² While NIPPC has great regard for the role of the OIE, and for this particular OIE's value in PacifiCorp's RFPs, in this instance, the remedies proposed are inadequate to the task.

The Commission has often expressed its concerns that utilities are "biased" in favor of their own resources. Docket No. UM 1276 was opened expressly to address that issue.³ The Commission's own experience with PacifiCorp's RFPs and resource procurement practices strongly suggest that the utility is quite intent on the goal of resource ownership, to the exclusion

¹ *Oregon Independent Evaluator's Assessment of PacifiCorp's 2009R Renewables RFP Design*, pp. 7-8.

² *Id.*, p. 9.

³ See, *Staff Request to Open an Investigation Regarding Performance-based Ratemaking Mechanisms to Address Potential Build-vs-buy Bias*, Docket No. UM 1276 (<http://edocs.puc.state.or.us/efdocs/HAA/um1276haa151839.pdf>). See also, *In the Matter of an Investigation into Regulatory Policies Affecting New Resource Development*, Order 05-133, at 2 (Docket No. UM 1066, March 17, 2005) (Commission expressed concern that using a cost standard for rate recovery of utility resources would cause utilities to favor their own resources).

of non-utility owned resources. PacifiCorp has acquired large resources (the 520 MW Chehalis plant) outside of the bidding process,⁴ and acquired adjacent 99-MW wind plants that were clearly sized and structured to enable the company to avoid having to comply with the Commission's bidding guidelines.⁵ The Commission should view this PacifiCorp RFP (and the OIE's recommendations regarding it) in light of the Commission's experience with PacifiCorp's other RFPs. The OIE can point out deeply troubling aspects of the company's approach to resource acquisition, but only the Commission can act with a remedy.

Recommendation

NIPPC proposes three alternatives for Commission action respecting PacifiCorp's 2009R RFP. First, the Commission could simply decline to approve the RFP. This does not mean that PacifiCorp cannot go forward with the RFP, but if so, the company would be proceeding without Commission approval, and would be required to accept a higher burden of proof in cost recovery filings. Second, the Commission could approve the RFP but on the condition that PacifiCorp remove the Benchmark Resource from consideration in the RFP.

NIPPC generally supports wholesale competition from all sources, and would not otherwise oppose a utility Benchmark Resource in an RFP, but PacifiCorp's history strongly suggests that allowing this RFP to proceed with a Benchmark Resource will likely work to the disadvantage of bidders, and ultimately to PacifiCorp's customers.

A third alternative would be to build on another OIE recommendation. The OIE recommended that the Commission advise the company that it must be prepared to demonstrate that the company's Benchmark Resource, if chosen, is *clearly superior* to any shortlisted bid in

⁴ *In the Matter of PacifiCorp Petition for Waiver of Commission's Competitive Bidding Guidelines*, Docket No. UM 1374, Order No. 08-376.

⁵ *In the Matter of PacifiCorp's 2009 Renewable Adjustment Clause*, Docket No. UE 200, Order No. 08-548, p. 21 ("we acknowledge that the Company sized the project to avoid the competitive bidding project [...] .")

the 2008R RFP.⁶ The OIE did not propose a quantifiable standard for such a demonstration, but the Commission has before it such a standard. In the OPUC docket respecting incentives to eliminate utility bias in resource procurement,⁷ NIPPC recommended that the Commission assume, in any RFP in which a utility Benchmark Resource is competing with independent bids, that the present value of the cost of independent bids will not be treated as greater than the present value of the cost of the utility Benchmark *unless* the cost of the independent bid is greater than 110% of the present value of the cost of the utility Benchmark.⁸

This ten percent metric would be an appropriate one to evaluate whether the company's Benchmark Resource is "clearly superior" to any bid received in the 2008R RFP. The Commission's order approving the 2009R RFP could indicate that, if the utility chooses its Benchmark Resource over any of the 2008R bids, then the utility must be prepared to demonstrate that the present value of the cost of the Benchmark Resource represented a ten percent savings to customers when compared to the present value of the cost of any short listed bid from the 2008R RFP. The Commission could enforce such a condition in any proceeding in which PacifiCorp requests rate recovery for its Benchmark by accordingly limiting PacifiCorp's cost recovery.

Conclusion

The timing of PacifiCorp's 2009R RFP, when coupled with the presence of a utility Benchmark Resource and the Commission's experience with PacifiCorp's resource acquisitions, should lead this Commission to be very skeptical of the company's desire to

⁶ OIE Assessment, p. 9.

⁷ *In the matter of Performance Based Ratemaking Mechanisms*, Docket No. UM 1276.

⁸ See, *Northwest and Intermountain Power Producers Reply Comments*, January 29, 2008, Docket No. UM 1276, at pp. 18-19 (<http://edocs.puc.state.or.us/efdocs/HAC/um1276hac1144.pdf>).

comply with letter and spirit of Oregon's UM 1182 bidding guidelines. NIPPC urges the Commission to adopt the recommendations included in these comments.

Finally, NIPPC appreciates the opportunity to comment on the 2009R RFP and participate in the Commission's processes regarding competitive procurement.

DATED this 25th day of June, 2009.

NORTHWEST AND INTERMOUNTAIN
POWER PRODUCERS COALITION

/s/ Susan K. Ackerman

Susan K. Ackerman, Attorney
Attorney for NIPPC
9883 NW Nottage Dr.
Portland, Oregon 97229
(503) 297-2392

Certificate of Service

I certify that I have this day served the foregoing NIPPC Comments on Final Draft RFP on all parties of record in UM 1429 by delivering a copy by electronic mail or by U.S. Mail to the parties as indicated on the service list compiled by the OPUC.

Dated this 25th day of June, 2009.

/s/ Susan K. Ackerman
 Susan K. Ackerman
 Attorney for NIPPC
 9883 NW Nottage Dr.
 Portland, Oregon 97229

UM 1429 Service List

DAVISON VAN CLEVE IRION A SANGER 333 SW TAYLOR - STE 400 PORTLAND OR 97204 ias@dvclaw.com	DEPARTMENT OF JUSTICE MICHAEL T WEIRICH REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 michael.weirich@doj.state.or.us
ESLER STEPHENS & BUCKLEY (W) JOHN W STEPHENS 888 SW FIFTH AVE STE 700 PORTLAND OR 97204-2021 stephens@eslerstephens.com	PACIFIC POWER & LIGHT JORDAN A WHITE 825 NE MULTNOMAH STE 1800 PORTLAND OR 97232 jordan.white@pacificorp.com
PACIFICORP OREGON DOCKETS 825 NE MULTNOMAH ST STE 2000 PORTLAND OR 97232 oregondockets@pacificorp.com	PUBLIC UTILITY COMMISSION OF OREGON KELCEY BROWN PO BOX 2148 SALEM OR 97301 kelcey.brown@state.or.us
RENEWABLE NORTHWEST PROJECT (W) KEN DRAGOON 917 SW OAK, SUITE 303 PORTLAND OR 97205 ken@rnp.org	RENEWABLE NORTHWEST PROJECT (W) SUZANNE LETA LIOU 917 SW OAK, SUITE 303 PORTLAND OR 97205 suzanne@rnp.org
RFI CONSULTING INC RANDALL J FALKENBERG PMB 362 8343 ROSWELL RD SANDY SPRINGS GA 30350 consultrfi@aol.com	NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION (W) ROBERT D. KAHN 1117 MINOR AVENUE SUITE 300 SEATTLE WA 98101 rkahn@nippc.org