

# CAITHNESS BEAVER CREEK, LLC

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March 19, 2018

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem OR 97301

Re: UM 1845: Caithness Beaver Creek, LLC's Comments on Independent Examiner's Closing Report and PacifiCorp's Request for Acknowledgment of Final Shortlist

Dear Commissioners:

Caithness Beaver Creek, LLC submits these comments on behalf of Beaver Creek I, LLC and Beaver Creek IV, LLC (collectively "Beaver Creek") in response to the concurrent filings on February 16, 2018 of the Final Report by the Independent Examiner ("IE") and PacifiCorp's Request for Acknowledgment of Shortlist of Bidders.<sup>1</sup> Beaver Creek's pending request to modify the conditional approval of the 2017R RFP should be granted, and PacifiCorp should be required to demonstrate compliance with those modified conditions prior to receiving acknowledgment of the Final Shortlist of Bidders.

## **I. Background**

Beaver Creek's prior filings in this docket have addressed the background for its pending request in detail. In short, Beaver Creek I and Beaver Creek IV each submitted bids offering power purchase agreements for a new wind-only facility located in Montana. The projects would each include on-site battery storage to mitigate the intermittent nature of the wind resource, and included options for delivery of the output from the facility – again, solely wind energy – during peak hours.

PacifiCorp disqualified Beaver Creek's bids as "nonconforming under the eligibility requirements of the RFP." The initial justification was that the bids failed to meet two minimum

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<sup>1</sup> Beaver Creek has access solely to the public versions of both reports.

eligibility requirements: (1) RFP H.13 – “technology risk,” and (2) RFP H.11 – “evidence of third party transmission service to PacifiCorp’s system.”

Promptly after receiving notice of this disqualification, Beaver Creek attempted to correct what it viewed as PacifiCorp’s mistaken understanding and analysis of its bids. The IE was a party to those communications. In the discussions that followed – and now in its subsequent filings in this docket – PacifiCorp’s stated rationale for the disqualification has narrowed: that the bids were nonconforming because the storage component rendered the bids no longer “wind only.” PacifiCorp has made clear that it was not relying on Beaver Creek’s proposed transmission delivery arrangement to justify its disqualification decision.

PacifiCorp confirmed its decision to disqualify the Beaver Creek bids in early December 2017, and Beaver Creek immediately requested review from the Commission. Specifically, Beaver Creek requested that the Commission modify its conditional approval of the 2017R RFP (Order No. 17-345) to include as conditions that:

- (1) the inclusion of a storage component within a wind project proposal does not, on its own, disqualify the project from consideration under the RFP, and
- (2) a bidder’s transmission delivery arrangement, through a third party with firm transmission rights for delivery to PacifiCorp’s system, is sufficient to satisfy the RFP’s Minimum Eligibility Requirement H.13.

As Beaver Creek further explained in the modification request, although the requested modifications were the specific result of PacifiCorp’s treatment of the Beaver Creek bids, the relief was intended to ensure that all bids were examined impartially under clear standards, and in a manner that was consistent with the RFP and the Commission’s Competitive Bidding Guidelines.

The parties and Commission Staff filed responses to Beaver Creek’s pending request. By Order dated January 26, 2018, this Commission specifically instructed PacifiCorp and the IE to provide additional information about the Beaver Creek bids. PacifiCorp and the IE provided their additional comments on February 16, largely repeating the arguments made in prior filings.

Beaver Creek has addressed the flaws in the analysis by PacifiCorp and the IE previously. Neither the IE Report nor PacifiCorp’s filing support the disqualification of the Beaver Creek bids.

## **II. The RFP did not support disqualification of the Beaver Creek bids.**

### **a. The Beaver Creek bids met the qualifications of the RFP**

The primary question raised by Beaver Creek’s motion is the following: did the eligibility requirements that PacifiCorp itself created in its RFP permit it to disqualify bids offering a wind-

energy only product, solely on the basis that the bids incorporated storage technology to firm up the delivered output?

The answer to that question must be no. Despite multiple attempts to explain its position, PacifiCorp has been unable to point to anything within the RFP itself that supports its decision. Instead, PacifiCorp simply repeats that its RFP envisions a “wind only” resource, and that it does not interpret a “wind plus storage” bid to meet that requirement. Beaver Creek’s prior filings detail the flaw in this position. But in short, this position is easily rebutted for two reasons.

First, the facts reflect that Beaver Creek’s bids were “wind only.” All energy delivered through the proposed bids would be solely wind generated, on-site at the wind facility identified in the bids. The on-site storage component of these bids simply reduced the intermittency of the resource delivery. It did not change the fact that all energy delivered would be “wind only.”

Neither PacifiCorp nor the IE appear to recognize this fact. Indeed, the IE Report suggests a basic misunderstanding of the Beaver Creek bids: it cites to concerns with storage facilities qualifying as “renewable” when they charge from the grid. *See* IR Report at 14. To be clear, Beaver Creek’s bids did *not* propose such an arrangement. Indeed, the Facilities Interconnection Study that Beaver Creek included with its bid materials expressly provided that the batteries *would not be charged from the grid*.

Second, the RFP itself does not support PacifiCorp’s interpretation. PacifiCorp asserts that its RFP was clear, and that it held multiple opportunities for bidders to seek clarification. But it tellingly does not point to anything in the RFP or from the bidder conference materials in which PacifiCorp notified bidders that it would disqualify any form of wind-only generation that did not conform with its unilateral vision of what that generation should look like.

**b. The IE Report acknowledges that the Beaver Creek bids did not pose a “technology risk.”**

Indeed, the IE’s Report acknowledges a significant flaw in PacifiCorp’s decision to disqualify the Beaver Creek bids: the RFP itself did not contain any provision that would actually justify the disqualification. The IE acknowledges that PacifiCorp “had to point to a reference in the RFP that supported” its decision to disqualify Beaver Creek’s bids. IE Report at 13. The “closest specific language” in the RFP, according to the IE Report, “is Section 3.H.13 which states: ‘proposal presents an unacceptable level of development or technology risk.’” IE Report at 13. But the IE does *not* agree with this assessment. In fact, it acknowledges that Beaver Creek’s argument that no technology risk was posed by the projects “has some validity.” IE Report at 13.

That acknowledgment is significant. So is the IE’s follow up acknowledgment that it “is true that PacifiCorp and the IEs could have decided to allow the offer[s].” IE Report at 14. Both statements recognize the flawed manner in which this RFP was conducted. Presented with an offer that did not fit what it envisioned, PacifiCorp was forced to try to fit a square peg into a

round hole by asserting a “technology risk” that simply did not and does not exist. Such reliance does not reflect a fair and reasonable process.

**c. Allowing wind energy bids with a storage component would not unfairly prejudice other bidders**

The IE Report also asserts that it was reasonable to disqualify the Beaver Creek bids because of the risk that other bidders could be prejudiced by not submitting similar types of bids. Beaver Creek made its pending request as soon as it was alerted of the basis for its disqualification in part to alleviate any such concern. But three points are worth bearing in mind here in any event.

First, it is notable that no bidder has made this argument. Indeed, the Northwest and Intermountain Power Producers Coalition *agreed* with Beaver Creek’s position, in principle, namely, that wind generation plus storage projects should be considered under the RFP. *See* 12/22/17 NIPPC Response at 1.

Second, Beaver Creek’s bids were based on the plain reading of the RFP. Again, as Beaver Creek emphasized in its earlier briefing, the RFP repeatedly called for “wind energy” and “wind energy resources” for the purpose of “interconnecting with or delivering to” PacifiCorp’s system. Both the IE Report and PacifiCorp assert that, on this basis, Beaver Creek should have known that a wind only project that includes a component for storing that wind energy would not qualify. And they point to the fact that bidder conferences were held as well. But again, what they do not point to is any evidence that this issue was discussed in those conferences or the RFP. That fact supports Beaver Creek’s position, not PacifiCorp’s.

Third, such logic as a basis to disqualify a bid is self-serving and reduces the competitiveness of the RFP. It cannot be the case that based on a possible ambiguity in its own RFP, a utility can disqualify unfavored bids by asserting that those bidders’ reasonable interpretation of an RFP may be different from the interpretation of other hypothetical bidders who might have otherwise applied. Such reasoning reflects a flaw in the RFP itself, not a basis to disqualify bids. Allowing such a justification only serves to further decrease the competition within the bidding process.

**d. The IE’s other stated reasons are speculative and reflect a lack of understanding and analysis of the Beaver Creek Bids**

The IE Report also lists, with little analysis, a handful of other “factors” that it says support the decision to disqualify the bids. But none of these reasons in fact support *disqualification*. It is certainly possible that there *could* have been reasons for the Beaver Creek bids to not be selected as a finalist. But that must be a different issue from whether the bids met the criteria of the RFP.

The IE first states that the “bid evaluation methodology would have to be re-examined” if such bids were allowed, in order to capture the “full value of a dispatchable wind resource.” IE

Report at 14. Beaver Creek's January 8, 2018 filing in this Docket addressed the flaw in this argument. As Beaver Creek explained, its bids were not "dispatchable," at least as the IE appears to use that term. The bids did not allow PacifiCorp to control or "dispatch" the facility's output: the Beaver Creek bids proposed a resource with the option of firm product numbers during peak hours.

Such a resource proposal fit squarely within the confines of the RFP, and a proper bid evaluation methodology should fairly account for it. Again, Beaver Creek is not requesting any special consideration of its bids. Rather, what it expected was that its bids would be evaluated under a fair and impartial methodology. The IE Report and the comments from PacifiCorp suggest that *no* analysis was even performed. The IE Report makes no attempt to address this argument.

The IE additionally states that in its experience, "dispatchable wind" offers "are not cost-competitive and only stand to succeed if the evaluation places a high value on the storage component." IE Report at 14. This experience is far from universally shared. Costs associated with storage components are rapidly declining, and with all due respect, an IE's prior experience should not be used as a justification for disqualifying a bid. Beaver Creek deserved to have its proposals evaluated on equal footing. It deserved to have those proposals thoroughly studied and understood, and fully evaluated as contemplated by this Commission's Competitive Bidding Guidelines. The IE's report only reinforces that the Beaver Creek bids were not even given that chance.

The IE's final two assertions, however, are perhaps the most notable. The first is the statement that "a storage-aided facility" may not "truly count as a 'renewable' resource" because storage projects "typically charge[] from the grid." IE Report at 14. As addressed above, this statement again reflects that the IE simply did not understand Beaver Creek's bids. The Beaver Creek bids did not propose to "charge from the grid." Beaver Creek recognizes the IE's concern may be valid in *some* types of storage projects. It is true that one potential use of storage technologies could be to charge from the grid during off-peak hours, for later discharge during peak hours. But that only proves Beaver Creek's point. The Beaver Creek proposals did not propose such an arrangement. Rather, they proposed simply to store the on-site wind energy generated from the turbines on-site, for sale of the resulting wind generated power. Beaver Creek provided this information as part of its bid. The fact that the IE Report mistakenly assumes otherwise is another reflection that the Beaver Creek bids were not properly evaluated.

The IE's final assertion is that a "cursory glance" of the prices in the Beaver Creek offers would "likely" have "not proven valuable" compared to other offers. IE Report at 14. PacifiCorp similarly states that it "has concerns" with the "overall competitiveness of Caithness pricing." PacifiCorp 2/16/18 at 43. Beaver Creek does not have access to the information necessary to fully address these statements. But it questions the assumptions contained within them. Beaver Creek reminds the Commission that PacifiCorp's RFP expressly requested creative bids. Beaver Creek responded, with offers for a high value product: WSPP Schedule C Firm Energy. Beaver Creek is confident that through an objective analysis, undertaken with the

ultimate goal of evaluating the benefits to ratepayers, the Beaver Creek offers would have “proven valuable.”

A conclusion to disqualify a bid should not be made on the basis of a “ cursory glance.” It should not be based on unstated “ concerns” about pricing or “ transmission arrangements.” And it should not be based on speculation as to what an actual analysis would yield. Yet that is what the IE and PacifiCorp offer here, along with the IE’s experience with other projects using different technologies and presenting different facts. It is no surprise that the IE is unable to point to anything in the actual RFP at issue here for support.

### **III. The Commission should grant the Request.**

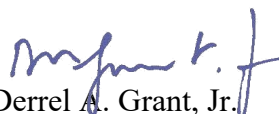
Beaver Creek asks for a level playing field. It is clear from the IE’s Report as well as PacifiCorp’s filings that Beaver Creek did not receive one. The IE and PacifiCorp misunderstood the fundamentals of the Beaver Creek bid, and chose not to undertake the analysis to fix that misunderstanding despite being repeatedly informed of it.

Bidders request that the Commission modify its conditional approval in Order 17-345 of the 2017R RFP to include as conditions that:

(1) the inclusion of a storage component within a wind project proposal does not, on its own, disqualify the project from consideration under the RFP, and

(2) a bidder’s transmission delivery arrangement, through a third party with firm transmission rights for delivery to PacifiCorp’s system, is sufficient to satisfy the RFP’s Minimum Eligibility Requirement H.13.

Respectfully submitted,

  
Derrel A. Grant, Jr.  
Senior Vice President

cc: UM 1845 service list (through electronic filing with Filing Center)