

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 16, 2017

REGULAR CONSENT EFFECTIVE DATE _____ Upon Commission Approval _____

DATE: May 8, 2017

TO: Public Utility Commission

FROM: ^{BFF} Ben Fitch-Fleischmann

THROUGH: ^I Jason Eisdorfer and ^{I for JC} John Crider

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: Request for Determination on the Scope of Changes to Current Practices to Consider When Establishing Competitive Bidding Rules (AR 600) and Updating the Competitive Bidding Guidelines (UM 1776).

STAFF RECOMMENDATION:

Adopt Staff's recommended scope of issues (described herein) to be considered in Dockets AR 600 and UM 1776.

DISCUSSION:

Issue

Whether the Commission should restrict the scope of issues to consider in Dockets AR 600 and UM 1776.

Applicable Law

In Order No. 16-188, issued in Dockets AR 598 and UM 1771, the Commission opened a permanent rulemaking (Docket AR 600) to implement provisions of Senate Bill 1547 (SB 1547) regarding diverse ownership of renewable energy resources used to meet renewable portfolio standards. This order states that the AR 600 rulemaking is "for the purposes of implementing provisions of SB 1547 that require us to adopt rules 'providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity.'"¹ In this

¹ Order No. 16-188 at 2. The referenced section of Senate Bill 1547 is contained in ORS 469A.075(4)(d).

order the Commission also opened an investigation (UM 1776) to “update our competitive bidding guidelines as necessary, in the event that certain of our current guidelines cannot be converted into rules.” In its discussion of AR 598 and UM 1771 at the May 17, 2016 public meeting, the Commission also expressed concerns about ambiguity in both the types of resources whose procurement is subject to the existing guidelines and the consequences of granting a “partial” waiver that would exempt a utility from some, but not all, of the guidelines.

In enacting SB 1547, the Oregon legislature amended ORS 469A.075, which had generally addressed implementation plans for electric companies subject to the renewable portfolio standard. OR Laws 2016 Ch. 28, Section 6. As amended by SB 1547, ORS 469A.075(4) now reads:

- (4) The commission shall adopt rules:
 - (a) Establishing requirements for the content of implementation plans;
 - (b) Establishing the procedure for acknowledgment of implementation plans under this section, including provisions for public comment;
 - (c) Providing for the integration of the implementation plan with the integrated resource planning guidelines established by the commission for the purpose of planning for the least-cost, least-risk acquisition of resources; and
 - (d) Providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity.

The current Competitive Bidding Guidelines are set forth in Appendix A to Order No. 14-149.² They are the result of a long history of investigations and determinations made by the Commission, which are briefly summarized here.

The Commission first set forth policy guidelines for competitive bidding in 1991 in Order No. 91-1383 (Docket UM 316), which stated that the Commission:

Supports a flexible approach which can evolve over time. At the same time, if bidding is to be successful, it is necessary that potential non-utility developers know the rules of participation, understand the ranking and selection process, and consider the probability of success and monetary rewards sufficient to justify the costs of participation. Thus, in developing a bidding regime, there is a trade-off between flexibility and the need to establish process requirements and limits.

² Available at <http://apps.puc.state.or.us/orders/2014ords/14-149.pdf>

The Commission further stated in Order No. 91-1383 that a competitive bidding process would be appropriate for Oregon at the time if it satisfied these goals:

1. Provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints;
2. Complement Oregon's least-cost planning process, as described in OPUC Order No. 89-507;
3. Not unduly constrain utility management's prerogative to acquire new resources through means other than competitive bidding;
4. Be flexible, allowing the contracting parties to negotiate mutually beneficial exchange agreements; and
5. Be understandable and fair.

The Commission revisited these goals and the guidelines in 2006, issuing Order No. 06-446 (Docket UM 1182) in which it adopted new guidelines for Requests for Proposals (RFPs) applicable to major resources with generating capacity greater than 100 MW.³ While the original Goals 1, 4 and 5 were left unchanged, Goals 2 and 3 were modified slightly to read:

2. Complement Oregon's integrated resource planning process;
3. Not unduly constrain utility management's prerogative to acquire new resources;

Also in 2006, the Commission opened an investigation in Docket UM 1276 to consider performance-based ratemaking mechanisms to address bias inherent in a resource procurement process that favors utility ownership of generation resources over power purchase agreements (PPAs) with third parties. In the Commission's order following its investigation, it accepted the premise that the utility resource procurement process favors utility-owned resources over PPAs.⁴ However, the Commission was not able to quantify any impact on rates as a result of this bias and declined to adopt the risk adjustment mechanisms proposed by the parties in the docket. Instead, the Commission reopened Docket UM 1182 and made the following determinations: an Independent Evaluator need not be involved in negotiations and resource selection, but may be involved on a case by case basis (Order No. 11-340); a modified definition of "major resource" should reduce the potential for a utility to purposefully size projects to avoid application of the Competitive Bidding Guidelines (Order Nos. 11-340 and 12-007); and there are several types of risk elements to compare between utility benchmark resources and PPAs (Order Nos. 13-204 and 14-149). In Order No. 14-149, which was issued on April 30, 2014, the Commission added a requirement that a utility file an application to seek acknowledgement of its final short list of bidders, and

³ These guidelines are set forth in Appendix A of Order No. 06-446.

⁴ See Order No. 11-001 at 5, issued January 3, 2011.

identified additional risk elements for an IE to evaluate with respect to a benchmark resource.

Analysis

Background

Staff and interested parties have discussed the issues prompted by Order 16-188 in workshops held on June 30, 2016, November 30, 2016 and February 15, 2017. Workshop participants also exchanged written versions of their suggestions for revisions to the existing Competitive Bidding Guidelines (submitted on October 25, 2016). Parties discussed these suggested revisions and clarified their positions in-person in the second workshop. Appendix A to this memo contains a matrix summarizing these suggestions. Discussions in the third workshop focused on the methods and assumptions that utilities use to compare bids of unequal durations and how they assemble and evaluate "portfolios" of multiple bids.

Staff appreciates that all participants in the workshops have maintained an underlying focus on addressing the requirements of SB 1547 and updating the guidelines to result in a process that provides the best outcome for the soliciting utility's customers. Most suggestions have been consistent with the goals for competitive bidding stated by the Commission in Order No. 06-446 and appear to be offered with a clear purpose of ensuring that the RFP process: (1) is fair, objective, and transparent; (2) encourages broad participation and creative proposals; (3) provides for a fair evaluation of bids according to all relevant factors; and (4) is conducted in an efficient and timely manner. Staff calls attention to these generally accepted criteria⁵ because, while they are each important, certain requirements in a competitive bidding process may support one of them at a cost to another. For example, improving transparency may also cause delays.

Parties prefaced their suggestions for changes to the existing Guidelines by explaining where they saw deficiencies in the current process that were impeding achievement of the purpose of the RFP process. Since perspectives on where deficiencies lie were quite broad, the scope of changes parties have suggested is correspondingly broad and parties have been unable to reach consensus about the appropriate scope of this rulemaking. For example, the utilities state that the existing Guidelines define a satisfactory process, while other parties maintain that there are important changes that should be considered.

⁵ See, for example, the white paper commissioned by NARUC on "The Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices" by Susan Tierney and Todd Schatzki, 2008.

In addition, parties raised issues in these workshops that implicate practices and policies outside of the competitive bidding process itself. These include the regulatory practices and policies governing Integrated Resource Plans (IRP)⁶ and questions about the set of resources or services whose procurement should be required to follow the competitive bidding process, among other issues. Because actions or events occurring outside of the competitive bidding portion of a procurement may affect whether the process ultimately “allows for diverse ownership,” it is important to consider the full context in which competitive bidding rules will apply when evaluating the changes that parties have suggested.

Because it would take a considerable amount of time and energy to investigate all of the issues raised and suggestions offered, Staff requests a determination from the Commission about the type and scale of issues to consider in this rulemaking. This will help Staff and parties direct their time and energy to determine a set of potentially valuable improvements to existing practices, should the Commission wish to entertain the possibility of changing the process when it establishes rules per the legislative directive in SB 1547.

This memo describes a range of options the Commission could consider and provides Staff’s recommendation on scope. In response to Staff’s request for a determination on scope for this rulemaking, the Commission has several options, including:

1. Restrict the scope of this rulemaking to the establishment of rules that preserve the competitive bidding process described by the existing guidelines as much as possible (to the degree that rules can effectively replicate guidelines).
2. Establish the rules and restrict the scope of this docket to only certain categories of issues or particular concerns raised by parties. The Commission could also take up in other dockets issues raised by parties which are not directly related to the current open dockets.
3. Decline to adopt any restrictions on scope at this time and ask the parties to address the full range of issues presented in comments.

Defining the Issues

The major elements of the existing competitive bidding process that parties have discussed are:

⁶ For example, IRP Guideline 13a, as established in Order No. 07-002, states that a utility should in its IRP “assess the advantages and disadvantages of owning a resource instead of purchasing power from another party.” Order No. 07-002 explains that this “assessment should be rigorous enough to provide a basis for evaluation and scoring criteria in any subsequent RFP” (Order No. 07-002 page 24).

- A. The information provided to bidders (including the timing with which this information is made available);
- B. The criteria and process for scoring bids (including how bids of unequal durations are compared, and how multiple bids are bundled and evaluated jointly);
- C. The responsibilities of the Independent Evaluator (IE);
- D. The process of developing an RFP; and
- E. The set of activities subject to the competitive bidding process (including exceptions or the use of "waivers" from competitive bidding requirements).

As mentioned above, parties have also discussed changes to policies outside of the competitive bidding portion of resource acquisition that may have an impact on procurement decisions. Staff has grouped these suggestions into a sixth category, representing changes to:

- F. The regulatory environment in which the competitive solicitation occurs.

For each of these six categories, Staff provides examples to illustrate the range of parties' concerns with the current process and the changes that parties have proposed. Staff categorizes the proposed changes according to the major element of the current competitive bidding process to which they apply so that each suggestion can be evaluated based on a clear connection with the existing guidelines. These examples serve to illustrate several potential dimensions the Commission may find useful to focus the scope of this rulemaking. These dimensions include (1) the degree to which a particular proposal is clearly or precisely defined (rather than vague), (2) the degree to which a particular proposal represents an update to the existing guidelines or represents a significant departure from existing practices, and (3) the degree to which a particular proposal is supported by stakeholders.

A: The Information Provided to Bidders

Several parties have expressed a concern that the information provided to bidders under the existing guidelines does not sufficiently describe the characteristics of the resource sought or the soliciting utility's system. This could hinder a bidder's ability to provide a valuable and competitive bid, and may also be unfair if the utility or its affiliates have greater or earlier access to relevant information. Northwest & Intermountain Power Producers Coalition (NIPPC) has provided specific suggestions of resource or system characteristics that it believes should be described both earlier in the process (when possible) and in greater detail (for example, necessary transmission rights, land use approvals, site control, or resource quality (such as solar irradiance or quality of wind)).

Currently, Guideline 6 suggests that an RFP state any minimum requirements for a bidder's credit or capability, the bid evaluation and scoring criteria, any minimum resource size, and also provide a standard form contract.⁷ The existing Guidelines also allow an opportunity for interested parties to submit comments on a utility's draft RFP and suggest that the utility conduct workshops for bidders and stakeholders to discuss the draft RFP.

Parties have also raised concerns about the timing by which relevant information is provided to potential bidders and the clarity with which RFPs explain scoring criteria and assumptions used for evaluating bids. The utilities have pointed to the IRP process as a valuable source of relevant information for bidders. However, other parties have noted that while a utility may engage in an extensive IRP process, it is a separate process with separate guidelines and it may fail to provide important information to potential RFP bidders in a fair and timely manner. The utilities also propose that the justification of a resource need should be allowed to take place outside of the IRP process. However, if the justification of a resource acquisition is permitted without the rigorous participatory process used in IRP development, important information may not be available to bidders as early as it would be otherwise.

There are a number of ways to consider modifying or augmenting bidders' access to certain information, if the Commission determines that this is warranted. Examples include requiring that more detailed information be provided in an RFP, or that information be provided earlier than the release of an RFP (such as in an IRP), or by making RFP acknowledgment conditional on the presence of certain information in the IRP.

B: The Criteria for Scoring Bids

Parties have expressed concerns about the bid scoring process and the content of the scoring criteria themselves. Currently, Guideline 9.a. states that scoring should be based on price and non-price factors. Specifically, price scores "should be calculated as the ratio of the bid's projected total cost per megawatt-hour to forward market prices using real-levelized or annuity methods." And, non-price scores "should be based on resource characteristics identified in the utility's acknowledged IRP Action Plan (e.g., dispatch flexibility, resource term, portfolio diversity, etc.) and conformance to the standard form contracts attached to the RFP."⁸

Staff has heard from the utilities that the requirement that price scores be calculated in units of dollars-per-megawatt-hour is too restrictive and not appropriate for some products (e.g., capacity). The utilities also suggest changes to the Guidelines that

⁷ Order No. 14-149 at Appendix A, page 2.

⁸ Order No. 14-149 at Appendix A, page 3.

would allow them to develop alternative scoring methods in consultation with the IE. Other parties have proposed that price scores should be required to reflect specific values, including (among others) the value of shorter contract terms and certain types of risks that may be different for utility-owned resources than for PPAs. NIPPC has also proposed a bid scoring mechanism in which all bids that could result in utility ownership are scored first and then the best of these bids is released as the "price to beat" for PPA or non-ownership bids to compete against.

Some parties have also raised concerns about the degree to which non-price scoring criteria allow for subjective judgments by the soliciting utility. Proposals to reduce this subjectivity include prohibiting the non-price criteria from containing any factors that could instead be converted into minimum bidder requirements, or requiring that non-price factors be sufficiently objective for bidders to determine whether they may receive the maximum non-price score, or assigning responsibility for determining the non-price criteria or even the non-price scores to the IE. Several stakeholders have proposed that bidders be given access to their bid scores and evaluations in order to verify them and learn from them.

Regarding NIPPC's suggestion that price scores should reflect the value of shorter contract terms, parties discussed a range of issues associated with the comparison of resources and PPAs with unequal lives. There is not a consensus on the appropriate way to make these comparisons, though Staff and other parties agree that this is an increasingly important issue.

C: The Independent Evaluator's (IE) Responsibilities

Several parties have expressed the belief that the IE is overly beholden to the soliciting utility and should instead be more independent and responsive to Staff. The IE's primary purpose, as currently defined, is to ensure that the overall procurement is conducted fairly and properly and that all offers are treated fairly.⁹ The existing Guidelines require that the IE be independent of the utility and likely potential bidders. In RFPs without utility ownership options or bids from a utility's affiliate, the IE checks to ensure the utility's scoring of the bids and its selection of the shortlist are reasonable. In RFPs that do allow affiliate bids or utility ownership options, the IE reviews the reasonableness of the score given to a utility's benchmark resource and independently scores the benchmark resource and all or a sample of the other bids. The IE also evaluates the unique risks and advantages associated with the benchmark resource, and the IE and utility are directed to attempt to reconcile any differences in their scores, which the IE then explains in a closing report (submitted after the company's selection

⁹ Order No. 14-149 at Appendix A, pages 2-4.

of the final shortlist of bids). The current Guidelines also allow for Staff to recommend, or other parties to request, greater involvement of the IE in the final resource selection.

Some parties have suggested that the IE should contract directly with the Commission, or be paid by the Commission, or both. There may be substantial logistical challenges for the Commission to directly engage or compensate the IE, though some other state utility commissions operate in this manner.¹⁰ In addition, the IE could be required to provide Staff and interested persons with documentation (transcripts or notes) of all its communications with the utility, which could provide greater transparency into the nature of the IE's responsiveness to the utility, relative to the Commission. Some other states require that all communications between the utility and bidders be conducted through the IE or with the IE present and require that the IE preserve documentation of all these communications for use in any relevant proceedings.¹¹

Parties have also proposed an expanded role for the IE in the bid evaluation process, with suggestions ranging as far as having the IE take over full responsibility of the bid evaluation and scoring and the determination of the shortlist. Counter to these suggestions, the utilities have proposed that the IE's access to the soliciting utility's cost and risk models remain as a suggestion in the guidelines but not be included as a requirement in rules. The utilities have also stated that an IE would be unlikely to have sufficient knowledge about all relevant features of the soliciting utility's system and would therefore need information beyond what is provided in an RFP in order to appropriately score bids. Some parties expressed the concern that, if this is true, an IE's inability to score bids without additional information may indicate that the IE is not able to independently determine whether the utility's bid scores are in fact reasonable.

NIPPC has suggested that the IE's role be expanded to require a review as to whether benchmark resource bids fully reflect all pre-existing investments that the utility may have made and which, if not fully accounted for in the bid's costs, could be found by the IE to provide self-build bids with an unfair advantage over third-party bidders. NIPPC also suggested requiring the involvement of an additional (non-IE) third-party expert to conduct a due diligence review of the financing for utility ownership bids, which many third party bids must also undergo to secure financing.

D: The RFP Development Process

Several parties are concerned that existing practices do not provide sufficient time or access for stakeholder input into and Commission review of a draft RFP. This has implications outside of the competitive bidding process because the development of an

¹⁰ In Oklahoma, the "Commission may, at its discretion, retain and arrange compensation" for an IE, and the IE reports to the Commission and the Attorney General. See OK ADC 165:35-34-3(b).

¹¹ See, for example, Utah ADC R746-420(3) and (4) or Colorado 4 CCR 723-3 3612(d).

RFP is affected in part by both the Competitive Bidding Guidelines and the IRP Guidelines, including:

- IRP Guideline 13, which states in part that an electric utility should identify a proposed acquisition strategy for all resources in its IRP action plan, assess the advantages and disadvantages of resource ownership as compared to purchasing power, and identify any benchmark resources "it plans to consider in competitive bidding."¹²
- Competitive Bidding Guideline 6, which states in part that a utility should consult with the IE when preparing drafts of the RFP, share a draft of the RFP with interested parties and discuss it at bidder and stakeholder workshops, and that the IE will provide an assessment of the final draft RFP to the Commission when the utility submits it for approval.¹³
- Competitive Bidding Guideline 7, under which the utility submits the final draft RFP to the Commission, which then solicits public comment and reviews the RFP.¹⁴ This Guideline further directs that the Commission's review should be completed within 60 days and focus on the RFP's alignment with the utility's acknowledged IRP, the overall fairness of the proposed bidding process, and whether the RFP satisfies the Competitive Bidding Guidelines. The Commission may approve the RFP with any conditions or modifications deemed necessary.
- Competitive Bidding Guideline 9, which states that the non-price scoring criteria (required to be provided in the draft RFP) should be based on resource criteria identified in a utility's acknowledged IRP Action Plan, and that the modeling and decision criteria used to select the final shortlist of bids should be stated in the draft RFP and should be consistent with the modeling and decision criteria used to develop the IRP Action Plan.¹⁵

As mentioned, stakeholders have conflicting views as to whether the existing process provides sufficient time and access for stakeholder input and Commission review of a draft RFP. For example, the utilities propose that (1) the identification of resource needs be permitted to occur outside of the IRP process, (2) non-price scoring factors be based on relevant characteristics identified anywhere in the IRP (rather than specifically in the IRP Action Plan),¹⁶ (3) parties be limited to 20 days to comment on draft RFPs or on

¹² Order No. 07-002 at Appendix A, page 7, and Order No. 07-047 at Appendix A, page 7.

¹³ Order No. 14-149 at Appendix A, page 2.

¹⁴ Order No. 14-149 at Appendix A, page 2.

¹⁵ Order No. 14-149 at Appendix A, page 3.

¹⁶ Specifically, utilities have proposed that the guidelines suggest that non-price factors be based on factors including but not limited to conformance to standard form contracts attached to the RFP and objective criteria related to development risk.

applications for waivers from the process, and (4) requests for RFP acknowledgment or waivers from the process be presumed approved unless the Commission rules otherwise within 60 days. On the other hand, in addition to the requests for more information (discussed above), NIPPC and Industrial Customers of Northwest Utilities (ICNU) propose (1) increasing the degree to which resource needs must be identified based on analyses provided in the IRP, and (2) that parties be allowed to request an extension of the Commission's review and public comment period. NIPPC has also proposed that parties be given expedited discovery rights similar to the IRP process.

E: Activities Subject to the Competitive Bidding

The current Competitive Bidding Guidelines apply to acquisitions of "major" resources, which are defined in part as "resources with durations greater than 5 years and quantities greater than 100 MW." There are four circumstances in which the current Guidelines do not apply to an acquisition that would otherwise meet these thresholds: in an emergency, when there is a "time-limited resource opportunity of unique value to customers," when the utility's acknowledged IRP provides for an alternative method, or with a waiver from the Commission awarded on a case-by-case basis.¹⁷

Parties have proposed a variety of revisions to the characteristics that define the resources whose procurement is subject to the Commission's competitive bidding standards. These include reducing the size threshold below 100 MW, adjusting the duration threshold of 5 years, or requiring that other activities (such as the acquisition of storage or of resources of an unspecified size) follow the competitive bidding process.

Parties have also discussed potential changes to the circumstances under which procurement may be exempt from the RFP requirement. For example, some parties have proposed that the existing exemption that applies when an acknowledged IRP "provides for an alternative acquisition method" be clarified to apply only when the alternative method itself has been specifically approved as part of the IRP acknowledgement. The utilities have suggested a change specifically stating in rules that the RFP requirement should not apply for contract renewals with terms greater than 5 years if such renewal is proposed in an acknowledged IRP Action Plan or IRP Update.

At a minimum, some clarifications regarding RFP development may need to be considered when converting the guidelines into administrative rules. For example, the guidelines provide for a waiver of competitive bidding requirements on a case-by-case basis. The Commission's administrative rules typically allow for a waiver of any particular rule upon a showing of good cause, which raises the question—discussed by the Commission during the public meeting on May 17, 2016—of whether only one component of the competitive bidding rules may be waived, such as the IE requirement,

¹⁷ Order No. 14-149 at Appendix A, page 1.

or if a waiver may only be granted for the entire set of requirements. The implications that a partial waiver would have on the meaning of an acknowledgement, or for subsequent cost recovery decisions, have not yet been considered in much depth in this docket.

F: The Regulatory Environment in which the Competitive Solicitation Occurs

Some parties have identified various regulatory policies and practices that could be changed in order to reduce the disparity between a utility's incentives to acquire resources that increase its rate-base and its incentives for pursuing other strategies for meeting its obligations and responsibilities. ICNU and NIPPC have proposed that, subject to certain conditions, cost recovery for a utility-owned resource could be capped at the cost included in the resource bid, as is done in some states.¹⁸ NIPPC has also proposed that bid evaluations should be preserved for reference in future cost-recovery proceedings, and that a determination of whether competitive bidding processes allow for diverse ownership should be made based on the actual outcomes of the processes. Toward this end, NIPPC proposed that a utility's ability to select a utility-owned resource be conditional on the degree to which the utility's past solicitations have resulted in non-utility ownership of resources.

Renewable Northwest and NW Energy Coalition have suggested a broader investigation into the regulatory compact in Oregon to consider whether the incentives created by existing regulatory practices will be appropriate for a world with new and rapidly changing technologies, including storage, demand response, customer-sited generation, and other new distributed energy resources.

Conclusion

In response to Staff's request for a determination on scope for this rulemaking, the Commission has several options. As mentioned above, the Commission's options include:

1. Restrict the scope of this rulemaking to the establishment of rules that preserve the competitive bidding process described by the existing guidelines as much as possible (to the degree that rules can effectively replicate guidelines).
2. Establish the rules and restrict the scope of this docket to only certain categories of issues or particular concerns raised by parties. The Commission

¹⁸ For example, if a self-build proposal is selected in Oklahoma, "the amount the soliciting utility shall recover through the rate base or other cost-recovery methods without additional Commission approval is limited to the total project cost identified in the self-build proposal." OK ADC 165:35-38-5(d).

could also take up in other dockets issues raised by parties which are not directly related to the current open dockets.

3. Decline to adopt any restrictions on scope at this time and ask the parties to address the full range of issues presented in comments.

Staff's recommendation is consistent with Option 2, which Staff recommends in order to balance the likelihood of improving the process with the time and energy required for a robust investigation of the issues. Specifically, Staff's recommendation is that the Commission focus its consideration in Dockets AR 600 and UM 1776 on only those changes that pertain to:

- The RFP development process (All of Issue Category D outlined above);
- The methods and assumptions used to compare resources or PPAs of unequal durations, the clarity with which scoring criteria are described in an RFP, and the objectivity of non-price scoring factors (Subparts of Category B);
- The Commission's or bidders' access to bid evaluations and documentation of communication between or among the utility, IE, and bidders (Subpart of Category C); and
- The set of activities subject to the competitive bidding process, including exceptions and requests for waiving some or all of the requirements (All of Category E).

Staff's recommendation is based on its judgment of the potential benefit provided to utilities' customers as well as the three dimensions identified previously (i.e., the degrees to which a proposed change to existing practice (1) is clearly or precisely defined (rather than vague), (2) represents an update to the existing guidelines or represents a significant departure from existing practices, and (3) is supported by stakeholders). Staff addresses the components of its recommendation in order.

First, Staff recommends that the Commission consider changes to the requirements of the RFP development process because of the substantial concerns expressed by multiple parties regarding this element of the process, because of current technological trends, and because the development of the RFP serves as a key link in an otherwise unclear relationship between the IRP and the solicitation of bids. This would provide an opportunity to explore the structure and timeline of the RFP.

Staff believes that the RFP development process could be adjusted to provide bidders with earlier and greater access to important information about a utility's system and resource needs. More generally, Staff also believes that the current rapid pace of technological development and the increasing availability of new distributed energy

resources raise the importance of comparing the value (for customers) of utility ownership of large, centralized generating resources to other strategies through which a utility could meet its customers' needs. However, the existing Guidelines—both for the IRP process and competitive bidding—fail to provide clarity on how the evaluation of such strategies should be incorporated into the evaluation of major resources, and Staff is concerned that this is becoming an increasingly important issue.

Additionally, utilities have pursued resource acquisitions for “economic” reasons (e.g., to take advantage of particular tax credits or other “time-sensitive” opportunities), rather than for strictly meeting load or reliability needs as identified in an IRP, and this reduces the usefulness of the IRP in providing early and fair access for third party bidders to important information about a utility’s likely resource acquisitions. Furthermore, utilities may increasingly need to compare conventional resources and PPAs, which are both likely to participate in an RFP, with new technologies or options that RFP solicitations have not traditionally been designed to evaluate. The inclusion of the RFP development process within the scope of this rulemaking will allow parties to consider whether and how the process for designing RFPs could be flexible enough to be adapted for solicitations of new resource technologies.

Second, Staff recommends that the Commission include in this docket a consideration of the methods and assumptions used to compare resources and/or PPAs of unequal durations (as discussed above in category B: Scoring Criteria). Staff makes this recommendation because the concern with this issue extends across many stakeholders and because Staff is optimistic that there are straightforward ways to address these concerns. The length of time over which a rate-based investment imposes costs on customers is a fundamentally important factor for determining the investment’s value. Furthermore, it is especially important to appropriately value the duration of resource commitments if new technologies are developing more quickly than they have previously. This is because it is more likely that strategies which delay making long-term irreversible decisions, such as through shorter contracts or resource commitments, will provide greater value when resource technologies are changing quickly than when they are steady and known. Staff also believes there is an opportunity to substantially improve the trust among all stakeholders by addressing this issue clearly in this rulemaking.

Third, Staff recommends that the Commission be open to consider changes to the access to bid evaluations and scores that utilities are required to provide to bidders and the Commission, as well as changes to the required documentation of communication between the IE and the utility or bidders. The primary reasons to consider these changes are to improve the transparency and understanding that Staff and bidders have into the evaluation portion of the RFP, and (potentially) to increase the trust among

bidders and utilities. Secondary reasons are to allow bidders to verify their scores and learn how to improve their offerings over time, and because the only potential downside to this that Staff sees is the likely small administrative burden.

Lastly, Staff recommends that the Commission be open to consider amendments to the set of activities that are subject to the competitive bidding process, including the exceptions and requests for waiving some or all of the requirements. Staff makes this recommendation in light of the growing array of resource technologies available and because these issues have already been raised by utilities and parties in recent proceedings and are therefore important to consider even if there is little departure from existing practices.

Regarding the various concerns the parties have raised about the broader regulatory environment and existing cost-recovery practices, Staff believes that an investigation into these areas could provide additional clarity and improvement to the existing competitive bidding practices. Staff limits its recommendation, however, because the pursuit of a significantly broader scope is not consistent with the idea of an “update” and creates the risk of an ill-defined docket that could take years to complete. This docket was not created—nor were stakeholders put on notice—to consider fundamental issues of the existing regulatory paradigm.

Staff recommends that, in this docket, the Commission pursue a scope of investigation that balances the chances of improving the existing process against a desire for a manageable and timely outcome.

Additional Investigation

While Staff recommends limiting the scope of this docket, it is impossible to ignore the interest and energy that stakeholders have demonstrated regarding a larger investigation into the trends and drivers in the electricity industry and the capacity of our existing regulatory approach to manage these changes.

Staff agrees that the electricity sector is undergoing rapid changes driven largely by technological advances in generation, storage, and information systems. Public policy is increasingly moving toward low-carbon solutions, such as transportation electrification, and customers are becoming more sophisticated and are demanding more service options, and new technologies are making those options more practical.

Therefore, Staff believes it is appropriate for the Commission to consider, at a suitable time, initiating a process to engage stakeholders in discussions about changes in the electricity sector and to explore whether the current regulatory approach also needs to change (and, if so, how). Staff recognizes that a larger review of our existing regulatory

approach would go far beyond the issues that prompted AR 600 and UM 1776. Before presenting a recommendation to the Commission regarding an investigation into these issues, Staff believes it should first develop a clear statement of the relevant challenges and issues facing existing regulatory practices to determine the conditions that would support such an investigation and the investigation's potential scope.

PROPOSED COMMISSION MOTION:

Adopt Staff's recommendation to focus the Commission's consideration in Dockets AR 600 and UM 1776 of changes to existing resource procurement practices on only those changes that concern (1) the RFP development process, (2) the methods and assumptions used to compare resources or PPAs of unequal durations, (3) the Commission's or bidders' access to bid evaluations, and the documentation of communication between or among the utility, IE, and bidders, or (4) the set of activities subject to the competitive bidding process, including exceptions and requests for waiving some or all of the requirements.

AR 600 - COMPETITIVE BIDDING PROCESS: Staff Summary of Suggested Changes

	ICNU	NIPPC/REC/CREA	RNW/NWEC	Electric Utilities (PGE, PAC, IDP)	Staff	SBUA
RFP required if resource exceeds	50MW or RFP does not specify a maximum; 5MWh for storage	50MW or RFP does not specify a maximum (includes storage >25MW)	50MW or RFP does not specify a maximum	100MW	TBD or RFP does not specify a maximum	50MW
Exceptions to RFP requirement	Adds: if alternative acquisition method is specifically approved in IRP acknowledgement, or for PURPA acquisitions.	Adds: If alternative acquisition method is specifically approved in IRP acknowledgement, PURPA acquisitions, solar acquired under SB 1547 Section 22, or with a waiver of the process due to a time-limited opportunity of unique value to customers.	Requests that exceptions to RFP requirement are "clarified and tightened"	Adds: for renewal of a contract (energy or capacity) greater than 5 years when the renewal is included in an acknowledged IRP action plan or update. Adds: utility may seek a waiver under time-limited opportunity exception and waivers are presumed approved unless Commission rules otherwise within 60 days.	Removes: "time-limited resource opportunity of unique value to customers." Waivers may be used for this purpose.	
RFP informational requirements	See ICNU redlines. RFP must be clearly defined, non-discriminatory, and consistent with need acknowledged in IRP.	See NIPPC redlines. RFP must be clearly defined, non-discriminatory, and consistent with need acknowledged in IRP. Utility must disclose more info in RFP and IRP, including: land use approvals, transmission rights, site control, resource quality (eg. quality of wind, solar irradiance). Further, no party should have an informational advantage in any part of the solicitation process. Therefore, info must be released to all potential bidders at the same time; utility must provide specific info in IRP for all >50MW resource acquisitions with detail sufficient for bidders to begin planning (site control, regulatory approval, etc). Commission may decline to acknowledge if RFP excludes bids for reasons that could not be determined from IRP.		Utility may provide support to justify resource acquisition outside of IRP process (e. g., analysis submitted along with RFP). Commission will consider the strength of this support when determining whether to acknowledge the RFP. RFP is presumed acknowledged unless Commission rules otherwise within 60 days of final draft submission.	Staff would like to develop requirements that ensure that the RFP includes sufficient detail such that non-utility bidders are not at a disadvantage due to a lack of information about important technical elements of the utility's system. Staff would like to hear parties' positions on whether utilities should be required to make sites used in self-build bids available to 3rd party bidders (including detailed site information).	
RFP review and approval	Stakeholders may request extension for comments (beyond 60 days).	Expedited discovery rights under contested case rules and Commission may extend review beyond 60 days. Approval is conditional on the absence of an informational advantage to any bidder prior to or during RFP process, and conditional on prior and expected ownership diversity.	Alignment with acknowledged RPIP should be acceptable alternative to alignment with acknowledged IRP.	Procurement may be justified by new (non-IRP) analysis submitted to support resource acquisition. Parties have 20 days to comment on final RFP (utility has 20 days to reply). RFP presumed acknowledged unless Commission orders otherwise within 60 days of final RFP filing.		
IE used if	RFP allows affiliate bids or bids with option for utility ownership at any point	RFP allows affiliate bids or bids with option for utility ownership at any point		IE used in all RFPs.	IE used in all RFPs.	IE used in all RFPs.
IE contract with/paid by	Commission	Commission	Commission, or Staff serves as IE	Utility (Commission maintains list of acceptable IEs)	Utility. However, Staff would like to make the IE more responsive to Commission.	Commission
IE-Utility communication	IE provides notes from all conversations and full text of written communications subject to confidentiality requirements.	IE provides notes from all conversations and full text of written communications.	IE provides notes from all conversations and full text of written communications.	Continue current practices of each utility.		
IE changed responsibilities	IE conducts RFP process, scores bids and selects shortlists. Utility may propose to put certain bid(s) on final shortlist. Differences between IE and utility must be discussed in IE closing report.	IE conducts RFP process, scores bids and selects shortlists. (Utility also scores bids and compares with IE.) IE reviews whether bids for utility-owned resources fully reflect pre-existing investments, construction costs, transmission, and financing provisions. Utility-owned resources on short list undergo financing due diligence by 3rd party expert.	IE conducts more thorough review of utility-ownership options to ensure that all costs and risks fully included.	Utility will consult with the IE in preparing the RFP. IE access to utility's production cost and risk models included in guidelines but not required in rules.	IE to be more responsive to Commission (need to discuss and define). Adds: IE independently develops non-price scores for all bids on the shortlist and reviews scores for all utility-owned resources.	IE should "be aware of the Oregon workforce to determine the best value bid." Preference points should be given for use of local workforce.
Renewable capacity factors	Require 3rd party verification for bids on shortlist.	Require 3rd party verification for bids on shortlist.	Require 3rd party verification for bids on shortlist.	3rd party verification for bids on shortlist suggested by guidelines (not required by rule)	Require 3rd party verification for bids on shortlist.	Require 3rd party verification for bids on shortlist.
Rules defined in	New CB division			New CB division	New CB division	

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Utility/affiliate bids, bids w/ ownership option	Eliminate "benchmark" resource concept. IE scores all bids. Utility and affiliates are prohibited from discussing substance of bids.	Eliminate "benchmark" resource concept and adjust scoring process. See Bid Scoring. Utility ownership options must undergo financing due diligence review by 3rd party expert.	Eliminate "benchmark" resource concept. IE conducts thorough review of all utility ownership options to ensure all costs and risks are fully	"Benchmark"/affiliate bids scored as in current guidelines. IE review of "benchmark" bid scores suggested by guidelines (not required by rules)	Utility-sponsored ("benchmark") bids treated as in current guidelines. Scores updated at the discretion of the IE (not utility). IE reviews scores of all utility-owned resources.	Eliminate "benchmark" resource concept. IE scores all bids.
Cost recovery for utility-owned resource	Capped at cost included in bid.	Capped at cost included in bid (including equipment procurement, construction bids, soft costs in development, legal support) as long as rates are sufficient to ensure confidence in the utility's financial integrity.		Prudence and recovery of all costs determined in a subsequent ratemaking proceeding.		
Bid scoring in general	Bids scored by IE.	Bids scored by IE. Bids with utility ownership (or option thereof) are scored first with the best score then released to other bidders as the "price to beat." See NIPPC redlines for details.		Adjust guidelines: Portfolio modeling and decision criteria used to select bids must be "compatible" (not "consistent") with modeling and decision criteria used to develop acknowledged IRP action plan. Should retain Commission ability to require an advisory opinion from a ratings agency but also allow Utility to obtain one. Removes requirement that price scores be calculated on	Scoring factors should be clearly defined and vetted. Scores may not be based on ownership structure/options (except to the extent that they affect costs) or renewal options. IE reviews/verifies scores and develops independent non-price scores for shortlist.	
Price scoring	The relative importance of price categories and discount rates used in scoring must be clearly specified in RFP.	NIPPC proposes a workshop to address the comparison of bid contract terms and advocates for a better and more fair way to compare shorter, certain PPA bids vs longer, uncertain utility-owned resource bids. Price scores should include at least: value of shorter contract terms, utility ownership risks, PPA risk mitigation, inflation risk mitigation, resource variability risk mitigation.	Propose a workshop to address scoring. Advocates for a better and more fair way to compare shorter, certain PPA bids vs longer, uncertain utility-owned resource bids. Requests increased transparency and clarity, with score factors clearly defined before bid	Adds to guidelines: alternative scoring methods may be developed with IE	See above. Need to discuss and define.	
Non-price scoring	See ICNU redlines. Must be objective. If a non-price factor could effectively disqualify a bid, it must instead be included as a minimum bidder requirement.	Must be: objectively reasonable, appropriately weighted, used at a minimum. May reflect unique risks and advantages of utility or non-utility ownership, and ownership diversity (and history thereof). Must not include factors that could instead be converted into minimum bidder requirements. RFP must contain objective criteria for bidder to determine whether it could receive the maximum non-price score.	Increased transparency and clarity, clearly defined before bid submission. Potentially give greater weight to non-utility ownership to ensure diversity.	Adjusts guideline language: Non-price scores should include resource characteristics identified in acknowledged IRP (rather than IRP Action Plan), conformance to standard form contracts, and "objective criteria related to development risk"	All non-price factors must be reasonable, rigorously justified, approved by the IE, and may not reflect elements that could be in price scores. IE develops independent non-price scores for shortlist bids.	Should reflect preference for bids with staffing comprised of certain groups (minorities, women, veterans)
Shortlist	Determined by IE, utility may propose to add to it. Acknowledgment required only if shortlist includes utility ownership option or utility adds to IE's final shortlist.	Determined by IE. Utility can add utility-owned bid to shortlist subject to IE approval and 3rd party financial due diligence review. Acknowledgement conditional on due diligence outcome.		Parties have 20 days to comment on utility's proposed final shortlist. Utility has 20 days to respond. Final shortlist presumed acknowledged unless Commission rules otherwise within 60 days.		Determined by IE.
Access to bid information	Bidders must have access to their own bid evaluations and detailed scoring results.	Bidders must have access to the scores for all utility-owned bids on shortlist, and to their own bid evaluations and scores. Differences in IE/Utility bid scores preserved by utility and made available at time of final shortlist approval and for use in future cost-recovery proceedings.	Bidders must have access to their own bid evaluations and detailed scoring results.	No disclosure of market sensitive bid information or detailed scores to bidders.		
Ownership Diversity		Require diversity of outcomes, where diversity means a range of generation owners (utility, PPA, PPA w/ utility ownership option). If a Utility's procurements over prior 10 years did not result in ownership diversity, the Commission shall not acknowledge an RFP that results in utility ownership. Procurements of multiple resources/facilities must have diversity of ownership within those	Recommend investigation of potential changes to the regulatory compact in OR to address the current incentives for utility ownership that exist in the current utility business model.	"The RFP must explicitly state that diverse ownership options will be considered."		