

January 16, 2018

VIA ELECTRONIC FILING

Attention: Commissioner Lisa Hardie, Chair
Commissioner Steve Bloom
Commissioner Megan Decker
Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301

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

Dear Commissioners:

Idaho Power Company (Idaho Power or Company) submits this letter to the Public Utility Commission of Oregon (Commission) to express its concerns regarding the draft rules issued by Staff on January 4, 2018 (Draft Rules), and to request that the Commission decline to initiate a formal rulemaking at this time.

Idaho Power appreciates the time and energy Staff has spent in meeting with stakeholders to identify issues, as well as Staff's efforts in crafting a comprehensive set of proposed rules. However, Idaho Power believes that the Draft Rules are flawed and require major revisions before they are ready to be published with the Secretary of State. Specifically, Idaho Power's chief concerns with the Draft Rules include:

- ***Anti-utility ownership bias.*** The Draft Rules impose undue burdens on requests for proposals (RFP) that include utility ownership options, and require heightened scrutiny of utility bids.
- ***Increased time and expense for competitive bidding.*** The Draft Rules significantly extend the duration of competitive bidding proceedings, substantially adding to the overall amount of time and expense required for resource acquisition.
- ***Implying utilities must make their property available to other bidders.*** The Draft Rules inappropriately require utilities to offer explanations to the Commission if they choose not to make elements of benchmark bids available to third-party bidders.

- **Reduced threshold of 50 MW.** The Draft Rules reduce the threshold for application of the competitive bidding rules from 100 MW to 50 MW, thus requiring an extremely lengthy and expensive process for relatively small resource acquisitions.
- **Potential inclusion of transmission resources.** The Draft Rules are written broadly enough that they could be applied to utility acquisition of transmission resources, adding an unnecessary additional hurdle to already-lengthy processes for siting and acquiring transmission lines.

Idaho Power believes that these aspects of the rules are inconsistent with the Commission's longstanding policies articulated in its Competitive Bidding Guidelines and associated orders,¹ and that they are inconsistent with the Commission's directions as to the intended scope of this docket.² For these reasons, Idaho Power asks the Commission to provide policy direction to Staff and the parties, to assist them in working together toward acceptable proposed rules.

A. The Draft Rules Incorporate an Anti-Utility Bias

Historically, this Commission has endeavored to adopt competitive bidding rules that are understandable and fair, in order to promote the level of competition necessary to ensure the selection of least cost resources for utility customers.³ Unfortunately, Staff's Draft Rules significantly depart from the principle of fairness by imposing additional burdens on bidding processes where utility ownership is a possible outcome.

Specifically, Staff has proposed the following provisions imposing additional burdens on bidding processes where utility ownership is an option:

- An independent evaluator (IE) is required in all competitive bidding processes that could result in utility ownership; on the other hand, the Commission may determine that an IE is not required when the RFP **"explicitly prohibits the submission of proposals that allow the electric company to own the resource that is the subject of any bid or acquire an ownership interest in the resource at a later date."**⁴
- The IE must score **all** bids where utility ownership is an option,⁵ whereas the existing competitive bidding guidelines require independent scoring for only a sample of bids.⁶

¹ *In the Matter of an Investigation into Competitive Bidding by Investor-Owned Electric Utility Companies*, Docket No. UM 316, Order No. 91-1383 (Oct. 18, 1991); *In the Matter of an Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 06-446 (Aug. 10, 2006); *In the Matter of Pub. Util. Comm'n of Or. Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 14-149 (Apr. 30, 2014); see also *In the Matter of Pub. Util. Comm'n of Or. an Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build-vs.-Buy Bias*, Docket No. UM 1276, Order No. 11-001 (Jan 3, 2011).

² Order No. 17-173 at 1-2.

³ See Order No. 91-1383 at 6; see also Order 06-446 at 2.

⁴ Draft Rules, OAR 860-0XX-0200(7).

⁵ Draft Rules, OAR 860-0XX-0400(5)(b).

⁶ Order No. 14-149.

- The IE must perform a “financial due diligence” review of all bids on the final shortlist that provide for the possibility of utility ownership, whereas the same financial review is conducted on a bid with no utility ownership option only if that final bid is selected for contract negotiations.⁷

The first two of these provisions incorrectly suggest that the IE’s purpose is to guard against utility bias in the RFP process, as opposed to generally promoting fairness and transparency. Moreover, all of these rules would result in a higher cost to issue an RFP that does not prohibit utility ownership—thereby tilting the competitive field against inclusion of a utility ownership option. The combined impact would be to distort the competitive bidding process, and undermine the goal of selecting the least-cost least risk resource—all to the detriment of utility customers.

B. The Draft Rules Increase the Timeline and Expense of Competitive Bidding

Staff’s Draft Rules would *substantially* expand the amount of time required to complete the competitive bidding process. For an RFP under the existing competitive bidding guidelines, it appears that the entire RFP process could be completed in about a year or less.⁸ Under Staff’s proposal, the process is lengthened to about **18 months**, unless the Commission grants an extended period for the RFP approval process, in which case the process may take up to **22 months**. In Idaho Power’s experience, the materials procurement and construction process for a large project can be quite lengthy in duration, ranging anywhere from 2 to 3 years. Expanding the existing RFP process by an additional 6 to 10 months would make resource planning significantly more challenging.

In addition, the Draft Rules increase the expense of the competitive bidding process. First, a longer process will necessarily require additional legal and regulatory resources. Moreover, as discussed above, the rules significantly expand the IE’s role by requiring the IE to independently score all bids if the RFP allows for utility ownership, and to perform financial due diligence reviews of all bids on the shortlist that allow for utility ownership as well as of all bids that will be selected for contract negotiations. Idaho Power is concerned that these additional tasks could result in millions of dollars of additional expense. Idaho Power asks the Commission to carefully consider the costs associated with these new proposals, which will ultimately result in real impacts to customers.

C. The Draft Rules Imply Utilities Must Make Utility Property Available to Bidders

The Draft Rules require that utilities provide the Commission with an explanation if they decline to make elements of a benchmark resource available to other bidders.⁹ Idaho Power recognizes that the Commission has at times encouraged utilities to make such elements

⁷ Draft Rules, OAR 860-0XX-0400(5)(b).

⁸ See, e.g., *In the Matter of PacifiCorp, dba Pac. Power Request for Proposals*, Docket No. UM 1845 (while this proceeding is on-going, it appears that the schedule contemplates a year or less from start to finish).

⁹ Draft Rules, OAR 860-0XX-0300(2); see also OAR 860-0XX-0300(3) requiring a similar explanation if utility ownership is an option and utility declines to make utility property or resources available to third-party bidders.

available to third-party bidders. And it is possible that under appropriate circumstances the Company might choose to do so. However, Idaho Power also believes that it is the utility's prerogative to determine if and when to provide access to third parties to utility property, and that there could be many reasons why it would legitimately decline to do so. Moreover, the Company believes that the Commission would have no legal basis to require the utility to provide such access.

Staff's proposed provision suggests that a utility must provide access to its property to third parties—or at least persuade the Commission that its decision not to do so is the correct one. This suggestion is inappropriate and should not be included in Commission rules.

D. The Threshold for Application of the Rules is Inappropriately Low

The current guidelines apply to Major Resources—which are defined as resources of at least 100 MW with a length of at least 5 years.¹⁰ Staff's Draft Rules reduce the size threshold to 50 MW.¹¹ This is a significant decrease, and one for which Staff has provided no clear justification.

Idaho Power's 2017 Integrated Resource Plan (IRP) Preferred Portfolio includes the addition of 54 MW reciprocating engines in 2035 and 2036. These projects are small enough that a multi-million-dollar competitive bidding process could have a disproportionate impact on project economics. This added expense—along with the required 18 to 22-month regulatory process—would unduly burden such simple and relatively small resource acquisitions.

Idaho Power believes that the current Major Resource definition provides a reasonable threshold for the competitive bidding process. The proposed rule is untenable.

E. The Draft Rules Appear to Inappropriately Apply to Transmission Resources

The Draft Rules eliminate the existing definition of a Major Resource, which has been applied only to energy resources. Staff proposes that the new competitive bidding rules apply to "energy or capacity resources,"¹² which is broad enough to include transmission resources. It is not clear whether Staff even intended for this broad language to also encompass transmission, as there has not yet been any explanation or discussion of this issue. Idaho Power (along with Portland General Electric and PacifiCorp) proposed redline revisions to clarify that transmission resources were not included, but Staff did not address this issue in the most recent version of the Draft Rules.

Idaho Power believes that the Draft Rules need to clarify that they do not apply to transmission resources. There is not currently a competitive market for ownership or operation of transmission lines in the Pacific Northwest. Therefore, the justification for requiring the Commission's competitive bidding process is not applicable. Moreover, the state and federal siting processes for large transmission lines is extraordinarily lengthy, creating significant challenges for project timing. Adding a lengthy OPUC competitive bidding process to the

¹⁰ Order No. 14-149, App. A at 1.

¹¹ Draft Rules, OAR 860-0XX-0100(1)(a).

¹² Draft Rules, OAR 860-0XX-0100(1).

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existing regulatory processes would prove extremely burdensome and could possibly undermine the utility's ability to complete the project altogether.

For the foregoing reasons, Idaho Power urges that the Draft Rules are not yet ready for formal rulemaking. Idaho Power asks that the Commission to provide Staff and the parties with policy direction on the issues raised by these Draft Rules, and direct parties to continue to work on the rules informally before initiating a formal rulemaking. Idaho Power looks forward to continuing to work with stakeholders on these critical issues.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Lisa Rackner', with a large, stylized flourish at the end.

Lisa Rackner

Attorney for Idaho Power Company