

# CAITHNESS BEAVER CREEK, LLC

c/o Caithness Services LLC  
565 Fifth Avenue, 29<sup>th</sup> floor  
New York, New York 10017  
Phone: (212) 921-9099  
Fax: (212) 921-9239

Via Electronic Submission to:  
[PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us)

January 8, 2018

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

Re: UM 1845: Caithness Beaver Creek, LLC's Reply to Staff's Response to ALJ's Ruling, in Support of Request to Modify Conditions in Order 17-345 Re. Conditional Approval of PacifiCorp's 2017R Request for Proposals

Dear Commissioners:

As directed by Administrative Law Judge Rowe, Commission Staff ("Staff") responded on January 5, 2018 to Caithness Beaver Creek, LLC's ("Caithness") request for the Commission to modify the terms attached to its conditional approval of PacifiCorp's 2017R RFP. This reply provides the first opportunity for Caithness, on behalf of bidders Beaver Creek Wind I, LLC and Beaver Creek Wind IV, LLC ("Bidders"), to address Staff's response.

**1. Bidders' proposal is a "wind-only" project, consistent with the requirements of the RFP.**

Staff's Response appears to accept the erroneous position of PacifiCorp and the IE that it was correct to disqualify Bidders' proposals as non-compliant because they do not offer a "wind-only" option. Staff 1/5/18 Response at 1. Bidders reiterate that they proposed to deliver a wind only option, as required by the language of the RFP.

By definition, the Beaver Creek projects are wind only since all of the output from the projects would come from wind generation. The storage component is an ancillary piece of equipment that is wholly unrelated to the generation of electricity. Ancillary, non-generation equipment accompanies every energy generation project. It is unclear to Bidders why the use of one non-generation technology (here, storage) can define and alter the essential nature of the project, when the use of other non-generation technologies does not. The use of storage equipment is no different than using capacitors to store energy and modify the power factor of a

wind project. Yet, including the latter technology in a proposal for a wind facility would not cause anyone to characterize such a facility as anything other than “wind-only.”

The meaning of “wind only” is well understood in the energy industry. It refers to the exclusive use of wind energy as the source of generation. And in fact, “wind energy” is the term that PacifiCorp itself repeatedly used throughout its RFP, as Bidders previously highlighted. For example, see 2017R RFP at Introduction; 2017R RFP. at Section 5. As a result, Bidders’ proposals were consistent with the plain meaning of the RFP.

**2. The Projects’ characterization as “dispatchable resources” is immaterial and misconstrues the Bidders’ proposals.**

Staff’s Response states that if the RFP was intended to include “dispatchable wind,” such a requirement would have been explicitly stated in the RFP. Staff 1/5/18 Response at 1. This conclusion is problematic for multiple reasons.

First, no one—not Staff, not the IE, and not PacifiCorp—has pointed to anything in the RFP that limits bids to “non-dispatchable wind” resources, as PacifiCorp or the IE defines that term. That is Bidders’ point: the RFP specifically refers to wind energy projects. If PacifiCorp wanted to exclude certain types of wind only projects, it needed to make that clear. It cannot disqualify bidders for following the RFP as it was written.

Second, there appears to be a misunderstanding in the use of the term “dispatchable wind” to describe Bidders’ proposals. To the extent that Staff uses this term to mean a facility that PacifiCorp will be able to turn on or off, and to adjust the output, that is *not* what Bidders proposed: Bidders’ proposals would not allow PacifiCorp to dispatch the wind facility. Rather, Bidders’ proposals state that the wind facility output would be provided during peak hours. Such proposals, by incorporating on-site storage technology to mitigate against output intermittency while continuing to provide solely wind generated energy, meet both the terms of the RFP and help to address PacifiCorp’s stated need in its Integrated Resource Plan for peaking resources.

Third, whether the proposed projects are dispatchable is immaterial. PacifiCorp requested a facility to deliver wind energy, and that is what Bidders proposed. PacifiCorp appears to be attempting to rely on an irrelevant distinction because it abandoned its previous argument that the Projects presented too much technological risk. Bidders ask that the Commission focus on the plain language of the RFP and PacifiCorp’s stated needs when evaluating Bidders’ request.

Fourth and finally, Staff’s Response further notes the IE’s concern over whether the bid evaluation methodology would need to be re-examined “in order to ensure it was capturing the full value of a dispatchable resource.” Staff 1/5/18 Response at 2. As explained above, Bidders did not propose a “dispatchable resource,” at least as the IE appears to be using that term—mooting this issue. Rather, Bidders proposed a resource with firm product numbers during peak hours. Such a proposal fits squarely within the confines of the RFP, and should not require any reexamination of the evaluation methodology.

**3. The issue regarding Bidders' transmission arrangement, under which a third party firm would take title to the Projects' output, can be easily resolved.**

Staff highlights in its Response (although not appearing to take a position on the matter) that PacifiCorp took issue with Caithness' transmission arrangement, under which a third party firm ("Transmission Firm") would hold title to the energy during transmission from the Projects to PacifiCorp. Staff 1/5/18 Response at 1.

This issue is moot. PacifiCorp's position before this Commission is that it did not rely on any "transmission issue" as justification for disqualifying Bidders' bids. In response to Bidders' Request, PacifiCorp's own response asserts that "transmission issues" were not addressed with Bidders, suggesting that, ultimately, the *sole* basis for disqualifying Bidders' proposals was "due to failure to limit the bid to wind generation only." PacifiCorp 12/22/17 Response at 3. It is thus irrelevant whether PacifiCorp may have initially informed the IE that the "transmission arrangement with a third party's firm transmission rights for delivery also presented an issue to PacifiCorp." Staff 1/5/18 Response at 1.

Regardless, the issue would be easily addressed. If PacifiCorp does not want the Transmission Firm to hold title during transmission, then Bidders will maintain title. Such issues could have (and should have) been addressed during the bid clarification phase. To raise this issue at this stage in the process elevates form over substance.

**4. The time constraints of this RFP warrant addressing this issue now.**

Staff also suggests that Bidders' concerns over the RFP could be addressed during the shortlist review stage and in the IE's closing report. But adopting Staff's proposed course of action risks missing the opportunity to provide any meaningful relief.

The parties, including PacifiCorp, have emphasized the time constraints that support expeditiously resolving this RFP. As time goes on, the "no turning back" argument will only grow. Waiting to address this issue at the shortlist review stage jeopardizes the Commission's ability to correct the errors in a manner that would, ultimately, allow for consideration of all proper bids. Such a result, in addition to being unfair to all bidders, would be to the detriment of PacifiCorp's ratepayers.

**The Commission should grant the Request.**

In light of the above, Bidders again request that the Commission modify its conditional approval in Order 17-345 of the 2017R RFP to include as conditions that:

(1) the inclusion of a storage component within a wind project proposal does not, on its own, disqualify the project from consideration under the RFP, and

(2) a bidder's transmission delivery arrangement, through a third party with firm transmission rights for delivery to PacifiCorp's system, is sufficient to satisfy the RFP's

Minimum Eligibility Requirement H.13. Or, in the alternative, the Commission may include as a condition that Bidders will maintain title to the energy through the transmission phase.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Derrel A. Grant, Jr.", with a stylized flourish at the end.

Derrel A. Grant, Jr.  
Senior Vice President

cc: UM 1845 service list (through electronic filing with Filing Center)