

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

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| In the Matter of |) | |
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| The Northwest and Intermountain Power Producers Coalition |) | NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION PETITION FOR TEMPORARY RULEMAKING AND INVESTIGATION |
| Petition for Temporary Rulemaking and Investigation into PacifiCorp’s 2016 Requests for Proposal |) | EXPEDITED TREATMENT REQUESTED |
| _____ |) | |

I. INTRODUCTION

The Northwest and Intermountain Power Producers Coalition (“NIPPC”) petitions the Oregon Public Utility Commission (the “Commission”) to open a rulemaking and adopt temporary rules and open an investigation to ensure that PacifiCorp’s (or the “Company”) 2016 renewable energy request for proposal (“2016R Renewable RFP”) aligns with recently passed legislation in Oregon (“SB 1547”) and Commission regulatory policies by following an independently verified competitive process for diverse ownership of renewable energy. NIPPC also recommends that the Commission open an investigation and delay the PacifiCorp’s 2016 renewable energy certificate (“REC”) RFP (“2016 REC RFP”) until the Commission can review the Company’s plans to meet its renewable portfolio standard requirements with REC purchases.

NIPPC is pleased to see PacifiCorp taking swift action to implement SB 1547; however, the 2016R Renewable RFP should be designed to result in better outcomes for competitive markets and ultimately ratepayers. NIPPC agrees with PacifiCorp that the Company should acquire new renewable power in the near to mid-term to comply with

the requirements of SB 1547. NIPPC also emphasizes that it supports the idea of PacifiCorp developing and proposing a properly designed renewable resource RFP.

The 2016 REC RFP should also be delayed at this time. PacifiCorp has not made a case that there is any time sensitive opportunity to acquire RECs immediately to comply with the renewable portfolio standard. PacifiCorp may be seeking to comply with the renewable portfolio standard through the purchase of only RECs, and this dramatic change in policy warrants more careful review by the Commission and interested stakeholders in an integrated resource plan (“IRP”).

II. COMPETITIVE MARKETS

1. **The Commission Is the Guardian of Competitive Markets and Must Ensure that Renewable Resources Are Acquired in a Process that Allows for Diverse Ownership**

The Commission has been charged by the Oregon legislature to ensure that there is a robust competitive electric generation market.¹ For example, the Commission is required “to mitigate the vertical and horizontal market power” and “eliminate barriers to the development of a competitive retail market structure.”² The Commission’s primary interest in promoting market competition is to ensure that customer rates are kept low through the acquisition of generation resources with the least cost and risk.³

These responsibilities are reflected in the Commission’s description of its fundamental goals and purposes for electricity regulation:

¹ ORS §§ 469A.075(4)(d), 757.646.

² ORS § 757.646.

³ E.g., Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 at 2 (Aug. 10, 2006)(the Commission adopted competitive bidding guidelines “to minimize long-term energy costs”).

The Commission is responsible for ensuring that the utilities we regulate offer safe and reliable energy at reasonable rates and **for promoting the development of competitive markets.**⁴

To fulfill this mission, the Commission has established regulatory policies to induce electric utilities to acquire a “mix of new resources” that will serve their customers “at the lowest cost and risk.”⁵

The Oregon legislature has also specifically directed the Commission to promote competitive markets and ensure that utilities do not own all of the generation resources that are used to serve load. In SB 1547, the Commission was directed not only to promote competition in generation markets, but also to specifically take the next step and develop rules to ensure that there is “**diverse ownership** of renewable energy sources that generate qualifying electricity.”⁶

2. The Commission Is Required to Eliminate Barriers to Competitive Markets and Ensure Diverse Ownership of Generation Because Utilities Have an Ownership Bias

The Commission has long recognized that utilities are biased in the resource procurement process to select ownership options over power purchase agreements.⁷ The bias exists because utilities can recover their costs and earn a profit on their own capital investments.⁸ In contrast, they only have an opportunity to recover their costs (but no returns on investment) when they purchase power from independent power producers.⁹

⁴ http://www.puc.state.or.us/Pages/electric_gas/index.aspx (emphasis added).

⁵ http://www.puc.state.or.us/Pages/electric_gas/index.aspx

⁶ ORS § 469A.075(4)(d) (emphasis added).

⁷ Re OPUC investigation regarding performance based ratemaking mechanisms to address potential build-vs.-buy bias, Docket No. UM 1276, Order No. 11-001 at 2, 5 (Jan. 3, 2011).

⁸ Id.

⁹ Re OPUC Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 14-149 at 1 (April 13, 2014).

Nevertheless, shareholder value should not surpass the Commission’s obligation to protect ratepayers by eliminating barriers to competitive markets and ensuring diverse ownership of generation resources used to serve customers.

The Commission has relied upon competitive bidding, the prudence review process in rate cases, and other regulatory mechanisms to protect ratepayers from this utility bias.¹⁰ For example, the Commission protected ratepayers and the competitive market in implementing HB 4126, which authorized utilities to propose to the Commission voluntary renewable energy tariffs for non-residential customers. The Commission adopted program design guidelines that prevented the utilities from including renewable resources in their rate base (and hence barring them from earning returns paid for by ratepayers in general), but would have allowed the utilities to recover profits and earn returns directly from participating customers.¹¹

The main tool the Commission has used to protect competitive markets and limit utility bias is its “guidelines” under which utilities conduct RFPs to purchase new major generation resources. The Commission has embraced competitive bidding since 1991, and in 2006 adopted guidelines with the primary goal of establishing a fair process for bidders and minimizing long-term energy costs for ratepayers.¹² Even when the utilities win the bidding process and eventually own the generation resources, customers benefit from the competition that drives down costs and spurs market innovation. In addition,

¹⁰ Docket No. UM 1182, Order No. 14-149 at 1 (“In this proceeding we have focused on reducing the bias through our competitive bidding guidelines”).

¹¹ Re OPUC Voluntary Renewable Energy Tariffs for Non-Residential Customers, Docket No. UM 1690, Order No. 15-405 at 2 (Dec. 15, 2015).

¹² Docket No. UM 1128, Order No. 06-446 at 2.

healthy competition provides other ratepayer benefits, including a market to sell to direct access customers while reducing the utilities' potential stranded cost obligations.

The Commission has revised these guidelines a number of times, most recently in 2014 requiring the utilities to file an application with the Commission seeking acknowledgment of their final shortlist of bidders in an RFP.¹³ The Commission adopted this requirement after Portland General Electric Company (“PGE”) did not seek Commission acknowledgement of its 2013 competitive bidding short-list that awarded itself ownership of one renewable energy resource and two thermal power plants including the still-uncompleted Carty Generating Station.

Oregon utilities have a long history of circumventing the competitive bidding process, or using it to acquire generation resources. In 2008 and 2009, PacifiCorp did not use the competitive bidding guidelines when it constructed a number of generation resources slightly below the 100 megawatt (“MW”) size threshold for conducting a formal RFP.¹⁴ Ultimately, the Commission disallowed as imprudent—and removed from Oregon rates—the Company’s 99 MW Rolling Hills wind project because it was markedly inferior to other resources.¹⁵ PGE sought to waive the competitive bidding guidelines to acquire the “time limited” 400 MW Rock Creek Wind Power Facility;

¹³ Docket No. UM 1182, Order No. 14-149 at 1.

¹⁴ See Re PacifiCorp, dba Pacific Power 2009 Renewable Adjustment Clause Schedule 202, Docket No. UE 200, Order No. 08-554 at 2, 19-20 (Nov. 25, 2008). PacifiCorp completed construction in 2008 and 2009, without requests for proposals, the 99 MW Glenrock I, 39 MW Glenrock III, 98 MW Goodnoe Hills, 99 MW High Plains, 99 MW Rolling Hills, 99 Seven Mile Hills, and 19.5 Seven Mile Hills II wind facilities.

¹⁵ Docket No. UE 200, Order No. 08-584 at 19-21.

however, PGE was required to abandon the project, due to Federal wildlife policies protecting golden eagles.¹⁶

PacifiCorp, PGE, and Idaho Power have all constructed or purchased significant gas-fired power facilities either by circumventing the Commission's competitive bidding process, or ensuring that ownership options were the winning bids. Idaho Power built the Langley Gulch gas plant without using the Commission's competitive bidding guidelines.¹⁷ PacifiCorp acquired the 550 MW Currant Creek gas plant (2005), the 558 MW Lake Side 1 gas plant (2007), and 645 MW Lake Side 2 gas plant (2014) through competitive procurement processes.¹⁸ PGE also awarded itself all the winning bids in its most recent RFP, which allowed PGE to acquire its 220 MW Port Westward 2 gas plant, its 440 MW Carty power plant, and its 266 MW Tucannon wind farm.

These acquisitions were not without controversy. For example, a Utah jury awarded a developer planning to sell electricity to PacifiCorp over \$100 million in damages for the Company's alleged stealing of trade secrets that it used to build Currant

¹⁶ See Re PGE Petition for a Waiver of Competitive Bidding Guidelines and Application for an Accounting Order, Docket No. UM 1449, Order No. 10-394 at 1 (Oct. 12, 2010); Re PGE Petition for a Waiver of Competitive Bidding Guidelines and Application for an Accounting Order, Docket No. UM 1449, PGE's Request for Withdrawal of PGE's Petition for a Waiver of Competitive Bidding Guidelines and Application for an Accounting Order (Sept. 29, 2010).

¹⁷ Re Idaho Power Company Petition for a Partial Waiver of Competitive Bidding Guidelines, Docket No. UM 1378, Idaho Power Petition at 10-11 (April 17, 2008) (request to waive the Commission's competitive bidding guidelines); see Idaho Power 2009 Integrated Resource Plan, Docket No. LC 36 at 36 ("Idaho Power completed the competitive bidding process in early 2009 and selected the 300 MW CCCT project").

¹⁸ Re PacifiCorp, dba, Pacific Power Petition for Waiver of the Commission's Competitive Bidding Guidelines, Docket No. UM 1374, Order No. 08-376 at 1-2 (July 17, 2008).

Creek.¹⁹ Similarly, PGE's recent request for proposals was highly controversial, and cost overruns at the PGE Carty plant may end up costing ratepayers tens of millions of dollars.²⁰ While utility ownership options could theoretically be the least cost and least risk option, it is hard to imagine that they are always the best choice for customers.

PacifiCorp has secured several long-term power purchase agreements, primarily through Public Utility Regulatory Policies Act ("PURPA") contracts with qualifying facilities ("QFs"). Berkshire Hathaway, PacifiCorp's parent company, unsuccessfully attempted to significantly reduce the Company's obligation to purchase power from renewable energy and cogeneration customers under PURPA.²¹ PacifiCorp has also attempted to: 1) reduce contract terms for PURPA projects in Idaho, Oregon, Utah, and Wyoming,²² which would have resulted in preventing most QFs from being able to obtain

¹⁹ Steven Oberbeck, *Texas Company wins \$134M from utility owner PacifiCorp*, THE SALT LAKE TRIBUNE (May 23, 2012), <http://archive.sltrib.com/story.php?ref=/sltrib/money/54163321-79/pacificorp-usa-power-jury.html.csp>.

²⁰ Ted Sickinger, *Despite acrimony and accusations, PGE's bid process doesn't need investigating, regulators decide*, OREGONLIVE (Sep. 20, 2013), http://www.oregonlive.com/business/index.ssf/2013/09/explanation_of_portland_genera.html; Ted Sickinger, *Construction halts at PGE's new gas plant in Boardman*, OREGONLIVE (Dec. 17, 2015), http://www.oregonlive.com/business/index.ssf/2015/12/construction_halts_at_pge_s_new.html.

²¹ *Statement of Jonathan M. Weisgall VP, Legislative and Regulatory Affairs Berkshire Hathaway Energy*, HOUSE ENERGY AND COMMERCE SUBCOMMITTEE ON ENERGY AND POWER (June 4, 2015), <http://docs.house.gov/meetings/IF/IF03/20150603/103551/HHRG-114-IF03-Wstate-WeisgallJ-20150603.pdf>.

²² Re Idaho Power Company's Petition to Modify Terms and Conditions of PURPA Purchase Agreements, IPUC Case Nos. IPC-E-15-01, AVU-E-15-01, PAC-E-15-03, Order No. 33357 at 25 (Aug. 20, 2015); Re the Application of Rocky Mountain Power for Modification of Contract Term of PURPA Power Purchase Agreements with QFs, UPSC Docket No. 15-053-15, Order at 21 (January 7, 2016); Re PacifiCorp, dba Pacific Power, Application to Reduce the QF Contract Term and Lower the QF Standard Contract Eligibility Cap, OPUC Docket No.

financing;²³ 2) fully or partially eliminate capacity payments in Utah, Washington, and Wyoming;²⁴ and 3) implement in Oregon a 43% reduction in its renewable avoided cost rates, and a 16% reduction in its baseload rates.²⁵ The Commission rejected PacifiCorp's proposal to lower the contract term and its avoided cost rate reduction filing, and directed the Company to work with Staff and interested parties "to update PacifiCorp's avoided costs in light of the passage of SB 1547."²⁶ The Company had argued that the price reduction was primarily driven by the assumption that it would not need new renewable energy for its entire twenty-year planning horizon. The Commission rejected PacifiCorp's proposals.

3. The Company's 2016R Renewable RFP Only Includes Ownership Options and Therefore Does Not Follow the Directives for Diverse Ownership and to Eliminate Barriers to Competitive Markets

PacifiCorp's 2016R Renewable RFP is accepting the following bids: 1) a build and transfer, and 2) a twenty year power purchase agreement in which PacifiCorp has the

²³ UM 1734, Order No. 16-130 at 1, 5-6 (March 29, 2016); Re Application of Rocky Mountain Power for Modification of Contract Term for PURPA Power Purchase Agreements with QFs, Docket No. 20000-481-EA-15, Record No. 14220, RMP Application (Aug. 26, 2015).

²⁴ OPUC Docket No. UM 1734, Order No. 16-130 at 1, 5-6.

²⁴ Washington Utilities and Transportation Commission v. Pacific Power & Light Co., WUTC Docket No. UE-144160, Order No. 04 at (1) (Nov. 12, 2015); Re Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 37, Avoided Cost Purchases from QFs, UPSC Docket No. 15-035-T06, Report and Order at 9 (Sept. 18, 2015); Re the Application of Rocky Mountain Power for Authority to Revise Schedule 37 Standard Rates for Purchases of Power from QFs, WPSC Docket No. 20000-458-EA-14, Record No. 14021, Order at 1-3 (August 26, 2015).

²⁵ Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible QFs, Docket No. UM 1729(1), Order No. 16-117 at 1, 4 (March 23, 2016).

²⁶ Id. at 1.

option to purchase the asset.²⁷ The RFP will require an independent power producer to be limited to either a complete asset sale upon commissioning, or to provide PacifiCorp the option to require the bidder to surrender its power plant and land to PacifiCorp to participate in a RFP.

PacifiCorp is accepting “Build-Transfer” options in which the independent power producer “develops the project, assumes responsibility for construction, and ultimately transfers the asset to the Company upon or prior to the operation date . . .”²⁸ Build transfers are a legitimate option for an RFP during ordinary circumstances; however, they should not be the expected or preferred outcome, because such a preference will bias the results toward only utility ownership.

PacifiCorp is also accepting power purchase agreements with twenty-year terms, but with the option for the Company to purchase the project during or at the end of the contract term.²⁹ This results in the bidder being required to provide PacifiCorp the “choice” to own the bidder’s site and property in order to participate in the 2016R Renewable RFP.

PacifiCorp is not accepting conventional power purchase agreements in its 2016R Renewable RFP. In addition to fostering general market competition, power purchase agreements are a power delivery arrangement that can lower costs and better use resources, which ultimately benefits ratepayers. For example, if the generation owner knows that they will retain ownership rights, then they will have a greater incentive to improve output and repower the site. A generation owner may not make these

²⁷ 2016R Renewable RFP at 1-2.

²⁸ Id. at 1-2.

²⁹ Id. at 2.

investments if the utility has an option to purchase the asset at the end of the contract term. Power purchase agreements also can allow an owner the ability lower costs by sourcing power from multiple facilities, including facilities that are already in operation.

III. PETITION FOR TEMPORARY RULEMAKING

The Commission should act now rather than wait for a rate proceeding to review the prudence of acquisitions in the 2016R Renewable RFP. The Commission has a new statutory duty to ensure the competitive bidding process does not solely result in utility ownership. The Commission’s traditional ratemaking review process is fundamentally inadequate here, because its remedy is limited to monetarily penalizing a utility for making an unreasonable decision in an attempt to keep ratepayers harmless. Allowing the 2016R Renewable RFP to proceed would not ensure diverse ownership or protect the competitive electricity market from the long-term and irreparable damage caused by a flawed bidding process. The Commission should take preventative action now to protect ratepayers and the integrity of the competitive market.

1. The Commission Has the Legal Authority to Adopt Temporary Rules

The Commission may adopt temporary rules effective up to 180 days without prior notice or hearing, or using an abbreviated notice and hearing.³⁰ While not required to provide notice, the Commission must “take appropriate measures to make temporary rules known to the persons who may be affected by them”, which could include simply providing copies of the rule and required information.³¹ When adopting temporary rules, the Commission must include: 1) a statement of its findings that the failure to act promptly will result in serious prejudice to the public or concerned parties; 2) a citation to

³⁰ ORS §§ 183.335(5), 183.335(6)(a).

³¹ ORS § 183.355(2)(b).

the statutory or legal authority relied upon and bearing upon the temporary rules; 3) a statement of the need for the rule and how the rule will meet that need; and 4) a list of publicly available documents, reports, or studies (if any) that were relied upon in creating the temporary rule.³²

2. The Commission Should Act Immediately to Protect Ratepayers from Prejudice Under the 2016R Renewable RFP

The Commission should consider this petition on an expedited basis and adopt temporary rules at its May 17, 2016 Regular Public Meeting. Despite knowing that it would file its 2016R Renewable RFP, PacifiCorp did not inform the Commission until immediately before issuing it to the public. The 2016R Renewable RFP has proposed an expedited schedule, which includes bidder proposals due on May 20, 2016, less than a month and half after the RFP was issued on April 11, 2016. Prompt and immediate action is necessary to provide proper guidance to both bidders and PacifiCorp. Consideration at the May 17, 2016 Regular Public Meeting will also allow PacifiCorp and interested parties sufficient time to file comments responding to this petition.

3. The Commission Should Adopt Temporary Rules to Bar Utility Ownership of New Renewable Energy Generation Until Permanent Rules Are Adopted or an Investigation Is Completed

The Commission should adopt temporary rules that prevent PacifiCorp from having an ownership or potential ownership interest in any new renewable energy until the adoption of permanent rules or the completion of an investigation into PacifiCorp's RFPs. Failing to immediately adopt rules that temporarily bar or limit PacifiCorp's ownership of new renewable resources will result in serious prejudice to the public interest, ratepayers, competitive markets, and non-utility generation owners.

³² ORS § 183.335(5).

As explained above, the Oregon legislature specifically required the Commission to adopt rules: “Providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity.”³³ This requires the Commission to improve its existing competitive bidding guidelines by making them legally binding rules that will prevent utilities from owning all the new renewable energy generation. These rules providing for diverse ownership of renewable energy should be in place before a utility acquires any new renewable energy sources.

The Commission has a time-sensitive opportunity to defend its policies and protect customers by ensuring that new barriers to competitive markets are not erected and less diverse resources acquired. Without acting promptly, PacifiCorp will be allowed to move forward with an RFP that will likely increase PacifiCorp’s market power, barriers to competitive markets, and utility resource ownership.

NIPPC specifically proposes that the Commission adopt a rule that prevents a utility from owning or having an ownership interest in renewable energy generating resources, other than PURPA contracts and currently owned resources, until the Commission adopts permanent competitive bidding rules. The Commission can also address PacifiCorp’s RFPs during an investigation while the temporary rules are in effect. This temporary rule would not bar PacifiCorp from actively pursuing a renewable RFP that would allow the Company to enter into power purchase agreements with independent power producers, if there is a true time sensitive opportunity. NIPPC’s proposed rule language is attached to this Petition as Attachment A.

³³ ORS § 469A.075(4)(d).

4. Rulemaking Information

A petition for temporary rules does not appear to require all the detailed information in a petition for permanent rules.³⁴ In order to assist the Commission; however, NIPPC provides the following information that is required in a petition for permanent rules.³⁵

A. The Name and Address of the Petitioner and Other Interested Persons

The name and address of NIPPC is:

Northwest and Intermountain Power Producers Coalition
Robert D. Kahn
Executive Director
P.O. Box 504
Mercer Island, WA 98040
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PacifiCorp, its customers and other interested stakeholders are interested in this proposed rule. NIPPC is serving, via electronic communications, PacifiCorp and other interested parties who have intervened in recent PacifiCorp proceedings, including Docket Nos. LC 62, UM 1050, UM 1182, UM 1690, UM 1734, UE 263, and UE 296. These parties are listed on Attachment B to this Petition.

B. Proposed Temporary Rule

The proposed language in full for the new rule is listed on Attachment A to this Petition.

³⁴ See OAR § 137-001-0080.

³⁵ OAR § 137-001-0070.

C. Facts or Arguments in Sufficient Detail to Show the Reasons and Effect of the Adoption of the Rule, and Propositions of Law Asserted by the Petitioner

The facts, arguments, and legal propositions are explained above in this petition. In summary, Oregon law, including SB 1547, requires the Commission to protect competitive markets and ensure diverse ownership of renewable energy sources, and PacifiCorp's 2016R Renewable RFP as currently designed will likely harm competitive markets and result in less diverse ownership of renewable resources. A temporary rule will protect competitive markets, ratepayers, and non-utility generation owners until the Commission can adopt permanent rules, or otherwise require PacifiCorp to propose a properly designed RFP.

IV. PETITION TO INVESTIGATE PACIFICORP'S 2016R RENEWABLE RFP AND 2016 REC RFP

In addition to adopting temporary rules, the Commission should open an investigation into the 2016R Renewable RFP and the 2016 REC RFP. The RFPs are inconsistent with the Commission's policies regarding competitive markets, utility bias, integrated resource and renewable portfolio standard planning, and PURPA. The Commission should issue an order to require PacifiCorp to revise the 2016R Renewable RFP to follow the Commission's competitive bidding guidelines. The Commission's competitive bidding guidelines apply in letter and spirit, and PacifiCorp's 2016 RFP does not protect against utility bias or fairly treat independent power producers or ratepayers. The Commission should also delay the 2016 REC RFP on the grounds that the Company's renewable portfolio standard implementation approach needs to be vetted in an IRP and the Commission's established renewable portfolio compliance process. The legislature has "upped the ante" on meeting the renewable portfolio standard, and the

Commission and interested stakeholders should review PacifiCorp’s approach, absent a demonstration of true emergency or time sensitive opportunity.

1. PacifiCorp’s 2016R Renewable RFP Does Not Follow the Commission’s Competitive Bidding Guidelines

The fundamental goals of an RFP are to “[b]e understandable and fair”, as well as complement the IRP process, lower long term energy costs, be flexible, and not unduly constrain utility management.³⁶ The Commission has sought to achieve these policies by requiring an RFP be conducted when an electric utility seeks to acquire resources that are 100 MW or larger, and have a duration of five years or longer.³⁷ Key components of the RFP include the Commission: 1) selecting an independent evaluator “to help ensure that all offers are treated fairly”; 2) approving the RFP design to, inter alia, ensure “the overall fairness of the utility’s proposed bidding process”; and 3) conducting an acknowledgment proceeding to review “the utility’s selection of the final shortlist of RFP resources.”³⁸

The 2016R Renewable RFP fails to comply with these guidelines.³⁹ PacifiCorp is seeking long-term resources, which have no size limitation and could individually exceed 100 MWs. In addition, in the aggregate, PacifiCorp has stated a need for up to 600 MWs

³⁶ Docket No. UM 1128, Order No. 06-446 at 2.

³⁷ Docket No. UM 1182, Order No. 14-149 at Appendix A at 1. An RFP is specifically required for resources identified in the utility’s last acknowledge IRP; however the purpose is intended to require RFPs for large major resources and PacifiCorp should not be allowed to circumvent this requirement by not seeking acknowledgement of its IRP update that identified a new resource need.

³⁸ Docket No. UM 1182, Order No. 14-149 at Appendix A at 1-5.

³⁹ NIPPC notes that an RFP should be able to proceed on an expedited basis if there are no utility ownership options. There is less of a need for the Commission and stakeholders to thoroughly review the RFP to protect against utility bias if there is no risk that the utility will bias the results toward themselves.

of new renewable resources in the near future.⁴⁰ Thus, the competitive bidding guidelines apply. PacifiCorp did not seek approval of its RFP design or engage in an independent evaluator. The RFP includes other provisions that are not fair to bidders, including preventing bidders from suing PacifiCorp for damages or from bidding if they have threatened or are in litigation with PacifiCorp for \$100,000 or more.⁴¹

2. PacifiCorp’s 2016R Renewable RFP Does Not Fit Into the Competitive Bidding Guidelines Exceptions or Lower the Prudence Standard

PacifiCorp has asserted that it must proceed with the 2016R Renewable RFP because there are “time-sensitive renewable resource acquisition opportunities . . .”⁴² This is an apparent attempt to fit into the Commission’s exception to the competitive bidding guidelines, which allow for acquisition of a major resource “where there is a time limited resource opportunity of unique value to customers.”⁴³

PacifiCorp’s primary justifications for “time-sensitive” opportunities are the passage of SB 1547 and the slow phase out of the federal production and investment tax credits for renewable energy.⁴⁴ These are similar justifications that the Commission rejected when PacifiCorp built the 99 MW Rolling Hills wind resource. In support for not following the Commission’s competitive bidding guidelines in 2008, PacifiCorp argued that the recently passed renewable portfolio standard had “lowered” the prudence standard, and the Company had “a ‘time-limited’” opportunity based on the “possible

⁴⁰ PacifiCorp d/b/a HB 4036, Presentation to OPUC at 2 (Jan. 29, 2016) (SB 1547 was originally HB 4036).

⁴¹ 2016R Renewable RFP at 3, 7.

⁴² Id. at 1.

⁴³ Docket No. UM 1182, Order No. 14-149 at Appendix A at 1.

⁴⁴ 2016R Renewable RFP at 1.

expiration of the federal production tax credits”.⁴⁵ The Commission disagreed, concluding that the “standard to be applied has not been ‘lowered’ to foster the acquisition of renewable resources” and PacifiCorp had failed to justify that a potential complete expiration (rather than phase out) of the tax credits warranted not complying with the guidelines.⁴⁶

Similarly, there is no need to ignore the procedural and substantive requirements of the competitive bidding guidelines now. SB 1547 provides incentives for renewable resources that are operational in the next five years and increases the mandates for acquiring renewable energy, but PacifiCorp does not need to immediately acquire renewable resources without due process.

Furthermore, wind and solar projects that can be on-line in 2019 or beyond can still maximize the benefit of tax credits. For example, the solar investment tax credit does not begin ramping down until 2021, and solar technology and installation costs are expected to fall over the next several years. Wind projects can also qualify for the definition of starting construction by investing in equipment in 2017 and completing the project in 2019, which would allow them to capture the full production tax credit. In addition, the tax credit expiration does not apply to existing and operating renewable energy projects that can sell power to PacifiCorp. Finally, it is always possible for Congress to extend the tax credits.

Even if there is a time sensitive opportunity driven by Federal tax policy, there is no reason that warrants PacifiCorp owning all the new generation it seeks. Therefore, it is not clear why PacifiCorp is pursuing the 2016R Renewable RFP on such an aggressive

⁴⁵ Docket No. UE 200, Order No. 08-584 at 12, 15, 18, and 20.

⁴⁶ Id. at 18-20.

timeline other than to maximize its ownership and without reviewing in an IRP whether the approach will be the least cost and least risk way to meet its SB 1547 obligations.

3. The Commission Has Not Reviewed PacifiCorp’s SB 1547 RPS Compliance Strategies

SB 1547 has increased PacifiCorp’s and PGE’s need for new renewable energy, which has the risk of imposing new costs upon ratepayers. The utilities have explained that they believe it will not be difficult or expensive to comply with the new law.⁴⁷ The best way to ensure that these mandates can be cost effectively met will be to ensure that the Commission’s traditional regulatory analysis regarding least cost and risk planning are complied with. Therefore, PacifiCorp should be required to conduct a thorough review of the new law’s obligations in an IRP before owning any new renewable energy or acquiring significant amounts of RECs.

The Commission was a pioneer in determining that least cost planning should be “the preferred approach to utility resource planning.”⁴⁸ The primary planning goals were to ensure that utilities acquired resources that were the least cost and risk in a manner consistent with the long run public interest and Oregon energy policy.⁴⁹ While the IRP requirements have become more complex and rigorous, these goals have not changed and continue to promote “the selection of a portfolio of resources with the best combination of expected costs and associated risks and uncertainties for the utility and its

⁴⁷ E.g., PacifiCorp d/b/a HB 4036, Presentation to OPUC at 2 (Jan. 29, 2016) (HB 4036 should result “in an average annual cost increase of less than 1.0% through 2030”).

⁴⁸ See Re Commission Investigation Into Integrated Resource Planning, Docket No. UM 1056, Order No. 07-002 at 1 (Jan. 8, 2007).

⁴⁹ Id. at 2.

customers.”⁵⁰ The Commission has also adopted rules to require renewable portfolio compliance plans, which provide more detailed information than in the IRP process and guide the utilities to ensure cost effective implementation of the renewable portfolio standard.⁵¹

PacifiCorp’s 2015 IRP was recently acknowledged, and understandably did not assume the passage of legislation doubling the renewable portfolio standard and making other substantive policy changes at the time it was prepared.⁵² The Commission, however, was aware of the proposed bill at the end of the IRP process, and directed PacifiCorp to update its IRP if the bill became law.

PacifiCorp and other stakeholders introduced House Bill 4036 that would significantly amend Oregon’s renewable portfolio standard and generally eliminate the use of coal-fired generation in Oregon by 2030. If passed, this legislation likely will affect PacifiCorp’s action plan contained in its 2015 IRP. We remind the company that IRP Guideline 3(f) requires a utility to file an IRP update once a utility anticipates a significant deviation from its acknowledged IRP.⁵³

Thus, the Commission specifically directed PacifiCorp to file an update once the law passed, which would allow proper analysis before an RFP was issued.

On March 31, 2016, PacifiCorp filed an IRP update. PacifiCorp submitted the IRP update for informational purposes only and has not sought its acknowledgment, despite claiming a need to pursue time-sensitive renewable resources that were not

⁵⁰ Re Commission Investigation Into Integrated Resource Planning, Docket No. UM 1056, Order No. 07-047 Appendix A at 1-2 (Feb. 9, 2007).

⁵¹ See generally Re a Rulemaking to Implement SB 838 Relating to Renewable Portfolio Standard, Docket No. AR 518.

⁵² Re PacifiCorp dba Pacific Power 2015 Integrated Resource Plan, Docket No. LC 62, Order No. 16-071 at 1 (Feb. 29, 2016).

⁵³ Id. at 1.

included in its 2015 IRP.⁵⁴ The IRP update does not show any new renewable capacity need to comply with SB 1547 (and California SB 350), but does include an action to issue RFPs for this time-sensitive opportunity, and shows prices in Table 4.4 that “assum[e] the projects are built as rate-based assets.”⁵⁵

SB 1547 is a major change in Oregon law and energy policy that warrants a thorough review and revision of PacifiCorp’s existing resource plan. The 2015 IRP planning period runs to 2034 and does not include **any** new major renewable resource acquisitions.⁵⁶ It is hard to imagine a least cost and least risk plan to meet the requirements of a gradual doubling of the renewable portfolio standard that has early incentives for the acquisition of renewable energy in the next five years without at least contemplating some renewable resource acquisitions in the next couple decades. The two RFPs issued by PacifiCorp are the best evidence that the Company’s 2015 IRP is outdated in terms of renewable resource planning.

The Commission has already recognized that the amendments to the renewable portfolio standard warrant a careful and thorough analysis of utility resource acquisition plans. For example, the Commission recently rejected PGE’s guidelines for using funds from the utility’s renewable tariff options for residential customers that wish to support new renewable energy. While the dollars at issue were far lower than what could result from the 2016R Renewable and REC RFPs, the Commission was concerned about utility ownership of the resources and noted that these renewable resource acquisitions should

⁵⁴ Re PacifiCorp dba Pacific Power 2015 Integrated Resource Plan, Docket No. LC 62, 2015 IRP update at 1 (March 29, 2016).

⁵⁵ Docket No. LC 62, 2015 IRP update at 44-45.

⁵⁶ Re PacifiCorp dba Pacific Power 2015 Integrated Resource Plan, Docket No. LC 62, 2015 IRP at 2 (March 31, 2015).

be reviewed in an IRP.⁵⁷ The Commission specifically directed PGE “to remove utility-owned projects from the guidelines” and “not accept the utility-ownership component of Staff’s proposed Renewable Fund Review Process”.⁵⁸

At the public meeting, Commissioner Savage explained how SB 1547 was a major policy change that warranted reviewing all options in an IRP before allowing utility ownership:

We have upped the ante on the RPS, I think we have got to aim for a goal now of ensuring that our course is the least cost and least risk way of complying with those RPS targets. I do not think these should be done on a project-by-project basis. So, I think that these sorts of projects that you are asking to do must be evaluated in an IRP . . .⁵⁹

Now is not the time to abandon Oregon’s decades long least cost and risk planning process. Instead, the Commission should require that PacifiCorp seek acknowledgment of an IRP that analyzes a renewable portfolio compliance strategy with stakeholder participation in a formal proceeding. If there are true time sensitive opportunities, then PacifiCorp must pursue them through a properly designed RFP.

V. CONCLUSION

In order to protect ratepayers and the competitive markets, and to ensure diverse ownership of renewable energy resources, the Commission should require PacifiCorp to modify the 2016R Renewable RFP by adopting temporary rules and open an investigation. PacifiCorp can proceed with its RFP, but there should not be any bids at this time that would be build transfers or otherwise allow the Company any potential

⁵⁷ Re Commission Recommendations for Guidelines and a Distribution and Reporting Process for Grants of Portfolio Options Voluntary Renewable Funds, Docket No. UM 1020, Order No. 16-123 at 1 (March 28, 2016).

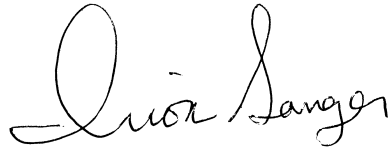
⁵⁸ Id.

⁵⁹ Transcript of March 22 Regular Public Meeting at 6:23-6:58.

ownership interest. Finally, 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.

Dated this 25th day of April 2016.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large, looped initial "I".

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Attachment A

Temporary Competitive Bidding Rule

Definitions

“Electric company” has the meaning given that term in ORS 757.600.

“Renewable energy resource” means an electricity generation facility fueled with a renewable energy source. Renewable energy resource does not include a power purchase agreement, unless the electric company has contractual option to acquire the resource either during or upon the end of the term of the power purchase agreement.

“Renewable energy source” has the meaning given that in term in ORS 469A.005.

Electric Utility Ownership in New Renewable Energy Resources

(1) An electric company shall not own or acquire ownership rights in any new renewable energy resources, other than ownership rights in renewable energy resources possessed by the electric company on May 18, 2016.

(2) The above restriction shall not apply to electric company ownership or acquisition of any renewable energy resources acquired pursuant to commission competitive bidding rules.

Attachment B

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