

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 600

In the Matter of

Allowances for Diverse Ownership of
Renewable Energy Resources

Staff Opening Comments

The Public Utility Commission of Oregon Staff (Staff) files these opening comments in Docket No. AR 600, Allowances for Diverse Ownership of Renewable Energy Resources. These opening comments respond to major policy issues related to competitive bidding requirements raised in a notice dated January 25, 2018, from the Administrative Hearings Division of the Public Utility Commission of Oregon.

Procedural History

Staff commenced informal rule development in AR 600 by facilitating multiple workshops with stakeholders, focusing on the issues described in Commission Order No. 17-173,¹ and the competitive bidding guidelines in general. Staff circulated an informal draft of competitive bidding rules, resulting from the initial workshops, to stakeholders on August 21, 2017. Staff received a series of written comments back from stakeholders in September 2017. Staff then held several more workshops to discuss informal draft rule components and potential changes. Staff subsequently developed a final informal draft,² which was presented before the Commission on January 17, 2018. At the public meeting on January 17, 2018, the Commission adopted Staff's recommendation to open the formal rulemaking, with an anticipated timeframe for the rulemaking to extend from 90 to 150 days.

Major Policy Issues

The following are Staff's responses to certain major policy issues related to competitive bidding requirements, as requested by the Administrative Hearings Division in the notice issued on January 25, 2018.

¹ Commission Order No. 17-173: <http://apps.puc.state.or.us/orders/2017ords/17-173.pdf>.

² Commission Order No. 18-015: <http://apps.puc.state.or.us/orders/2018ords/18-015.pdf>.

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?

Staff believes that one of, if not the primary, reasons for proscribed competitive bidding requirements is the protection against any potential bias on behalf of an electric company towards utility-owned resource proposals.³ The Commission has recognized this rationale in previous orders and decisions.⁴

The utility-ownership bias is rooted in the basic economic incentives that are foundational to the regulated rate-of-return system. Oregon's regulated, investor-owned utilities can be confident of a rate-of-return applied to any owned, used and useful capital assets in rate base, assuming the utility has acted prudently in acquiring and operating these capital assets. This regulatory mechanism is grounded in early policy directives to invest in an electric system that is reliable and can serve all customers throughout a utility's service territory.

Therefore, where an electric company faces an energy or capacity resource decision, the shareholders of that electric company benefit when the resource selected will be utility-owned, rather than owned by a third party. If the electric company chooses the utility-owned resource, and builds and operates it prudently, the utility will accrue a return on that asset for its entire used and useful life. If, on the other hand, the electric company chooses a third party-owned resource, there will be no return on spending for that resource for shareholders. The implications for shareholders of the two results are clear, i.e., return on a rate-based capital investment is preferable to a contract to purchase power from a third party.

It has been historically well understood by this and other utility Commissions and states that competitive bidding rules serve to reduce the potential for the inherent utility preference for utility ownership to influence the energy and capacity decision-making process.⁵ The reason the Commission desires to see this natural bias protected against is that third party-owned resources may sometimes be lower cost or lower risk, or both, as compared to utility-owned resources. Competitive bidding rules serve to protect customers against the potential for a lower cost or lower risk non-utility-owned proposal being negatively impacted, scored, or disqualified in the competitive bidding process due to the utility's natural incentive to favor utility-owned resources.

³ *In the Matter of Public Utility Commission of Oregon, Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 14-149 at 1 (April 30, 2014).

⁴ *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).

⁵ States that have or have had formal rules or guidance for competitive bidding or utility resources include Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Illinois, Maine, Maryland, Massachusetts, Montana, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, and Washington; See *Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices*, Tierney et. Al., Analysis Group, July 2008, p. i.

It is also clear from recent experience that some low-cost or low-risk energy and capacity resources may not participate in a competitive bidding process, but may offer compelling products through a bilateral negotiation.⁶ Staff considers it important to allow utilities to consider and propose these types of bilateral negotiations, outside of the competitive bidding process.

Accordingly, Staff is of the opinion that if a resource procurement process does not allow for utility ownership, the need for full adherence to our competitive bidding requirements may be obviated. If the potential for any bias towards selection of a utility-owned asset is eliminated by virtue of an RFP that does not contemplate utility ownership, then Staff is confident that the incentives will be naturally and appropriately aligned, and that the professional staff of the electric company will seek to make reasonable resource decisions. Where there is no possibility of utility ownership, the electric companies' assumed goal is to lower costs and risk as much as possible. Allowing electric companies to acquire resources outside of the competitive bidding process in select situations presents the additional benefit of opening the resource procurement process up to energy and capacity resources that might not otherwise participate in an open competitive process.

Staff considers the option for an exemption to be a feature that injects flexibility into Oregon's resource procurement options, essentially allowing utilities to by-pass parts of the competitive bidding process for certain types of resources, and avoid incurring unnecessary expense. Conversely, utility stakeholders have characterized this flexibility as a bias against utility-owned resources. Staff does not agree; nothing in the draft proposed rules prohibits or discourages an electric company from developing an RFP that allowed for a contemplated utility ownership of resources. The proposed rules simply allow exemption from parts of the competitive rulemaking process under specific circumstances where the potential for bias in favor of utility ownership is not present.

Under draft proposed OAR 860-0XX-0200(7), "The Commission may determine that engagement of an IE under this rule is not necessary when the electric company's 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."⁷

By any plain reading, the proposed rules do not require or express a preference on whether or not this type of exemption should be pursued, nor do they indicate whether or not a utility should seek utility-owned capacity or energy resources. Staff does not consider providing for additional optionality when the potential for bias in favor of utility ownership is reduced to be a bias against utility ownership.

⁶ See *In the Matter of Portland General Electric Company Application for Waiver of the Competitive Bidding Guidelines*, Docket No. UM 1892, Application for Waiver of the Competitive Bidding Guidelines, at 2.

⁷ See Order No 18-015, Appendix A, p.8.

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?

Staff considers the engagement of an IE to be valuable in all circumstances; however, Staff believes that the draft rules properly balance the circumstantial need for an IE with the costs associated with engagement of an IE.⁸ As discussed above, Oregon's competitive bidding rules exist in part to help ensure that the lowest-cost, lowest-risk resources are selected in the context of clear economic incentives that favor utility ownership. The IE is most important when utility ownership is contemplated as part of the RFP process. In that situation, the IE works to help the Commission evaluate the fairness of the process and to ensure that if utility-owned options are selected, they truly represent the least-cost, least-risk proposal.

Staff has extensive direct experience with the IE community and has worked with IE service providers in the course of many RFPs. Generally, this has been a very positive experience. Professional IEs tend to add extensive knowledge to the RFP process, tend to improve the quality of RFPs, making them more effective tools, and tend to improve the proposal evaluation process. The IE is consistently an important resource for Staff and the Commission, particularly where the IE can bring experience to bear from other jurisdictions and other utilities.

However, the IE must be contracted with, and the limited number of qualified IE service providers are experienced professionals who command high hourly fees. Accordingly, though in an ideal world Staff, the Commission, and electric companies would have the support of an IE on every RFP, Staff believes that it is appropriate to limit the use of the IE to only those RFPs where they are most needed, because the costs associated with engagement of the IE will be passed on to ratepayers.⁹

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

Staff has consistently argued as a matter of public policy that utility-owned sites, which are to be utilized in benchmark or utility-owned bids, be made available to all qualified third-party bidders regardless of ownership structure.

"As a matter of policy, staff recommends that the Commission encourage the electric utilities to offer their sites for third party development. Staff believes this practice could provide value to ratepayers....Such a provision in a utility RFP may be viewed favorably by the Commission when they

⁸ IE costs in specific dockets are typically treated as protected information, but can easily reach \$100,000.00 or more over the course of an RFP.

⁹ Staff recognizes that the engagement of an IE could or likely results in a net savings for customers, due to improved RFPs that increase competitiveness and result in lower bids. However, this "savings" is difficult to identify or calculate with specificity in advance.

seek RFP approval and, if adopted by the Commission, acknowledge [the final] list of bids with which the utility will pursue negotiations.”¹⁰

The purpose of an RFP is to identify the lowest-cost, lowest-risk resource option. If utility-owned sites are made available to other bidders, then the RFP process is likely to produce more bids, more competition, better terms and lower prices. Ultimately, the customer will benefit.

To date, Staff has not been presented with any public policy rationale for limiting the use of utility-owned sites to utility-owned or benchmark bids. Accordingly, Staff recommends that all utility-owned sites utilized for benchmark or utility-owned proposals be made available to other bidders. However, as the Commission has recognized in previous decisions, there may be legal implications to requiring that utility-owned property be made available to third parties.¹¹ Out of an abundance of caution, the draft proposed rule does not require that these sites be offered to third parties.

Under the draft proposed rule, utilities are simply required to explain why it is in the public interest not to offer the site, if said site will be utilized for a benchmark or utility-owned proposal:

“An electric company may propose a benchmark resource in response to its RFP to provide a potential cost-based alternative for customers. If the electric company proposes a benchmark resource but will not allow third-parties to submit bids using elements of the benchmark resource owned or secured by the electric company (e.g. site, transmission or fuel arrangements) the electric company must include with its draft RFP filing under OAR 860-)XX-0250 a statement explaining why it would not be in the interests of the electric company’s customers to make such elements available for use in third-party bids for resources to be owned by the electric company or owned by third parties after construction.”¹²

In this way, the Commission can examine the utility rationale for limiting use of the site. Utilities are in no way compelled to offer the site to third parties under this proposed rule. However, such a requirement would be likely to lead to more bids, more competitive RFPs, and lower prices for energy and capacity resources.

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

Currently, the draft proposed rules are limited to energy and capacity resources of a certain size and duration.¹³ The previously adopted guidelines in effect today, upon

¹⁰ *In the Matter of Public Utility Commission of Oregon, Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Staff Comments at 7 (October 21, 2005).

¹¹ Order No. 06-446 at 6 (August 10, 2006).

¹² See Order No 18-015, Appendix A, p.10.

¹³ See Order No 18-015, Appendix A, p.7, OAR 860-0XX-0100 (1).

which Staff's proposed rules are based, include language that ensures that competitive bidding guidelines apply universally to all major resource acquisitions:

"A utility must issue an RFP for all Major Resource acquisitions identified in its last acknowledged IRP. Major Resources are resources with durations greater than 5 years and quantities greater than 100 MW."¹⁴

The draft proposed rules are consistent with current guidelines. "100 MW" resources are generally understood to refer to energy or capacity resources. Staff believes that it is clear that a transmission infrastructure project that is not a capacity or energy resource, or qualifying storage, is not subject to the draft competitive bidding rules. Staff notes, however, that current guidelines could be read even more expansively than the proposed scope of "energy and capacity" resources.

Staff is open to expansion of these rules to include transmission projects. In theory, there is no reason to limit competitive bidding rules to generating resources. In other parts of the county, there are several established and experienced transmission construction and operation firms. Staff believes that an RFP process, properly designed and implemented, could result in lower cost or lower risk transmission projects due to the competitive forces that are intrinsic to an RFP. Staff is interested in the comments of other stakeholders on this point.

This concludes Staff's Opening Comments.

Dated this 14th of February 2018.


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¹⁴ *In the Matter of Public Utility Commission of Oregon, Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 14-149 Appendix A at 1 (April 30, 2014).