

February 18, 2022

Oregon Public Utility Commission (OPUC)

201 High Street SE, Suite 100
Salem, Oregon 97301

Attention: Filing Center
201 High Street, Suite 100
Post Office Box 1088
Salem, OR 97308-1088

Re: UM 2193 Comments on PacifiCorp Draft RFP

Dear Commission:

NewSun Energy (NewSun) respectfully submits these comments on PacifiCorp's (PAC's) draft request for proposal (RFP) dated January 14th, 2022.

(I) Primary Surrounding Principles and Observations:

- **(1) HB 2021 has created a generational scale requirement.** It requires continual progress towards 80% clean by 2030, 90% by 2035, and 100% by 2040. It is somewhat curious how scarcely mentioned that governing law is, in a RFP filed to a state PUC charged with overseeing the procurements involved in compliance therewith. There will be billions of dollars of infrastructure required for such compliance. This Oregon laws requirements and implications, direct and indirect, *including the immense challenges that will and do exist in complying with the law* should surround the PUC's review of this entire RFP and related matters.
- **(2) Shouldn't backload HB 2021 compliance with late-in-decade assets.** Unnecessary risk, unfair to options which are viable earlier, and will jam up execution viability in states and at various utilities by overburdening their workforces, regulatory and administrative agencies (local, state, federal), utility staffs, and contractors, in entirely unnecessary and risk- and cost-compounding ways. Get started early, go fast, and flush out issues and challenges sooner, sooner, sooner. We can't move fast enough—and are likely to fail; the question is how, when, what will we do then, and how will we mitigate those risks.
- **(3) Generally, bid restrictions which artificially limit the ability of the regulator, ratepayer, and market to see the benefit of options which might reasonably provide solutions should not be permitted.** Oregon IOUs have created ingrained practices in which they add “filters” to who, what, and how the market can bid to them that apply faux pretenses to then limit the viable bidder and bid type universe, including deal and market structures which might (a) solve real challenges with creative solutions; and/or (b) reduce the prices paid by the IOU and its ratepayers. This practice has the effect of creating a distorted presentation to the regulator of the market, including (especially where restrictive terms or bid conditions add costs) making the IOU's own

self-developed options pricing look more reasonable relatively, but only through having denied the presence or existence of lower competing alternatives through such artificial filters.

If an IPP bidder can save the ratepayer money through alternative approaches, including but not limited to:

- (i) more creative transmission arrangements;
- (ii) alternative commercial terms;
- (iii) curtailment provisions; (iv)
- (iv) preserving capacity attributes to itself; (v)
- (v) creative dispatch provisions or restrictions; (vi)
- (vi) alternate facility design; (vii)
- (vii) less strict performance guarantees; (viii)
- (viii) BTA design which are less gold-plated than PAC proposes; etc,

...then the PUC and ratepayer should get to see those options.

In particular, overly rigid RFP transmission bid requirements will ultimately further amplify the transmission challenges (capacity, timeline, cost) that will be the singular defining challenges of Oregon's decarbonization efforts, and likely how Oregon will fail. Any solution the market can bring which reduces the stranglehold of this bottleneck should be considered. Even just telling the market – as you can do – that such is now “in bounds” will send a signal to the market to start trying to solve such issues and thereby reduce the cost, viability, and timeline paralysis risk surrounding this issue.

- **(4) HB 2021 Section 2 requires consideration and achievement “to the maximum extent practicable” of benefits to in-state communities.** PAC's RFP is silent and inadequate on this. PAC and PUC must provide and require, respectively, *substantial* scoring, preference, price, and consideration of this to *achieve* that, now legally effective state policy. See comments by NewSun, OSSIA, and CREA on this in UM 2166 (PGE RFP docket) which are incorporated hereto by reference.

(II) Specific Comments and Recommendations:

- **Pacificorp owned assets should not be permitted to bid (for at least another RFP cycle).** The consequences of PAC's queue clearing exercise are too recent, and PAC's ability to abuse that for self-owned resources are still too present and concerning. PAC's token gesture of removing itself from the first post-queue-reform RFP was not enough to address the real abuse harm risk associated with those actions. See comments about nukes; about BTA on-system restrictions. Further, PAC has not implemented sufficient firewalling (and other practices and policies) between its procurement team and self-build teams sufficient to provide a truly fair and transparent process that does not have IOU bias issues.

The PUC should ensure the market has at least another fair pass at this without these concerns in these presence and require PAC implement substantial, effective protective mechanisms to

protect the market. The abuse exposure issue to ratepayers is far too great for this to be taken lightly given the \$Bs and \$Bs of new power infrastructure required under HB 2021. This issue is core to the PUC's existence and charter—to protect ratepayers from *utility*-ownership and monopoly- and position-of-power abuses and corresponding ratepayer price risks. Caution on the PUC's part is merited—and another RFP cycle without PAC as a biased competitor in a process it runs, at a minimum, is appropriate while the PUC more fully considers this and causes robust solutions.

- **The IE should work for the PUC, not the utility.** PUC should require this going forward. In this case, PAC has 3 IE's, one per state. This is a great opportunity to have the State of Oregon make a long overdue change for transparency and better regulation – and begin to represent its own interests in RFP evaluation, have and choose its own IE that works for PUC and its Staff; not have the IE reporting to the entity which it is effectively supposed to be auditing, and which such IE's future employment will be chosen (or not!) by that IOU. PUC should retain the IE directly and bill the IOUs for all related costs.
- **No more “on system only BTA” bid restrictions.** This is nonsense—and only reasonably explicable as a pre-baked preference for that which PAC will want to develop and operate itself—as well as a major source of bias exposure for transmission line routing preferences. It is categorically inappropriate to deny PAC ratepayers, the IE, and the PUC visibility to what bid alternatives might exist off-system. If these are worse, then fine, see the bids and let them be analyzed. If these might be better, this restriction artificially restricts the ratepayer from access to them, and the regulator from seeing them. That it does so *only* related to the category of bids in which the IOU might own the outcome and/or steer transmission assets towards its own generation investments and/or in cases in which PAC might beneficially exploit interconnection practices *is very concerning, inappropriate, and unacceptable*. The PUC should put an end to this practice in this RFP.
- **Why are fossil bids permitted in an Oregon RFP?**
- **Do not permit extra COD timeline eligibility for “long lead” or other resources.**
 - EOY 2026 is plenty of time for a very large suite of options and bidders.
 - Issues of IOU abuse for self-developed options, which is particularly evident as a point of concern now that PAC is on-record with a stack of long-lead items, including thousand of MW of PAC-owned pumped storage and nuclear projects proposed. If those are “the best” resources, they will continue to be the best resources a few years from now if and when they complete their development processes and have firmer realer prices and development viability. Allowing these resources to partially clear the deck of need, inappropriately early, relative to an immense number of other options is not appropriate, not fair to the competitive process (especially selectively),

- Inconsistent with “continual progress” requirements of HB 2021 to push a major portion of criteria to a later date unnecessarily.
- How will PAC provide scoring preferences to those which can be online earlier?
- If extended to all bidders (such as NIPPC proposes), then creates an incentive for bidders to stretch out schedules, which then creates greater HB 2021 compliance risk through overly backloading the performance toward the 2030 80% clean milestone (and undermines steady progress).
- **Transmission requirements should not be restricted to full NERC 7 LTF only. Conditional Firm and Short-Term Firm and Non-Firm Options should be permitted, subject to contractual protections.** Oregon ratepayers and regulators deserve to see what other pricing options might exist if such restrictions were relaxed. Transmission will be the major challenge of decarbonization. Hybrids of LTF/CF/Short-Term-Firm and other variations should be allowed, ranked, and considered duly, including to send the market signals to begin developing such options.
- **Tolling Agreements for BESS and pumped storage should not be restricted to Year Round nor Exclusive.** The market may offer other ways to slice such facilities which are financially superior to ratepayers and/or otherwise material and worth considering. This could include seasonal arrangements and/or multi-offtaker arrangements.
- **Battery Term Lengths need not be the same as PPA term.**
- **No Nukes!!** For reasons previously discussed—and which include IRP modeling bias effects, ratepayer exposure to multi-billion dollar cost overruns, not prematurely exposing and over-committing ratepayers to major cost and schedule issues, and Oregon not allowing the outsourcing of unacceptable technology risk (i.e. environmental and public health disaster risks) to other states—the PUC should prohibit any nuclear power bids in this RFP. Oregon has a special history on nuclear power. It has *major* Super Fund clean-up sites just across the river (and human casualties there due to radiation) – and ALL OF THE NUCLEAR POWER PROJECTS ATTEMPTED IN THE PAST 2 DECADES IN THE U.S. HAVE MULTI-\$B COST OVERRUNS. It would be stupid, reckless, and negligent of the state to condone such actions at this time—or at any time in the foreseeable future, absent spectacular, never-seen-before levels of information and protections uniquely and overwhelmingly scrutinized and examined (not at rate payer expense) to demonstrate otherwise.

(III) Insufficient Review Time for PAC PPAs and other Major RFP Documents—More Time

Required: PAC has submitted **over 2,000 pages** of documents in its January 14th draft RFP submission. *There is just not remotely sufficient time for Stakeholders to review and consider, much less comment, much less discuss issue amongst other stakeholders and PUC staff, much less comment based on such additional consideration.* This is literally one of the largest procurements in the history of our nation and

Oregon. It will affect generations to come and remake the generation profile of one of the largest utilities in the nation, with billions upon billions of dollars involved. It is barely possible for many stakeholders to discuss these issues at the highest level, much less the level of scrutiny required for such a beast of a filing, in which many single sentences, PPA terms, BTA specifications, etc have great consequences.

Indeed it is comical to think this is possible, particularly when stakeholders are so underfunded and stretch relative to the timelines and scales of materials and implications involved. (Adobe Acrobat crashed just trying to scroll through this document.)

- The PUC should provide more time for this to be reviewed
- The PUC should breakout the “primary substance and form” draft RFP review process from the review of the legions of other materials.
- The PUC should (after retaining the IE directly) require a review by its own independent experts, including amply Q&A time to comment on issues of higher technical expertise, such as PPA terms *and their interactivity* to help mitigate these issues.
- The PUC should allow and require separate processes to focus on scoring and bid evaluation, to provide sufficient consideration and treatment thereof.

(IV) New Oregon State Policy for Procurement under HB 2021’s Section 2 requires methodologies, scoring criteria, and preferences in this and future IOU RFPs:

First, the complete failure to address the Oregon state policy obligations newly added by HB 2021 in Section 2 is striking and inappropriate.

It is timely, appropriate, and required that the new policy be addressed now in this RFP—in addition to further process that may occur in the future—and this RFP must address those standards, and develop methodologies and preferences to ensure both a broad range of bids from facilities achieving these policies, and ultimately that procurement results from this and future RFPs.

Section 2, paragraph (2) of HB 2021 states:

Policy. It is the policy of the State of Oregon:

...

(2) That electricity generated in a manner that produces zero greenhouse gas emissions also be generated, to the maximum extent practicable, in a manner that provides additional direct benefits to communities in this state in the forms of creating and sustaining meaningful living wage jobs, promoting workforce equity and increasing energy security and resiliency;

This RFP—and all procurement subsequent to HB 2021’s passage—can, should, and must encourage, require, examine how in-state siting can be promoted and achieved, as the most direct and obvious way to “provide additional *direct* benefits to communities *in this state* in the forms of *creating and sustaining meaningful living wage jobs*”¹. In-state siting is also the most obvious and direct way for “*increasing*

¹ Emphases added to HB 2021 language.

energy security and resiliency”, which with current wildfire risk disfavors increasingly remote generation, as well as favors higher diversity of locations and resource types. We also note that this is a *currently effective* legal standard, not one that waits until 2030 to apply: “zero greenhouse gas emissions” energy will be being procured and generated in advance of the 2030 milestone; this policy applies now—to this and every RFP hereafter.

In effect, it would be *impossible* for the state to comply with this in-state policy requirement without at least *some* scoring criteria related to it.

But in reality “to the *maximum* extent practicable” is a very high legal bar. It is a high bar that points to not only to scoring preferences and methodologies, but even utilities and ratepayers incurring additional costs to attempt to achieve it.

For example, one would not intuitively (nor legally) understand “to the maximum extent practicable” to mean either to “try none at all” nor to “spend zero extra dollars in trying” nor to “not reduce barriers for qualifying projects that might achieve the policy”, nor to mean that procurement should not recognize the high volume of options that exist in Oregon and very close to its borders and take measures to include them in outcomes.

By contrast, it is obviously practicable to spend some additional amounts, apply additional scrutiny, develop preferences and metrics, reduce barriers for qualifying projects, and make special efforts to achieve “the maximum extent practicable”—for each of these policy objectives. This is what must occur.

This—and future—procurement must incorporate scoring, preferences, and other measures to achieve the policy “to the maximum extent practicable”, otherwise the procurement is inconsistent with state policy at this point—which ultimately the Commission is responsible for ensuring is implemented and enforced.

We recommend serious changes to this RFP to address these deficiencies, as well as a broader discussion as soon as possible to inform procurement by all Oregon IOUs going forward.

As Representative Helm noted when HB 2021 passed: “I understand this language to mean that the renewable energy generation will be built where Oregon workers would get the jobs associated with the construction and the operation of those facilities.”² Direct benefits such as these simply cannot accrue if all or a majority of the resources in this RFP are acquired from outside the state.”

At a minimum, some amount of the procurement in this RFP effectively must be in-state, as the only reasonable safe harbor to complying with the policy. Thus, at minimum there must be some minimum procurement standard in this RFP (such as 30-50%) as in interim measure. But preferably fuller standards could be developed.

Conclusion

The Commission, and the ratepayers of Oregon, have a vested interest in seeing as many bids as possible. The RFP structure should facilitate this. Including providing flexibility for bidders to be creative in their

² House Committee on Revenue at 15:46 (May 13, 2021)
<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2021051192&startStreamAt=946&stopStreamAt=970>.

bid terms. If the OPUC allows RFP structures that remove such bids from the market, it can never even come close to knowing how much extra cost its utilities are forcing upon ratepayers, because it is effectively agreeing to blind itself and the market—as well as sending signals to the market of OPUC condoned IOU power that cannot be contested.

Please bear this in mind as you consider this and future RFPs. To the extent RFP structures preclude, diminish, and/or bias against prospective bidders (and generally volume of bidders)—or, worse, in the process support utilities’ telegraphing power to the market that all parties must acquiesce to their positions (no negotiation permitted)—the Commission *must reject and discourage these behaviors*. Until the Commission begins rejecting filings and calling these behaviors out, it is de-fanging itself is a regulatory authority.

Finally, HB 2021’s decarbonization demands are immense. NewSun Energy notes again, as it has in various proceedings, that the steep procurement obligations and steep challenges demand *earlier and faster action—and approaches which identify failures and limitations earlier than later, so that remedial actions can be taken to ensure compliance and success with HB 2021’s milestones*.

Sincerely,

Jake Stephens
CEO, NewSun Energy