ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
REDACTED STAFF REPORT

SPECIAL PUBLIC MEETING DATE: APRIL 30, 2018

REGULAR X CONSENT ____ EFFECTIVE DATE N/A

DATE: April 9, 2018

TO: Public Utility Commission

FROM: JP Batmale JMB

THROUGH: Jason Eisdorfer JE

SUBJECT: PACIFICORP: (Docket No. UM 1845) Request for Acknowledgement of 2017R Request for Proposal (RFP) Final Shortlist.

STAFF RECOMMENDATION:

The final 2017R RFP shortlist for PacifiCorp (PAC or Company) should not be acknowledged due to issues that impacted the overall competitiveness of the RFP and improved knowledge of better economic opportunities in the market place.

DISCUSSION:

Issue

Whether the 2017R RFP shortlist should be acknowledged per the Competitive Bidding Guidelines (CBG).

Applicable Law

On April 30, 2014, the Commission issued Order No. 14-149, adopting a revised list of 13 CBG, set forth in Appendix A of the order. Under Guideline 5, an independent evaluator (Independent Evaluator or IE) must be used in an RFP to help ensure that all offers are treated fairly. The RFP must be designed and approved as provided in Guideline 6 and 7. Bid scoring requirements are set forth in Guidelines 8 and 9. Guideline 9.b further provides:

> "Selection of the final shortlist of bids should be based, in part, on the results of modeling the effect of candidate resources on overall system costs and risks. The portfolio modeling and decision criteria used to select the final shortlist of bids must be consistent with the modeling and decision criteria used to develop the utility's acknowledged IRP Action Plan. The IE must have full access to the utility's production cost and risk models."

Under Guideline 10, the utility conducts the RFP process, scores bids, selects the initial and final shortlists and undertakes negotiations. The IE independently scores any benchmark resource and the associated unique risks and advantages, and scores all or a sample of bids to determine whether the selections for the initial and final shortlists are reasonable. The IE and the utility should compare score results and attempt to reconcile any scoring differences.

The IE prepares a closing report after the utility selects its final shortlist, per Guideline 11. Differences in scoring should be explained in this report as stated in Guideline 10.e.

With respect to acknowledgement of the final shortlist, Guideline 13 provides:

> "**RFP Acknowledgement:** Except upon a showing of good cause, the utility must request that the Commission acknowledge the utility's selection of the final shortlist of RFP resources. The IE will participate in the RFP acknowledgment proceeding. Acknowledgment has the same meaning as assigned to that term in Commission Order No. 89-507. RFP acknowledgment will have the same legal force and effect as IRP acknowledgment in any future cost recovery proceeding. The utility's request should discuss the consistency of the final shortlist with the company's acknowledged IRP Action Plan. The Commission will consider the request to acknowledge at a public meeting within 60 days of receiving the utility's application.
>
> Commission Staff will make a recommendation about whether the Commission should require IE involvement through final resource selection at the time of acknowledgement of the utility's final shortlist of resources. Other parties, including bidders, may request expanded IE involvement at that time."

With Commission Order No. 89-507, Docket UM 180, the Commission first adopted the least cost planning process for utility resource planning. In this order, the Commission states that "acknowledgement" of an integrated resource plan means only that the plan seems reasonable to the Commission at the time the acknowledgement is given. It further states that favorable ratemaking treatment is not guaranteed by acknowledgment of a plan.

Following the Commission's conditional approval in this docket of the draft RFP in Order No. 17-345, as amended by Order No. 17-367, PacifiCorp issued its 2017R RFP in September 2017 for up to 1,270 MW of new or repowered wind energy capable of interconnecting or delivering to PacifiCorp's Wyoming system or additional wind energy located outside of Wyoming capable of delivering energy that will reduce system costs and that provides net benefits to customers.[1]

PacifiCorp's most recent Integrated Resource Plan (IRP), LC 67, included in its Action Plan two items relevant here: (1) issue the RFP for new wind resources and (2) construct a 140-mile, 500 kV transmission line from the Aeolus substation in Wyoming to the Jim Bridger power plant by

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[1] Available at: http://www.pacificorp.com/sup/rfps/2017-rfp.html.

December 31, 2020. At a December 11, 2017 public meeting, the Commission acknowledged these two Action Plan items with conditions.

Analysis

Introduction

Staff does not recommend acknowledging the proposed shortlist. Staff bases its recommendation on four reasons:

1.) Key decisions made by PAC in the RFP ultimately eliminated the competitiveness of the process, as not all offers were treated fairly.

2.) The lack of diversity in the shortlist poses an avoidable risk to ratepayers given that:
   a. The Independent Evaluator's conditions for acknowledgement cannot be adopted; and,
   b. Other, more cost-effective alternatives exist.

3.) The proposed shortlist is not aligned with the acknowledged IRP.

4.) Better economic opportunities with lower risk have been shown to exist in the market now.

Key decisions made by PAC ultimately constrained the RFP's competitiveness.

Determining the reasonableness of any shortlist for which the utility is seeking acknowledgement must be based on the totality of circumstances and compliance with competitive bidding requirements. A competitive process requires fairness and transparency. As Staff and other stakeholders, including the Independent Evaluator, noted there were several key errors made during this RFP. These errors challenge the fairness and transparency of this RFP process and they ultimately result in the selection of a shortlist of projects that cannot be characterized as truly competitive, fair, transparent and least cost, least risk.

The first error was that PAC revealed late into the RFP evaluation process that they would assume that only all higher positioned projects on their newly proposed, yet to be constructed, Wyoming transmission segment (D2) would be built and projects within the constrained area in Wyoming with a higher queue number than 0712 would likely not be deliverable by the end of 2020. In effect, this eliminated from final shortlist consideration any competition from wind projects that would not be owned wholly or in part by PacifiCorp. Only four potential offers from the constrained area were left in this RFP because of the new interconnection queue issue. Only two third-party offers had a high enough queue position to be considered viable, and only one from the initial shortlist of nine projects.[2]

Staff finds that PacifiCorp's determination of how to approach evaluating interconnection requests and how that information is used for purposes of developing the shortlist overly narrow. PacifiCorp states that PacifiCorp transmission is required to study interconnection requests in

[2] *Id.*, at pg. 34-35.

serial queue order.[3] In fact, PacifiCorp transmission may elect to study interconnection requests in a queue cluster window.[4] All interconnection requests received within a period up to 180 days are studied together. PacifiCorp does not provide an explanation as to why it did not consider clustering interconnection requests for purposes of interconnection system impact studies. Moreover, though PacifiCorp acknowledges the limitations that studies based on serial queue order may have, and references FERC's historic discussion of the issue, the Company has not taken action to address the impact these limitations would have on competitive procurements such as this one. PacifiCorp comments that "[It] would need to seek FERC approval to deviate from these basic interconnection queue processing rules."[5] Staff agrees and finds that when we requested, FERC has approved modifications to a transmission provider's *pro forma* Large Generator Interconnection Procedures (LGIP) to accommodate the needs of a state's least cost resource solicitation program. In short, PAC is not powerless against FERC as they have existing procedures whereby a soliciting entity can establish a position in the interconnection queue as the agent for bidders participating in a bid solicitation.[6]

A more fundamental concern is the use of the interconnection system impact re-study in development of the shortlist. As the IE notes in its Closing Report, the entire RFP process was rushed, for the stated purpose of meeting a deadline for the production tax credit sunset, despite the fact that the sunset date has been known since the end of 2015. What further troubles the IE, is that the accelerated schedule for completion of the D2 segment was not incorporated in the initial system impact studies.[7] Following completion of the re-study, PacifiCorp used queue position alone to select projects that remain dependent on completion of the D2 Segment within the schedule set by the Company. As the IE acknowledges, "many projects will likely drop out of the queue" and "actual interconnection costs will differ from projected."[8] The IE makes the supposition in its Closing Report that "[t]o go forward with projects that cannot meet the proposed online date without major accelerated transmission investment would not seem to be the wisest course of action."[9] The IE was left with little choice, given that the system impact re-studies were provided on January 29, 2018, and the Closing Report was filed by PacifiCorp on February 16, 2018.[10] But, the RFP process is governed by the terms of the RFP, and administered by the Company. Interconnection queue position should not be employed as a substitute or shortcut for an appropriate evaluation of cost and risk among responsive bids.

A full understanding of FERC policy raises a concern for Staff about the impartiality of PacifiCorp's approach to interpreting the interconnection queue issue, especially as 82 percent of the 1,150 MW of new, Wyoming wind projects on the shortlist will be owned by PacifiCorp.

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[3] UM 1845 PacifiCorp Reply Comments, p. 10 (March 29, 2018).
[4] PacifiCorp OATT, Section 39.2.
[5] PacifiCorp Reply Comments, p. 11.
[6] *In the Matter of Xcel Energy Operating Companies*, 109 FERC ¶ 61072 (2004).
[7] UM 1845, IE's Final Report on PacifiCorp's RFP at 5.
[8] *Id.*, pg. 35.
[9] *Ibid.*
[10] *Id.,* Attachment 3.

PacifiCorp claims there was only a "single shortlist change resulting from interconnection restudies."[11] In fact, the top offers, by net benefit, on the initial shortlist were PPAs.[12] The interconnection restudies were issued after the IE questioned why PacifiCorp's SO model would choose projects that had lower net levelized benefits and the IE advised the Company that the PPA-heavy portfolio should be the top choice.[13]

Staff finds that a different approach to the interconnection queue issue could have lead to a very different shortlist of Wyoming wind projects. On review of data provided in the IE report, Staff agrees with the IE that a PPA-heavy portfolio would be the appropriate shortlist, based on net benefits, without the queue position adjustment. A benchmark-heavy portfolio has lower net benefits. [BEGIN HIGHLY PROTECTED] [redacted] [END HIGHLY PROTECTED] The difference is stark. A benchmark-heavy shortlist will also carry higher risks associated with production costs and PTCs. The IE came to a similar conclusion when it compared a PPA portfolio to PacifiCorp's:

> While the PPA portfolio is more expensive in the early years, as we might assume since the value of the PTC in a PPA is spread out over a longer period of time, by 2034 it has greater cumulative benefits than PacifiCorp's selected portfolio. Even over the lifetime of all projects, the PPA portfolio produced more net benefits.[15]

The Company could have sought alternatives that would allow the interconnection studies to focus on the best projects within this solicitation and avoid the draw-backs of a serial-queue order. Options within the existing FERC interconnection study rules could have been explored,

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[11] Id., pg. 14.
[12] UM 1845, Independent Evaluator's Final Report on PacifiCorp's RFP at 25.
[13] *Id.*, pg. 33.
[14] [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]
[15] *See* UM 1845, Independent Evaluator's Report on PacifiCorp's 2017R RFP, pg. 33.

potential modifications identified, and potentially employed to focus only the least cost, least risk portfolio of projects in developing the RFP shortlist for acknowledgement; a shortlist reflecting the actual outcome of the 2017R RFP competitive process, not the projects highest in an interconnection queue. PacifiCorp chose not to do so. Instead, the Company chose to apply interconnection queue position as a threshold issue for project selection rather than the competitive RFP process. The effect was the elimination of more competitive projects, very late in the RFP process, limiting stakeholder input and feedback.

A better understanding of FERC policy on interconnection requests reinforces a finding shared by ICNU, Avangrid, the Independent Evaluator and Staff: PacifiCorp made disruptive decisions at key junctures in this RFP that ultimately undercut what could have been a competitive, transparent, and open procurement process. As the IE stated, "The net result of these adjustments calls for consideration of the overall context of the RFP."[16]

The Company's decision to base shortlist eligibility entirely on interconnection queue position was a surprise finding that occurred extremely late in the RFP process. Despite PacifiCorp claims to the contrary, all parties filing comments expressed a similar level of surprise at PAC's approach.

The next major error was a matter of transparency. PAC had ample opportunities throughout the RFP process to articulate how it would approach the issue of interconnection queue position but decided not to do so. Neglecting to mention this fact earlier in the RFP process deprived bidders and stakeholders a chance to provide critical input. When the Company filed its final draft RFP with the Commission, its filing advised stakeholders, "Final shortlist determined using economic analysis and production cost modeling to select the least cost/risk adjusted mix of bids in PacifiCorp's resource portfolio."[17] There was no mention of queue position at that time, or before the RFP was issued in September 2017.

PacifiCorp did not inform the IE of the interconnection queue issue until late January 2018 during discussion of development of the final shortlist.[18] When the IE explained that this would mean a majority of bids were no longer viable, the Company responded that this is why it had sought to require a completed system impact study for bids. The IE correctly notes that even projects with completed system impact studies would have be affected later on by PacifiCorp's re-study.[19]

The third major error was one of fairness. PAC made a decision that skewed the competiveness of the RFP in how it chose to not levelize the PTC benefits. The IE felt this choice was of particular concern, as they commented on its potential to bias, "...the bid selection to less favorable offers." [20] The IE even went so far as to include a recommendation that any future modeling consider the effect of this practice as it, "...can force a choice of a suboptimal offer."[21]

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[16] *Ibid.*, pg. 34.
[17] UM 1845, PacifiCorp's Final Draft RFP at 3 (August 4, 2017).
[18] *Ibid., pg. 33.*
[19] *Ibid.*, pg. 34.
[20] Independent Evaluator's Report on PacifiCorp's 2017R RFP*, pg. 6.*
[21] *Ibid.*, pg. 40.

The Company's reply comments dismissed concerns about not levelizing PTC benefits relative to other levelized costs by stating that:

> *Nothing in the RFP prohibited PPA bidders from offering price proposals that reflect the timing of PTCs retained for the bidder's own use.*
>
> *Rather, the nominal [non-levelized] treatment of PTCs appropriately accounts for inherent differences in the net cost profiles between eligible bid structures.*

Staff finds that PacifiCorp's defense of its new, nominal treatment practice for PTCs falls short of actually addressing stakeholder concerns about potentially skewing an RFP's analysis toward bids that may not be least cost, least risk; just that PAC thinks this new practice is appropriate.[22]

In summation these problems cannot be overcome to grant acknowledgement. Staff reiterates its interpretation of the IE's final report in which it chose to recommend acknowledgement of PacifiCorp's shortlist only if "hard" conditions were imposed on the acknowledgement itself. The IE's "hard" conditions are:

1. All selected resources owned by the Company be held to their capital and operations and maintenance cost projections, as provided with the bid.
2. PacifiCorp should provide an unconditional guarantee that ratepayers will receive the full projected value of the PTCs.
3. PacifiCorp should be held to their cost projections for the D2 Segment.
4. Enact some form of rate protection to mitigate customer rate impacts from the expiration of the PTC in ten years.

As stated in Staff's initial comments on the IE's Closing Report, the Commission will defer a decision on whether to hold PacifiCorp accountable for benchmark bids' cost and performance assumptions to a future prudence review.[23] Staff agrees with PacifiCorp's reply comments that the IE's recommendations are a subject for ratemaking but Staff also notes that the IE's concerns illuminate the IE's position on the shortlist, and their decision to state that if the shortlist is acknowledged the IE's conditions should inform future rate making decisions.

Conditions on future ratemaking cannot be included in the Commission's acknowledgement of the selected shortlist for this RFP.[24] The acknowledgement must be based only on what is known at the time with regards to fidelity to the IRP and fairness of the RFP process. Based on what is known now <u>and</u> that the IE's ratepayer protections cannot be added as "hard" conditions to the acknowledgement, selection of the final shortlist offered by PacifiCorp cannot be acknowledged reasonable decision.

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[22] Staff is left to assume that "nominal treatment" is a new practice based on the statement in PacifiCorp's reply comments: "PacifiCorp intends to model PTCs in this manner in future IRPs because modeling PTCs on a nominal basis better reflects how they are treated in rates." *See* UM 1845, PacifiCorp Reply Comments, pg. 18.
[23] *See* UM 1845, Commission Order No. 17-345, Sept. 14, 2017, pg. 4.
[24] *See* UM 1845, PacifiCorp's Reply Comments, pg. 6.

Lack of Diversity in Final Shortlist

PacifiCorp is poised to own approximately 85 percent of the projects found on the shortlist, if the Company proceeds with a decision to acquire those resources. PacifiCorp believes this is acceptable because the IE found all of the benchmark bids to be reasonable and there are net benefits associated with its final portfolio.[25] While the RFP was well received by the market, the benefits associated with robust competition are questionable given how the final shortlist was selected. Further, the IE's suggested ratepayer protections clearly point to an overall, portfolio risk associated with a shortlist dominated by PacifiCorp owned projects. Underperformance – in production or operations – or cost overruns in construction – in benchmark bids or in the new transmission line – will disproportionally impact costs to PacifiCorp ratepayers which could eliminate any portfolio benefits.

Specifically, two key areas of financial risk were not directly covered by the RFP's cost-benefit analysis. They were (a) PTC acquisition risk due to portfolio underperformance and (b) construction cost overruns for PacifiCorp owned assets. To mitigate these risks, the IE encouraged the Commission to adopt specific ratepayer protections. *(See above.)* A final shortlist with a balanced amount of PPA projects would likely not require many of the IE's recommended "hard" conditions directed at mitigating benchmark-associated risks to ratepayers.

Oregon IRP and the Final Shortlist are Misaligned

The final shortlist includes the Uinta wind project. It is a 161 MW project that does not need to be connected to the new transmission line and inclusion of this project on the shortlist exceeds the authorized scope of the 2017 IRP. The Commission conditionally approved issuance of the 2017R RFP in September 2017 "for up to 1,270 MW". Staff and other stakeholders have called into question the inclusion of the Uinta project on two grounds. First it is outside the area being connected to the new transmission line. Second, it is of marginal value.

PAC claims that the shortlist's inclusion of the Uinta Project is in keeping with the IRP and various public statements, such as it maximizes customer benefits.[26] Staff finds this not to be the case. In describing the relationship between the proposed transmission line and any new wind projects in July 2017 PAC stated this:

> The proposed wind resources are enabled by a new 140-mile, 500 kV transmission line and associated infrastructure running from a new Aeolus substation near Medicine Bow, Wyoming, to a new annex substation, Bridger/Anticline, which will be located near the existing Jim Bridger substation (transmission project). The new wind resources and transmission project are time-limited opportunities and are inextricably linked…[27]

Uinta is neither enabled by nor inextricably linked to the proposed, new transmission line.

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[25] Benchmark Bid Reasonableness: *Ibid,* pg. 16 and 17.
[26] *See* UM 1845, PacifiCorp's Reply Comments, (March 29, 2018) pg. 22.
[27] *See* UM 1845, PacifiCorp's Comments and Updated Schedule, (July 17, 2017) pg. 2.

More importantly [BEGIN HIGHLY CONFIDENTIAL] [redacted]

[redacted] [END HIGHLY CONFIDENTIAL].

Existence of Better Opportunities

Over the course of this RFP, PacifiCorp learned that solar could both enhance the economic benefits of the shortlist portfolio and in at least one scenario have superior economic benefits to the shortlist itself. Specifically:

> In the low natural gas, zero CO2 price-policy scenario, the portfolio with solar PPA bids and without the Combined Projects has higher net customer benefits relative to a

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28 [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]

portfolio containing just the Combined Projects. The increase in net benefits in the solar PPA portfolio is $17 million based on the risk adjusted PaR results.[29]

In data specific to Oregon, [BEGIN HIGHLY CONFIDENTIAL [redacted] [END HIGHLY CONFIDENTIAL]. This shows the rapid advancement of solar economics just since the IRP filing in April 2017. PacifiCorp's 2017 IRP did not call for new solar resources until 2028[31] and the IRP projected near-term, utility-scale solar installation costs to be around $1,800/kW and decreasing 25% over the next ten years.[32]

While Staff does not know the solar prices PacifiCorp received in their Utah solar RFP, Staff is aware that utility-scale solar prices are now around $1,480/kW.[33] That represents an 18% decrease in solar prices *in just over one year.*

Staff brings up these comparisons as reminders of what we have learned since this IRP launched and that in PacifiCorp's most recent resource RFP, under Docket UE 313, the Company responded to market feedback by not executing any resource contracts.[34]

Conclusion

Staff believes it has arrived at the right conclusion in not recommending shortlist acknowledgment. Our conclusion does not appear to depart from the IE's recommendation, as PAC asserts, but rather reflects a holistic reading of exactly what the IE stated. In Staff's interpretation, the IE found the final shortlist to be reasonable only if "hard" conditions could be attached to the acknowledgement. Those conditions cannot be attached and PAC has not chosen to proactively commit to them in response to concerns raised thus far, the IE's recommendation to acknowledge cannot stand on its own.

Consider what we now know. Since the 2017R RFP was rushed to launch in July 2017, to secure an economic opportunity while the Company's IRP was still being decided, we have found out that:

- PAC would fail to take a reasonable approach to interconnection re-studies and did not disclose its application of queue position in selection of the shortlist until the end of the RFP process. This narrow approach all but assured Company owned resources would

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[29] *See* Utah Public Service Commission, 17-035-40, Rocky Mountain Power, Supplemental Testimony of Rick Link, February 23, 2018, pg. 18/35. The scenario where 1,000+ MW of PPA solar had superior benefits to the shortlist portfolio of wind projects was the low gas, no carbon scenario.
[30] [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]
31 *See* LC 67, PacifiCorp, Initial IRP Filing, April 4, 2017, pg. 25.
[32] *Ibid.*, pg. 121.
[33] *See* LC 66, PGE IRP Update, March 8, 2018, pg. 26.
[34] See In the Matter of PacifiCorp, Update to Schedule 203, Docket UE 313, Order No. 17-019, Appendix A (January 24, 2017).

dominate the final shortlist portfolio, in spite of the RFP process selecting other projects *not owned by the Company.*

- PAC would fail to disclose until the end of the RFP process that the Company would employ a new approach to assessing PTC value that skews the RFP's cost-benefit analysis in favor of benchmark projects.
- The RFP would be expanded after its launch to include a very marginal benchmark bid for new wind, *outside of the area* selected as part of its April 2017 IRP.
- Spurred by the Utah Public Service Commission PAC would conduct an additional solar RFP that revealed a 1,100 MW of solar, *under PPAs,* could yield higher net benefits *than this RFP's proposed shortlist* under a low-carbon, zero natural gas scenario.

Staff reiterates what it stated in its last set of comments: the shortlist should not be acknowledged and that it would most likely be worth the loss of some PTC value to conduct a fairer, more competitive and better designed RFP. The process to make a massive commitment of financial resources that will last 30 years or more should be robustly competitive and fair. Ideally it should have as many bidders participating with an active chance to win the contract and understanding what the parameters are for a winning or losing bid. A new RFP could be better designed to address PacifiCorp's stated IRP goals while being fair and transparent. Or, PacifiCorp may choose to proceed without an acknowledged shortlist.

Finally, Staff understands the acknowledgement of an RFP or an IRP to be an assessment of reasonableness of the requested action or item at the time of acknowledgement, based on information available at the time. With this in mind, the IE's final report leads Staff to believe that PacifiCorp's 2017R RFP did not demonstrate that the final shortlist selection was reasonable nor that the process was concluded in a fair and transparent fashion.

PROPOSED COMMISSION MOTION:

Deny PacifiCorp's request that the Commission acknowledge the 2017R RFP final shortlist.