

ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: AUGUST 29, 2017

REGULAR CONSENT EFFECTIVE DATE Upon Approval

DATE: August 28, 2017

TO: Public Utility Commission

FROM: Geoff Ihle

THROUGH: Jason Eisdorfer and John Crider

SUBJECT: PACIFICORP:
(Docket No. UM 1845) Request for Approval of Final Draft 2017R Request for Proposals.

STAFF RECOMMENDATION:

Staff recommends that the Commission deny PacifiCorp's request for approval of PacifiCorp's August 2017 Request for Proposal (RFP) for new wind resources.

DISCUSSION:

Issue

Whether the Commission should grant or deny PacifiCorp's petition for approval of PacifiCorp's August 2017 final draft Request for Proposal for new wind resources (2017R RFP).

Applicable Rule or Law

The Commission's Competitive Bidding Guidelines were first established in Docket No. UM 1182, Order No. 06-446. Subsequently, the Commission has amended the Guidelines four times, most recently in Order No. 14-449, and a complete set of the Guidelines is provided as Appendix A to that order. Generally, the Guidelines require issuance of a Request for Proposals in compliance with the Guidelines for all Major Resource Acquisitions (duration greater than five years and quantities greater than 100 MW) and certain multiple small resource acquisitions that qualify for treatment as a Major Resource Acquisition.

Per Guideline 5, an independent evaluator (IE) must be used by the utility to help ensure all offers are treated fairly. An IE was approved by the Commission in this docket in Order No. 17-279.

Under Guideline 6:

“The utility will prepare a draft RFP and provide the draft to all parties and interested persons in the utility’s most recent general rate case, RFP and IRP dockets. The utility must conduct bidder and stakeholder workshops on the draft RFP. The utility will then submit a final draft RFP to the Commission for approval, as described in Guideline 7 []. The draft RFPs must set forth any minimum bidder requirements for credit and capability, along with bid evaluation and scoring criteria. The utility may set a minimum resource size, but Qualifying Facilities larger than 10 MW must be allowed to participate. The final draft submitted to the Commission must also include the standard form contracts. However, the utility must allow bidders to negotiate mutually agreeable final contract terms that are different from ones in the standard form contracts. The utility will consult with the IE in preparing the RFPs, and the IE will submit its assessment of the final draft RFP to the Commission when the utility files for RFP approval.”

The specifics for bid scoring criteria and bid evaluation are set forth in Guidelines 8 and 9. Of note are the provisions in Guideline 9 that the:

“[P]rice score 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. The non-price score 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.”

When a utility files a draft RFP for approval, public comment shall be solicited per Guideline 7. Guideline 7 further provides that Commission review will consider:

- (1) The alignment of the utility’s RFP with its acknowledged IRP;
- (2) Whether the RFP satisfies the Competitive Bidding Guidelines; and
- (3) The overall fairness of the utility’s proposed bidding process.

Per Guideline 7, the Commission may consider the impact of multi-state regulation on RFP development, including the requirements imposed by other states for the RFP process. The Commission will target a decision within 60 days of the filing of the final

draft RFP, unless the utility requests a longer review period. The Commission may approve the RFP with any conditions and modifications deemed necessary.

Analysis

Background

PacifiCorp Requests for Proposals

On August 4, 2017, PacifiCorp (PAC or Company) filed its final draft 2017R RFP with the Commission, which seeks up to 1,270 MW of new wind resources with a commercial operation date no later than December 31, 2020. These resources are contemplated in PacifiCorp's 2017 Integrated Resource Plan (IRP) filed April 4, 2017, which is currently under review by the Commission in LC 67. The Company stated a time-sensitive need as the driver for initiating the RFP process as quickly as possible and without an associated acknowledged IRP Action Plan item related to a limited-time opportunity for obtaining wind resources eligible for 100 percent of the current federal production tax credits (PTCs).¹ The value of the PTCs expires for non-wind resources after December 31, 2016, and is reduced for wind resources that start construction by 20 percent each year thereafter until it expires in 2020. Solar projects are not eligible for the PTC but may be eligible for the Investment Tax Credit (ITC) which does not decline until 2020.²

This RFP is open to two product types, "Build-Transfer" resources and 20 year Power Purchase Agreements (PPAs) with or without an option for the Company to purchase the project. PacifiCorp intends to bid self-build, or "benchmark" resources into the RFP as well.

Most significantly, as discussed in further detail below, the Company's call for resources in the RFP is not consistent with an acknowledged integrated resource plan (IRP), as required under Competitive Bidding Guideline 7, or any other order of the Commission approving a similar resource plan. Additionally the RFP process did not allow adequate time for stakeholder participation. Staff believes these deficiencies alone are compelling reasons for the Commission to deny approval of this RFP. Despite this, Staff takes this opportunity to raise a number of other concerns, which are as follows:

1. The base-case economic benefits reported by the Company have fluctuated greatly in the short time between the IRP filing and the present, signaling that this

¹ Potential wind projects could be eligible to meet the Internal Revenue Service (IRS) guidance for qualifying projects which requires demonstration of spending five percent of the project capital investment by January 1, 2017. See: <https://energy.gov/savings/renewable-electricity-production-tax-credit-ptc>.

² See: <https://energy.gov/savings/business-energy-investment-tax-credit-itc>.

\$2.5 billion project does indeed possess significant risks with which Staff is concerned.

2. An RFP which narrowly requires only wind resources that can be interconnected to PacifiCorp's Wyoming transmission system cannot reasonably be expected to result in a least-cost resource acquisition.
3. Requirements on bidders make the success of PacifiCorp's benchmark bids all but a foregone conclusion, an outcome which PacifiCorp itself seems to have foreseen in its 2016 10-K filing with the Securities and Exchange Commission (SEC).

Staff provides further detail on each of these issues below.

The RFP is not consistent with the Competitive Bidding Guidelines; it is not consistent with an acknowledged IRP and does not allow for sufficient stakeholder participation

Staff does not recommend approval of the draft 2017R RFP, as that action is not consistent with longstanding Commission policies and procedures related to two fundamental priorities of the PUC:

1) Protecting ratepayers by ensuring prudent investments by utilities yield the least cost, lowest risk approach to resource planning and reasonable rates and 2) supporting identification of the least cost, lowest risk approach by allowing for the development of fair and competitive markets. Substantial effort by the Commission and stakeholders, spanning several years and multiple dockets, has resulted in the creation of the IRP administrative rule and Guidelines and the Competitive Bidding Guidelines. These processes and their applicability to this RFP are discussed below.

Integrated Resource Plans

The utility IRP process provides the framework by which utilities and stakeholders can participate in the development of the least cost, lowest risk paths to long term operations and investments for the utility. As outlined in OAR 860-027-0400, the Commission reviews the submitted IRP to determine whether the utility has proposed a portfolio of resources to meet its energy demand that presents the best combination of cost and risk. Acquisition of a new resource is a major long-term commitment for all ratepayers that the Commission cannot take lightly. Without the IRP process, there would be no shared understanding of the best approach to resource investment and therefore no stakeholder or Commission confidence that based upon information known or knowable at this time, that a resource acquisition is in order.

Competitive Bidding Guidelines

Since 2006, the Commission has required that utilities follow Competitive Bidding Guidelines which apply to resource acquisition exceeding five years with capacity of 100 MW or larger. The guidelines have been revised over the years but five fundamental goals remain: 1) to provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints; 2) to complement Oregon's integrated resource planning process; 3) to not unduly constrain utility management's prerogative to acquire new resources; 4) to provide flexibility, allowing the contracting parties to negotiate mutually beneficial exchange agreements; and 5) to maintain a process which is transparent, understandable and fair. In 2014, the Competitive Bidding Guidelines docket (Docket No. UM 1182) was reopened to further examine the potential bias in the utility resource procurement process for utility ownership driven by the utilities' ability to earn a return on the capital investment.

The requirement in Competitive Bidding Guideline 7 that a draft RFP align with the utility's most recent acknowledged IRP provides an essential baseline for approval of an RFP. Without separate Commission action, the IRP is often the sole justification for a resource solicitation. The Commission first explained in Order No. 07-018 that the need for alignment with an acknowledged IRP in Guideline 7 was to ensure the Commission's review of a draft RFP is based on a fully vetted and acknowledged resource plan.³ With the Company's 2011 all source RFP, the Commission ordered PacifiCorp to revise its schedule to allow the Commission to consider acknowledgment of a pending IRP before making a decision on whether to issue an RFP.⁴ The acknowledgment order in the pending RFP was issued March 9, 2012,⁵ and the final draft RFP was approved on March 27, 2012.⁶ And, with respect to Portland General Electric's 2016 draft RFP for renewable resources, the Commission accepted Staff's recommendation to take no action on the RFP, given that the resource was not reflected in the last acknowledged RFP and there was no other process to identify a corresponding need and the least cost least risk strategy to acquire it.⁷ Thus, the Commission has consistently found under the Competitive Bidding Guidelines that the resource must first be vetted and identified before a draft RFP may be issued.

³ PAC refers to Order No. 07-018 in Docket UM 1208 as support for approval of an RFP before IRP acknowledgment. But in Docket UM 1208, the Company's Draft Request for Proposal for New Renewable Resources was filed for the purpose of acquiring a portion of the supply-side renewable resources identified in PAC's acknowledged 2007 IRP. *In the Matter of PacifiCorp's Request for Approval of a 2009R Solicitation Process for New Renewable Resources*, Docket No. UM 1429, Draft Request at 1-2 (June 5, 2009).

⁴ *In the Matter of PacifiCorp dba Pacific Power Application to Open Docket and Appoint Independent Evaluator*, Docket UM 1540, Order No. 11-243 at 2 (July 5, 2011).

⁵ Docket LC 52, Order No. 12-082 (March 9, 2012).

⁶ Docket UM 1540, Order No. 12-211.

⁷ Docket UM 1773, Order No. 16-280 (July 29, 2016).

PAC's most recent acknowledged IRP (Docket No. LC 62, Order No. 16-071, February 29, 2016) does not contemplate the major legislative policy changes of Senate Bill (SB) 1547 (Oregon Laws 2016, ch. 28). In fact, the acknowledged IRP shows that new renewable resources are not needed until 2038, beyond the IRP planning horizon. The PAC IRP Update, filed March 31, 2016, does provide some cursory insights into how the Company is taking SB 1547 into account in its internal planning and notes that the next renewable investment is needed for physical compliance in 2025 if the forecasted QF resources materialize as planned. The 2017 IRP filed in Docket No. LC 67 indicates the Company now expects to be compliant until 2029 with minimal incremental renewable procurement.⁸

The wind resources sought in the draft RFP were introduced with the filing of PacifiCorp's pending IRP on April 4, 2017. The Company's case for a time-sensitive need for the RFP resources is not based in energy or capacity gaps as is typical of IRP planning, but built on the case of lost opportunity related to the currently anticipated decline of the federal PTC starting in 2017. This near term lost opportunity only impacts wind resources, not solar for which the ITC continues "as is" for several more years. In the PAC IRP update, the Company offers an analysis of the "cost" of delaying investment in a 100MW wind plant from 2018 eligible for 100 percent of the PTC to construction one year later eligible for 80 percent of the PTC to be \$20-\$25 million over 10 years. The time and place to consider PAC's justification of this resource is in the IRP docket, LC 67. The initial comments of Staff and Interested Parties in the IRP docket do not indicate uniform support of the Company's Action Plan. The procedural schedule in that docket was recently extended. Staff agrees with the comment filed by the Industrial Customers of Northwest Utilities (ICNU) that any decision on the justification of the resource outside the IRP docket is premature, and the appropriate action is to allow "for full process and consideration of the matter in the appropriate IRP context."⁹

Under Guideline 7 of the Competitive Bidding Guidelines, the Commission normally targets a decision on a draft final RFP within 60 days of filing, allowing for a public comment period. Here, the Commission is scheduled to consider the draft final RFP at a special public meeting 25 days after the filing date of the draft. The accelerated timeline will likely impact much of parties' abilities to fully participate in the RFP process. The abbreviated RFP review process does not allow for the exploration and full vetting of the Company's revised resource acquisition plan. It is particularly inappropriate to engage in such a review when a full review is already under way in Docket LC 67.

⁸ See Docket No. LC 67, PacifiCorp's 2017 Integrated Resource Plan p. 202 (April 04, 2017).

⁹ UM 1845, ICNU Opening Comments, p. 5, August 18, 2017.

Rate Recovery Process

If PacifiCorp were to acquire a resource through this process and seek rate recovery with a return on the investment from ratepayers, the Company would need to demonstrate prudence in the investment decision to the Commission. Having sidestepped the two Commission processes designed to provide thorough review of the Company's resource acquisition decisions (the IRP and the Competitive Bidding Guidelines), PacifiCorp will be faced with the task of demonstrating that it acted prudently when requesting rate recovery for any resources acquired through this RFP. In addition, if the resource capacity exceeds 100MW as expected, the Company would need to demonstrate how its selection process honored a competitive process.

The expected economic benefits of the Wyoming wind and transmission project fluctuate greatly with updates, signaling that any economic benefit is uncertain and risk is high

On April 27, 2017, PacifiCorp presented to Staff a Wyoming wind and transmission project summary indicating an expected economic benefit of between \$17 million and \$21 million. In its July 28, 2017 informational filing in Docket No. LC 67, this figure became \$85 million, or \$137 million when taken over the full 30 year life of the wind projects.¹⁰ These changes occurred due to "changes and updates made in assumptions, inputs, and modeling."¹¹ This wide swing is a clear indication that the expected economic benefit cannot be known with any certainty even in the expected case. Some of this swing, presumably, is due to updating the forward curve that drives the revenues for 30 years to offset the \$2.5 billion capital cost. This is just one area in which small changes have the potential to reverse the economics to the detriment of ratepayers. The Company's sensitivity analyses all indicate that the expected cost or benefit fluctuates by hundreds of millions of dollars with changes to natural gas and carbon dioxide cost assumptions.

There are other areas of risk that are not explored by the Company. Staff notes that if the project comes on line one day late and hence only qualifies for 80 percent of the PTCs, the economic benefit will decrease by \$160 million, and become an economic harm to ratepayers. The risk of construction cost overruns is also a concern, when the expected economic benefits are very small compared to the \$2.5 billion capital cost. Even realized generation falling short of the modeled capacity factor could easily reverse the economics of the project, as it will affect both the total energy revenue and the PTCs received (which are based on megawatt-hours actually generated). Taken together, this project cannot be called "least risk" when compared to other actions that

¹⁰ See Docket No. LC 67, PacifiCorp's 2017 IRP Informational Filing (July 28, 2017) pp. 42, 48, available at <http://edocs.puc.state.or.us/efdocs/HAH/lc67hah152156.pdf>

¹¹ *Ibid.* Cover letter.

do not have the sheer magnitude of these risks. Staff does not support approval of the RFP without due consideration and evaluation of these risks in the proper forum, Docket No. LC 67.

This RFP is unlikely to result in a least-cost resource acquisition

The RFP is seeking "...bids for up to 1,270 MW of wind energy resources interconnecting with or delivering to PacifiCorp's Wyoming system."¹² By defining this RFP so narrowly, we will never know whether other solutions in the market would have been more cost-effective for ratepayers. However, intuition strongly suggests that increasing the project's capital cost by nearly 50 percent to include transmission is not going to make it competitive against resources that have little or no such burden. Using the original round numbers of \$2.5 billion for 1,100 MW, the project costs \$2.3 million per megawatt. Staff's opinion is that this is not in the ballpark of other such projects, due to the transmission cost.

PacifiCorp's benchmark bids winning most or all of the RFP is all but a foregone conclusion

PacifiCorp set itself up through action long before the announcement of the 2017R RFP to be virtually guaranteed of benchmark bid success. As the Utah Association of Energy Users (UAE) notes in a parallel docket:

"It appears that, while regulators, ratepayers and potential competitors were not notified of PacifiCorp's plans until well into 2017, PacifiCorp was quietly developing its plans well before the end of 2016 to invest billions of dollars in new transmission and wind rate base assets. Indeed, PacifiCorp apparently spent over \$111 million in 2016 to acquire wind assets and options on wind assets designed to meet assumed "safe harbor" for federal production tax credits, acquired strategic wind sites, and submitted interconnection requests to its transmission function (relying on six previously unannounced transmission infrastructure projects in Central Wyoming that PacifiCorp's merchant alone apparently knew might be expanded. It appears that PacifiCorp alone had reason to believe the congestion would be relieved with new transmission assets. Had PacifiCorp timely notified regulators, developers and other stakeholders of its plans in 2016 when PacifiCorp made over \$111 million in wind turbine purchases, there might be a chance today for a fair and competitive solicitation process that could lead to identification of the most cost-effective resources available under the timeline proposed by PacifiCorp. Unfortunately, everyone but PacifiCorp (including its merchant function) appears to have been

¹² See PacifiCorp's final draft RFP, Docket UM 1845, p. 1 (August 4, 2017) available at <http://edocs.puc.state.or.us/efdocs/HAH/um1845hah153140.pdf>

deprived of a fair opportunity to compete in this RFP for these new resources, in contravention of the intent and purposes of the Act and the Rules, and contrary to the best interest of Utah ratepayers.”¹³

Indeed, in 2016, the Company spent \$110 million safe-harboring turbine equipment. In its 10k filed with the SEC, the Company simply states “Wind investment includes initial costs for new wind plant construction projects and repowering of existing wind plants. Wind investments totaling \$110 million in 2016 for the purposes of repowering certain existing wind-powered generating facilities and the construction of a new wind-powered generating facility.”¹⁴ When asked about this equipment in a recent IRP workshop, the Company indicated it would be able to find another use for these turbines if its benchmark bids are not successful. Staff understood this to mean that there is a backup plan in place, in the event that the Company’s benchmark bids do not ultimately appear in the 2017R RFP selected portfolio.

That PacifiCorp was silently accumulating safe harbor resources, land leases and options, and interconnection system impact studies long before the RFP was announced suggests the competitive process is being followed in form only. This raises a number of concerns, all of which are important. The Commission should make clear that it finds the timeline, process and events associated with this resource acquisition all below its expectations.

Summary of IE and Public Comment *IE Report*

The IE selected for PacifiCorp to use if it proceeds with an RFP in this docket is Bates White (IE). On August 10, 2017, the IE provided its assessment of the draft final RFP, which was less than a week after the final draft was filed, per the Company’s accelerated schedule. The IE acknowledges that with a rushed process such as this, and given the late announcement in the IRP process of the proposed acquisitions, the process may be set up for selection of the affiliate bids, with less than optimal competition. The IE, like Staff, finds that the issue of whether the proposed acquisition is appropriate is an issue that is decided in the pending IRP proceeding. In addition, the IE finds the analysis as to whether this is a time-limited opportunity to acquire a resource of unique value “is not possible within this time frame.”

¹³ See *Initial Comments of the Utah Association of Energy Users on Rocky Mountain Power’s Proposed Solicitation Process*, Public Service Commission of Utah Docket No. 17-035-23, pp. 7-8 (August 4, 2017) available at: <https://pscdocs.utah.gov/electric/17docs/1703523/295768InitialCommUAE8-4-2017.pdf>.

¹⁴ See PacifiCorp’s 2016 10-k, p. 179, available at: https://www.berkshirehathawayenergyco.com/assets/upload/financial-filing/BHE%2012.31.16%20Form%2010-K_FINAL-1.pdf.

The IE makes three recommendations to address risks inherent in the draft RFP. First, to address specific risks in the draft RFP, the IE recommends that the Company include a notation in the RFP document that there is a risk that the IRP may be rejected or substantively modified, rendering this RFP moot. Second, the IE raises a concern related to the expiration of the federal PTC. Should a project be prevented from capturing the PTC based on the Company's failure to bring the Gateway Segment D2 Project on line, the IE finds the RFP should clarify that neither the bidder nor ratepayers should be at risk for the associated cost increase. Third, given the risk that a certificate of public convenience and necessity for the Gateway Segment D2 Project may not be approved by the Wyoming Commission or the project may not be constructed on time, the IE recommends that bidders be allowed to terminate any contractual agreements without penalty in such event, and ratepayers should bear no risk if a project cannot claim the PTC as a result.

In addition, the IE makes five specific suggestions to improve fairness and transparency, six detailed suggestions to address uncertainty and the assignment of risk, and three recommendations to improve the possibility of a positive result.

Public Comment

Three organizations filed written comments on August 18, 2017: ICNU, Northwest and Intermountain Power Producers Coalition (NIPPC), and Renewable Northwest.

Renewable Northwest supports approval of the RFP with two modifications: (1) allowance of three alternatives to the requirement that bidders provide a completed system impact study before November 11, 2017 to be considered for short-list evaluation; and (2) elimination or modification, beyond what the IE has recommended, of the minimum bidder requirement that a bidder may be deemed ineligible if it or an affiliate is in current litigation with PAC or has made a written threat of litigation with a requested amount in excess of \$100,000.

NIPPC, in its written comments also supports approval of the draft RFP with the modifications recommended by the IE and with a number of additional modifications:

- Open the RFP to more than Wyoming-based wind resources and allow other wind and solar resources regardless of location to be evaluated;
- PAC's repowering of its wind generation be included in the 2017 Renewable RFP to allow the economics to be tested by the market;
- Apply terms limited to PPA bidders to PAC-owned generations, including delay damages, termination rights, and availability guarantees;
- Eliminate non-price scoring, modify the criteria as recommended by the IE, or reduce the weight assigned to non-price scoring;

- Eliminate requirement for a completed system impact study; and
- Eliminate restriction on bids from bidders that are in or have threatened litigation with PAC, and if not, raise the threshold amount to \$125 million;
- Require a due diligence review by the IE of any resource with PAC ownership interest on the short-list; and
- Require evaluation by PAC of resources with different term lengths a transparent analysis and an IE evaluation of the use of annuity-based analysis without using generic fill.

ICNU, in its written comments, does not support approval of the draft RFP, given the lack of an acknowledged IRP that has reviewed the resource acquisition and the purpose behind Competitive Bidding Guideline 7. Alternatively, if the Commission approves the RFP, ICNU urges the Commission to condition approval on the Company's assumption of all risk associated with proceeding with and RFP prior to IRP acknowledgment, the incorporation of the IE's concerns and modifications, and conditions that insulate Oregon customers prospectively from any changes that result from the multistate planning process that limit any benefit Oregon customers may receive from the proposed resource acquisition.

Options for Commission action:

1. The Commission approves PacifiCorp's 2017R RFP with conditions.

If the Commission decides to approve this RFP, it should, at a minimum, require a mechanism be put in place that ratepayers are held harmless if the economic benefits do not materialize as expected over the project life. Exactly what those protections would be remain to be determined.

2. The Commission does not approve PacifiCorp's 2017R RFP.

Conclusion

Staff recommends Option 2, that the Commission not approve this RFP.

PacifiCorp may decide whether or not to proceed at the risk of receiving rate recovery. The project is probably not least-cost, and certainly not least-risk. Not using the long-term planning process to add \$2.5 billion to PacifiCorp's rate base at ratepayer risk is inappropriate and should not be encouraged.

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PROPOSED COMMISSION MOTION:

Deny the request for approval of PacifiCorp's 2017R RFP.

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