

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • jog@dvclaw.com
Suite 400
333 SW Taylor
Portland, OR 97204

February 14, 2018

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of Rulemaking Regarding Allowances for Diverse
Ownership of Renewable Energy Resources.
Docket No. AR 600

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the Industrial Customers of Northwest Utilities' Opening Comments.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 600

In the Matter of)	
)	
Rulemaking Regarding Allowances for)	OPENING COMMENTS OF THE
Diverse Ownership of Renewable Energy)	INDUSTRIAL CUSTOMERS OF
Resources.)	NORTHWEST UTILITIES
_____)	

I. INTRODUCTION

Pursuant to the Chief Administrative Law Judge’s January 25, 2018 Notice, the Industrial Customers of Northwest Utilities (“ICNU”) files these Opening Comments on certain policy questions identified in this docket. ICNU appreciates this opportunity to comment on key policy issues related to the Oregon Public Utility Commission’s (“Commission”) competitive bidding requirements, as well as on Commission Staff’s draft competitive bidding rules. As explained more fully below, ICNU believes the draft rules will help ensure a fair and transparent bidding process, but suggests several changes to increase efficiency when a request for proposal (“RFP”) does not allow for utility ownership.

II. COMMENTS

- 1. Is it appropriate to allow exemptions from certain competitive bidding rule sections if a Request for Proposal (RFP) does not incorporate or consider electric company ownership of resources?**

Yes. These draft rules are intended to create a level playing field for all parties interested in responding to a utility RFP. Fundamentally, they create safeguards to guard against

utility self-build bias, which is the greatest threat to a fair bidding process.^{1/} But if an RFP does not allow for utility ownership (at any point in the resource's life), then the risk of an unfair process is largely eliminated. While an RFP could potentially still unfairly favor certain bids, ICNU believes the lowered risk justifies a less burdensome, and less expensive, review process. Customers bear the cost associated with a resource procurement process. Accordingly, this process should be as efficient and inexpensive as possible while still ensuring a fair and unbiased result.

To that end, it is reasonable to waive certain requirements when the RFP does not allow for self-build options.^{2/} ICNU's primary recommended modification in RFPs that do not allow for self-bids is that utilities not be required to retain an IE. This is discussed in more detail below.

In addition, ICNU believes that a shortened review period may be appropriate when an RFP does not include a self-build option. As currently drafted, the rule allows the Commission 100 days to review a proposed RFP. XX-0250(9)(a). Commission review of RFP terms is important, and ICNU generally supports allowing the Commission as much time as necessary to complete this task. That said, such a review might be simpler, and commensurately shorter, when the Commission does not need to assess whether an RFP contains a potential self-build bias. ICNU recommends that the current 60-day review process be retained for RFPs that lack a self-build option.

^{1/} See In the Matter of an Investigation to Address Potential Build-vs.-Buy Bias, Docket No. UM 1276, Order No. 11-001 at 2, 5 (Jan. 3, 2011).

^{2/} See Order 17-173, Appendix A at 4 (staff memo noting trade-offs between transparency and efficiency).

ICNU also questions the need for a third-party assessment of “site specific critical performance factors,” such as wind and solar potential, when an RFP does not contain a self-build option. XX-0400(5). Such performance factors are obviously of great importance – but ICNU believes that utilities can likely perform this assessment with in-house experts, and at a significantly lower cost. This outside assessment is only potentially important when a utility is comparing a self-build option to other bids. Eliminating it in cases without a self-build option would reduce costs for customers.

It is possible that other sections of these draft rules may not be necessary when an RFP does not permit utility ownership of a new resource. ICNU recommends that, on a case-by-case basis, the Commission consider whether strict compliance with a section’s requirement is necessary to ensure a fair process, and how waiving the requirement might lower costs and other burdens for the utility and other parties. When relevant, this should include a consideration of whether the utility’s existing in-house resources might be sufficient to comply with the spirit of the rule.

2. Is the engagement and participation of an Independent Evaluator (IE) in the competitive bidding process valuable regardless of whether the RFP contemplates utility resource ownership options?

No. The utilities assert that there is value in retaining an IE in the competitive bidding process, whether or not the RFP allows for utility resource ownership.^{3/} ICNU questions whether the utilities would still make this claim if their shareholders were required to bear the costs of the IE. The IE is a substantial expense, for which customers are fully responsible under

^{3/} See Joint Utilities’ Informal Comments on Staff’s Draft Rules at 11 (Sept. 22, 2017).

the current guidelines.^{4/}

This draft of the proposed rules obligates a utility to retain an IE to assess all RFPs, whether or not the utility or an affiliate can own the resource that is eventually selected. XX-0200(1). The rules allow the Commission to waive this requirement if the RFP prohibits utility ownership, but by default, an IE must be retained to assess all RFPs covered by these draft rules. XX-0200(7). This formulation puts cost responsibility for the IE on customers in all instances. ICNU believes this rule should be reversed – RFPs that do not allow utility ownership should presumptively be conducted without an IE, unless the utility can make a clear showing that customers would receive a significant benefit from an IE’s participation.

It is well-accepted that an IE’s primary role in the RFP process is to guard against a utility’s self-build bias.^{5/} These draft rules contain many provisions designed to create a transparent, fair process that allows independent power producers to compete on a level playing field with utilities – and the IE’s role is central to this. The IE’s primary responsibilities are to assess a utility’s bids (or those of its affiliates) and independent bids to ensure that a utility is not giving its own proposals a preference. Other IE duties, like the obligation to review the RFP prior to its issuance, also respond to the need for a fair process to prevent biased procurement. Collectively, these rules help create a fair bidding process that includes utility participation.

When an RFP excludes utility participation, however, the justification for an IE falls away. The Joint Utilities argue that requiring an IE only when an RFP allows utility

^{4/} See In the Matter of an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order 06-446, 7 (Aug. 10, 2006); see also, Docket UM 1532, “Application of PGE for Reauthorization of Deferred Accounting Treatment of Certain Expenses Associated with an Independent Evaluator for up to Three Requests for Proposal” at 3 (Mar. 28, 2013) (identifying over \$743,000 in expenses for an IE).

^{5/} See Investigation Regarding Competitive Bidding, Docket UM 1182, Order No. 14-149 at 1-2 (April 30, 2014).

participation “incorrectly implies that the sole purpose of IE participation is to scrutinize the utility’s proposal for a utility-owned resource” – but their comments do not identify any secondary purposes, aside from a vague reference to prior Commission decisions that required IE participation in all RFPs.^{6/} ICNU does not dispute that the “sole purpose” of an IE in an RFP may not be to guard against self-build bias. But it is fair to characterize the IE’s obligation to “scrutinize the utility’s proposal” as its primary purpose. The rules, and rate recovery, should be drafted accordingly.

According to the utilities, any rule that requires an IE only for RFPs that allow for self-build options “creates yet another bias against utility ownership.”^{7/} ICNU sees no bias, only a reflection of the fundamental purpose of these rules. If an RFP allows for utility ownership, then the process must include an IE to guard against self-build bias. If the RFP does not, then the process may include an IE if ratepayers will see a significant benefit. In the former case, that “significant benefit” is the mitigation of the self-build bias, a phenomenon well-recognized by this Commission and most participants in this docket.^{8/} When a risk of that bias does not exist, it is fair to ask the utility to show why ratepayers should pay for extra process. The IE may bring ancillary benefits to the RFP process in either case – but it bears repeating that these competitive bidding rules only exist because utilities have an economic incentive to procure self-owned resources. Thus, the rules should be drafted in a manner that allows the utilities to use an IE for RFPs that do not include a self-build option, but requires them to bear

^{6/} Joint Utilities’ Informal Comments on Staff’s Draft Rules at 11.

^{7/} Id.

^{8/} See Order 14-149, 1-2.

those costs unless they can make a clear showing that the IE will benefit customers.

3. Can or should electric companies be compelled or encouraged to offer electric company owned facilities to bidders proposing non-utility owned resources if those same sites are utilized for benchmark or electric company owned bids?

ICNU does not have a position on this question at this time but reserves the right to respond to other parties' proposals.

4. Should transmission activity be subject to competitive bidding requirements?

ICNU does not have a position on this question at this time but reserves the right to respond to other parties' proposals.

III. CONCLUSION

ICNU appreciates the opportunity to comment on Commission Staff's draft competitive bidding rules and related policy issues. ICNU looks forward to providing further input as this rulemaking develops.

Dated this 14th day of February, 2018.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

Tyler C. Pepple

Riley Peck

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 (phone)

(503) 241-8160 (facsimile)

tcp@dvclaw.com

rgp@dvclaw.com

Of Attorneys for the Industrial Customers of

Northwest Utilities