

May 12, 2017

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3398

Attn: Filing Center

RE: AR 600/UM 1776 – PacifiCorp’s Comments

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) appreciates this opportunity to provide comments in response to the proposal of Staff of the Public Utility Commission of Oregon (Commission) regarding the scope of UM 1776 and AR 600. In addition, these comments object to proposals contained in Northwest and Intermountain Power Producers Coalition’s (NIPPC) May 10, 2017 comments and correct major inaccuracies contained in those comments.

I. BACKGROUND

The existing competitive bidding guidelines have been the subject of investigation for over 10 years. The final order of UM 1182, the Commission’s last investigation into the competitive bidding process, was issued in 2014. Unlike NIPPC’s claim that this “serial investigation” has been “ultimately futile,”¹ the Commission’s careful consideration of the competitive bidding process has resulted in guidelines that promote a fair process that does not predetermine winners or losers. Without any changes, the existing competitive bidding process is fair. PacifiCorp does not, however, oppose Staff’s recommendation to proceed with a narrow investigation of specific aspects of the competitive bidding guidelines. Staff’s proposal reasonably focuses on minor process modifications without opening up the entire scope of the well-litigated competitive bidding process to further investigation.

Importantly, Staff’s recommendation focuses on the competitive bidding process, and not the outcome. NIPPC’s continued requests for a process that guarantees an outcome for independent power producers flies in the face of the Commission’s stated intent for a competitive bidding process that is fair and transparent and results in least-cost, least-risk resources for customers. NIPPC’s myopic focus on the outcome ignores the fundamental question of whether the process is fair, and NIPPC’s proposal would, not surprisingly, result in a process that is anything but fair. To claim that the competitive bidding process is unfair based entirely on the results of the outcome of a competitive bidding process is like the Los Angeles Lakers blaming their four-season losing record on the rules of game, rather than the fact that the Laker’s performance simply is not at the same level as their competition. The fact that utility-owned resources have

¹ NIPPC Comments at 10.

won requests for proposals (RFPs) or that NIPPC disagrees with the outcome of an RFP does not, on its own, mean that the competitive bidding process is unfair.

NIPPC's Attachment A attempts to distort the balance of utility versus non-utility ownership by footnoting how PacifiCorp purportedly sidestepped the competitive bidding guidelines to add multiple utility-owned resources and quietly notes that "power purchase agreements were executed with qualifying facilities". It should be noted that during that 2007 to 2009 period, PacifiCorp executed 329 MW of qualifying facilities (QF) power purchase agreements, and this figure has grown to 1,750 MW of QF projects under contract by 2017.

II. COMMENTS

A. NIPPC continues to intentionally distort the plain language of Senate Bill (SB) 1547.

NIPPC continues to claim that SB 1547 requires diversity of resource ownership.² The full text of the relevant provision of SB 1547 is contained below:

The commission shall adopt rules . . . [p]roviding for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity.³

NIPPC's comments are littered with inaccurate references to the statutory language. For example, NIPPC states that the Commission opened dockets UM 1776 and AR 600 to "implement Senate Bill 1547's requirement to adopt administrative rules that allow for diversity of generation ownership."⁴ This statement intentionally leaves out a critical component of the language of SB 1547: the requirement that the rules provide for the *evaluation* of the competitive process. SB 1547 does not require diversity of generation ownership. Similarly, NIPPC goes on to state that "the legislature has codified a specified goal: 'diverse ownership,'"⁵ which is simply not true and is not supported by the statutory language. Confusingly, NIPPC's comments also seem to acknowledge that SB 1547 only requires adoption of rules for the evaluation of the competitive bidding process,⁶ but then goes on to again mis-state the statutory requirement by recommending the Commission identify a standard for determining "whether the overall competitive bidding process *results* in diverse ownership."⁷ NIPPC's characterizations of SB 1547's requirements are incorrect.

² For example, NIPPC's comments state that the Commission opened UM 1776 and AR 600 to "implement Senate Bill 1547's requirement to adopt administrative rules that allow for diversity of generation ownership." This statement intentionally leaves out a critical component of the language of SB 1547: the requirement that the rules provide for the evaluation of the competitive process. SB 1547 does not require diversity of generation ownership. See NIPPC Comments at 8-9. Similarly, NIPPC goes on to state that the legislature has codified a specified goal: "diverse ownership."

³ See B-Engrossed SB 1547 (SB 1547-B), Section 6, 4(d).

⁴ NIPPC Comments at 8-9.

⁵ NIPPC Comments at 9.

⁶ NIPPC Comments at 9-10.

⁷ NIPPC Comments at 10, emphasis added.

The plain language of SB 1547 contains no mandate for diverse ownership of renewable energy sources, nor does it require changes to the competitive bidding process. The only requirement contained in SB 1547 with regard to competitive bidding is for the Commission to adopt rules providing for the *evaluation* of the competitive bidding process to ensure the process *allows for*—but does not require—diverse ownership. If the legislature intended to require diverse ownership, it could have done so. Indeed, in this legislative session, the Legislative Assembly failed to pass legislation championed by NIPPC that would have limited utility ownership of new generation resources, instead adopting a significantly revised version of the bill that imposes no limitation on utility-ownership of generating resources.⁸ NIPPC’s continued and intentional misrepresentation of the plain language of SB 1547 is inappropriate and obfuscates the true directive contained in SB 1547, which is to evaluate, rather than change, the existing competitive bidding process that already allows for diverse ownership options. PacifiCorp acknowledges the Commission’s stated interest in converting the existing guidelines to rules⁹ and does not dispute that the Commission has the authority to make changes to the competitive bidding process as part of the conversion, but objects to the continued and intentional insistence by NIPPC that diversity of ownership is required by SB 1547; it is not.

B. The Commission should reject NIPPC’s request for a five percent set aside for independent power producers.

NIPPC requests the Commission adopt a standard for determining whether an RFP *results* in diversity of ownership.¹⁰ NIPPC states that the metric does not need to specify an exact percentage of non-utility ownership that qualifies as diversity, but recommends the Commission adopt a five percent threshold: if a bidding process does not yield at least five percent non-utility-owned resources, the bidding process does not *result* in diversity of ownership.¹¹ Again, NIPPC misapplies the statutory mandate and focuses instead on the results of an RFP rather than the RFP process. There is no legal mandate for an RFP to *result* in diversity of ownership. So long as the competitive bidding process *allows* for diversity of ownership, the legal requirement has been met. Focusing on the results of the RFP is not legally required, distorts the purpose of the competitive bidding process, and is beyond the Commission's role in overseeing RFPs, which is to ensure a fair and transparent process for selection of least-cost, least-risk resources, not guaranteed outcomes for developers regardless of cost or risk. The Commission should reject NIPPC’s proposal.

C. The Commission should reject NIPPC’s “conditions” on its support of the scope of this proceeding.

NIPPC states that it can only support Staff’s proposed scope if certain conditions are met. NIPPC’s first condition is that the Commission conclude the rule making before PacifiCorp and Portland General Electric Company (PGE) issue RFPs. NIPPC’s second condition is that the

⁸ See Senate Bill 978.

⁹ Order No. 16-188 at 2.

¹⁰ NIPPC Comments at 9-10.

¹¹ NIPPC Comments at 10, emphasis added.

Commission investigate the competitive bidding process and “adopt stronger rules and other solutions” if the utilities’ upcoming RFPs do not *result* in diverse ownership.¹² NIPPC’s first condition is impractical from a timing perspective. If the Commission adopts Staff’s proposed scope, the parties should be given adequate time to address the issues. Even under the most accelerated of procedures, PacifiCorp and PGE are on track to issue RFPs in the near term and it is unlikely that new competitive bidding rules could be adopted in time for the utilities to incorporate the new rules into their RFPs. NIPPC’s second condition inappropriately focuses on the outcome of the RFPs rather than the process. PacifiCorp recommends the Commission revisit the competitive bidding rules after the conclusion of the utility’s RFPs only if the Commission believes the process was not fair for all participants.

D. Utilities should not be required to engage a third-party to evaluate the financial viability of utility-owned options.

PacifiCorp does not support using an additional third-party evaluation on the utility-owned option as part of the RFP process. NIPPC’s additional due diligence is repetitive, time-consuming, and would increase costs to customers.

Selection of an Independent Evaluator (IE) in conjunction with the Commission staff and non-bidding parties provides ample opportunities to ensure an experienced and reputable IE is selected to ensure RFPs are implemented fairly by completing the explicit tasks outlined in the current guidelines.

The competitive bidding guidelines already provide for significant due-diligence by the IE through all phases of the RFP, from the design of the RFP to modeling and cost assumptions to the final selection and closing reports, including analysis of risk factors associated with a project’s development, construction, and operation. In addition, the IE conducts an independent evaluation and stress test on multiple risk factors during the final selection process on benchmark resources. Specifically, the guideline calls for the IE to independently evaluate the risks or advantages of a benchmark resource, including regulatory treatment of costs and benefits related to actual construction cost and operation that may differ from what was proposed in an RFP.¹³

The additional due diligence proposed by NIPPC and used by investors and lenders is done for a very different purpose than a Commission decision on the procurement of resources for utility customers and does not consider the type or level of risk assessment already required under the competitive guidelines for utility-owned options. Private lenders who provide financing are interested in the downside risk of the transaction and are most concerned with getting their money paid back. Private investors taking an equity position have a different agenda, seeking to identify the risks that affect the upside of their investment when considering potential financial returns. This due diligence designed for lenders and investors is already undertaken by the IE as

¹² NIPPC Comments at 4, emphasis added.

¹³ Order No. 06-046, UM 1182 Competitive Bidding Guidelines, Appendix A, 10.d.

part of their tasks, but, in addition, the IE takes into account regulatory treatment and the appropriate provisions for risk management and risk allocation as required under the guidelines.

III. CONCLUSION

PacifiCorp appreciates the opportunity to provide these comments and reiterates that while the existing competitive bidding process is fair, the Company does not oppose Staff's proposal to proceed with a narrow investigation of specific aspects of the competitive bidding guidelines. Staff's recommendation focuses on minor process modifications to the existing competitive process and is reasonable. NIPPC's requests for substantive process changes that guarantee an outcome for independent power producers is inconsistent with a process that is fair and transparent and results in least-cost, least-risk resources for customers. The Commission should reject NIPPC's proposals.

Respectfully submitted,

A handwritten signature in cursive script that reads "Etta Lockey" followed by a vertical line and the initials "NES".

Etta Lockey
Senior Counsel
Pacific Power

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's Comments on the parties listed below via electronic mail and/or or overnight delivery in compliance with OAR 860-001-0180.

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Dated May 12, 2017.


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