

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 600

In the Matter of

Allowances for Diverse Ownership of
Renewable Energy Resources

Staff Reply Comments

The Public Utility Commission of Oregon Staff (Staff) files these reply comments in Docket No. AR 600, Allowances for Diverse Ownership of Renewable Energy Resources, following the submission of opening comments¹ that addressed a set of policy issues² set forth by Administrative Hearings of the Oregon Public Utility Commission. These reply comments are in response to the opening comments³ filed by Portland General Electric Company (PGE), Pacific Power (PacifiCorp), and Idaho Power Company (Idaho Power) (collectively, Joint Utilities). Opening and reply comments will be addressed, and policy direction will be provided at a Commissioner Workshop to be held on March 6, 2018, at 1:30 pm. An overview of the procedural history can be found at the beginning of Staff's opening comments⁴ in this docket.

Policy Question No. 1

The Joint Utilities stated in opening comments that it strongly opposes exemptions from the competitive bidding requirements for RFPs that prohibit utility ownership, in its response to the following policy question.

1. Is it appropriate to allow exemptions from certain competitive bidding rule sections if a Request for Proposal (RFP) does not incorporate or consider electric company ownership of resources?

Staff supports and encourages utility ownership bids that are competitive and a viable option for least-cost and least-risk for its customers. However, as stated in its opening comments, Staff continues to believe that if a resource procurement process does not allow for utility ownership, the need for full adherence to the competitive bidding

¹ Link to Docket No. AR 600 Case Record: <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=20190>. Stakeholder's opening comments were filed on February 14, 2018.

² Link to notice containing policy issues: <http://edocs.puc.state.or.us/efdocs/HNA/ar600hna115657.pdf>.

³ Link to opening comments filed by Joint Utilities:

<http://edocs.puc.state.or.us/efdocs/HAC/ar600hac164127.pdf>.

⁴ Link to opening comments filed by Staff: <http://edocs.puc.state.or.us/efdocs/HAC/ar600hac9470.pdf>.

requirements may be unnecessary. Furthermore, Staff reiterates that nothing in the draft proposed rules prohibits or discourages an electric company from developing an RFP that allows for a contemplated utility ownership of resources. The proposed rules⁵ simply allow the Commission to determine that parts of the competitive rulemaking process do not apply in specific circumstances. This is an option and not a requirement. As previously stated in Staff's opening comments, the proposed rules do not require or express a preference on whether or not this type of exemption should be granted, and whether or not a utility should seek utility-owned capacity or energy resources or not. Also stated in Staff's opening comments and explained in detail, Staff does not consider this additional optionality to be a bias against utility ownership.

Policy Question No. 2

The Joint Utilities stated in opening comments that they believe that the use of an IE benefits customers, the Commission, and the utility in all cases and should therefore be used for all RFP structures, in its response to the following policy question.

2. Is the engagement and participation of an Independent Evaluator (IE) in the competitive bidding process valuable regardless of whether the RFP contemplates utility resource ownership options?

The Joint Utilities stated that the Draft Rules create an incentive to reduce competition within an RFP, and in addition, stated that the Draft Rules are "contrary to the purpose and goal of competitive bidding and counterproductive to the selection of least-cost, least-risk resources."

As stated in opening comments, Staff considers the engagement of an IE to be valuable in all circumstances; however, Staff believes that the draft rules properly balance the circumstantial need for an IE with the costs associated with engagement of an IE. The costs for an IE's services are typically filed under seal (not available for public review), but can easily reach \$100,000 or even much more, over the course of an RFP. While as previously stated, Staff believes that an experienced IE can add extensive knowledge to the RFP process; due to the limited number of qualified IE service providers, these experienced professionals command high hourly fees.

Staff maintains that Oregon's competitive bidding rules exist in part to help ensure that the lowest-cost, lowest-risk resources are selected in the context of clear economic incentives to favor utility ownership. The IE's involvement is most important when utility ownership is contemplated as part of the RFP process. In that situation, the IE works to help the Commission evaluate and confirm the impartiality of the process and to ensure

⁵ "OAR 860-0XX-0200(7) The Commission may determine that engagement of an IE under this rule is not necessary when the electric company's RFP explicitly prohibits the submission of proposals that allow the electric company to own the resource that is the subject of any bid or acquire an ownership interest in the resource at a later date." Also, see Order No. 18-015, Appendix A, p.8.

that if utility-owned options are selected that they truly represent the least-cost, least-risk proposal in the RFP process.

Policy Question No. 3

The Joint Utilities stated in opening comments that it believes any proposal suggesting that a utility must offer its owned facilities to bidders exceeds the scope of the Commission's legal authority and constitutes an unconstitutional taking of utility property, in its response to the following policy question.

3. Can or should electric companies be compelled or encouraged to offer electric company owned facilities to bidders proposing non-utility owned resources if the same sites are utilities for benchmark or electric company owned bids?

The Joint Utilities commented⁶ in detail regarding the following declarations:

- A. The Commission lacks authority to compel electric utilities to offer owned facilities to bidders.**
- B. The Commission has consistently recognized the limits on its authority to compel the disposition of utility owned property.**
- C. The Commission should not require utilities to “explain themselves” if they choose to not offer utility owned resources to third-party bidders.**
- D. The Commission may encourage utilities to offer owned facilities to third party bidders, but does not need to adopt rules to do so.**

The Joint Utilities specifically state “The Commission may, consistent with its existing authority, encourage utilities to offer owned facilities to third-party bidders, but the Joint Utilities do not believe that it is necessary to adopt rules to implement this policy.”

As stated in Staff's opening comments, out of an abundance of caution, the draft proposed rule⁷ does not require that these sites be offered to third parties. However, Staff also stated that it has consistently argued as a matter of public policy that utility-

⁶ See Joint Utilities opening comments, pages 7 – 11.

⁷ “OAR 860-0XX-0300 An electric company may propose a benchmark resource in response to its RFP to provide a potential cost-based alternative for customers. If the electric company proposes a benchmark resource but will not allow third-parties to submit bids using elements of the benchmark resource owned or secured by the electric company (e.g. site, transmission or fuel arrangements) the electric company must include with its draft RFP filing under OAR 860-)XX-0250 a statement explaining why it would not be in the interests of the electric company's customers to make such elements available for use in third-party bids for resources to be owned by the electric company or owned by third parties after construction.” See Order No 18-015, Appendix A, p.10.

owned sites, which are to be utilized in benchmark or utility-owned bids, should be made available to all qualified third-party bidders regardless of ownership structure.

While no requirement is included in the proposed rule, Staff maintains that as a matter of policy, the Commission should encourage the electric utilities to offer their sites for third party development. Staff continues to believe this practice could provide value to ratepayers. Adopting a generally applicable policy, as proposed in the draft rules, that requires a utility to consider the issue and explain as necessary ensures that this option will be considered.

Finally, Staff reiterates that the purpose of an RFP is to identify the lowest-cost, lowest-risk resource option. If utility-owned sites are made available to other bidders, then the RFP process is likely to produce more bids, more competition, better terms and lower prices. The overall and likely result is that the customer will benefit.

Policy Question No. 4

The Joint Utilities stated in opening comments that it recommends that the draft proposed rules be revised to explicitly exclude transmission resources, in its response to the following policy question.

4. Should transmission activity be subject to competitive bidding requirements?

The Joint Utilities commented⁸ in detail regarding the following declarations:

- A. Including transmission in the competitive bidding rules would be a major policy shift, for which no policy rationale has been advanced to-date, and which would require a full investigation.**
- B. There is no competitive market for transmission in Oregon.**
- C. If or when such a competitive market is established, competitive bidding would likely occur through the RTO or ISO.**
- D. Including transmission in the competitive bidding rules is unworkable and unnecessary.**

Staff stated in opening comments that a transmission infrastructure project that is not a capacity or energy resource, is not currently subject to the proposed competitive bidding rules. The proposed rules are limited to energy and capacity resources.⁹

⁸ See Joint Utilities opening comments, pages 13 – 16.

⁹ See Order No 18-015, Appendix A, p.7, OAR 860-0XX-0100 (1).

Staff remains unconvinced that the draft rules should be revised to explicitly exclude transmission resources without further consideration, and remains open to expansion of these rules, in this rulemaking or at a later time, to include transmission projects. Staff continues to be interested in the comments of other stakeholders on this point.

Additional Policy Questions from Joint Utilities

Policy Question No. 5

The Joint Utilities requested in opening comments that the Commission provide Staff with policy direction to clarify that the appropriate role for the IE is to help ensure a fair and transparent process, and not to replicate the utility's efforts in a parallel RFP proceeding. The Joint Utilities further requested that the Commission direct Staff to reinstate the language from the Guidelines providing the option that the IE may independently score a sample of bids, in its response to the following policy question.

5. Should the role of the IE be expanded to require scoring of all bids for RFPs that include a utility ownership option?

Staff welcomes continued discussion and potential Commission direction regarding whether or not the role of the IE should be expanded to require scoring of all bids for RFPs that include a utility ownership option. However, at this time Staff still believes that this would be in the best interest of ratepayers, as the value of independent scoring will likely outweigh the cost of additional IE services.

Policy Question No. 6

The Joint Utilities stated in opening comments that the proposal to require a third party financial due diligence review has not been adequately explained or justified, and should be eliminated from further consideration at this time, in its response to the following policy question.

6. Should the Commission establish a third-party financial due diligence review?

Staff welcomes continued discussion and potential Commission direction regarding whether or not the draft rules should provide that the IE will conduct a "project finance due diligence review" on any bids on the final shortlist that provide for the possibility of utility or affiliate ownership of the resource. This is not unlike whether further consideration should be given to the IE scoring all bids for RFPs that include a utility ownership option, as discussed above. Staff believes that this too would be in the best interest of ratepayers.

Staff appreciates the efforts of each of the stakeholders in this rulemaking process, and looks forward to working together and receiving Commission direction at the Commissioner Workshop on March 6, 2018.

This concludes Staff's Reply Comments.

Dated at Salem, Oregon, this 26th of February 2018.



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