

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 600

In the Matter of Rulemaking Regarding
Allowances for Diverse Ownership of
Renewable Energy Resources

REPLY COMMENTS OF
RENEWABLE NORTHWEST

I. Introduction

Renewable Northwest thanks the Public Utility Commission of Oregon (“the Commission”) for this opportunity to comment on the proposed Competitive Bidding Rules (“Draft Rules”) prepared by Commission Staff (“Staff”) and published on April 18, 2018. Our comments address Commission Order No. 18-127 and the Staff Report included as Appendix A to that Order, to the Joint Utilities’ May 14 comments, and to NIPPC’s May 29 comments.

We are a non-profit advocacy organization that works to facilitate the expansion of responsibly developed renewable resources in the Northwest. Our membership includes renewable energy developers and manufacturers, as well as consumer advocates, environmental groups, academic institutions, and other industry advisers. The common goal of Renewable Northwest’s members is to promote the development of a cost-effective, reliable, and clean energy system for the betterment of the Northwest economy and environment.

Our efforts to promote a cost-effective and clean energy system include ensuring that resource procurement processes instill market confidence and provide for robust competition that produces the lowest cost, lowest risk result for customers. To that end, our participation in the formal and informal phases of this rulemaking, including these comments, has sought to help inform the development of rules that lead to a fair, transparent, and competitive resource procurement process.

In Section II of these comments, we support retaining in the Final Rules Commission to waive independent evaluator (“IE”) engagement in request for proposals (“RFPs”) without utility ownership options. Section III supports Commission adoption of the proposal for financial due-diligence review of utility bids. Section IV supports retaining the Draft Rules 50 MW threshold for energy and capacity resources. Section V supports the Draft Rules treatment of storage

resources. Section VI encourages to continue exploring ways to incorporate utility-owned transmission rights into its RFP process. Finally, Section VII encourages the Commission to retain the Draft Rules treatment of Qualifying Facilities (“QFs”).

II. The Commission’s option to bypass IE engagement for RFPs without utility-ownership bids would allow for increased flexibility.

Renewable Northwest continues to support the Draft Rules’ provision that “[t]he Commission may determine that engagement of an IE . . . is not necessary when the electric company’s RFP explicitly prohibits the submission of proposals that allow the electric company to own the resource.”¹ We have previously acknowledged that IEs can play a valuable role in the development and execution of an RFP.² However, we have also supported the adoption of rules that give the Commission the discretion to determine that an IE is not necessary for RFPs without utility ownership options.³ Oregon’s residential and industrial consumer advocates have also supported this concept.⁴

Given the Commission-recognized bias of utilities favoring owning resources,⁵ an important role of the competitive bidding process—and of the IE’s participation—is to provide confidence to potential bidders that the process is fair and transparent. The IE’s role in instilling market confidence becomes clear from review of Commission Order No. 14-149, which provides that “[a]n IE must be used in each RFP to help ensure that all offers are treated fairly” and that “[t]he IE must be independent of the utility.”⁶ The IE’s role is also clear from the current Competitive Bidding Guidelines, which direct the IE to, among other things, “independently score the utility’s Benchmark Resource (if any) and all or a sample of the bids to determine whether the selection for the initial and final shortlists are reasonable” *only* “[i]f the RFP allows affiliate bidding or includes ownership options.”⁷

Adopting rules that give the Commission discretion to avoid the cost of an IE where the RFP cannot result in utility ownership is sensible. Where utility-owned resources are not a possibility, the costs of engaging the IE may outweigh the benefits, and the Commission should have the flexibility to determine whether that cost is warranted. As a result, we encourage the Commission to adopt final rules that allow it to determine that an IE is not necessary for RFPs that cannot result in utility ownership of resources.

¹ See Draft OAR 860-089-0200(7).

² Renewable Northwest’s February 14 Comments at 2-3.

³ *Id.* at 3.

⁴ Citizens’ Utility Board of Oregon’s February 14 Comments at 2; Industrial Customers of Northwest Utilities’ February 14 Comments at 3-6.

⁵ UM 1276, Order No. 11-001 at 5 (Jan. 3, 2011) (“We too accept the premise that a bias exists in the utility resource procurement process that favors utility-owned resources over PPAs.”)

⁶ UM 1182, Order No. 14-149, Appx. A, p. 2 (Apr. 30, 2014).

⁷ *Id.* at 17 (Guideline 10(d)).

Renewable Northwest does not share the Joint Utilities’ concern that allowing the Commission to waive the IE requirement would result in a less competitive process.⁸ First, our experience in the competitive bidding process indicates that the Commission changes to draft RFPs are typically aimed at expanding, not reducing the potential pool of bidders. Second, utilities would still have an incentive to design RFPs that allow for utility ownership of resources. Finally, the rules would expressly articulate the lack of a preference for particular type of RFP.⁹ As a result, we do not agree that Draft OAR 860-089-0200(7) “will result in a less diverse solicitation.”¹⁰ Instead, the Draft Rule would give the Commission greater flexibility when the utility decides to design an RFP that could not result in utility ownership.

III. Third-party due diligence review of all parties’ RFP bids would promote fairness in the procurement process and decrease risk to customers.

Renewable Northwest continues to find merit in the concept of third-party due diligence review of RFP bids that would otherwise not undergo a similar level of review from a lending institution. For example, for certain utility ownership bids, the due diligence review could serve as an additional layer of consumer protection that ensures the same level of review required to determine whether a project would be financeable. Hence, the due diligence review proposed by NIPPC could protect utility customers from risks like construction cost overruns. As a result, we support NIPPC’s proposed language on this topic.¹¹

IV. The proposed 50 MW competitive bidding threshold will help capture the benefits of rapid technological development.

Renewable Northwest encourages the Commission to establish the project-size threshold for the Competitive Bidding Rules at a level that ensures competitive procurement processes for any significant resources. The Draft Rules would adopt a 50 MW threshold for capacity and energy resources.¹² This proposed threshold will likely result in competitive procurement of a range of new resources, driving the procurement of least-cost, least risk resources.

Additionally, we respectfully disagree with the Joint Utilities’ comments advocating for retention of the current guidelines’ 100 MW threshold.¹³ While we share the Joint Utilities’ view that less

⁸ Joint Utilities’ May 14 Comments at 10.

⁹ Draft OAR 860-089-0015(2)

¹⁰ Joint Utilities’ May 14 Comments at 8.

¹¹ NIPPC’s May 29 Comments at 13 (proposing the following language: “For each Benchmark or each bid with utility ownership on the final short list, the IE must conduct a project-finance due diligence evaluation of the type utilized by financing institutions for purposes of securing financing from reputable financing entities prior to extending project financing for major generation facilities.”).

¹² Draft OAR 860-089-0100(1).

¹³ Joint Utilities’ May 14 Comments at 5-7.

process is necessary for smaller, less costly procurements, the economics of energy resources are undergoing rapid change. Opening smaller procurements of new resources to formal competitive bidding is likely the best way to capture new, more efficient, and lower-cost technologies for the benefit of Oregon utility customers. As a result, we encourage the Commission to retain in the Final Rules the 50 MW threshold currently in the Draft Rules.

V. Renewable Northwest encourages the Commission to retain the Draft Rules’ treatment of storage in the competitive bidding process.

Renewable Northwest respectfully disagrees with the Joint Utilities’ proposed treatment of storage in the competitive bidding rules. First, the Joint Utilities argue that “no separate threshold is necessary for energy storage” and therefore propose to apply to storage the same threshold¹⁴ for energy and capacity resources.¹⁵ Second, the Joint Utilities propose that the Final Rules do not include a section specifying that the Competitive Bidding Rules apply to storage.¹⁶ Renewable Northwest encourages the Commission to reject both proposals.

V.1 Adoption of a storage-specific threshold is appropriate

Renewable Northwest encourages the Commission to adopt a storage-specific threshold for applicability of the Competitive Bidding Rules. The Joint Utilities propose to apply to storage the same threshold for more traditional energy or capacity resources. The threshold for more traditional energy and capacity resources in the Draft Rules is 50 MW, while the Joint Utilities propose an 100 MW threshold. However, both 50 MW or 100 MW are too high a threshold to determine whether the procurement of a storage resource in Oregon should be covered by the Competitive Bidding Rules.

While in the future we may see Oregon utilities procuring storage projects of that magnitude, the procurement of storage projects over 50 MW, let alone 100 MW, is unheard of in Oregon. In fact, the largest project (in terms of power rating in MW) currently proposed in Oregon is PGE’s Power System Integration project which—if approved—will have a power rating of 17–20 MW.¹⁷ Furthermore, 100 MW battery storage projects are still sufficiently uncommon as to make them newsworthy on an international level.¹⁸ As a result, we disagree with the Joint Utilities’ perspective that the same threshold that applies to other resources should also apply to storage.

¹⁴ The Draft Rules include a 50 MW threshold for energy and capacity resources, while the Joint Utilities propose an 100 MW threshold.

¹⁵ Joint Utilities May 14 Comments at 7.

¹⁶ Attachment 1 to Joint Utilities’ May 14 Comments at 5-6.

¹⁷ UM 1856, PGE’s Energy Storage Proposals and Revised energy Storage Potential Evaluation at 11 (Nov. 1, 2017).

¹⁸ See <https://cleantechnica.com/2018/01/24/100-mw-400-mwh-fluence-energy-storage-project-long-beach-worlds-largest-li-ion-battery-storage-project/>; www.utilitydive.com/news/tesla-wins-100-day-bet-to-build-129-mwh-battery-in-australia/511637/.

Renewable Northwest reiterates our understanding that megawatt-hours are a more appropriate unit for the threshold applicable to storage.¹⁹ In the context of energy storage projects, megawatts refers to the power rating of an energy storage system, while “megawatt-hours” refers to how much energy is stored; the latter appears to be more reflective of the size of a battery. As a result, we encourage the Commission to retain in the Final Rules a storage threshold stated in megawatt-hours. Finally, we do not take a position on the specific megawatt-hour threshold proposals by other stakeholders.²⁰

V.2. Specifying that the Competitive Bidding Rules apply to storage is appropriate

Renewable Northwest disagrees with the Joint Utilities’ proposal that the Final Rules do not include a section specifying that the Competitive Bidding Rules apply to storage. According to the Joint Utilities, energy storage would be covered by the Joint Utilities’ proposed definition of Major Resource.²¹ However, unlike traditional resources that can be generally categorized into generation, transmission, or distribution assets, energy storage can be all of the above—as well as load—depending on how the system is deployed. As a result, Renewable Northwest encourages the Commission to retain in its Final Rules the language in Draft Rule OAR 860-089-0100(3).

VI. Renewable Northwest encourages the Commission to continue exploring ways to incorporate utility-owned transmission rights into RFP processes.

As the Commission is well aware, stakeholders have expressed concern that utilities’ reluctance to make transmission rights (and other elements secured by the utility) available to third-party bidders casts doubt on whether RFP processes can result in the procurement of least-cost, least-risk resources.²² While there may be additional process necessary to determine the best means of ensuring that utility-owned transmission resources are deployed to the greatest customer benefit, we support the Commission’s expressed interest in continuing to engage with stakeholders and Commission counsel on this important issue.²³

More generally, Renewable Northwest encourages the Commission to explore whether it has the legal authority to go beyond encouraging utilities to “make elements secured by the electric

¹⁹ We first expressed this position in our September 22, 2017 comments as part of the informal stage of this rulemaking.

²⁰ The Draft Rules include a 25 MWh threshold while AWECC proposes a 70 MWh threshold.

²¹ Attachment 1 to Joint Utilities’ May 14 Comments at 5-6.

²² See, e.g., Docket UM 1934, Order No. 18-171 at 4 (discussing the Commission’s “increasing need to understand the technical and complex information necessary to determine whether transmission rights held for the benefit of customers are being deployed to support least cost, least risk outcomes”).

²³ See, e.g., *id.*

company . . . available for use in third-party bids.”²⁴ In this rulemaking, we have seen opposing interpretations of the Commission’s legal authority on this issue, and we understand that the last time that the Commission explored the boundaries of its legal authority was in 2006.²⁵ Since, recent proceedings have highlighted how scarcity of specific transmission assets can impact the competitive nature of utilities’ RFPs. Specifically, the scarcity of transmission rights to particular areas, and utility ownership of those rights, raised complex questions in the context of Docket UM 1934. The future may bring similar concerns about other types of assets, such as existing resource sites.

We understand that, at the March 6 workshop for this docket, the Commission expressed interest in working with its counsel to gain a greater understanding of its legal authority to go beyond encouraging utilities to make elements secured by the utility available for third-party use. For the reasons listed above, we encourage the Commission to explore this issue, including questions such as whether that authority is impacted by scarcity of a particular element, such as elements like transmission rights or resource sites, and by whether an element has been included in the utility’s rate base.

In the meantime, we also support using the Competitive Bidding Rules to encourage utilities to make their transmission rights available to third-party bidders in circumstances where that arrangement could enable the procurement of least-cost, least-risk resources.²⁶ Staff’s proposed encouragement is reasonable and appropriate under the circumstances as the Commission works to develop a more thorough understanding of this complex issue.

Finally, making utility transmission rights available to third-party bidders could lead to procurement of least-cost, least-risk resources and could maximize both ratepayer benefits and diversity of renewable resource ownership. Given this possibility, using the Competitive Bidding Rules to encourage utilities to make transmission rights available is reasonable.

VII. Renewable Northwest opposes the Joint Utilities’ suggested language on Qualifying Facilities (“QFs”) and encourages the Commission to Reject it.

Renewable Northwest encourages the Commission to retain Staff’s Draft OAR 860-089-0200(4) on QFs as filed and to reject both Joint Utility edits to this subsection. Renewable Northwest opposes the Joint Utilities’ requested edits to Draft OAR 860-089-0200(4) because they would fundamentally change the framework for participation of QFs in RFPs under the competitive bidding process. First, the Joint Utilities propose to eliminate Draft Rule language that would require utilities to allow QFs above the current eligibility threshold for standard avoided cost

²⁴ Draft OAR 860-089-0300(4).

²⁵ UM 1182, Order 06-446 at 5-6 (Aug. 10, 2006).

²⁶ See Order No. 18-127, Appx. A at 3 (Staff Report proposing amendments to OAR 860-089-0300(2) & (3)).

rates to participate in the RFP.²⁷ Second, the Joint Utilities propose to include language that would allow QFs without an executed power purchase agreement (“PPA”) to participate in the RFP and that, by implication would exclude QFs with executed PPAs.

VII.1. Renewable Northwest Supports Final Rules that Allow All QFs Above the Eligibility Threshold for Standard Avoided Cost Rates to Participate in Utility RFPs.

We encourage the Commission to adopt rules that allow QFs above the eligibility threshold for standard rates to participate in utility RFPs, consistent with the spirit of the Competitive Bidding Guidelines. Under Competitive Bidding Guideline 6, “[QFs] larger than 10 MW must be allowed to participate” in utility RFPs.²⁸ The Commission adopted this language to allow participation of QFs above its limit for standard avoided cost rates and standard contracts, at a time when the limit was 10 MW for all QFs.²⁹ Since, the Commission decreased the threshold for standard avoided cost rates from 10 MW to 3 MW for solar QFs.³⁰ Staff’s Draft OAR 860-089-0200(4) seeks to retain the intent of Competitive Bidding Guideline 6 by ensuring that the rules allow for RFP participation of all QFs³¹ above the threshold for standard avoided cost rates. As a result, we encourage the Commission to reject the Joint Utilities’ proposed edits and retain Staff’s proposed Draft OAR 860-089-0200(4).

VII.2. Limiting Participation by QFs with Executed PPAs in the Competitive Bidding Rules is Not Appropriate.

Renewable Northwest encourages the Commission to reject the Joint Utilities proposal to exclude all QFs with executed PPAs from participation in utility RFPs. Firstly, Renewable Northwest is not aware of any discussion of this proposal throughout the informal or formal phases of this rulemaking prior to the Joint Utilities’ comments submitted in May 14. Secondly, the Joint Utilities argue that excluding QFs with executed PPAs from participation in utility RFPs is appropriate because QF’s with PPAs are accounted for in utility resource planning.³² However, even if the utility has accounted for QFs with PPAs in its planning process, not all of those QF PPAs will materialize. In fact, recent utility efforts have tried to account for that reality

²⁷ Attachment 1 to Joint Utilities’ May 14 Comments at 8-9.

²⁸ UM 1182, Appendix A to Order 14-419 at 2 (Apr. 30, 2014).

²⁹ UM 1182, Order 06-446 at 8-9 (DATE) (“[the Oregon Department of Energy (“ODOE”)] contends that all resources over 10 MW should be allowed to bid, in order to be consistent with the Commission’s limit for standard avoided cost rates and standard contracts for Qualifying Facilities . . . We agree with ODOE with respect to qualifying facilities under the Public Utility Regulatory Policies Act, and include language that prohibits utilities from excluding Qualifying Facilities larger than 10 MW from participating.”

³⁰ This decrease has an interim nature for Portland General Electric while the Commission issues an order in Docket UM 1854.

³¹ Including solar QFs larger than 3 MW and all other QFs larger than 10 MW.

³² Attachment 1 to Joint Utilities’ May 14 Comments at 8-9.

in resource planning.³³ Therefore, even though a utility may plan for all QF PPAs to come online, this is unlikely to be the case, and so does not justify the exclusion of QFs with executed PPAs. For these reasons, we encourage the Commission not to adopt the utilities’ proposed language in the Final Rules.

VIII. Conclusion

Again, Renewable Northwest thanks the Commission for the opportunity to provide these comments. We look forward to continued engagement with the rulemaking process and with procurement processes under the new rules.

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³³ LC 66, PGE’s Revised Addendum to 2016 IRP at 17 (Nov. 9, 2017) (“Consistent with the methodology in the 2016 IRP, as a base assumption, the Company assumes that all contracts executed prior to a recent cut-off date (October 19, 2017 for the current snapshot) result in successful projects that come online by the estimated commercial online date. PGE has traditionally employed this assumption for both QF and non-QF contracts in the IRP. *In practice, there are a number of development and financial uncertainties that could affect the success rate of the QF projects coming online. To understand the sensitivity of PGE’s near-term needs to these uncertainties, the Company conducted a simple sensitivity analysis in which a fixed fraction of projects that are executed but not yet online are assumed to be successful. This analysis is shown below, assuming 100%, 75%, and 50% success rates.*”).