

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 600/UM 1776

In the Matter of)	
)	
Rulemaking Regarding Allowances for)	NORTHWEST AND
Diverse Ownership of Renewable Energy)	INTERMOUNTAIN POWER
Resources)	PRODUCERS COALITION
)	COMMENTS
)	
In the Matter of Public Utility Commission of)	
Oregon)	
)	
Investigation of Competitive Bidding)	
<u>Guidelines Related to Senate Bill 1547</u>)	

I. INTRODUCTION AND SUMMARY

The Northwest and Intermountain Power Producers Coalition (“NIPPC”) submits these comments recommending that the Oregon Public Utility Commission (the “Commission” or “OPUC”) consider and adopt modest changes to its competitive bidding process for inclusion in administrative rules that could mitigate some of the adverse impact of utility bias in favor of utility-owned generation (“UOG”) and against diversity of generation ownership. NIPPC recommends that the Commission adopt Staff’s proposed scope of issues, which includes a limited number of important and substantive issues raised by stakeholders.¹ Also, in addition to consideration of the four issues raised by Staff, the Commission: 1) should define and adopt a standard to evaluate

¹ NIPPC notes that the utilities’ proposals to increase their own flexibility and reduce the opportunity for stakeholders to review and influence the request for proposal (“RFP”) process were included within Staff’s scope of issues. While NIPPC strongly opposes many of these recommendations, NIPPC is not seeking to prevent the utilities from raising their concerns.

whether the competitive bidding process allows for diversity of ownership of generation resources,² as Senate Bill 1547 requires; and 2) consider requiring that all utility-owned generation options on the shortlist be subjected to a thorough review by a highly qualified consultant with expertise in project finance that conducts a complete project-financing due diligence of the bid's costs and performance assumptions, which does not occur in the current request for proposals ("RFP") process.

As explained below, the need to improve the competitive bidding process to allow for diverse ownership of resources should be obvious. To date, the existing competitive bidding guidelines ("RFP Guidelines") have resulted in almost 95-percent utility-owned generation "winning" the utility-run RFPs in Oregon.³ Since the adoption of the RFP Guidelines, Oregon's only significant exceptions to utility ownership have been the power purchase agreements mandated by the requirements of the Public Utility Regulatory Policies Act. Contrary to the basic rules of economics and the experience of history, the RFPs have somehow consistently reached the conclusion that the least-cost and least-risk generation supply is virtually always resources owned and operated by monopoly utilities rather than their competitors in the generation sector.

As one might expect from these results, the competitive market has no confidence that the current RFP Guidelines are fair, will ever allow for diverse ownership, or that the Commission's policy will result in the least-cost and least-risk portfolio for ratepayers.

There are very real impacts to Oregon ratepayers resulting from the utilities'

² ORS § 469A.075(4)(d).

³ Attachment A (Results from RFPs run under Competitive Bidding Guidelines). This does not include resource acquisitions that were abandoned after the utility withdrew the RFP because of objections to the resource, including objections to the fairness of the process.

anticompetitive behavior, including the acquisition of riskier and costly resources like the Carty generation station. In addition, even the mere appearance of unfairness harms the market and will eventually limit the effort and resources the utilities' competitors are willing to commit to what will inevitably be a losing bid under the existing RFP framework. Moreover, the utility-owned acquisitions that have "won" past solicitations have often resulted in cost overruns and lower-than-predicted performance, resulting in increased costs to the utilities' customers than would result without the utilities' self-dealing. The Commission need look no further than the last major acquisition – Portland General Electric Company's ("PGE") Carty Generating Facility, which was barely completed on time and has resulted in numerous lawsuits over the liability for the plant's cost overruns that exceed \$150 million so far.

At some point, the Commission may conclude it needs to make a comprehensive change to its competitive process eliminating the unsound comparison of cost-plus utility-owned bids to competitive bids with fixed prices and contract terms for performance. Head to head "competition" between UOG and independent power producer ("IPP") generation is impossible given the unique advantages and disadvantages of the different ownership structures an error compounded when the utility has an economic incentive to select itself. The consequence is that ratepayers pay more and assume more risks than would be the case if utility bias were fully mitigated with true diverse ownership. NIPPC strongly prefers a broad investigation that truly addresses and resolves the utility bias from resource procurement.

NIPPC understands that Portland General Electric Company ("PGE") and PacifiCorp are planning to release RFPs soon. Given the Legislature's desire to ensure

that the new renewable resources are acquired through improved rules that actually allow for diverse ownership, the Commission's current requirements need to be improved, even incrementally, to better ensure RFPs result in least-cost and least-risk acquisitions. Due to this need to improve the RFP process immediately, NIPPC agrees it is appropriate to pursue a narrower investigation at this time. However, NIPPC's support for the near-term, narrower investigation is contingent upon two conditions. One, the Commission should complete the near-term rulemaking *prior* to the utilities' upcoming RFPs. Two, the Commission should re-evaluate the competitive procurement process after the RFPs, and if those RFPs fail to produce unbiased and diverse results, the Commission should re-open this investigation to adopt stronger rules and other solutions.

II. BACKGROUND

The Commission has a long history of recognizing utility bias and attempting, without much success, to mitigate it. The Commission has repeatedly concluded that an investor-owned utility is inherently biased in the resource procurement process to select a utility-owned option over an independently owned option offered under a power purchase agreement or tolling agreement (collectively referred to as power purchase agreements or "PPAs"). The inherent bias is the natural result of the utility's statutory right to recover their costs and earn a profit on their own capital investments.⁴ In contrast, utilities only

⁴ Re OPUC investigation regarding performance based ratemaking mechanisms to address potential build-vs.-buy bias, Docket No. UM 1276, Order No. 11-001 at 2, 5 (Jan. 3, 2011).

have an opportunity to recover their costs (but no returns on investment) when they purchase power from IPPs.⁵

The Commission has recognized the need to promote market competition and protect against utility-ownership bias to ensure that customers' rates are kept low through the acquisition of generation resources with the least cost and risk.⁶ The Commission's enabling statutes even require the Commission to ensure that there is a robust and competitive electric generation market.⁷ For example, the Commission is required "to mitigate the vertical and horizontal market power" and "eliminate barriers to the development of a competitive retail market structure."⁸ Similarly, Oregon's energy policy goals related to statutes that it implements specifically includes protecting independent power producers and promoting "the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible . . ."⁹

These responsibilities are reflected in the Commission's description of its fundamental goals and purposes for electricity regulation:

The Commission is responsible for ensuring that the utilities we regulate offer safe and reliable energy at reasonable rates and for promoting the development of competitive markets.¹⁰

⁵ Re OPUC Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 14-149 at 1 (April 13, 2014).

⁶ E.g., Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 at 2 (Aug. 10, 2006) (the Commission adopted competitive bidding guidelines "to minimize long-term energy costs").

⁷ ORS §§ 469A.075(4)(d), 757.646.

⁸ ORS § 757.646.

⁹ ORS § 758.515(2)(a).

¹⁰ http://www.puc.state.or.us/Pages/electric_gas/index.aspx (emphasis added).

To fulfill this mission, the Commission has established regulatory policies to induce electric utilities to acquire a “mix of new resources” that will serve their customers “at the lowest cost and risk.”¹¹

The Commission has relied upon the integrated resource planning process, competitive bidding, the prudence review process in rate cases, and other regulatory mechanisms to protect ratepayers from this utility bias.¹² This rulemaking is focused on reviewing how to improve the RFP Guidelines which, despite the best of intentions, have failed to ensure that the utilities acquire the least-cost and least-risk resources in their RFPs. The Commission has relied upon competitive bidding since 1991, and in 2006 adopted RFP Guidelines with the primary goal of establishing a fair process for bidders and minimizing long-term energy costs for ratepayers.¹³ The Commission has repeatedly revised these RFP Guidelines, most recently in 2014 requiring the utilities to file an application with the Commission seeking acknowledgment of their final shortlist of bidders in an RFP.¹⁴ The Commission is constantly playing catch up to fix problems with the last RFP or resource procurement, but the end result does not change.

PacifiCorp, Portland General Electric Company (“PGE”), and Idaho Power have all placed significant capital investments in rate base after circumventing the

¹¹ http://www.puc.state.or.us/Pages/electric_gas/index.aspx

¹² Docket No. UM 1182, Order No. 14-149 at 1 (“In this proceeding we have focused on reducing the bias through our competitive bidding guidelines”).

¹³ Docket No. UM 1128, Order No. 06-446 at 2.

¹⁴ Docket No. UM 1182, Order No. 14-149 at 1. This requirement was adopted by the Commission after PGE did not seek Commission acknowledgement of its extremely controversial 2013 competitive bidding short-list. In that RFP, PGE ultimately awarded itself ownership of one major renewable energy resource and two thermal power plants, including the Carty Generating Station that was finally constructed approximately \$150 million over budget (based on costs to date).

Commission's competitive bidding process to ensure that utility-ownership options were the "winning" bids in past generation acquisitions. Soon after the adoption of the modern RFP Guidelines in 2006, PacifiCorp creatively avoided them by constructing a number of wind resources slightly below the 100 megawatt ("MW") size threshold for conducting a formal RFP.¹⁵ The Commission excluded from Oregon rates as imprudent PacifiCorp's 99 MW Rolling Hills wind project because it was markedly inferior to other resources, but the Company was able to rate base all of its other resources acquired outside of the RFP.¹⁶ PGE sought to waive the RFP Guidelines to acquire the "time limited" 400 MW Rock Creek Wind Power Facility; however, PGE was required to abandon the project because it did not perform due diligence related to federal wildlife policies protecting golden eagles.¹⁷ Idaho Power built the 300 MW Langley Gulch gas plant without using the Commission's competitive bidding process.¹⁸ PacifiCorp acquired the 550 MW Carrant Creek gas plant (2005), the 558 MW Lake Side 1 gas plant (2007), and 645 MW

¹⁵ See Re PacifiCorp, dba Pacific Power 2009 Renewable Adjustment Clause Schedule 202, Docket No. UE 200, Order No. 08-548 at 2, 19-20 (Nov. 25, 2008). PacifiCorp completed construction in 2008 and 2009, without requests for proposals, the 99 MW Glenrock I, 39 MW Glenrock III, 98 MW Goodnoe Hills, 99 MW High Plains, 99 MW Rolling Hills, 99 Seven Mile Hills, and 19.5 Seven Mile Hills II wind facilities.

¹⁶ Docket No. UE 200, Order No. 08-548 at 19-21.

¹⁷ See Re PGE Petition for a Waiver of Competitive Bidding Guidelines and Application for an Accounting Order, Docket No. UM 1449, Order No. 10-394 at 1 (Oct. 12, 2010); Re PGE Petition for a Waiver of Competitive Bidding Guidelines and Application for an Accounting Order, Docket No. UM 1449, PGE's Request for Withdrawal of PGE's Petition for a Waiver of Competitive Bidding Guidelines and Application for an Accounting Order (Sept. 29, 2010).

¹⁸ Re Idaho Power Company Petition for a Partial Waiver of Competitive Bidding Guidelines, Docket No. UM 1378, Idaho Power Petition at 1-3 (April 17, 2008) (request to waive the Commission's RFP Guidelines); see Idaho Power 2011 Integrated Resource Plan, Docket No. LC 53, 2011 IRP at 35 ("Idaho Power completed the competitive bidding process in early 2009 and selected the 300 MW CCCT project").

Lake Side 2 gas plant (2014) through competitive procurement processes. PGE also awarded itself all the winning bids in its most recent RFP, which allowed PGE to acquire its 220 MW Port Westward 2 gas plant, its 440 MW Carty power plant, and its 266 MW Tucannon wind farm.

The Commission opened this rulemaking to address the flaws in PacifiCorp's last RFP, as well as the Oregon legislature's specific concern that Senate Bill 1547's increased renewable portfolio standard ("RPS") requirements would not result in diverse ownership. Immediately following the Governor's signing of this bill, PacifiCorp held a renewable resource RFP that did not fairly treat non-utility ownership options and for which PacifiCorp did not even ask for Commission acknowledgment under the RFP guidelines. PacifiCorp disingenuously argued that the RFP Guidelines did not apply because the RFP did not specifically state that PacifiCorp intended to acquire a resource in excess of 100 MW in capacity. The Commission ultimately allowed the RFP to move forward despite finding that "PacifiCorp is acting outside of our competitive bidding guidelines," and that "PacifiCorp has apparently decided to forego our competitive bidding process in favor of its own process."¹⁹

As a result of PacifiCorp's actions, however, the Commission opened this investigation in UM 1776 to update the competitive bidding policies and concurrently opened this permanent rulemaking in AR 600 to implement Senate Bill 1547's

¹⁹ Re NIPPC Petition for Temporary Rulemaking and Investigations into PacifiCorp's 2016 Requests for Proposal, Docket Nos. AR 598 and UM 1771, Order No. 16-188 at 2 (May 19, 2016).

requirement to adopt administrative rules that allow for diversity of generation ownership.²⁰

III. COMMENTS

A. **The Commission Should Define Diversity and Adopt Metrics for Evaluation of Whether the Competitive Bidding Rules Allow for Diversity**

The Commission should determine the meaning of Senate Bill 1547's term "diverse ownership" and develop a standard or metric for evaluating if a utility has achieved diverse ownership to ensure the statutory directive is met. Specifically, Senate Bill 1547 required the Commission to adopt rules: "Providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity."²¹

The legislature has codified a specific goal, which is "diverse ownership." This requirement is new because a goal to achieve diverse ownership does not exist in the current RFP Guidelines. It is now incumbent upon the Commission to interpret that statutory provision and apply this standard through a rule. A reasonable definition of "diverse ownership" is a range of different generation owners, including but not limited to utility ownership, power purchase agreement structures (including tolling agreements), and power purchase agreements with the option for utility ownership. There cannot be diverse ownership unless long-term power purchase agreements without a utility-purchase option fill a substantial share of each utility's generation portfolio that is acquired through an RFP.

Next, the Commission should identify the standard under which it will determine,

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Id.

²¹ ORS § 469A.075(4)(d).

and periodically review, whether the overall competitive bidding process results in diverse ownership. While the Commission may not need to specify the exact percentage of non-utility ownership that qualifies a generation portfolio as “diverse,” the Commission must at least conclude that the current bidding process’s yield of five-percent non-utility ownership has *not* resulted in diverse ownership. The fact that only five percent of the long-term generation supply acquired through the competitive bidding process is non-utility owned is, in and of itself, sufficient evidence that the process does not allow for diverse ownership.

To illustrate, imagine an example in a less complex and arcane field than utility regulation. If the Legislature had directed a state agency to ensure that law schools’ admissions processes allow for enrollment diversity between male and female students, no reasonable person would argue that the existing processes were adequate if they had resulted in 95 percent female enrollment. At some point, the Commission needs to adopt a systematic solution to the diversity requirement in the legislation, even if it is theoretically possible for a utility, with its vast regulatory resources, to justify the lack of diversity in individual RFPs.

The Commission’s past approach – while not explicitly stated – has been to evaluate whether the competitive bidding process mitigates against bias through serial investigations into the process. After each RFP fails to include diversity or to mitigate bias, or the utilities acquire generation outside of the RFP process, the Commission investigates the guidelines again, and then adopts more specific and detailed provisions in an ultimately futile effort to ensure that the process is fair, aligned with the utility’s IRP,

and consistent with the substantive and technical provisions of the RFP Guidelines.²²

In previous proceedings, NIPPC recommended bid adders to address utility ownership bias and allowing cost recovery of power purchase agreements.²³ At the start of this proceeding, NIPPC proposed several very specific recommendations to more properly ensure that the RFP can allow for diverse outcomes. Staff has decided that some of these should not be addressed in the near term. For example, NIPPC originally recommended:

- For RFPs that result in the acquisition of multiple generation facilities or more than 100 MW of renewable energy or multiple storage facilities in excess of 50 MW of capacity, the utility cannot obtain acknowledgement if the RFP does not result in ownership diversity.
- The Commission shall not acknowledge an RFP that does not result in ownership diversity if the utility's RFPs over the last 10 years have not resulted in ownership diversity.
- Evaluate diversity based on the totality of the last RFPs. If the utility's long-term resource acquisitions over the last 10 years have not resulted in diversity, then diversity gets greater weight in the resource evaluation as a non-price factor.

In lieu of pursuing these remedies in the near term, NIPPC supports the Commission making additional and specific changes, including the four issues proposed by Staff, as are further identified in these comments, despite the concern that these incremental steps will continue to prove futile. At this time, NIPPC specifically recommends that the competitive bidding rules provide that the Commission shall

²² The Commission's decision to approve an RFP should consider: "(1) the alignment of the utility's RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process." RFP Guideline 7.

²³ Docket No. UM 1182, Order No. 14-149 at 12; Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 13-204 at 3-10 (June 10, 2013); Docket No. UM 1276, Order No. 11-001 at 5-8.

evaluate each specific RFP regarding whether it allows for diverse ownership and eliminate any provisions that will unduly limit ownership diversity. In addition, if PGE and PacifiCorp's next round of RFPs fail to achieve a substantial share of non-utility owned generation, then the Commission should adopt additional rules to ensure the acquisition of the least-cost and least-risk resources.

B. All Utility Ownership Bids on the Short-List Should Be Vetted in Due Diligence by a Highly Qualified Third Party

For each utility-owned bid that makes it onto the final resource short list, the Commission should also receive a due diligence review by a highly-qualified financial analyst deeply versed in the power industry. There is a misconception that the independent evaluator ("IE") conducts a thorough due diligence of the type required to obtain third-party financing of a major generation facility. This is incorrect, because the IE oversees the RFP process itself, but does not review or have the expertise to perform the same type of deep due diligence that a bank or private financier requires for third-party financing of an IPP-owned generation facility.

The intent of this requirement is to subject utility-owned bids to the same type of analysis to ensure the accuracy and complete inclusion of all costs and critical performance characteristics, as well as adequate contingency reserves have been accounted for in fixed-price PPA bids. Prior to obtaining financing, bankers (which have their own money, rather than ratepayer money, at stake) require an IPP bid to endure a thorough and exhaustive analysis of all assumptions, costs, and contract terms. Where there is a utility-owned bid, the Commission and ultimately ratepayers are essentially acting as the banker approving the use of the utility's monopoly service and rate recovery rights. Thus, the utility-owned project should be subjected to the same type of due

diligence that any major IPP project must survive prior to acknowledging the utility-owned bid submittal as reasonable in the RFP.

The Commission should be able to consider and issue appropriate rules on the use of a due diligence review by a highly-qualified consultant this year before PacifiCorp and PGE issue their next series of RFPs. As the RFP Guidelines already include an IE, it should not be too difficult or cumbersome for the parties to come up with a reasonable manner of ensuring that this additional analysis provides useful results in a timely manner.²⁴ Consideration of this issue is warranted now because, like Staff's four identified issues, it can be quickly and easily incorporated into administrative rules.

C. The Near-Term Investigation Must Include, at a Minimum, the Four Broad Issues Listed in the Staff Report

Staff has identified four broad issues that should be considered for inclusion in the proposed rules. Staff characterizes those issues as follows:

- The RFP development process;
- The methods and assumptions used to compare resources or PPAs of unequal durations;
- The Commission's or bidders' access to bid evaluations and documentation of communication between or among the utility, IE, and bidders; and
- The set of activities subject to the competitive bidding process, including exceptions and requests for waiving some or all of the requirements.²⁵

NIPPC agrees with Staff that each of these discrete items reflects an aspect of the current RFP process that should be promptly addressed for inclusion in the rules prior to

²⁴ In addition, the "independence" of the IE in Oregon has been questioned by PGE's last RFP in which they retained an IE with whom the IPP bidders had no confidence. PGE has also already begun the process of hiring a new IE for its upcoming RFPs and, after repeated requests, rejected NIPPC's efforts to participate in the process (or even comment on documents) to hire a new IE.

²⁵ Staff Report at 13-15.

the upcoming RFPs that PGE and PacifiCorp plan to hold. These issues, at a minimum, should be addressed prior to the commencement of the next RFP.

1. RFP Development Process

NIPPC has proposed changes in the RFP development process and supports substantive consideration of this issue in the near term. Staff asserts that “the RFP development process could be adjusted to provide bidders with earlier and greater access to important information about a utility’s system and resource needs.”²⁶ NIPPC agrees. This was a fundamental problem in PGE’s recent Carty and Port Westward RFPs where confusion existed as to PGE’s requirements for dynamic transfer transmission rights, no-notice gas delivery rights, and other unique characteristics. PGE was aware of these requirements years in advance of the RFP and could develop its sites to meet the unique needs. But because the IRP and even the RFP were vague on these points, bidders were left in the dark until it was too late for many of them to develop a site with all the RFP’s requirements. As a result, ratepayers were deprived of meaningful competition. The same problem is playing out in PGE’s current IRP as PGE is refusing to provide information regarding the type of capacity it needs in the IRP, but will likely use a scoring methodology that favors whatever generation type it plans to build or have built at its utility-owned site.

It is a basic rule of fair solicitations that no party, *particularly* a utility or its affiliate, “should have an informational advantage in any part of the solicitation process. The RFP and all relevant information about it should be released to all potential bidders

²⁶ Id. at 14.

at the same time.”²⁷ The Commission’s rules should include an explicit requirement to that effect, and ensure that prospective bidders have all critical information about the RFP at the time the utility decides what it wants, which can occur years before the RFP.

Staff also notes that the “current rapid pace of technological development and the increasing availability of new distributed energy resources raise the importance of comparing the value (for customers) of utility ownership of large, centralized generating resources to other strategies through which a utility could meet its customers’ needs.”²⁸ This issue also warrants further consideration before the utilities decide to commit their captive customers to existing technologies to be placed in rate base for 30 to 40 years.

2. Method to Reasonably Compare Unequal Term Lengths of UOG and IPP Bids

NIPPC introduced this issue into the proceeding and fully supports prompt adoption of administrative rules to address the proper treatment of bids of different term length in the current RFP process. This issue presents a problem inherent in a solicitation that attempts to equitably compare a longer-term obligation placed in rate base (typically 30-plus years) and the shorter-term PPA or other IPP structure, such as a tolling agreement (typically 15 to 25 years). With all other factors being equal, the IPP option will be far less expensive to the ratepayer in the early years, and the UOG resource declines in costs in its later years due to front loading of rate-base costs and returns in normal rate-of-return ratemaking.²⁹ Additionally, the longer-lived UOG resource

²⁷ Allegheny Energy Supply Co., 108 FERC ¶ 61,082, P 23 (2004).

²⁸ Staff Report at 14.

²⁹ Of course, the assumed lower costs of the utility-owned resource in the latter years are only possible if the facility costs and performs as advertised in those future years without unexpected capital upgrades, unlike the IPP plant which typically has a fixed price.

requires the RFP evaluation to include present value and levelization analysis to compare the ratepayer costs of these resources in the RFP. This is an area where major errors can be made, yet there has been no analysis or transparency of it in past RFPs.

The parties held a technical workshop on this topic. The utilities that were able³⁰ to explain how they compare resources of different resource lengths indicated that they use a “generic fill” for the costs of the shorter-lived resource after its term expires. In other words, the IPP’s actual bid price is substituted for a hypothetical assumed cost in the latter years simply because the bid has a shorter-term bid than the longer-lived utility-owned bids. There is obviously a significant risk of intentional or unintentional errors in this form of evaluation of bids. The RFPs are currently being conducted to assume that the 35-year bid for utility-owned projects is the norm, and errors have been introduced (through generic fill) to accommodate that type of bid. Furthermore, according to the utilities’ presentation at the workshop, the “portfolio analysis” that occurs pursuant to Guideline 9b often must add generic fill from day one to round out the portfolio containing many bids to the full capacity of the overall portfolio sought.

The current evaluation unreasonably disadvantages the shorter-term bids, which are really the bids that should be encouraged in times of rapid technological change. Staff suggests, and NIPPC agrees, that this approach sends the wrong policy signal “because it is more likely that strategies which delay making long-term irreversible decisions, such as through shorter contracts or resource commitments, will provide

³⁰ PGE provided a slideshow presentation of its term-length analysis, which PacifiCorp generally stated was consistent with its analysis. Idaho Power Company was unable to confirm how it has compared bids of unequal terms in past RFPs.

greater value when resource technologies are changing quickly than when they are steady and known.”³¹

These problems are compounded in the Oregon RFPs because an inherently interested party, the utility, conducts the bulk of this analysis without meaningful oversight from the IE or participation from stakeholders. Overall, NIPPC agrees with Staff that there is significant room for major and prompt improvement in this aspect of the analysis.

3. Access to Bid Evaluations, and IE’s Retention of Communications

NIPPC supports prompt consideration and adoption of rules requiring that bidders have access to their bid score and that the IE fully document and retain communications with the utility and bidders. Staff succinctly explains that the “primary reasons to consider these changes are to improve the transparency and understanding that Staff and bidders have into the evaluation portion of the RFP, and (potentially) to increase the trust among bidders and utilities.”³² NIPPC agrees. These changes should be made promptly before the next RFP.

4. Applicability of the Competitive Bidding Process

While NIPPC does not agree with some of the utilities’ substantive proposals to exempt most of their acquisitions from the new RFP rules, NIPPC agrees that this topic is worthy of consideration in the near term for the reasons stated in Staff’s memorandum. The rules should clearly specify their applicability to limit disputes and confusion, as well as to provide a basis to ensure their intent is not thwarted.

³¹ Staff Report at 14-15.

³² Id.

D. The Commission Should Hold Open this Rulemaking to Ensure that the Competitive Bidding Rules Allow for Diversity and Mitigate Utility Bias

As explained above, it is critically important that the Commission adopt improved competitive bidding rules before PGE and PacifiCorp issue their next RFPs, which is the sole reason that NIPPC is not proposing many of its more significant changes to address utility bias and allow for diverse ownership of long-term generation resources. NIPPC recommends, however, that the Commission hold this proceeding open after adopting new rules, and consider adopting additional revisions after the completion of the next round of RFPs. NIPPC sincerely hopes that history does not repeat itself, and there will be no need to make additional changes.

If the utilities do not acquire independently-owned generation resources, the Commission should act at that time to implement more systematic changes. In addition to the items discussed above, some of the proposals NIPPC has raised, but will not be considered in the near term, are listed below for the Commission's reference. NIPPC understands that some of these and other issues may also be raised in utility-specific RFPs.

- The bidding process should include two steps. First, all ownership options will be evaluated. The best ownership score will be announced to the bidders. Second, power purchase agreements will be provided an opportunity to beat the ownership score. NIPPC derived this proposal from bidding processes that occur in other situations where one of the bidders has an inherent conflict of interest. The utility has a conflict of interest because any successful UOG bids will provide an opportunity for the utility to increase its returns to utility shareholders while a successful non-UOG bid will provide no opportunity for returns to the utility's shareholders. In other areas of the law, such as bankruptcy and corporate acquisitions, a "conflict-of-interest proposal" like that of a UOG bid here requires special treatment, where the conflict-of-interest proposal is submitted first and then put out to be bid against by competitive bids.

- The role of the IE should be revised, including but not limited to the IE being paid by the Commission (*not* the utility), should report to Staff instead of the utility, and/or should run and score the entire RFP.
- Subject to certain conditions, cost recovery for a utility-owned resource could be capped at the cost included in the resource bid, as is done in some states.
- The degree to which non-price scoring criteria allow for subjective judgments by the soliciting utility should be minimized. Proposals to reduce this subjectivity include prohibiting the non-price criteria from containing any factors that could instead be converted into minimum bidder requirements, or requiring that non-price factors be sufficiently objective for bidders to determine whether they may receive the maximum non-price score, or assigning responsibility for determining the non-price criteria or even the non-price scores to the IE.

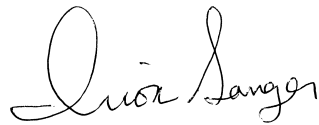
IV. CONCLUSION

For the reasons explained above, NIPPC supports prompt consideration of the four issues raised by Staff for inclusion in administrative rules prior to the next round of RFPs. Additionally, the Commission's near-term investigation and rulemaking should:

- 1) define and adopt a standard to evaluate diversity of ownership of generation resources, as Senate Bill 1547 reasonably requires the Commission to develop rules that will allow for diversity; and
- 2) require that all utility-owned generation options on the shortlist be subject to a highly-qualified consultant that oversees a financial due diligence, which does not occur in the current RFP process.

Dated this 10th day of May 2017.

Respectfully submitted,



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Attachment A

Oregon Public Utility Commission Results from RFPs run under Competitive Bidding Guidelines¹

Year	Utility	Location	Docket	Project/Capacity	Utility Owned ²	Outcome
2008	PacifiCorp	Chehalis, WA	UM 1208, 1374	Chehalis Generation Facility 520 MW gas-fired CCCT	Yes	PacifiCorp acquires power plant from Suez Energy, with a waiver of the OPUC competitive bidding guidelines.
2008	PacifiCorp	Converse County, WY	UM 1368	Top of the World Windpower 200 MW	No	PacifiCorp and Duke Energy sign 20 year PPA. ³
2009	PacifiCorp	Carbon County, WY	UM 1429	Dunlap I wind farm 111 MW	Yes	PacifiCorp follows Utah PSC's bidding process in parallel with OPUC.
2010	PacifiCorp	Utah County, UT	UM 1360	Lake Side 2 637 MW CCCT	Yes	PacifiCorp selects CH2M Hill E&C as its EPC contractor to build the power plant adjacent to its Lake Side 1 CCCT unit.
2010	Portland General Electric	Gilliam County, OR	UM 1499	Rock Creek Wind Power Facility 400 MW	Not completed	PGE petitioned to waive the bidding guidelines for a self-built project only to withdraw its request due to new USFWS golden eagle protection policy.
2012	Idaho Power	Payette County, ID	UE 248	Langley Gulch 330 MW gas-fired CCCT	Yes	After Idaho Power skips bidding guidelines, the OPUC conditions Oregon's share of Idaho Power's <i>future</i> rate recovery on adherence to Oregon's bidding guidelines ⁴
2012	Portland General Electric	Columbia County, OR	UM 1535	Port Westward Unit 2 220 MW gas-fired reciprocating engines	Yes	Self-built power project with 12 reciprocating engines adjacent to Unit 1, a PGE-owned gas-fired CCCT power plant.
2013	Portland General Electric	Morrow County, OR	UM 1535	Carty Generating Station 440 MW gas-fired CCCT	Yes	PGE selects Abengoa S.A. as its EPC contractor to build the power plant adjacent to Boardman coal-fired power plant slated for retirement.
2013	Portland General Electric	Columbia County, WA	UM 1613	Tucannon River Wind Farm 267 MW	Yes	PGE acquires development rights from Puget Sound Energy and builds its first power plant outside Oregon.

¹ Oregon originally enacted its bidding guidelines in September 2006 with Order No. 06-446. It applies to resource acquisitions over 100 MW.

² In late 2003, PacifiCorp "won" its own RFP and, after securing regulatory approvals, built the 525 MW Currant Creek CCCT near Mona, UT. Last year a jury awarded USA Power \$134 million after a jury concluded that PacifiCorp misappropriated the plans from the IPP's bid submittal and used them to build its plant.

³ In 2007-2009, PacifiCorp built a number of wind farms in close proximity to each other and sized "under" 100 MW to avoid the competitive bidding guidelines. Since 2005, outside of any Commission approved competitive bidding processes, PacifiCorp has obtained ownership of the 99 MW Glenrock I, 39 MW Glenrock III, 94 MW Goodnoe Hills, 99 MW High Plains, 100.5 MW Leaning Juniper, 140.4 MW Marengo, 70.2 MW Marengo II, 28.5 MW McFadden Ridge, 99 MW Rolling Hills, 99 MW Seven Mile Hills, and 19.5 MW Seven Mile Hills II wind facilities, a power purchase agreement with the 99 MW Campbell Hill-Three Buttes wind facility, and power purchase agreements with qualifying facilities.

⁴ The Idaho PUC approved Idaho Power's Langley Gulch power project in September 2009 despite opposition.