

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • jog@dvclaw.com
Suite 450
1750 SW Harbor Way
Portland, OR 97201

April 19, 2018

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PACIFICORP, dba PACIFIC POWER,
Application for Approval of Final Draft 2017R Request for Proposals
Docket No. UM 1845

Dear Filing Center:

Please find enclosed the Comments of the Alliance of Western Energy Consumers on the April 9, 2018 Staff Report.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1845

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER,)	COMMENTS OF THE ALLIANCE OF
)	WESTERN ENERGY CONSUMERS ON
Application for Approval of Final Draft)	THE APRIL 9, 2018 STAFF REPORT
2017R Request for Proposals.)	
_____)	

I. INTRODUCTION

Pursuant to the Administrative Law Judge’s March 7, 2018 Ruling, the Alliance of Western Energy Consumers (“AWEC”) files these Comments on the Oregon Public Utility Commission (“Commission”) Staff Report issued in the above-referenced docket on April 9, 2018 (“Staff Report”). AWEC concurs with Staff’s recommendation that the Commission “[d]eny PacifiCorp’s request that the Commission acknowledge the 2017R RFP final shortlist.”^{1/}

AWEC, in fact, is not even clear about what the final shortlist is at this point. One day after Staff issued its Report, on April 10, 2018, PacifiCorp (or the “Company”) reached a settlement with parties in Wyoming that, among other things, excluded the Uinta project.^{2/} As AWEC understands, this means that, regardless of what occurs in other states’ regulatory processes, the Company will not construct the Uinta project because it lacks the requisite

^{1/} Staff Report at 11.

^{2/} Wyoming Public Service Comm’n Docket No. 20000-520-EA-17, Record No. 14781, Stipulation and Settlement Agreement between Rocky Mountain Power, Wyoming Industrial Energy Users, and Wyoming Office of Consumer Advocate (Apr. 10, 2018).

certificate of public convenience and necessity from the Wyoming Public Service Commission.^{3/}

This is yet another example of the ever-changing circumstances facing the Commission and stakeholders as they evaluate the Company's procurement process. First, PacifiCorp did not need any new resources, then it needed over 1000 MWs of new wind and a new transmission line. Next it updated its initial shortlist of bids to account for the new federal tax law but still has not updated its forward market price curves that are a key component of its net benefits analysis to account for this change in law.^{4/} Next it disqualified bids at the final stage of the RFP process based on updated transmission planning assumptions. Then it dismissed the results of its solar RFP without providing parties to this docket the ability to review the data underlying this decision. Now it has changed the very shortlist of which it has requested acknowledgement. In addition to Staff's and AWEC, these circumstances have led to uniform opposition to the proposed wind projects in Utah by all non-Company parties.^{5/} The numerous issues with this RFP, both discussed below and in the Staff Report, including the fact that the final shortlist now includes bids that are no longer viable, make it difficult to understand how the Commission can find that this shortlist "seems reasonable."^{6/}

II. COMMENTS

In its Reply Comments, PacifiCorp supports its request for acknowledgement of the final shortlist based primarily on the following arguments: (1) the process complied with the competitive bidding guidelines and RFP requirements; (2) the IE recommends

^{3/} Id. ¶ 79.

^{4/} Utah Public Service Comm'n Docket No. 17-035-40, Rebuttal Testimony of Bradley G. Mullins for Utah Association of Energy Users & Utah Industrial Energy Consumers at 26-29 (Apr. 17, 2018)

^{5/} Id.; Rebuttal Testimony of Daniel Peaco for Division of Public Utilities (Apr. 17, 2018); Rebuttal Testimony of Bela Vastag for Office of Consumer Services (Apr. 17, 2018).

^{6/} Docket No. UM 1182, Order No. 06-446 at 15 (Aug. 10, 2006).

acknowledgement; (3) the limited transmission capacity from the Aeolus-to-Bridger/Anticline line that invalidated a number of bids did not substantively impact the final shortlist; (4) the Company did not improperly reveal the interconnection limitations at the end of the solicitation process; (5) the Company properly modeled production tax credits (“PTCs”) and a terminal value for benchmark bids; and (6) the results of the solar RFP PacifiCorp ran concurrently with its wind RFP do not impact the wind RFP’s results. Staff finds these arguments unconvincing and, for the reasons discussed below, so does AWEC.

A. The RFP did not fulfill the goals of the competitive bidding guidelines.

The goals underlying the competitive bidding guidelines conflict with PacifiCorp’s arguments in favor of acknowledgement. The Company suggests that strict adherence to the guidelines and the solicitation requirements in the RFP should guide the Commission’s decision on acknowledgement.^{7/} But acknowledgement is not a rote exercise that examines whether PacifiCorp checked all of the boxes (and, in any case, PacifiCorp did not follow the guidelines, as discussed in Section E below). It is a holistic review of the process to determine whether the outcome “seems reasonable” based on what is known today.^{8/}

The Commission has a long history with the competitive bidding process, dating back at least to 1991.^{9/} Since that time, the goals of the process have remained consistent:

1. Provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints;
2. Complement Oregon’s integrated resource planning process;

^{7/} PacifiCorp Reply Comments at 5-6.

^{8/} Order No. 06-446 at 15.

^{9/} Docket No. UM 316, Order No. 91-1383, 127 P.U.R.4th 306 (Oct. 18, 1991).

3. Not unduly constrain utility management’s prerogative to acquire new resources;
4. Be flexible, allowing the contracting parties to negotiate mutually beneficial exchange agreements; and
5. Be understandable and fair.^{10/}

In this instance, the last of these goals is particularly relevant. When it initially developed the guidelines, the Commission found that “if bidding is to be successful, it is necessary that potential non-utility developers know the rules of participation, understand the ranking and selection process, and consider the probability of success and monetary rewards sufficient to justify the costs of participation.”^{11/} Among the requirements the Commission adopted in this vein was one that utilities “make best effort attempts to assist sponsors of winning projects [to] get their electricity to the utility’s system [A] soliciting utility’s RFP should *clearly define the utility’s policy concerning transmission access and wheeling of power.*”^{12/} When it reissued the competitive bidding guidelines 15 years later, in Order No. 06-446, the Commission found that the goals the Commission adopted in 1991 “have guided us well over the years” and it, therefore, made only minor adjustments to them, including no adjustment at all to the requirement that the process be “understandable and fair.”^{13/}

PacifiCorp’s RFP in this case did not meet these fundamental criteria. A dispositive factor – the ability of bids to meet interconnection requirements – was not revealed until after the bidding process had occurred. Had bidders understood the true “selection process” and had the ability to “consider the probability of success” in this RFP, there is little doubt they

^{10/} Order No. 06-446 at 2; Order No. 91-1383 at *3-4.

^{11/} Order No. 91-1383 at *3.

^{12/} Id. at 9 (emphasis added).

^{13/} Order No. 06-446 at 2.

would not have participated since the “probability of success” was precisely zero. Bidders did not, and could not, have understood this, though, because PacifiCorp’s RFP did not “clearly define [its] policy concerning transmission access” until after the RFP process had concluded. As Staff puts it, these circumstances “challenge the fairness and transparency of this RFP,”^{14/} a foundational requirement for the entire competitive bidding process.

B. The Company ignores the context of the IE’s recommendation.

For PacifiCorp, the fact that the IE recommends acknowledgement, rather than the circumstances that drive this recommendation, should be dispositive.^{15/} AWEC disagrees. To be sure, the Company is correct that the IE “participated in the entire RFP process and [is] in the best position to judge the process and its outcome.”^{16/} But the IE’s judgment of the process and its outcome was that the “entire RFP really boiled down to two viable benchmarks and two third-party offers, meaning a lot of the analysis presented here was of questionable value.”^{17/}

It is clear from the IE’s report that it only recommends acknowledgement of the final shortlist because it feels constrained by PacifiCorp’s transmission interconnection limitations.^{18/} Without these limitations, there is little doubt that the IE would not have recommended acknowledgement of the shortlist PacifiCorp selected.^{19/} Again here, PacifiCorp focuses on literal adherence to the guidelines and ignores the goals that underlie them. The IE’s recommendation to acknowledge the shortlist was not a sanction of the process that led to this shortlist, it was merely a recognition that the “selected bids represent the top offers that are

^{14/} Staff Report at 3.

^{15/} PacifiCorp Reply Comments at 3-5.

^{16/} Id. at 5.

^{17/} IE Report at 35.

^{18/} Id.

^{19/} Id. at 32 (“we believed that the PPA-heavy portfolio should be the top choice”).

viable under current transmission planning assumptions.”^{20/} As Staff states, the Company chose to apply interconnection queue position as a threshold issue for project selection rather than the competitive RFP process. The effect was the elimination of more competitive projects, very late in the RFP process, limiting stakeholder input and feedback.”^{21/} Based on the IE’s Report, it would agree with Staff’s assessment.

C. The RFP’s interconnection limitations did impact the final shortlist.

In response to Staff and AWEC’s concerns that the interconnection limitations the IE Report identifies materially impacted the final shortlist, PacifiCorp alleges that these limitations merely “resulted in PacifiCorp proposing to replace only one shortlist bid, with all other shortlist bids remaining unchanged.”^{22/} This is a misleading statement. It is based on the shortlist PacifiCorp had recommended based on modeling assumptions that the IE rejected.^{23/} The shortlist the IE was prepared to recommend was materially different than the one that resulted following application of the interconnection limitations.^{24/} Here, as in a number of other places, the Company is guilty of the same impropriety of which it accuses Staff and AWEC, “selectively rely[ing] on excerpts from the Independent Evaluator’s report.”^{25/} Also noteworthy is PacifiCorp’s statement that the only true impact from the transmission restudies was that they “allowed the inclusion of a more economic project by increasing the interconnection

^{20/} Id. at 2.
^{21/} Staff Report at 6.
^{22/} PacifiCorp Reply Comments at 13.
^{23/} IE Report at 32.
^{24/} Id.
^{25/} PacifiCorp Reply Comments at 2-3.

capability.”^{26/} PacifiCorp still does not explain how these restudies revealed this additional capacity, yet another uncertainty that undermines the transparency of this RFP process.

D. PacifiCorp’s failure to inform bidders of interconnection limitations in a timely manner was fatal to the fairness and transparency of the process.

The Staff Report relies heavily for its recommendation on the fact that PacifiCorp “revealed late into the RFP evaluation process that ... projects within the constrained area in Wyoming with a higher queue number than 0712 would likely not be deliverable”^{27/} Staff takes issue with PacifiCorp’s transmission assumptions, noting that the Company could have evaluated interconnections in a cluster window or could have petitioned FERC for an amendment to its OATT to accommodate the Commission’s least-cost planning requirements.^{28/} AWEC does not take a position on these issues currently, but agrees with Staff that the Company’s approach eliminated the competitiveness of the RFP, lacked transparency, and was fundamentally unfair.^{29/}

Most importantly, there are only two conclusions the Commission could reach regarding the transmission interconnection issue. Either: (1) PacifiCorp knew when it issued the RFP that interconnection limitations would invalidate most non-Company bids and did not disclose this information; or (2) PacifiCorp prepared and issued an RFP to the market without analyzing and understanding issues that would be dispositive to bid evaluation. The Commission should not sanction either of these alternatives.

^{26/} Id. at 13.

^{27/} Staff Report at 3.

^{28/} Id. at 3-4.

^{29/} Id. at 3-6.

PacifiCorp states that it “did not err by considering the interconnection limitations at the end of the process.”^{30/} The Company takes conflicting positions in support of this claim. First, it states that it had originally drafted its RFP to require bids to have a completed system impact study and blames other parties for the removal of this requirement.^{31/} It then, however, touts the benefits of “performing restudies close-in-time to the selection of the final shortlist” because they incorporated the most up-to-date information.^{32/} What these positions reveal is that the IE is correct – a requirement for bids to have completed system impact studies would not have made a difference because those studies would not have included the updated results from the Company’s later-in-time interconnection restudy process.^{33/} Only completing this process prior to issuing the RFP would have disclosed the necessary information to bidders.

The Company also claims that it “routinely communicated about interconnection queue issues with both the independent evaluators and bidders.”^{34/} It states that it responded to bidder questions on this issue and that AWEC “inaccurate[ly] claim[ed] that PacifiCorp never held a transmission workshop”^{35/} In fact, AWEC did not make this claim, it merely recounted the Utah IE’s statements on this issue.^{36/} Regardless, though, whatever information the Company provided to bidders was plainly insufficient since these bidders continued to participate as if they had any chance of winning, and both the IE and Utah IE were clearly surprised when PacifiCorp revealed the updated analysis at the end of the process.^{37/} The

^{30/} PacifiCorp Reply Comments at 14.

^{31/} Id. at 15.

^{32/} Id.

^{33/} IE Report at 34.

^{34/} PacifiCorp Reply Comments at 15.

^{35/} Id.

^{36/} Comments of ICNU on Final Shortlist at 10 (citing Utah IE Report at 69 & 83).

^{37/} IE Report at 32; Utah IE Report at 64.

Company even states that it cautioned “as early as January 2018 that certain bids with a relatively high interconnection queue number ... may not be viable.”^{38/} That date was two months *after* bidding had closed and the initial shortlist had been developed,^{39/} and is contemporaneous to when PacifiCorp completed its final shortlist evaluation.^{40/}

E. PacifiCorp did not appropriately model the benchmark bids.

PacifiCorp asserts that it was appropriate to model PTCs for benchmark and BTA bids on a nominal basis despite levelizing all other costs.^{41/} The IE, Staff, AWEC, and Avangrid have all disputed the appropriateness of this decision, and it is also being challenged in other states.^{42/}

There are at least three reasons why PacifiCorp’s modeling of PTCs is inappropriate. The IE identified the first, which is that the Company’s justification for nominalizing the benefits of PTCs could also apply to a number of costs associated with benchmark and BTA bids, which were nevertheless levelized.^{43/}

Second, the Company’s methodology violates the competitive bidding guidelines. Guideline 8 provides that a “score should be assigned to the Benchmark Resource using the same bid scoring and evaluation criteria that will be used to score market bids.”^{44/} PacifiCorp violated this guideline by assigning a score to the benchmark resources that included nominalized PTC

^{38/} PacifiCorp Reply Comments at 15-16.

^{39/} IE Report at 7.

^{40/} Utah IE Report at 56.

^{41/} PacifiCorp Reply Comments at 17-18.

^{42/} IE Report at 29-32; Staff Comments on IE Report at 7; AWEC Comments on IE Report at 8-9 & Attach. A at 8-9; Avangrid Comments on IE Report at 6-10; Utah Public Service Comm’n Docket No. 17-035-40, Rebuttal Testimony of Bradley G. Mullins at 21-23; Utah Public Service Comm’n Docket No. 17-035-40, Rebuttal Testimony Daniel Peaco for the Division of Public Utilities at 47-48 (Apr. 17, 2018)

^{43/} IE Report at 30.

^{44/} Docket No. UM 1182, Order No. 14-149, Appen. A at 3 (Apr. 30, 2014).

values while scoring market bids with levelized PTC values. Additionally, Guideline 9(b) provides that the “portfolio modeling and decision criteria used to select the final shortlist of bids must be consistent with the modeling and decision criteria used to develop the utility’s acknowledged IRP Action Plan.”^{45/} This requirement “promotes flexibility in achieving the Commission’s competitive bidding goals ... by providing a means to promote and improve upon the roadmap established in the utility’s IRP Action Plan.”^{46/} It is intended to encourage “a search process aimed at helping find the best combination of resources for ratepayers.”^{47/} In the Company’s IRP, however, it evaluated its resource options by levelizing the PTC.^{48/} PacifiCorp states that it “intends to model PTCs in [the nominalized] manner in future IRPs,”^{49/} but the guidelines require modeling in the Company’s RFP to be driven by the assumptions in the IRP, not vice versa.

Third, by selectively modeling certain benefits (or costs) differently than the other aspects of a resource, the Company defeats of the purpose of the modeling exercise, which is to compare resources on a level playing field, not necessarily to identify how resources would be reflected in rates. The Company could have determined to model everything on a nominalized basis which, while inconsistent with its IRP, would at least have been internally consistent. Choosing to model only certain features of only select resources differently undermines the fairness and transparency of the process and introduces inherent advantages and disadvantages to particular resources.

^{45/}

Id.

^{46/} Docket No. UM 1368, Order No. 09-247, Appen. A at 3 (June 23, 2009).

^{47/} Order No. 06-446 at 11.

^{48/} PacifiCorp 2017 IRP at 101, 111 (noting costs in Tables 6.2 and 6.3 are based on estimates of the first-year, real-levelized costs for resources, and Table 6.2 showing levelized value of PTC in mills/KWh).

^{49/} PacifiCorp Reply Comments at 18.

The Company also defends its use of a terminal value for Company-owned projects, stating that it “is reasonable to include a terminal value benefit for projects where the company retains control of the site at the end of the asset life.”^{50/} In contrast, the Company states, “PacifiCorp did not assign a terminal value to any PPA bids that included a purchase option because it is not possible to determine at this time whether it might be in the interest of customers to exercise that option at some point in the future”^{51/} This is an excellent argument for why utilities should not assign terminal values to owned resources. It may be that customers would be better off without those resources in the Company’s portfolio by the end of the study period. A PPA that provides an option, but not a requirement, to purchase the facility at the end of the term arguably has greater value to customers because it lets PacifiCorp make that decision with contemporaneous information rather than locking customers into a resource for an indeterminate period, as occurs with utility-owned resources. Regardless, the point of AWEC’s comments was that the IE noted that the terminal value was necessary to make the utility ownership portfolio competitive with the PPA-heavy portfolio, and this value is speculative at best.

F. The Commission does not have sufficient information to compare the results from the wind RFP with those from the solar RFP.

As the Staff report notes, solar capital costs are declining rapidly and, under certain scenarios, even the Company’s modeling shows greater net benefits to customers from the bids into its solar RFP than the final shortlist from its wind RFP.^{52/} The Company, however,

^{50/} Id. at 19.

^{51/} Id.

^{52/} Staff Report at 10.

simply asserts that its evaluation determined that it was best to proceed with the wind RFP and delay acquisition of any solar resources.^{53/} Like Staff, AWEC has not had the opportunity to review the solar bids, but in other states that have a process to preapprove resource decisions, parties have supported the solar bids over the wind bids on both cost and risk grounds.^{54/} Even in Utah, where the solar RFP was required and which is undergoing a preapproval process for the Company's proposed wind resources, the Division of Public Utilities has raised concerns about the Company's evaluation of the solar RFP bids and disputed the Company's modeling of the benefits from these bids.^{55/} This at least raises uncertainty over which resources the Company should select, if any. In fact, the Company's statement that it can delay acquisition of solar resources and still capture the full investment tax credit may itself support acquiring solar in lieu of wind, as this will defer rate impacts from new investments, during which time capital costs should continue to decline, while still leveraging the full value of currently available tax credits.

Ultimately, the issue the Commission must be aware of is that information material to a decision on whether the final shortlist "seems reasonable" is missing from the record. Acknowledgement is to be based on the information available currently. Information regarding the solar RFP is available, but has not been provided to or vetted by stakeholders or the Commission.

^{53/} PacifiCorp Reply Comments at 23.

^{54/} ICNU Comments on Final Shortlist, Attach. A; Utah Public Service Comm'n Docket No. 17-035-40, Rebuttal Testimony of Bradley G. Mullins at 18-21.

^{55/} Utah Public Service Comm'n Docket No. 17-035-40, Rebuttal Testimony of Daniel Peaco at 3, 52-53.

G. The Commission should not adopt the highly confidential protective order from this docket for use in other cases absent a showing of compelling need and with instructions to the parties for how to handle highly confidential information.

Without challenging the highly confidential protective order that was ultimately issued in this docket, AWEC wishes to close these comments with its experience under this protective order so that the Commission is informed of these issues for future dockets.

Under the terms of the highly confidential protective order, anyone who was not a Staff employee, counsel to Staff, or an employee of the Citizens' Utility Board ("CUB") was required to view highly confidential information at PacifiCorp's offices.^{56/} This puts parties who are subject to this requirement in an uncertain position. As PacifiCorp notes, AWEC's representative viewed this information at the Company's offices,^{57/} but PacifiCorp did not allow AWEC's representative to take any notes of this information or include it in AWEC's comments. This is despite the fact that the protective order allows qualified persons to "*reproduce* Highly Protected Information only to the extent necessary to participate in these proceedings."^{58/} While AWEC was able to draft its comments in this docket without reproducing highly confidential information, in future dockets that may not be possible. It is unclear what procedure will prevail if this occurs. If AWEC (or another non-Staff, non-CUB party) is allowed to reproduce highly confidential information, then that information will necessarily no longer be available to AWEC only at PacifiCorp's offices. Additionally, AWEC's counsel employs paralegals and other staff who review filings before they are finalized. If this staff has signed the protective order, are they

^{56/} Order No. 18-080, Appen. A ¶¶ 12-13.

^{57/} PacifiCorp Reply Comments at 6.

^{58/} Order No. 18-080, Appen. A ¶ 17 (emphasis added).

allowed to view highly confidential information included in a filing since they are not viewing it at PacifiCorp's offices? If the Commission must review highly confidential information in executive session at its open meeting to consider the final shortlist, will AWEC's representatives be allowed to stay since they will be hearing that information outside of PacifiCorp's offices?

Additionally, parties who do not have possession of highly confidential information are at a disadvantage because they cannot easily review and confirm statements made based on highly confidential information. In its Reply Comments, for instance, PacifiCorp states that AWEC's position that the Uinta project produced marginal net benefits was based on an incorrect cite to a highly confidential attachment.^{59/} AWEC has no way of verifying PacifiCorp's claim without going back to PacifiCorp's offices and reviewing the highly confidential materials again. Similarly, the Staff Report contains highly confidential information that AWEC has not reviewed because it was only mailed to PacifiCorp and CUB.

In short, a requirement for in-house review presents a host of complications and disadvantages for parties that are subject to this requirement. This is particularly troublesome when the requirement is selectively applied – if the information is not sensitive enough to require in-house review of every party (including Staff and CUB), then it should not be sensitive enough to require in-house review of any party. AWEC strongly encourages the Commission not to require in-house review in future dockets except under the most compelling circumstances.

III. CONCLUSION

For the foregoing reasons, AWEC supports the Staff recommendation that the Commission decline to acknowledge the final shortlist of bids from PacifiCorp's 2017R RFP.

^{59/} PacifiCorp Reply Comments at 22-23.

Dated this 19th day of April, 2018

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

Tyler C. Pepple

1750 SW Harbor Way, Suite 450

Portland, Oregon 97201

(503) 241-7242

tcp@dvclaw.com

Of Attorneys for the Alliance of

Western Energy Consumers