ORDER NO. 16 188

ENTERED MAY 19 2016

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 598, UM 1771

In the Matters of THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION, Petition for Temporary Rulemaking and Investigations into PacifiCorp's 2016 Requests for Proposal.	ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED; PROCEEDINGS OPENED

This order memorializes our decision, made and effective at our May 17, 2016 Public Meeting, to deny a petition filed by the Northwest and Intermountain Power Producers Coalition (NIPPC) and to open a rulemaking and concurrent investigation addressing our competitive bidding guidelines.

I. INTRODUCTION

On April 25, 2016, NIPPC filed a petition seeking Commission action in response to two Requests for Proposals (RFPs) issued by PacifiCorp, dba Pacific Power. First, NIPPC requests we adopt temporary rules to prohibit a utility from acquiring an ownership interest in new renewable resources unless the resource is acquired in compliance with our competitive bidding guidelines. Second, NIPPC asks that we open an investigation to ensure that PacifiCorp's RFP for renewable resources aligns with our policies and recently enacted Senate Bill 1547. Finally, NIPPC requests we open an investigation and delay of PacifiCorp's RFP seeking renewable energy certificates (REC) until we review the company's plans to meet its renewable portfolio standard (RPS) requirements with REC purchases.

Staff presented NIPPC's petition at our May 17, 2016 Public Meeting. Staff recommends we deny NIPPC's petition for temporary rulemaking and investigations related to PacifiCorp's RFPs and, instead, open a permanent rulemaking to implement Senate Bill 1547 regarding allowances for diverse ownership of renewable energy resources to meet the increased RPS requirements. Staff's recommendation is contained in its report attached as Appendix A.

II. DISCUSSION

We adopt Staff's recommendation and deny NIPPC's petition. Although we are sympathetic to many concerns addressed in the petition, we conclude that we lack the authority to adopt rules that prohibit utility ownership of generating resources. We are also convinced that opening the investigations requested by NIPPC may cause harm to customers, and decline to impose any form of partial remedial action in response to PacifiCorp's decision to issue the RFPs.

Instead, we adopt Staff's recommendation to open a permanent rulemaking for the purpose of implementing provisions of SB 1547 that require us to adopt rules "providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity." ORS 469A.075(4)(d). In addition, we open a concurrent investigation to update our competitive bidding guidelines as necessary, in the event that certain of our current guidelines cannot be converted to rules.

In making this decision, we emphasize that our denial of NIPPC's petition should not be viewed as any form of approval of PacifiCorp's actions. We believe PacifiCorp is acting outside of our competitive bidding guidelines, and caution the company that it is proceeding on its own and remains at risk for everything with regard to future cost recovery of any resource acquired pursuant to these RFPs. PacifiCorp has apparently decided to forego our competitive bidding process in favor of its own process, and will carry the burden to establish that its process is open, fair, and transparent and resulted in the prudent acquisition of least-cost and least-risk resources.

PacifiCorp is proceeding without the involvement of an independent evaluator (IE). We highly value not only an IE's expertise and independence in its oversight of a competitive bidding process, but also the IE's review and documentation of that process to help inform later prudence reviews. To help mitigate this loss, we direct our Staff to monitor, evaluate, and document PacifiCorp's process going forward. We also direct PacifiCorp to be prepared to replicate a detailed IE report for use of the parties and our review in any future ratemaking proceeding.

Finally, we make two observations about the impact of the passage of SB 1547. First, we will take action to update the utility avoided cost streams as soon as possible to ensure equal considerations for the development of both utility resources and those of qualifying facilities under the Public Utility Regulatory Policy Act. Second, NIPPC's petition underscores our need for both PacifiCorp and Portland General Electric to update RPS compliance plans. Until those plans are updated, we are unable to determine what actions by utilities are least cost and least risk. We look forward to seeing the utilities new updated plans, scheduled to be filed by July 15, 2016, and expect a thorough evaluation of all potential strategies over a wide range of possible futures.[1]

[1] *See also* Order Nos. 16-157 and 16-158 for additional information about the required analysis.

III. ORDER

IT IS ORDERED that:

1. The petition for temporary rulemaking and for investigation into PacifiCorp's requests for proposals filed by The Northwest and Intermountain Power Producers Coalition is denied;

2. A permanent rulemaking is opened to implement Senate Bill 1547 regarding allowances for diverse ownership of renewable energy resources to meet the increased renewable portfolio standards; and

3. A concurrent investigation is opened to update our competitive bidding guidelines.

Made, entered, and effective MAY 19 2016.

Susan K. Ackerman
Chair

John Savage
Commissioner

Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ORDER NO. 16 188

ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 17, 2016

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** **Upon Approval**

DATE: May 10, 2016

TO: Public Utility Commission

FROM: John Crider

THROUGH: Jason Eisdorfer and Michael Dougherty

SUBJECT: PACIFIC POWER:
(Docket Nos. UM 1771 and AR 598) Petition by Northwest and Intermountain Power Producers Coalition (NIPPC) for temporary rulemaking and investigation related to PacifiCorp's RFP for renewable resources.

STAFF RECOMMENDATION

Staff recommends that the Commission deny the Northwest and Intermountain Power Producers Coalition's (NIPPC's) petition for temporary rulemaking and investigations into PacifiCorp's April 2016 Requests for Proposal (RFPs) and open a permanent rulemaking.

ISSUES

1. Whether the Commission should initiate rulemaking and adopt a temporary rule proposed by NIPPC.
2. Whether the Commission should open an investigation into PacifiCorp's Renewable Resource RFP issued April 11, 2016.
3. Whether the Commission should open an investigation and delay the Company's Renewable Energy Credit RFP issued April 11, 2016.

APPLICABLE LAW

Under ORS 183.390, a person may petition the Commission to adopt, amend or repeal a rule. A petition must include the name and address of the petitioner and any other person known to the petitioner to be interested in the rule. The Attorney General's model rules for rulemaking, OAR 137-001-0070(1) further state that the petition must

contain a detailed statement regarding the reasons for the rule petitioner requests the agency to adopt, including the full proposed language for the new rule.

Not later than 90 days after a petition is filed, the Commission must either: (1) deny the petition in writing; or (2) initiate rulemaking proceedings in accordance with ORS 183.335. ORS 183.335 establishes the requirements for promulgation of temporary and permanent administrative rules. The Commission may adopt a temporary rule if it makes a finding, among other requirements, that failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned, providing specific reasons for the findings of prejudice. Temporary rules may not be in effect for more than 180 days.

In the 2016 legislative session, Senate Bill 1547 was enacted, effective March 8, 2016. Senate Bill 1547, Section 6 amends ORS 469A.075(4) to add a requirement (d) that the Commission adopt rules "providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity." Section 6 of the bill also amends ORS 469A.075(4)(c) to require that the Commission adopt rules "providing for the integration of an [renewable portfolio standard] implementation plan with the integrated resource planning guidelines established by the Commission for the purpose of planning for the least-cost, least-risk acquisition of resources." Among the numerous other provisions of SB 1547, the legislature enacted amendments to the renewable portfolio standards (RPS) and to the provisions for how renewable energy certificates (RECs) are banked and used.

Under ORS 756.040(2), the Commission supervises and regulates every public utility in this state, may do all things necessary and convenient in the exercise of its authority, and specifically under ORS 756.515(1), the Commission may open an investigation of any matter relating to any public utility subject to the Commission's regulatory jurisdiction.

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. Under ORS 757.210, a utility always has the burden of

proving that it acted prudently in acquiring its resources. When a utility avoids the Guidelines, the burden of producing evidence remains with the utility[1].

DISCUSSION

Background

PacifiCorp Requests for Proposals

On April 11, 2016 PacifiCorp (PAC or Company) issued two RFPs, one for acquisition of wind and solar resources with a minimum project size of 3 MW of capacity but without a limit to per project size or total acquisition they are seeking, and a second RFP for RECs. The Company stated a time-sensitive need as the driver for releasing the RFPs as quickly as possible related to the limited time opportunity for securing 100 percent of the current federal production tax credit (PTC). [2] The value of the PTC expires for non-wind resources after 2016 and is reduced for wind resources 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.

The first RFP, for Renewable Resources, is open to two product types, "Build-Transfer" or a 20 year Power Purchase Agreement (PPA) with a required option for the Company to purchase the project. This RFP does not include an option that does not contemplate ownership by the Company at some point.

The RFP schedule is brief with responses due May 20, 2016, and any resulting contracts signed in September 2016. Although proposals may exceed the 100MW trigger which requires use of the Public Utility Commission's (PUC's) Competitive Bidding Guidelines, many of the key elements needed to meet those Guidelines are not included in the Company's schedule. These elements include Commission selection of an Independent Evaluator (IE), Commission review and approval of the draft RFP, and Commission acknowledgement of the final shortlist of projects. In addition, as discussed in further detail below, the Company's call for resources in the RFP is not consistent with an acknowledged integrated resource plan or with the Company's most recent RPS implementation plan.

[1] Order No. 08-548 at 19.
[2] Potential wind projects could be eligible to meet the Internal Revenue Service (IRS) guidance for qualifying projects which requires demonstration of spending 5 percent of the project capital investment by January 1, 2017.

The second RFP for RECs is scheduled to follow a similar schedule with bids due May 20, 2016. Similar to the renewable resource RFP, it also does not include a total acquisition target, but does set a per transaction minimum of 1,000 RECs per calendar year. The Company is interested in three products;

- Product A: RECs for any vintage period between Jan 1, 2007, and March 8, 2016 (unbundled RECs);
- Product B: RECs and associated qualifying electricity from facilities with commercial operation date March 9, 2016, through December 31, 2022, contracted for 20 years or more (bundled, with six years of unlimited life RECs); and
- Product C: Same as Product B but for less than 20 years.

Although Product B above is similar to resource acquisitions that may be subject to PUC's Competitive Bidding Guidelines, as with the Renewable Resource RFP, the Company has not employed many of the key elements needed to meet those Guidelines.

Across both RFPs, both utility ownership models and third-party owned resources with PPAs are represented. If a developer is not interested in providing an ownership option, they do have the opportunity to submit a bid for their project as a bundled REC product. However, the Company does state a clear preference for "bids for unbundled RECs from Bidders offering RECs from a Qualifying Facility (QF) project located in Oregon."[3]

NIPPC Petition

In response to PacifiCorp's release of the two RFPs, NIPPC filed a petition that is the basis for this docket on April 25, 2016, requesting that the Commission:

1. Adopt a temporary rule that prevents PacifiCorp from acquiring an ownership interest in new renewable resources unless acquired pursuant to the Commission's yet to be adopted competitive bidding rules;
2. Open an investigation to ensure that PAC's RFP aligns with SB 1547 and Commission policies; and
3. Open an investigation and delay the PAC REC RFP until the Commission can review the Company's plans to meet its renewable portfolio standard requirements with REC purchases.

[3] See PacifiCorp's 2016 RFP for RECs, page 3, available at http://www.pacificorp.com/content/dam/pacificorp/doc/Suppliers/RFPs/RFPREC/2016RECRFP/RFP_REC_2016_MAIN_DOCUMENT.pdf.

Comments filed on the NIPPC Petition

On May 2, 2016, Industrial Customers of Northwest Utilities (ICNU) filed comments on NIPPC's petition. In its filing, ICNU states:

> ICNU neither supports nor opposes NIPPC's requested relief in its Petition, but does agree with a number of the issues NIPPC raises. Fundamentally, ICNU considers PacifiCorp's renewable requests for proposals ("RFPs") to be imprudent, and if they result in the acquisition of new resources or the purchase of additional renewable energy credits ("RECs"), customers should not bear those costs.

On May 6, 2016, PacifiCorp filed comments in opposition to the NIPPC Petition by describing it as fatally flawed in five areas summarized as follows:

- Barring utility ownership exceeds the Commission's delegated authority;
- NIPPC misunderstands the RFP process and suggests costly delays for a time sensitive opportunity;
- NIPPC conflates competitive bidding process with prudence review;
- NIPPC's interpretation of SB 1547 is misleading; and
- NIPPC misapprehends the nature of the federal tax credits.

On May 9, 2016, Renewable Energy Coalition filed comment in support of NIPPC's Petition and recommended that the Commission "take some action to protect wholesale electricity market, non-utility generators, and ratepayers."

Analysis

In releasing the Renewable Resource RFP, the Company disregarded longstanding Commission policies and procedures related to two fundamental roles 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) promoting the development of fair and competitive markets. Substantial effort by the Commission and stakeholders, spanning several years and multiple dockets, has resulted in three important processes for fulfilling these oversight roles – the Integrated Resource Plan and Guidelines, the Renewable Portfolio Implementation Plan, and the Competitive Bidding Guidelines. These processes and their applicability to this RFP are discussed below.

Integrated Resource Plans (IRPs)

The utility integrated resource planning 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. 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, a resource acquisition is in order.

PAC's most recent acknowledged IRP (Docket No. LC 62, Order No. 16-071, February 29, 2016) does not contemplate the major policy changes of SB 1547. 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 their internal planning and notes that the next renewable investment is needed for physical compliance in 2025 if the forecasted QF resources materialize as planned.

Although not included as a new resource in the IRP Update preferred portfolio, the Company indicates that there may be an economic benefit to adding new renewable resources prior to reaching a physical need for compliance. Since the Company is not seeking acknowledgement of the IRP Update, there is no opportunity for interested parties to review the assertions made in the Update and no opportunity for a stakeholder or the Commission to test the Company's new resource strategy against other options to give parties a sense that this Renewable Resource RFP is the best action for ratepayers.

The stated 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. This is a substantial difference but one that is not grounded in the overall long-term tradeoffs of RPS compliance. In other words, $20-$25M is a significant amount of ratepayer investment, but with only the information provided, it is impossible for Staff to evaluate whether delaying the RFP to open up competition and vetting the company's early bid strategy with stakeholders could result in a better overall long-term compliance strategy. The abbreviated RFP process does not allow for the exploration of options like delaying acquisition in order to take advantage of downward cost trends of wind resources, or investing in East Side wind resources with superior capacity factors.

Renewable Portfolio Standard Implementation Plans (RPIPs)
Pursuant to OAR 469A.075 and OAR 860-860-0400, every two years, utilities are required to submit five year plans for how they anticipate meeting requirements of the Renewable Portfolio Standard (RPS). PacifiCorp filed their 2017-2021 RPIP in December 2015, prior to passage of SB 1547, which amends ORS chapter 469A in several significant ways. The RPIP does not address the new REC provisions of SB 1547 and the extension of federal tax credits, and does not contemplate the addition of new renewable resources, beyond new QFs, until 2034. Staff filed an unopposed motion requesting the Commission acknowledge the RPIP, given applicable time constraints, but also requesting that the Commission condition acknowledgment on submission of a new RPIP.

In Order No. 16-158, Docket UM 1754, the Commission acknowledged the RPIP with conditions that the Company rework and refile the RPIP by July 15, 2016, including a complete analysis of how SB 1547 impacts the Company's strategy for determining the optimal compliance approach through 2040. Without an updated analysis showing the economic case for early resource and REC acquisition versus waiting to procure resources for physical compliance needs, neither of the RFPs can be tied back to transparent, rigorous analysis.

In summary, PacifiCorp has disregarded typical long-term resource planning processes, with the release of the RFPs. In doing so, PacifiCorp has yet to justify the case for the economic need for new renewable resources and bundled RECs, failed to do so prior to releasing the RFPs and did not specify the optimal amount of resource acquisition they are seeking.

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 100MW 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.

Although a specific capacity acquisition target is not stated in the RFP, the magnitude of generation required for future RPS compliance makes it quite plausible that the Commission's competitive guidelines will be triggered. Despite this fact, the Company did not seek stakeholder and Commission review of the RFP before it was released and is not planning to follow the independent evaluator requirements or short list approval process steps, which are key elements of the guidelines. In addition, although the competitive guidelines allow for acquisition of resources without issuing an RFP under certain time-sensitive conditions, the Company has not requested such a waiver.

In SB 1547, Section 6, the legislature amends ORS 469A.075(4) to add a requirement (d) that the commission adopt rules "providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity."[4] This legislation passed just over two months ago, effective March 8, 2016. The statute does not set a required timeline for the commission within which rules must be adopted. Staff has previously indicated that it plans to initiate permanent rulemaking to address this requirement prior to summer 2016, less than four months after the bill was signed. However, the compressed RFP schedule does not allow for the Commission to adopt those rules in advance of the Company completing the anticipated acquisition.

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 prudency in the investment decision to the Commission. Having chosen to forego the two Commission processes designed to provide thorough review of the Company's resource acquisition decisions (the IRP and the Competitive Guidelines), PAC 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, the Company will need to demonstrate how its selection process honored a competitive process.

Petition for Commission Action

Temporary Rulemaking

NIPPC's main concern with the RFPs is that the product design and the quick timeline may limit the opportunity for independent power producers to compete with utility-owned options. NIPPC points to SB 1547 wherein the PUC is directed to adopt rules that provide for competitive bidding processes that allow for diverse ownership. In light of the PAC RFP, NIPPC requests that the Commission adopt a temporary rule to achieve two

[4] SB 1547, OR Laws 2016 ch.28, Section 6 (4)(d).

actions which address this new obligation: first, new renewable energy resources are defined to include power purchase agreements with a contractual option to acquire the resource; and second, all new renewable energy resources acquired after the date of the rule may not be utility owned, unless acquired pursuant to the commission's yet-to-be-adopted competitive bidding rules.

Staff agrees that the Commission is obligated to take up rulemaking related to competitive bidding and has already shared plans with stakeholders during an April 21, 2016, meeting that Staff plans to do so within the next few months. This planned permanent rulemaking process will provide all stakeholders the opportunity to participate in an unrushed, thoughtful process. Temporary rulemaking as proposed by NIPPC would be in place just three days before bids are currently due for the RFP. The impact of such a temporary rulemaking could be that either PacifiCorp withdraws or re-issues the RFP. If the Company chooses to comply with temporary rules that restrict ownership and continue with the RFP, re-issuing the RFP would require adjusting the design and extending the response deadline which would effectively push out the entire schedule and may impair the Company's ability to act on this time sensitive opportunity.

A temporary rule is appropriate when failure to act will result in serious prejudice. NIPPC's petition alleges serious prejudice will result if a temporary rule is not adopted because the Commission must adopt "rules that will prevent utilities from owning all the new renewable energy generation."[5] Staff counsel has advised that there are no self-implementing provisions requiring diversity of ownership on the effective date of SB 1547. SB 1547 requires adoption of competitive bidding rules that *allow for* diverse ownership of renewable energy sources, but may not necessarily *require* diversity of ownership.

Staff notes again that SB 1547 does not contain a deadline by which the Commission must act to adopt rules, and it does not contain any prohibition on utility ownership of resources. Staff further notes that the Company's RFP for RECs allows for submittal of proposals that do not involve company ownership of resources, providing for diversity of submittals. Finally, because Staff is already anticipating a permanent rulemaking to consider the implementation of this new rulemaking obligation, NIPPC's request is not compelling to Staff.

The Commission may find other justification for a temporary rule, given the shortened timeline of the RFPs. If the Commission chooses to adopt a temporary rule, and chooses to adopt language consistent with the language proposed by NIPPC, Staff notes that the language proposed by NIPPC in Attachment A to its petition should be

[5] NIPPC Petition at 12.

modified to limit application of the temporary rule's restrictions to the satisfaction of Oregon's RPS requirements. PacifiCorp filed a statement in opposition to the petition noting that the proposed language would prohibit the Company from acquiring resources that may be located in another state or applied to meet the RPS requirements of other states.

It is questionable whether the PUC can mandate that specific portions of renewable resource acquisition must or must not be owned by the utility. Ultimately, for ratemaking purposes, the question is not whether the utility owns a resource, the question is, rather, will the PUC allow cost recovery of that resource from customers.

Whether or not the Commission grants NIPPC's petition for temporary rulemaking, Staff believes it is appropriate to open a permanent rulemaking process within the next month, according to the timeline proposed by Staff, i.e. before summer 2016. Within the permanent rulemaking process, all parties will have the opportunity to participate and the process for developing appropriate rule language will not be rushed.

Renewable Resource RFP Investigation
NIPPC's focus with the renewable resource RFP investigation is to ensure that the RFP is open for market competition. NIPPC requests that the Commission issue an order requiring PacifiCorp to revise the RFP to be in accordance with the Competitive Bidding Guidelines. Staff finds such an order neither practical given time restrictions nor necessary given PUC prudence determination authority.

The Commission does not have a lengthy history of dictating resource acquisition choices represented in a utility's RFP. There are cases where the Commission directed utilities to re-issue RFPs with corrections or necessary clarifying additions and to extend the bidding period[6] but these cases are infrequent. Competitive Bidding Guideline 7, RFP Approval, likely minimizes Commission interruption of the RFP process.[7] In this step, the Commission has the opportunity to review the RFP prior to its release and with public comments and "may approve the RFP with any conditions and modifications deemed necessary."[8] Even when the Commission grants a waiver of the Guidelines, it may impose other requirements on the bidding process.[9]

Bids for both PacifiCorp RFPs are due May 20, 2016, three days from the date the Commission considers the petition. If the temporary rules were to impose significant

[6] Order No. 10-304 and Order 12-398.
[7] For example, see Order No. 08-476.
[8] Order No. 14-149, Appendix A, Page 2.
[9] Order No. 09-290.

new requirements or impose ownership restrictions, it is difficult to envision how the bidding schedule could change and still keep to the goal of capturing the full value of the PTC. At the very least, PacifiCorp would need to make changes to the RFP terms and potential bidders would have to reconstruct bids based on a re-issued RFP. Staff believes that the temporary rule or an investigation and order, as they are proposed, would essentially serve to terminate the RFP.

Given the path chosen by PacifiCorp and the abbreviated schedule ostensibly dictated by the partial expiration of the PTC, for all intents and purposes, the Commission is being asked to choose between new temporary rules, or other restrictions imposed by Commission order, that likely have the practical effect of terminating the RFP (thereby losing the opportunity to acquire a resource before the PTC value is reduced), or allowing PacifiCorp to proceed with an RFP that: 1) is not based on an acknowledged IRP or RPIP; 2) did not have stakeholder input at the outset; and 3) is not in compliance with Competitive Bidding Guidelines designed to protect ratepayers and competitive market forces, let alone the competitive bidding rules the Commission will consider in the future. Staff explored amendments to NIPPC's proposed rule and request for an investigation and order, to try to add further protections of competition in the Company's RFP while not altering the timeline, and failed to identify any meaningful changes that would cure the infirmities in PacifiCorp's approach. Staff emphasizes that based on its choice to not apply the Commission's guidelines and policies to this RFP, PacifiCorp is alone in taking on this risk, and still bears the full burden of demonstrating how its acquisition process led to best value for ratepayers should it seek rate recovery.

REC RFP Investigation
NIPPC states that the utility REC strategy is not clear and transparent to the Commission and requests that the Commission delay the REC RFP while vetting the Company's approach in the IRP and RPIP processes. NIPPC asserts "there is no urgent need to purchase RECs and any renewable portfolio compliance approach that heavily relies upon RECs should be reviewed and vetted to determine if it is the least cost and least risk approach".

Staff agrees that the Company's strategy to optimize use of RECs of various vintages and costs should be reviewed and vetted given new provisions in SB 1547. This review is already set to occur when PAC files a revised RPIP in mid-July. It is typical for the utility to secure long term power purchase agreements without prior approval from the Commission, but 20-year bundled REC contracts are new and unusual. The "golden" (i.e., non-expiring) REC is referenced by PAC in the Company's response to NIPPC's petition as the driving time-sensitive need behind this RFP. Without taking action to stop the REC RFP, if the Company does acquire long-term bundled REC contracts, the Commission will have the opportunity to consider if these investments were prudent

decisions through review of power costs and future rate cases. Staff believes the existing RPIP process is sufficient for determining the optimal REC acquisition strategy without a need for a parallel investigation.

OPTIONS FOR COMMISSION ACTION

1. The Commission adopts one or more components of the NIPPC's Petition.

If a temporary rule is adopted prior to May 20, based on the language proposed by NIPPC, all bids which exceed 100 MW and five years may not allow for utility ownership, including PPAs with options for utility ownership, unless the acquisition is compliant with the rules yet to be adopted by the Commission under SB 1547. Because the RFP does not have a limit per project size or total acquisition, the assumption is that the temporary rules would apply to the entirety of the resource acquisition RFP. Without an option for ownership, PacifiCorp might well decide to withdraw the RFP altogether. If the Commission opens an investigation into either of the RFPs and requires the RFPs to be re-issued or delayed pending compliance with the Competitive Bidding Guidelines and review under the IRP and RPIP processes, the duration of such an investigation makes it likely that the Company may lose an opportunity to acquire least cost resources if indeed this is a time-sensitive acquisition.

2. The Commission denies the NIPPC Petition.

Due to the potentially limited time horizon, the Commission may decide to take deny NIPPC's petition. PacifiCorp still assumes the full risk of receiving rate recovery if it acquires any resources as a result of the RFPs. The requirement that utilities comply with the Competitive Bidding Guidelines for resources 100 MW and larger remains in place. NIPPC's petition to prescribe that only third-party ownership arrangements are allowed, pending adoption of rules for which a rulemaking has not yet been initiated, may limit consideration of viable options as diverse ownership includes utility-owned options with the overall goal being competition for the best resource to meet ratepayer needs.

Regarding the REC RFP, PacifiCorp will file an updated RPIP in July. The REC RFP results can be evaluated in light of the RPIP so that PUC Staff can review any resulting purchases in future compliance reports, power cost filings and rate cases.

Staff Recommendation:

Staff recommends Option 2, that the Commission deny the NIPPC petition. Temporary rulemaking that is rushed prior to meeting the deadline for bids for this RFP is not likely to result in a more competitive response to this RFP, and may in fact limit time-sensitive opportunities. Staff finds that NIPPC's suggestion to prescribe only third party

ownership arrangements may be unnecessarily limiting viable options and that diverse ownership includes utility-owned options with the goal being competition that leads to the best resource to meet ratepayer needs. The PUC should not dictate ownership of specific renewable resources, but at all times, the Commission will determine cost recovery, if any.

PacifiCorp may decide whether or not to proceed at the risk of receiving rate recovery. The Company chose to disregard the guidelines and, at this point, Staff feels it's too late in the process to have any meaningful impact on the range of bids received as a result of temporary rulemaking. The requirement for utilities to meet competitive bidding guidelines for resources 100MW and larger will be in effect without needing to take the extra step of adding a temporary rule and will need to be addressed either before or during the rate recovery process.

To implement SB 1547, as discussed here, Staff recommends opening a permanent rulemaking to consider the development of competitive markets. Both PacifiCorp's RFPs in response to SB 1547 and the NIPPC reaction to the RFPs clearly indicate the need for the Commission to take on this permanent rulemaking sooner rather than later. Permanent rulemaking will begin by summer 2016 to address PUC obligations in SB 1547 regarding allowances for diverse ownership of renewable energy resources to meet the RPS which will then be in place for the next utility resource procurement. Staff supports focusing stakeholder interest on this issue in the permanent rulemaking process rather than pursuing temporary rulemaking without an opportunity for public input.

PROPOSED COMMISSION MOTION:

Deny the petition for temporary rulemaking and investigations into the April 2016 Renewable Resource and REC RFPs issued by PacifiCorp and open a permanent rulemaking.

UM 1771