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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 860
PUBLIC UTILITY COMMISSION

FILED
04/18/2018 12:12 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Rulemaking Regarding Competitive Bidding Requirements - Allowances for Diverse Ownership of Renewable Energy Resources

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/15/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Diane Davis
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/16/2018

TIME: 9:30 AM

OFFICER: ALJ Moser

ADDRESS: Public Utility Commission -
Hearing Room

201 High Street SE Suite 100
Salem, OR 97301-3398

NEED FOR THE RULE(S):

Senate Bill 1547 was enacted following the 2016 legislative session. Section six of this bill amends ORS 469A.075(4) to require that the Public Utility Commission of Oregon (Commission) adopt rules that provide "for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity." The Commission has long supported the use of a competitive bidding process by electric companies as it provides the opportunity to minimize long-term energy costs, complements Oregon's integrated resource planning process for electric companies, and establishes a fair, open process without unduly restricting such companies from acquiring new resources and negotiating mutually beneficial terms. The Commission adopted guidelines for the competitive bidding process conducted by electric companies subject to its jurisdiction most recently in its Order No. 14-149. This rulemaking is intended to incorporate the Commission's competitive bidding guidelines into administrative rules, consistent with the recent legislation and to provide additional updates and refinements that enhance the fairness and transparency of the competitive bidding process.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 600 on comments and attach them to an e-mail to the Commission's Filing Center at

PUC.FilingCenter@state.or.us.

Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=20190>. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=4027>.

Participants wishing to monitor the hearing by telephone must contact Diane Davis at diane.davis@state.or.us or (503) 378-4372 by close of business May 11, 2018, to request a dial-in number. The Commission strongly encourages those planning to present oral comment at the hearing to attend in person.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OPUC Order No. 91-1383, Docket UM 316, available at:
<http://edocs.puc.state.or.us/efdocs/HAH/ar600hah153833.pdf>

OPUC Order No. 11-001, Docket UM 1276, found online at:
<http://apps.puc.state.or.us/edockets/docket.asp?DocketID=13600>

OPUC Order No. 11-340, Docket UM 1182, found online at:
<http://apps.puc.state.or.us/orders/2011ords/11-340.pdf>

OPUC Order No. 12-007, Docket UM 1182, found online at:
<http://apps.puc.state.or.us/orders/2012ords/12-007.pdf>

OPUC Order No. 06-446, Docket UM 1182, found online at:
<http://apps.puc.state.or.us/orders/2006ords/06-446.pdf>

OPUC Order No. 13-204, Docket UM 1182, found online at:
<http://apps.puc.state.or.us/orders/2013ords/13-204.pdf>

OPUC Order No. 14-149, Docket UM 1182, found online at:
<http://apps.puc.state.or.us/orders/2014ords/14-149.pdf>

OPUC Order No. 16-188, Dockets AR 598 and UM 1771, found online at:
<http://apps.puc.state.or.us/orders/2016ords/16-188.pdf>

OPUC Order No. 17-173, Docket AR 600, UM 1776, found online at:

FISCAL AND ECONOMIC IMPACT:

The proposed rules set a lower threshold for acquisitions that will be subject to these rule requirements than those subject to the existing competitive bidding guidelines and add certain storage resources to the set of acquisitions subject to competitive bidding. For acquisitions subject to the rules, an electric company would be responsible for the fees and expenses associated with engaging an independent evaluator's services, but may request recovery of those fees and expenses in customer rates, thereby passing the expense on to the customers of the electric company. An electric company conducting an acquisition that is subject to the rules may incur administrative, reporting and labor costs associated with the need to participate in a proceeding before the Commission for approval of the independent evaluator, request for proposals, and short-list acknowledgment, along with the need to communicate and exchange information relevant to the process with the Commission, its Staff, the independent evaluator and interested parties during that proceeding, and to contract with the independent evaluator for its services. Such expenses are not anticipated to be excessive in most instances, particularly given that electric companies have been engaged in competitive bidding under the existing guidelines. The proposed rules allow for extension of certain timelines, which may result in additional expense for the electric company and its customers than may currently be incurred. In certain circumstances, the proposed rules require an electric company to develop and present a proposal for scoring and bid modeling in a separate proceeding before the Commission, which may also increase the electric company's administrative, reporting and labor costs. The amount of such expenses in any particular circumstance cannot be quantified. The overall longer-term impact of any expenses borne by the electric company or its customers may be offset or outweighed by savings in the cost of acquiring a resource, as the primary purpose of the competitive bidding requirements is to identify the least-cost, least-risk resources for acquisition by an electric company.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

No state agencies or units of local government are likely to be economically affected by the proposed rules. As stated above, an electric company subject to the rules, or its customers, may be economically affected, but the overall impact of any expenses incurred to comply with the proposed rules may be offset or outweighed by savings in the cost of acquiring a resource. Investor-owned electric utilities regulated by the Commission are subject to the proposed rules, none of which is a small business. For acquisitions that would be subject to the proposed rules, electric companies are generally required to engage the services of an independent evaluator, who would have specific duties under the proposed rules. Persons serving as independent evaluators may be small businesses and would receive the benefit of contracting with the electric company to provide their professional services.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Commission's staff, and on one occasion, the Commission, conducted stakeholder workshops and engaged in discussions with stakeholders, including organizations representing independent power producers, small business interests and consumer interests.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Commission and its staff conducted multiple workshops and engaged in discussions with interested stakeholders.

RULES PROPOSED:

860-089-0010, 860-089-0015, 860-089-0020, 860-089-0100, 860-089-0200, 860-089-0250, 860-089-0300, 860-089-0350, 860-089-0400, 860-089-0450, 860-089-0500, 860-089-0550

ADOPT: 860-089-0010

RULE SUMMARY: Proposed OAR 860-089-0010 states that the rules contained in Division 89 apply to electric companies. The rule sets forth a process for Commission waiver of any of the Division 89 rules.

CHANGES TO RULE:

860-089-0010

Applicability of Division 089

(1) The rules contained in this Division apply to electric companies, as defined in OAR 860-089-0020. ¶

(2) Upon request or its own motion, the Commission may waive any of the Division 089 rules for good cause shown. A request for waiver must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition, and the request must indicate whether the electric company intends to request acknowledgement of the final short list or resource acquisition. ¶

(a) In addition to the filing requirements in OAR Chapter 860, Division 001, an electric company filing a request for waiver under this section must serve the request on all parties and interested persons in the electric company's most recent general rate case, competitive bidding filing, and IRP dockets. ¶

(b) The Commission may allow oral and written comment on an electric company's request for waiver as it finds appropriate under the circumstances, and will generally issue an order on the waiver request within 90 days. ¶

(3) Any request for waiver filed by an electric company after it acquires a resource, if granted, does not result in or equate to the Commission's acknowledgment of the resource acquisition

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 ¶ 6

ADOPT: 860-089-0015

RULE SUMMARY: The rule contains a statement of the purpose of Division 089.

CHANGES TO RULE:

860-089-0015

Purpose of Division 089

(1) OAR chapter 860, division 89 is intended to provide an opportunity to minimize long-term energy costs, complement the integrated resource planning process, and establish a fair, objective and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms. ¶

(2) These rules provide a process that allows for diverse ownership of resources. Any distinction in these rules between an RFP soliciting proposals that allow the electric company to own the resource or acquire an ownership interest in the resource at a later date and an RFP that does not allow for such proposals is not made to express a general preference for either type of RFP nor to express a preference for any particular result in terms of ownership structure from the competitive bidding process.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 ¶ 6

ADOPT: 860-089-0020

RULE SUMMARY: Proposed OAR 860-089-0020 provides definitions for certain terms used in Division 89.

CHANGES TO RULE:

860-089-0020

Definitions

For purposes of this Division, unless the context requires otherwise:¶

(1) "Acknowledgment" is a finding by the Commission that an electric company's final shortlist of bid responses appears reasonable at the time of acknowledgment and was determined in a manner consistent with the rules in this division. ¶

(2) "Benchmark resource" is a resource identified in an electric company's response to its own request for proposals that is site-specific and self-built. ¶

(3) "Commission-acknowledged IRP" means an IRP for which the Commission has issued an order acknowledging the electric company's plan to procure the resource subject to the rules in this division. ¶

(4) "Electric company" has the meaning given that term in ORS 757.600. ¶

(5) "Emergency" means a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant failure, that requires an electric company to take immediate action. ¶

(6) "Independent evaluator" or "IE" refers to a person engaged by an electric company to oversee an RFP process under the rules in this division, and who also reports directly to the Commission Staff during that process. ¶

(7) "Integrated resource plan" or "IRP" has the meaning given that term in OAR 860-027-0400. ¶

(8) "IRP Update" means an update to an acknowledged IRP that is filed in accordance with OAR 860-027-0400(9). ¶

(9) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies. ¶

(10) "Qualifying facility" refers to qualifying facilities under 16 USC § 796(17) and (18) (2012). ¶

(11) "Resource acquisition" refers to a process for the purpose of acquiring energy, capacity or storage resources that starts with an electric company's: ¶

(a) Circulation of a final or draft RFP to third parties; or ¶

(b) Communication of an offer or receipt of an offer in a two-party negotiation. ¶

(12) "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals from prospective bidders.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 § 6

ADOPT: 860-089-0100

RULE SUMMARY: Proposed OAR 860-089-0100 describes the circumstances in which an electric company must comply with the rules in Division 89, certain exceptions to those circumstances and the steps that an electric company must take when an exception applies.

CHANGES TO RULE:

860-089-0100

Applicability of Competitive Bidding Requirements

(1) An electric company must comply with the rules in this division when it seeks to acquire energy or capacity resources, or to contract for energy or capacity if any of the following apply: ¶

(a) The acquisition is of a resource or a contract for more than 50 megawatts and five years in length. ¶

(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection (1)(a) or (1)(c) of this rule. ¶

(c) The acquisition is of resources more than five years in length that in the aggregate provide the electric company with more than 50 megawatts and these resources: ¶

(A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent, and ¶

(B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other. ¶

(2) An electric company may request that the Commission find that resources presumed to be subject to these rules under subsection (1) (c) of this rule should not be considered in the aggregate. The electric company may make this request before acquiring the resources or if the electric company proceeds without following competitive bidding rules, the request may be made when seeking recovery of the costs of the resources in rates. The electric company bears the burden of rebutting the presumption that the acquisition is subject to these rules by showing each resource is separate and distinct based on other factors. ¶

(3) An electric company must comply with the rules in this division when it seeks to acquire energy storage resources or contracts for a storage resource greater than 25 megawatt hours and with a duration of more than five years. ¶

(4) An electric company is not required to comply with the rules in this division before seeking to acquire a resource under section (1) or (3) of this rule in the following circumstances: ¶

(a) In an emergency; ¶

(b) When there is a time-limited opportunity to acquire a resource of unique value to the electric company's customers; or ¶

(c) When an alternative acquisition method was proposed by the electric company in the IRP and explicitly acknowledged by the Commission. ¶

(5) Within 30 days of a resource acquisition under OAR 860-089-0100(4), the electric company must file a report with the Commission explaining the relevant circumstances. The report must be served on all the parties and interested persons in the electric company's most recent rate case, RFP and IRP dockets. ¶

(6) Resource acquisitions and RFPs for resources or contracts other than those identified in sections (1), and (3) of this rule are not subject to the rules in this Division. Specifically, the acquisition of transmission assets is not subject to the rules in this Division.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 ¶ 6

ADOPT: 860-089-0200

RULE SUMMARY: Proposed OAR 860-089-0200 requires an electric company to engage the services of an independent evaluator (IE) to oversee the competitive bidding process and specifies what the electric company's contract with the IE must contain. The proposed rule establishes a process for selection and approval by the Commission of the use of an IE.

CHANGES TO RULE:

860-089-0200

Engaging an Independent Evaluator

(1) Prior to issuing a request for proposals, an electric company must engage the services of an independent evaluator to oversee the competitive bidding process. ¶

(2) The electric company must notify all parties and interested persons in the electric company's most recent general rate case, RFP and IRP dockets of its need for an IE. The electric company must solicit input from these parties and interested persons regarding the manner in which it intends to solicit proposals. ¶

(3) Commission Staff will recommend an IE to the Commission based in part on the consideration of: ¶

(a) Any input received from the electric company and interested, non-bidding parties. ¶

(b) Review of the degree to which the IE is independent of the electric company and potential bidders. ¶

(c) The degree to which the cost of the services to be provided is reasonable. ¶

(d) The experience and competence of the IE. ¶

(e) And the public interest. ¶

(4) The Commission may then select an IE for the RFP. ¶

(5) The electric company is responsible for engaging the services of the IE and is responsible for all fees and expenses associated with engaging the IE's services. The electric company may request recovery of fees and expenses associated with engaging an IE in customer rates. ¶

(6) The electric company's contract with the IE must require that the IE fulfills its duties under the rules in this Division and that the IE confers as necessary with the Commission and Commission Staff on the IE's duties. ¶

(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.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 ¶ 6

ADOPT: 860-089-0250

RULE SUMMARY: Proposed OAR 860-089-0250 sets forth requirements for requests for proposals (RFPs), and establishes a process for Commission review and approval of a draft RFP.

CHANGES TO RULE:

860-089-0250

Design of Requests for Proposals

(1) For each resource acquisition, the electric company must prepare a draft request for proposals, and provide the draft to all parties and interested persons in the electric company's most recent general rate case, RFP, IE selection, and IRP dockets. Prior to filing the draft RFP with the Commission, the electric company must consult with the IE in preparing the RFP and must conduct bidder and stakeholder workshops.

(2) The draft RFP must reflect the RFP elements, scoring methodology and associated modeling described in the Commission-acknowledged IRP. The electric company's draft RFP must reference and adhere to the specific section of the IRP in which RFP design and scoring is described.

(a) If the electric company's Commission-acknowledged IRP does not include a specific section devoted to describing the RFP design, scoring methodology and associated modeling process, the electric company must develop and present in a separate filing with the Commission a proposal for scoring and any associated modeling, which must be filed with the Commission before the electric company may prepare the draft RFP. The electric company must consider resource diversity (e.g. with respect to technology, fuel type, resource size, and resource duration) in preparing its proposal. The Commission or an administrative law judge may establish a process for review of the filing.

(b) The filing of a proposal for scoring and any associated modeling under subsection (2)(a) of this rule must be served on all parties and interested persons in the electric company's most recent general rate case, RFP, IE selection, and IRP dockets.

(3) At a minimum, the draft RFP must include:

(a) Any minimum bidder requirements for credit and capability;

(b) Standard form contracts to be used in acquisition of resources;

(c) Bid evaluation and scoring criteria that are consistent with section (2) of this rule and OAR 860-089-0400;

(d) Language to allow bidders with which it negotiates to negotiate mutually agreeable final contract terms that are different from the standard form contracts;

(e) Description of how the electric company will share information about bid scores, including what information about the bid scores and bid ranking may be provided to bidders and when and how it will be provided; and

(f) Bid evaluation and scoring criteria for selection of the initial shortlist of bidders and for selection of the final shortlist of bidders consistent with the requirements of OAR 860-089-0400.

(4) An electric company may set a minimum resource size in the draft RFP, but it must allow qualifying facilities that exceed the eligibility cap for standard avoided cost pricing to participate as bidders.

(5) Subsequent to taking the steps required under sections (1), (2), (3), and (4) the electric company must file the final draft RFP with the Commission for review and approval. Public comment may be submitted to the Commission on the draft RFP.

(6) The electric company must demonstrate in its RFP filing:

(a) The alignment of the electric company's RFP with an acknowledged IRP;

(b) Whether the RFP satisfies the rules in this Division; and

(c) The overall fairness of the proposed bidding process.

(7) The electric company may explain in its filing the impact of multi-state regulation on RFP development, including the requirements imposed by other states for the RFP process.

(8) The Commission may approve the RFP with any conditions it deems necessary, upon a finding that the electric company has complied with the provisions of section (6) of this rule.

(9) Subject to the provisions of subsections (a) and (b) of this section, the Commission will generally issue a decision approving or disapproving the RFP within 100 days after the final draft RFP is filed.

(a) An electric company may request an alternative review period when it files the final draft RFP for approval. If the accompanying request is for an alternative review period shorter than 100 days, the electric company must demonstrate good cause for the alternative review period. ¶

(b) Any person may request an extension of the review period of up to 30 days per request upon a showing of good cause. ¶

(10) The Commission or an administrative law judge may establish an alternate review period and may set deadlines for public comment on a draft RFP by providing notice to the parties, generally within 10 days of the electric company's filing of the draft RFP.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 ¶ 6

ADOPT: 860-089-0300

RULE SUMMARY: Proposed OAR 860-089-0300 authorizes and provides for additional process when an electric company submits or allows its affiliates to submit bids in response to its own RFP, and when it proposes a benchmark resource with elements owned or secured by the electric company and addresses proposals for transfer of ownership.

CHANGES TO RULE:

860-089-0300

Resource Ownership

(1) An electric company may submit or allow its affiliates to submit bids in response to the electric company's request for proposals. Electric company and affiliate bids must be treated in the same manner as other bids.¶

(a) Any individual who participates in the preparation of an electric company or affiliate bid may not participate in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company and must be screened from that process.¶

(b) Any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.¶

(2) An electric company may propose a benchmark resource in response to its RFP to provide a potential cost-based alternative for customers. The Commission encourages the electric company to make elements of the benchmark resource owned or secured by the electric company (e.g. site, transmission or fuel arrangements) available for use in third-party bids. ¶

(3) If the acquisition may result in ownership of a generation resource by the electric company, the Commission encourages the electric company to make elements secured by the electric company (e.g. site, transmission or fuel arrangements) available for use in third-party bids for resources to be owned by the electric company or owned by third parties after construction.¶

(4) An electric company may consider ownership transfers within an RFP solicitation. ¶

(5) The electric company issuing the RFP must allow independent power producers to submit bids with and without an option to renew and may not require that bids include an option for transferring ownership of the resource.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 ¶ 6

ADOPT: 860-089-0350

RULE SUMMARY: Proposed OAR 860-089-0350 establishes requirements for scoring benchmark resources.

CHANGES TO RULE:

860-089-0350

Benchmark Resource Score

(1) Prior to the opening of bidding on an approved RFP, the electric company must submit to Commission Staff and the IE for review and comment a detailed score for any benchmark resource with supporting cost information, any transmission arrangements and all other information necessary to score the benchmark resource. The electric company must apply the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids.

(2) If, during the course of the RFP process, the Commission or the IE determines that it is appropriate to update any bids, the electric company must also make the equivalent update to the score of the benchmark resource.

(3) Before the IE provides the electric company an opportunity to score other bids, the electric company must submit the final benchmark resource score developed in consultation with the IE, cost information and other related information shared under this section, either in hard copy in a sealed envelope or a digital copy on electronic media, to the IE and Commission Staff.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 § 6.

ADOPT: 860-089-0400

RULE SUMMARY: Proposed OAR 860-089-0400 sets forth requirements for bid scoring criteria and metrics and for the evaluation of bids.

CHANGES TO RULE:

860-089-0400

Bid Scoring and Evaluation by Electric Company

(1) The purpose of this rule is to ensure that the electric company engages in a transparent bid-scoring process using objective scoring criteria and metrics.¶

(2) The electric company must provide all proposed and final scoring criteria and metrics in the draft and final RFPs, respectively. ¶

(3) The electric company must base the scoring of bids and selection of an initial shortlist on price and, as appropriate, non-price factors. Non-price factors should be converted to price factors where practicable. The electric company must use the following approach to develop price and non-price scores, unless an alternative approach is approved by the Commission when it reviews the final draft RFP. ¶

(a) Price scores must be based on the prices submitted by bidders and calculated using units that are appropriate for the product sought and technologies anticipated to be employed in responsive bids using real-levelized or annuity methods. The IE may authorize adjustments to price scores on review of information submitted by bidders. ¶

(b) Non-price scores should, when practicable, primarily relate to resource characteristics identified in the electric company's most recent acknowledged IRP Action Plan or IRP Update and may be based on conformance to standard form contracts. Non-price scoring criteria must be objective and subject to self-scoring analysis by bidders. ¶

(c) Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements.¶

(d) Scoring criteria may not be based on renewal or ownership options, except insofar as these options affect costs, revenues, benefits or prices. Any criteria based on renewal or ownership options must be explained in sufficient detail in the draft RFP to allow for public comment and Commission review of the justification for the proposed criteria. ¶

(4) The electric company may select an initial shortlist of bids after it has scored the bids and identified the bids with top scores. Following selection of an initial shortlist of bids, the electric company may select a final shortlist of bids. ¶

(5) Selection of the final shortlist of bids must be based on bid scores and the results of modeling the effect of candidate resources on overall system costs and risks using modeling methods that are consistent with those used in the Commission-acknowledged IRP, unless an alternative method is approved by the Commission when it reviews the final draft RFP. ¶

(a) The electric company must use a qualified and independent third-party expert to review site-specific critical performance factors for wind and solar resources on the initial shortlist before modeling the effects of such resources.¶

(b) In addition, the electric company must conduct, and consider the results in selecting a final short list, a sensitivity analysis of its bid rankings that demonstrates the degree to which the rankings are sensitive to:¶

(A) Changes in non-price scores; and ¶

(B) Changes in assumptions used to compare bids or portfolios of bids, such as assumptions used to extend shorter bids for comparison with longer bids, or assumptions used to compare smaller bids or portfolios with larger ones. For example, the electric company may assume that shorter bids will continue to be available with the same characteristics after the bid term rather than adding "generic fill" assumptions to the end of these bids to extend them for comparison with others.¶

(6) The electric company must provide the IE and Commission Staff with full access to its production cost and risk models and sensitivity analyses. When the IE and Commission Staff concur that appropriate protections for

protected information are in place, the electric company must provide access to such information to non-bidding interested parties that request the information in the final short list acknowledgment proceeding.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 § 6

RULE SUMMARY: Proposed OAR 860-089-0450 identifies the independent evaluator's duties.

CHANGES TO RULE:

860-089-0450

Independent Evaluator Duties

- (1) The IE will oversee the competitive bidding process to ensure that it is conducted fairly, transparently, and properly. ¶
- (2) The IE must be available and responsive to Commission Staff throughout the process, and must provide Commission Staff with the IE's notes of all conversations and the full text of written communications between the IE and the electric company and any third-party that are related to the IE's execution of its duties.¶
- (3) The IE must consult with the electric company on preparation of the draft RFP and submit its assessment of the final draft RFP to the Commission when the company files the final draft for approval.¶
- (4) The IE must check whether the electric company's scoring of the bids and selection of the initial and final shortlists are reasonable.¶
- (5) If the RFP allows bidding by the issuing electric company or an affiliate of the company, or includes resource ownership options for the electric company, the IE must independently score the affiliate bids and bids with ownership characteristics or options, if any, and all or a sample of the remaining bids as the IE, in consultation with Commission Staff, finds appropriate to determine whether the company's selections for the initial and final shortlists are reasonable. When the IE does not score all bids, and while a request for acknowledgment of a final shortlist is pending before the Commission, as provided in OAR 860-089-0500, a participant in the acknowledgment proceeding may request that the Commission direct the IE to score all remaining bids or a broader sample. ¶
- (6) The IE must also evaluate the unique risks and advantages associated with any company-owned resources (including but not limited to the electric company's benchmark), and may apply the same evaluation to third-party bids, including an evaluation of the following issues:¶
 - (a) Construction cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs):¶
 - (b) Reasonableness of forced outage rates:¶
 - (c) End effect values:¶
 - (d) Environmental emissions costs:¶
 - (e) Reasonableness of operation and maintenance costs:¶
 - (f) Adequacy of capital additions costs:¶
 - (g) Reasonableness of performance assumptions for output, heat rate, and power curve; and ¶
 - (h) Specificity of construction schedules or risk of construction delays.¶
- (7) The IE must review the reasonableness of any score submitted by the electric company for a benchmark resource. Once the electric company and the IE have both scored and evaluated the competing bids and any benchmark resource, the IE and the electric company must compare results and attempt to reconcile and resolve any scoring differences. If the electric company and IE are unable to do so, the IE must explain the differences in its closing report to the Commission. The electric company and the IE must both report their scores to Commission Staff before any reconciliation. ¶
- (8) The IE must review the electric company's sensitivity analysis of the bid rankings required under OAR 860-089-0400 and provide a written assessment to Commission Staff prior to when the electric company requests acknowledgment of the final short list. ¶
- (9) The IE must prepare a closing report for the Commission after the electric company has selected its final shortlist. The IE's closing report must include an evaluation of the applicable competitive bidding processes in selecting for the least-cost, least-risk acquisition of resources and allowing for the opportunity for diverse ownership. ¶
- (10) Unless the Commission determines there is no need for further IE participation, the IE must participate in the

final short list acknowledgment proceeding initiated by the electric company, and must continue to participate if, at the time of acknowledgment of the electric company's final shortlist, the Commission chooses to require IE involvement through final resource selection. In addition to making a decision on acknowledgment, Commission Staff and other parties, including bidders, may request that the Commission require expanded IE involvement. Upon such a request or its own consideration, the Commission may require an IE to be involved in the competitive bidding process through final resource selection.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 § 6

ADOPT: 860-089-0500

RULE SUMMARY: Proposed OAR 860-089-0500 sets forth requirements for requests for acknowledgment of a final shortlist of bid, establishes a process for Commission review and acknowledgment, and requires sharing of specific information about bid scores and pricing.

CHANGES TO RULE:

860-089-0500

Final Short List Acknowledgment and Result Publication

(1) After an RFP has been issued under the rules in this Division, the electric company must request that the Commission acknowledge the electric company's final shortlist of bids before it may enter any resulting contracts. If granted by the Commission, acknowledgment has the same legal force and effect as a Commission-acknowledged IRP in any future cost recovery proceeding. ¶

(2) A request for acknowledgment must include, at a minimum, the IE's closing report, the electric company's final shortlist of responsive bids, all sensitivity analyses and a discussion of the consistency between the final shortlist and the electric company's last-acknowledged IRP Action Plan or acknowledged IRP Update. ¶

(3) The Commission will generally issue a decision on the request for acknowledgment within 60 days of receipt of the electric company's filing. ¶

(4) The electric company must make a non-confidential filing in the RFP docket providing the average bid score and the average price of a resource on its final shortlist. ¶

(5) Following execution of all contracts resulting from an RFP or cancellation of the RFP, the electric company must provide information, on request, to a bidder about the bidder's bid score.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 ¶ 6

ADOPT: 860-089-0550

RULE SUMMARY: Proposed OAR 860-089-0550 establishes a process for the electric company to make available protected information.

CHANGES TO RULE:

860-089-0550

Protected Information

The electric company may request a protective order be issued under OAR 860-001-0080 in order to make available protected information required to be shared under this Division. Such protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any benchmark resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, Commission Staff, and the IE and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in RFP review and approval, final shortlist acknowledgment and cost-recovery proceedings.

Statutory/Other Authority: ORS Ch. 183, 756, 759, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 759.060, 2016 OL Ch. 28 § 6