

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 10, 2018

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: March 27, 2018

TO: Public Utility Commission

FROM: Lisa Gorsuch

THROUGH: Jason Eisdorfer and JP Batmale

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. AR 600)
Request for Approval to Issue Notice of Proposed Rulemaking on
Competitive Bidding Requirements.

STAFF RECOMMENDATION:

Staff recommends that the Commission approve issuance of a notice of proposed rulemaking on competitive bidding requirements as set forth in Attachment 1.

DISCUSSION:

Issue

Whether to approve issuance of a notice of proposed rulemaking on competitive bidding requirements as set forth in Attachment 1.

Applicable Law

Under ORS 756.060, the Commission may adopt reasonable and proper rules relative to all statutes administered by the Commission.

With Order No. 18-015, the Commission approved issuance of a notice of proposed rulemaking on competitive bidding requirements, but also indicated the schedule would include an early opportunity for the Commission to provide direction on policy issues.

At a Commission workshop on March 6, 2018, the Commission agreed on five revisions to the draft proposed rules, to be presented by Staff with a recommendation for filing with the Secretary of State at a public meeting. The revisions required by the Commission are listed in Order No. 18-087 as:

- a. Addition of a section on the purpose of the rules. In addition to describing the overall purpose of these rules, this section should be clear that the intent with respect to any differentiation between requests for proposals (RFPs) with utility owned resources and those with no utility-owned resources is not to discourage the former or favor any particular RFP outcome in terms of ownership structure.
- b. Clarification that the rules are not intended to require competitive bidding of transmission projects.
- c. Amendment to proposed rule OAR 860-089-0300 to eliminate the requirement that an explanation of customer interest be provided where an electric company will not allow the use of elements of its benchmark bid by third-parties, and replacement with a clear encouragement to electric companies to make these benchmark elements available to third party bidders as part of an RFP.
- d. Revisions to revert proposed bid scoring language in OAR 860-089-0450(5) to reflect our current guidelines, while adding flexibility for parties to request that we require the scoring of all bids where appropriate. The current draft provision requires the independent evaluator (IE) to score all bids, while our existing guideline 10(d) permits the IE to score all or a sample of submitted bids.
- e. Removal of proposed rule OAR 860-089-0400(5)(b).

Also under Order No. 18-087, Staff was directed to file the revised proposed rules by April 10, 2018, for consideration at the April 24, 2018 public meeting.

Analysis

Staff attaches to this report a revised set of proposed rules, consistent with Order No. 18-087. Attachment 1 is a clean copy and Attachment 2 is a redline version to illustrate Staff's revisions.

Addition of a Purpose Rule

The first revision is the addition of a purpose section to the proposed rules, OAR 860-089-0015, which currently reads as follows:

(1) OAR chapter 860, division 89 is intended to complement the integrated resource planning process, and establish a fair, objective and transparent competitive bidding process that provides an opportunity to minimize long-term energy costs,, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms.

(2) These rules provide a process that allows for diverse ownership of resources. Any distinction in these rules between an RFP soliciting proposals that allow the electric company to own the resource or acquire an ownership interest in the resource at a later date and an RFP that does not allow for such proposals is not made to express a general preference for either type of RFP nor to express a preference for any particular result in terms of ownership structure from the competitive bidding process.

Revisions to proposed rule OAR 860-089-0100

The second revision is to proposed rule OAR 860-089-0100(6). Staff added a sentence clarifying that the rules do not apply to a transmission project. Section (6) now reads:

Resource acquisitions and RFPs for resources or contracts other than those identified in sections (1), and (3) of this rule are not subject to the rules in this Division. Specifically, the acquisition of transmission assets is not subject to the rules in this Division.

Revisions to proposed rule OAR 860-089-0300

Third, Staff has revised sections (2) and (3) in proposed rule OAR 860-089-0300 to read as follows:

(2) An electric company may propose a benchmark resource in response to its RFP to provide a potential cost-based alternative for customers. The Commission encourages the electric company to make elements of the benchmark resource owned or secured by the electric company (e.g. site, transmission or fuel arrangements) available for use in third-party bids.

(3) If the acquisition may result in ownership of a generation resource by the electric company, the Commission encourages the electric company to make elements secured by the electric company (e.g. site, transmission or fuel arrangements) available for use in third-party bids for resources to be owned by the electric company or owned by third parties after construction.

Staff notes that Order 18-087 refers only to benchmark resources in identifying the necessary revisions. Sections 2 and 3, as originally proposed, both required an electric

company to explain why it would not be in the interests of an electric company's customers to make elements of a resource available for use in third-party bids, either in reference to elements of a benchmark resource (Section (2)) or in reference to elements secured by the electric company when an RFP may result in ownership of a generation resource by the electric company (Section (3)). Staff's understanding is that the Commission does not intend to require electric companies to include explanatory statements on this issue in the RFP. For consistency, Staff proposes conforming revisions to both sections of this rule, deleting any requirement for an explanatory statement and including language to the effect that the Commission encourages the offering of resource elements secured by the Company to third-party bidders. This proposal is consistent with previous Commission decisions, i.e. Commission Order No. 06-446.¹

Revisions to proposed rule OAR 860-089-0450

Staff proposes revised language for OAR 860-089-0450(5) consistent with the Commission's direction:

If the RFP allows bidding by the issuing electric company or an affiliate of the company, or includes resource ownership options for the electric company, the IE must independently score the affiliate bids and bids with ownership characteristics or options, if any, and all or a sample of the remaining bids as the IE, in consultation with Commission Staff, finds appropriate to determine whether the company's selections for the initial and final shortlists are reasonable. When the IE does not score all bids, and while a request for acknowledgment of a final shortlist is pending before the Commission, as provided in OAR 860-089-0500, a participant in the acknowledgment proceeding may request that the Commission direct the IE to score all remaining bids or a broader sample.

The revised language, to the draft rules above,² includes changes consistent with the current competitive bidding guidelines, requiring the IE to score all or a sample of submitted bids. The revised language includes two additional changes, italicized above, to add flexibility for parties to request the scoring of all bids where appropriate. First, the IE must consult with Staff in making the initial determination as to the number of bids it is necessary to score in order to determine whether the initial and final shortlists are reasonable. Second, during the shortlist acknowledgment proceeding, parties can request that the Commission require the IE to broaden the sample or score all bids.

¹ See page six of Commission Order No. 06-446: <http://apps.puc.state.or.us/orders/2018ords/18-087.pdf>.

² Revisions to draft rules. See approved draft rules in Commission Order No. 18-015: <http://apps.puc.state.or.us/orders/2018ords/18-015.pdf>, and required revisions to approved draft rules in Commission Order No. 18-087: <http://apps.puc.state.or.us/orders/2018ords/18-087.pdf>.

Revisions to proposed rule OAR 860-089-0400

The language in *OAR 860-089-0400(5)(b)*, originally proposed by Staff, has been deleted and the remaining subsections renumbered, per direction from Commission Order No. 18-087.³

Conclusion

After the March 6, 2018 workshop, Staff revised the draft proposed rules based on the Commission's direction and guidance. Staff recommends that the Commission approve the issuance of a notice of proposed rulemaking for competitive bidding requirements, using the draft proposed rules in Attachment 1.

PROPOSED COMMISSION MOTION:

Approve issuance of a notice of proposed rulemaking on competitive bidding requirements as set forth in Attachment 1.

³ Link to Commission Order No. 18-087: <http://apps.puc.state.or.us/orders/2018ords/18-087.pdf>

Resource Procurement for Electric Companies

860-089-0010

Applicability of Division 089

- (1) The rules contained in this Division apply to electric companies, as defined in OAR 860-089-0020.
- (2) Upon request or its own motion, the Commission may waive any of the Division 089 rules for good cause shown. A request for waiver must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition, and the request must indicate whether the electric company intends to request acknowledgement of the final short list or resource acquisition.
 - (a) In addition to the filing requirements in OAR Chapter 860, Division 001, an electric company filing a request for waiver under this section must serve the request on all parties and interested persons in the electric company's most recent general rate case, competitive bidding filing, and IRP dockets.
 - (b) The Commission may allow oral and written comment on an electric company's request for waiver as it finds appropriate under the circumstances, and will generally issue an order on the waiver request within 90 days.
- (3) Any request for waiver filed by an electric company after it acquires a resource, if granted, does not result in or equate to the Commission's acknowledgment of the resource acquisition.

860-089-0015

Purpose of Division 089

- (1) OAR chapter 860, division 89 is intended to provide an opportunity to minimize long-term energy costs, complement the integrated resource planning process, and establish a fair, objective and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms.
- (2) These rules provide a process that allows for diverse ownership of resources. Any distinction in these rules between an RFP soliciting proposals that allow the electric company to own the resource or acquire an ownership interest in the resource at a later date and an RFP that does not allow for such proposals is not made to express a general preference for either type of RFP nor to express a preference for any particular result in terms of ownership structure from the competitive bidding process.

860-089-0020

Definitions

For purposes of this Division, unless the context requires otherwise:

- (1) "Acknowledgment" is a finding by the Commission that an electric company's final shortlist of bid responses appears reasonable at the time of acknowledgment and was determined in a manner consistent with the rules in this division.
- (2) "Benchmark resource" is a resource identified in an electric company's response to its own request for proposals that is site-specific and self-built.

(3) "Commission-acknowledged IRP" means an IRP for which the Commission has issued an order acknowledging the electric company's plan to procure the resource subject to the rules in this division.

(4) "Electric company" has the meaning given that term in ORS 757.600.

(5) "Emergency" means a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant failure, that requires an electric company to take immediate action.

(6) "Independent evaluator" or "IE" refers to a person engaged by an electric company to oversee an RFP process under the rules in this division, and who also reports directly to the Commission Staff during that process.

(7) "Integrated resource plan" or "IRP" has the meaning given that term in OAR 860-027-0400.

(8) "IRP Update" means an update to an acknowledged IRP that is filed in accordance with OAR 860-027-0400(9).

(9) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(10) "Qualifying facility" refers to qualifying facilities under 16 USC § 796(17) and (18) (2012).

(11) "Resource acquisition" refers to a process for the purpose of acquiring energy, capacity or storage resources that starts with an electric company's:

(a) Circulation of a final or draft RFP to third parties; or

(b) Communication of an offer or receipt of an offer in a two-party negotiation.

(12) "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals from prospective bidders.

OAR 860-089-0100

Applicability of Competitive Bidding Requirements

(1) An electric company must comply with the rules in this division when it seeks to acquire energy or capacity resources, or to contract for energy or capacity if any of the following apply:

(a) The acquisition is of a resource or a contract for more than 50 megawatts and five years in length.

(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection (1)(a) or (1)(c) of this rule.

(c) The acquisition is of resources more than five years in length that in the aggregate provide the electric company with more than 50 megawatts and these resources:

(A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent, and

(B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other.

(2) An electric company may request that the Commission find that resources presumed to be subject to these rules under subsection (1) (c) of this rule should not be considered in the aggregate. The electric company may make this request before acquiring the resources or if the electric company proceeds without following competitive bidding rules, the request may be made when seeking recovery of the costs of the resources in rates. The electric company bears the burden of rebutting the presumption that the acquisition is subject to these rules by showing each resource is separate and distinct based on other factors.

(3) An electric company must comply with the rules in this division when it seeks to acquire energy storage resources or contracts for a storage resource greater than 25 megawatt hours and with a duration of more than five years.

(4) An electric company is not required to comply with the rules in this division before seeking to acquire a resource under section (1) or (3) of this rule in the following circumstances:

(a) In an emergency;

(b) When there is a time-limited opportunity to acquire a resource of unique value to the electric company's customers; or

(c) When an alternative acquisition method was proposed by the electric company in the IRP and explicitly acknowledged by the Commission.

(5) Within 30 days of a resource acquisition under OAR 860-089-0100(4), the electric company must file a report with the Commission explaining the relevant circumstances. The report must be served on all the parties and interested persons in the electric company's most recent rate case, RFP and IRP dockets.

(6) Resource acquisitions and RFPs for resources or contracts other than those identified in sections (1), and (3) of this rule are not subject to the rules in this Division. Specifically, the acquisition of transmission assets is not subject to the rules in this Division.

OAR 860-089-0200

Engaging an Independent Evaluator

(1) Prior to issuing a request for proposals, an electric company must engage the services of an independent evaluator to oversee the competitive bidding process.

(2) The electric company must notify all parties and interested persons in the electric company's most recent general rate case, RFP and IRP dockets of its need for an IE. The electric company must solicit input from these parties and interested persons regarding the manner in which it intends to solicit proposals.

(3) Commission Staff will recommend an IE to the Commission based in part on the consideration of:

(a) Any input received from the electric company and interested, non-bidding parties,

(b) Review of the degree to which the IE is independent of the electric company and potential bidders,

(c) The degree to which the cost of the services to be provided is reasonable,

(d) The experience and competence of the IE,

(e) And the public interest.

(4) The Commission may then select an IE for the RFP.

(5) The electric company is responsible for engaging the services of the IE and is responsible for all fees and expenses associated with engaging the IE's services. The electric company may request recovery of fees and expenses associated with engaging an IE in customer rates.

(6) The electric company's contract with the IE must require that the IE fulfills its duties under the rules in this Division and that the IE confers as necessary with the Commission and Commission Staff on the IE's duties.

(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.

OAR 860-089-0250

Design of Requests for Proposals

(1) For each resource acquisition, the electric company must prepare a draft request for proposals, and provide the draft to all parties and interested persons in the electric company's most recent general rate case, RFP, IE selection, and IRP dockets. Prior to filing the draft RFP with the Commission, the electric company must consult with the IE in preparing the RFP and must conduct bidder and stakeholder workshops.

(2) The draft RFP must reflect the RFP elements, scoring methodology and associated modeling described in the Commission-acknowledged IRP. The electric company's draft RFP must reference and adhere to the specific section of the IRP in which RFP design and scoring is described.

(a) If the electric company's Commission-acknowledged IRP does not include a specific section devoted to describing the RFP design, scoring methodology and associated modeling process, the electric company must develop and present in a separate filing with the Commission a proposal for scoring and any associated modeling, which must be filed with the Commission before the electric company may prepare the draft RFP. The electric company must consider resource diversity (e.g. with respect to technology, fuel type, resource size, and resource duration) in preparing its proposal. The Commission or an administrative law judge may establish a process for review of the filing.

(b) The filing of a proposal for scoring and any associated modeling under subsection (2)(a) of this rule must be served on all parties and interested persons in the electric company's most recent general rate case, RFP, IE selection, and IRP dockets.

(3) At a minimum, the draft RFP must include:

(a) Any minimum bidder requirements for credit and capability,

(b) Standard form contracts to be used in acquisition of resources,

(c) Bid evaluation and scoring criteria that are consistent with section (2) of this rule and OAR 860-089-0400;

(d) Language to allow bidders with which it negotiates to negotiate mutually agreeable final contract terms that are different from the standard form contracts.

(e) Description of how the electric company will share information about bid scores, including what information about the bid scores and bid ranking may be provided to bidders and when and how it will be provided; and

(f) Bid evaluation and scoring criteria for selection of the initial shortlist of bidders and for selection of the final shortlist of bidders consistent with the requirements of OAR 860-089-0400.

- (4) An electric company may set a minimum resource size in the draft RFP, but it must allow qualifying facilities that exceed the eligibility cap for standard avoided cost pricing to participate as bidders.
- (5) Subsequent to taking the steps required under sections (1), (2), (3), and (4) the electric company must file the final draft RFP with the Commission for review and approval. Public comment may be submitted to the Commission on the draft RFP.
- (6) The electric company must demonstrate in its RFP filing:
- (a) The alignment of the electric company's RFP with an acknowledged IRP;
 - (b) Whether the RFP satisfies the rules in this Division; and
 - (c) The overall fairness of the proposed bidding process.
- (7) The electric company may explain in its filing the impact of multi-state regulation on RFP development, including the requirements imposed by other states for the RFP process.
- (8) The Commission may approve the RFP with any conditions it deems necessary, upon a finding that the electric company has complied with the provisions of section (6) of this rule.
- (9) Subject to the provisions of subsections (a) and (b) of this section, the Commission will generally issue a decision approving or disapproving the RFP within 100 days after the final draft RFP is filed.
- (a) An electric company may request an alternative review period when it files the final draft RFP for approval. If the accompanying request is for an alternative review period shorter than 100 days, the electric company must demonstrate good cause for the alternative review period.
- (b) Any person may request an extension of the review period of up to 30 days per request upon a showing of good cause.
- (10) The Commission or an administrative law judge may establish an alternate review period and may set deadlines for public comment on a draft RFP by providing notice to the parties, generally within 10 days of the electric company's filing of the draft RFP.

OAR 860-089-0300

Resource Ownership

- (1) An electric company may submit or allow its affiliates to submit bids in response to the electric company's request for proposals. Electric company and affiliate bids must be treated in the same manner as other bids.
- (a) Any individual who participates in the preparation of an electric company or affiliate bid may not participate in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company and must be screened from that process.
- (b) Any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.
- (2) An electric company may propose a benchmark resource in response to its RFP to provide a potential cost-based alternative for customers. The Commission encourages the electric company to make elements of the benchmark resource owned or secured by the electric company (e.g. site, transmission or fuel arrangements) available for use in third-party bids.

(3) If the acquisition may result in ownership of a generation resource by the electric company, the Commission encourages the electric company to make elements secured by the electric company (e.g. site, transmission or fuel arrangements) available for use in third-party bids for resources to be owned by the electric company or owned by third parties after construction.

(4) An electric company may consider ownership transfers within an RFP solicitation.

(5) The electric company issuing the RFP must allow independent power producers to submit bids with and without an option to renew and may not require that bids include an option for transferring ownership of the resource.

OAR 860-089-0350

Benchmark Resource Score

(1) Prior to the opening of bidding on an approved RFP, the electric company must submit to Commission Staff and the IE for review and comment a detailed score for any benchmark resource with supporting cost information, any transmission arrangements and all other information necessary to score the benchmark resource. The electric company must apply the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids.

(2) If, during the course of the RFP process, the Commission or the IE determines that it is appropriate to update any bids, the electric company must also make the equivalent update to the score of the benchmark resource.

(3) Before the IE provides the electric company an opportunity to score other bids, the electric company must submit the final benchmark resource score developed in consultation with the IE, cost information and other related information shared under this section, either in hard copy in a sealed envelope or a digital copy on electronic media, to the IE and Commission Staff.

OAR 860-089-0400

Bid Scoring and Evaluation by Electric Company

(1) The purpose of this rule is to ensure that the electric company engages in a transparent bid-scoring process using objective scoring criteria and metrics.

(2) The electric company must provide all proposed and final scoring criteria and metrics in the draft and final RFPs, respectively.

(3) The electric company must base the scoring of bids and selection of an initial shortlist on price and, as appropriate, non-price factors. Non-price factors should be converted to price factors where practicable. The electric company must use the following approach to develop price and non-price scores, unless an alternative approach is approved by the Commission when it reviews the final draft RFP.

(a) Price scores must be based on the prices submitted by bidders and calculated using units that are appropriate for the product sought and technologies anticipated to be employed in responsive bids using real-levelized or annuity methods. The IE may authorize adjustments to price scores on review of information submitted by bidders.

(b) Non-price scores should, when practicable, primarily relate to resource characteristics identified in the electric company's most recent acknowledged IRP Action Plan or IRP Update and may be based on conformance to standard form contracts. Non-price scoring criteria must be objective and subject to self-scoring analysis by bidders.

(c) Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements.

(d) Scoring criteria may not be based on renewal or ownership options, except insofar as these options affect costs, revenues, benefits or prices. Any criteria based on renewal or ownership options must be explained in sufficient detail in the draft RFP to allow for public comment and Commission review of the justification for the proposed criteria.

(4) The electric company may select an initial shortlist of bids after it has scored the bids and identified the bids with top scores. Following selection of an initial shortlist of bids, the electric company may select a final shortlist of bids.

(5) Selection of the final shortlist of bids must be based on bid scores and the results of modeling the effect of candidate resources on overall system costs and risks using modeling methods that are consistent with those used in the Commission-acknowledged IRP, unless an alternative method is approved by the Commission when it reviews the final draft RFP.

(a) The electric company must use a qualified and independent third-party expert to review site-specific critical performance factors for wind and solar resources on the initial shortlist before modeling the effects of such resources.

(b) In addition, the electric company must conduct, and consider the results in selecting a final short list, a sensitivity analysis of its bid rankings that demonstrates the degree to which the rankings are sensitive to:

(A) Changes in non-price scores; and

(B) Changes in assumptions used to compare bids or portfolios of bids, such as assumptions used to extend shorter bids for comparison with longer bids, or assumptions used to compare smaller bids or portfolios with larger ones. For example, the electric company may assume that shorter bids will continue to be available with the same characteristics after the bid term rather than adding "generic fill" assumptions to the end of these bids to extend them for comparison with others.

(6) The electric company must provide the IE and Commission Staff with full access to its production cost and risk models and sensitivity analyses. When the IE and Commission Staff concur that appropriate protections for protected information are in place, the electric company must provide access to such information to non-bidding interested parties that request the information in the final short list acknowledgment proceeding.

OAR 860-089-0450

Independent Evaluator Duties

(1) The IE will oversee the competitive bidding process to ensure that it is conducted fairly, transparently, and properly.

(2) The IE must be available and responsive to Commission Staff throughout the process, and must provide Commission Staff with the IE's notes of all conversations and the full text of written

communications between the IE and the electric company and any third-party that are related to the IE's execution of its duties.

(3) The IE must consult with the electric company on preparation of the draft RFP and submit its assessment of the final draft RFP to the Commission when the company files the final draft for approval.

(4) The IE must check whether the electric company's scoring of the bids and selection of the initial and final shortlists are reasonable.

(5) If the RFP allows bidding by the issuing electric company or an affiliate of the company, or includes resource ownership options for the electric company, the IE must independently score the affiliate bids and bids with ownership characteristics or options, if any, and all or a sample of the remaining bids as the IE, in consultation with Commission Staff, finds appropriate to determine whether the company's selections for the initial and final shortlists are reasonable. When the IE does not score all bids, and while a request for acknowledgment of a final shortlist is pending before the Commission, as provided in OAR 860-089-0500, a participant in the acknowledgment proceeding may request that the Commission direct the IE to score all remaining bids or a broader sample.

(6) The IE must also evaluate the unique risks and advantages associated with any company-owned resources (including but not limited to the electric company's benchmark), and may apply the same evaluation to third-party bids, including an evaluation of the following issues:

- (a) Construction cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs);
- (b) Reasonableness of forced outage rates;
- (c) End effect values;
- (d) Environmental emissions costs;
- (e) Reasonableness of operation and maintenance costs;
- (f) Adequacy of capital additions costs;
- (g) Reasonableness of performance assumptions for output, heat rate, and power curve; and
- (h) Specificity of construction schedules or risk of construction delays.

(7) The IE must review the reasonableness of any score submitted by the electric company for a benchmark resource. Once the electric company and the IE have both scored and evaluated the competing bids and any benchmark resource, the IE and the electric company must compare results and attempt to reconcile and resolve any scoring differences. If the electric company and IE are unable to do so, the IE must explain the differences in its closing report to the Commission. The electric company and the IE must both report their scores to Commission Staff before any reconciliation.

(8) The IE must review the electric company's sensitivity analysis of the bid rankings required under OAR 860-089-0400 and provide a written assessment to Commission Staff prior to when the electric company requests acknowledgment of the final short list.

(9) The IE must prepare a closing report for the Commission after the electric company has selected its final shortlist. The IE's closing report must include an evaluation of the applicable competitive bidding processes in selecting for the least-cost, least-risk acquisition of resources and allowing for the opportunity for diverse ownership.

(10) Unless the Commission determines there is no need for further IE participation, the IE must participate in the final short list acknowledgment proceeding initiated by the electric company, and must continue to participate if, at the time of acknowledgment of the electric company's final shortlist, the Commission chooses to require IE involvement through final resource selection. In addition to making a decision on acknowledgment, Commission Staff and other parties, including bidders, may request that the Commission require expanded IE involvement. Upon such a request or its own consideration, the

Commission may require an IE to be involved in the competitive bidding process through final resource selection.

OAR 860-089-0500

Final Short List Acknowledgement and Result Publication

(1) After an RFP has been issued under the rules in this Division, the electric company must request that the Commission acknowledge the electric company's final shortlist of bids before it may enter any resulting contracts. If granted by the Commission, acknowledgement has the same legal force and effect as a Commission-acknowledged IRP in any future cost recovery proceeding.

(2) A request for acknowledgement must include, at a minimum, the IE's closing report, the electric company's final shortlist of responsive bids, all sensitivity analyses and a discussion of the consistency between the final shortlist and the electric company's last-acknowledged IRP Action Plan or acknowledged IRP Update.

(3) The Commission will generally issue a decision on the request for acknowledgment within 60 days of receipt of the electric company's filing.

(4) The electric company must make a non-confidential filing in the RFP docket providing the average bid score and the average price of a resource on its final shortlist.

(5) Following execution of all contracts resulting from an RFP or cancellation of the RFP, the electric company must provide information, on request, to a bidder about the bidder's bid score.

OAR 860-089-0550

Protected Information

The electric company may request a protective order be issued under OAR 860-001-0080 in order to make available protected information required to be shared under this Division. Such protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any benchmark resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, Commission Staff, and the IE and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in RFP review and approval, final shortlist acknowledgement and cost-recovery proceedings.

Resource Procurement for Electric Companies
(Including revisions resulting from Commissioner Workshop on March 6, 2018)

860-089-0010

Applicability of Division 089

- (1) The rules contained in this Division apply to electric companies, as defined in OAR 860-089-0020.
- (2) Upon request or its own motion, the Commission may waive any of the Division 089 rules for good cause shown. A request for waiver must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition, and the request must indicate whether the electric company intends to request acknowledgement of the final short list or resource acquisition.
 - (a) In addition to the filing requirements in OAR Chapter 860, Division 001, an electric company filing a request for waiver under this section must serve the request on all parties and interested persons in the electric company's most recent general rate case, competitive bidding filing, and IRP dockets.
 - (b) The Commission may allow oral and written comment on an electric company's request for waiver as it finds appropriate under the circumstances, and will generally issue an order on the waiver request within 90 days.
- (3) Any request for waiver filed by an electric company after it acquires a resource, if granted, does not result in or equate to the Commission's acknowledgment of the resource acquisition.

860-089-0015

Purpose of Division 089

(1) OAR chapter 860, division 89 is intended to provide an opportunity to minimize long-term energy costs, complement the integrated resource planning process, and establish a fair, objective and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms.

(2) These rules provide a process that allows for diverse ownership of resources. Any distinction in these rules between an RFP soliciting proposals that allow the electric company to own the resource or acquire an ownership interest in the resource at a later date and an RFP that does not allow for such proposals is not made to express a general preference for either type of RFP nor to express a preference for any particular result in terms of ownership structure from the competitive bidding process.

860-089-0020

Definitions

For purposes of this Division, unless the context requires otherwise:

- (1) "Acknowledgment" is a finding by the Commission that an electric company's final shortlist of bid responses appears reasonable at the time of acknowledgment and was determined in a manner consistent with the rules in this division.
- (2) "Benchmark resource" is a resource identified in an electric company's response to its own request for proposals that is site-specific and self-built.

(3) "Commission-acknowledged IRP" means an IRP for which the Commission has issued an order acknowledging the electric company's plan to procure the resource subject to the rules in this division.

(4) "Electric company" has the meaning given that term in ORS 757.600.

(5) "Emergency" means a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant failure, that requires an electric company to take immediate action.

(6) "Independent evaluator" or "IE" refers to a person engaged by an electric company to oversee an RFP process under the rules in this division, and who also reports directly to the Commission Staff during that process.

(7) "Integrated resource plan" or "IRP" has the meaning given that term in OAR 860-027-0400.

(8) "IRP Update" means an update to an acknowledged IRP that is filed in accordance with OAR 860-027-0400(9).

(9) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(10) "Qualifying facility" refers to qualifying facilities under 16 USC § 796(17) and (18) (2012).

(11) "Resource acquisition" refers to a process for the purpose of acquiring energy, capacity or storage resources that starts with an electric company's:

(a) Circulation of a final or draft RFP to third parties; or

(b) Communication of an offer or receipt of an offer in a two-party negotiation.

(12) "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals from prospective bidders.

OAR 860-089-0100

Applicability of Competitive Bidding Requirements

(1) An electric company must comply with the rules in this division when it seeks to acquire energy or capacity resources, or to contract for energy or capacity if any of the following apply:

(a) The acquisition is of a resource or a contract for more than 50 megawatts and five years in length.

(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection (1)(a) or (1)(c) of this rule.

(c) The acquisition is of resources more than five years in length that in the aggregate provide the electric company with more than 50 megawatts and these resources:

(A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent, and

(B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other.

(2) An electric company may request that the Commission find that resources presumed to be subject to these rules under subsection (1) (c) of this rule should not be considered in the aggregate. The electric company may make this request before acquiring the resources or if the electric company proceeds without following competitive bidding rules, the request may be made when seeking recovery of the costs of the resources in rates. The electric company bears the burden of rebutting the presumption that the acquisition is subject to these rules by showing each resource is separate and distinct based on other factors.

(3) An electric company must comply with the rules in this division when it seeks to acquire energy storage resources or contracts for a storage resource greater than 25 megawatt hours and with a duration of more than five years.

(4) An electric company is not required to comply with the rules in this division before seeking to acquire a resource under section (1) or (3) of this rule in the following circumstances:

(a) In an emergency;

(b) When there is a time-limited opportunity to acquire a resource of unique value to the electric company's customers; or

(c) When an alternative acquisition method was proposed by the electric company in the IRP and explicitly acknowledged by the Commission.

(5) Within 30 days of a resource acquisition under OAR 860-089-0100(4), the electric company must file a report with the Commission explaining the relevant circumstances. The report must be served on all the parties and interested persons in the electric company's most recent rate case, RFP and IRP dockets.

(6) Resource acquisitions and RFPs for resources or contracts other than those identified in sections (1), and (3) of this rule are not subject to the rules in this Division. [Specifically, the acquisition of transmission assets is not subject to the rules in this Division.](#)

OAR 860-089-0200

Engaging an Independent Evaluator

(1) Prior to issuing a request for proposals, an electric company must engage the services of an independent evaluator to oversee the competitive bidding process.

(2) The electric company must notify all parties and interested persons in the electric company's most recent general rate case, RFP and IRP dockets of its need for an IE. The electric company must solicit input from these parties and interested persons regarding the manner in which it intends to solicit proposals.

(3) Commission Staff will recommend an IE to the Commission based in part on the consideration of:

- (a) Any input received from the electric company and interested, non-bidding parties,
- (b) Review of the degree to which the IE is independent of the electric company and potential bidders,
- (c) The degree to which the cost of the services to be provided is reasonable,
- (d) The experience and competence of the IE,
- (e) And the public interest.

- (4) The Commission may then select an IE for the RFP.
- (5) The electric company is responsible for engaging the services of the IE and is responsible for all fees and expenses associated with engaging the IE's services. The electric company may request recovery of fees and expenses associated with engaging an IE in customer rates.
- (6) The electric company's contract with the IE must require that the IE fulfills its duties under the rules in this Division and that the IE confers as necessary with the Commission and Commission Staff on the IE's duties.
- (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.

OAR 860-089-0250

Design of Requests for Proposals

- (1) For each resource acquisition, the electric company must prepare a draft request for proposals, and provide the draft to all parties and interested persons in the electric company's most recent general rate case, RFP, IE selection, and IRP dockets. Prior to filing the draft RFP with the Commission, the electric company must consult with the IE in preparing the RFP and must conduct bidder and stakeholder workshops.
- (2) The draft RFP must reflect the RFP elements, scoring methodology and associated modeling described in the Commission-acknowledged IRP. The electric company's draft RFP must reference and adhere to the specific section of the IRP in which RFP design and scoring is described.
 - (a) If the electric company's Commission-acknowledged IRP does not include a specific section devoted to describing the RFP design, scoring methodology and associated modeling process, the electric company must develop and present in a separate filing with the Commission a proposal for scoring and any associated modeling, which must be filed with the Commission before the electric company may prepare the draft RFP. The electric company must consider resource diversity (e.g. with respect to technology, fuel type, resource size, and resource duration) in preparing its proposal. The Commission or an administrative law judge may establish a process for review of the filing.
 - (b) The filing of a proposal for scoring and any associated modeling under subsection (2)(a) of this rule must be served on all parties and interested persons in the electric company's most recent general rate case, RFP, IE selection, and IRP dockets.
- (3) At a minimum, the draft RFP must include:
 - (a) Any minimum bidder requirements for credit and capability,
 - (b) Standard form contracts to be used in acquisition of resources,
 - (c) Bid evaluation and scoring criteria that are consistent with section (2) of this rule and OAR 860-089-0400;
 - (d) Language to allow bidders with which it negotiates to negotiate mutually agreeable final contract terms that are different from the standard form contracts.
 - (e) Description of how the electric company will share information about bid scores, including what information about the bid scores and bid ranking may be provided to bidders and when and how it will be provided; and
 - (f) Bid evaluation and scoring criteria for selection of the initial shortlist of bidders and for selection of the final shortlist of bidders consistent with the requirements of OAR 860-089-0400.

- (4) An electric company may set a minimum resource size in the draft RFP, but it must allow qualifying facilities that exceed the eligibility cap for standard avoided cost pricing to participate as bidders.
- (5) Subsequent to taking the steps required under sections (1), (2), (3), and (4) the electric company must file the final draft RFP with the Commission for review and approval. Public comment may be submitted to the Commission on the draft RFP.
- (6) The electric company must demonstrate in its RFP filing:
- (a) The alignment of the electric company's RFP with an acknowledged IRP;
 - (b) Whether the RFP satisfies the rules in this Division; and
 - (c) The overall fairness of the proposed bidding process.
- (7) The electric company may explain in its filing the impact of multi-state regulation on RFP development, including the requirements imposed by other states for the RFP process.
- (8) The Commission may approve the RFP with any conditions it deems necessary, upon a finding that the electric company has complied with the provisions of section (6) of this rule.
- (9) Subject to the provisions of subsections (a) and (b) of this section, the Commission will generally issue a decision approving or disapproving the RFP within 100 days after the final draft RFP is filed.
- (a) An electric company may request an alternative review period when it files the final draft RFP for approval. If the accompanying request is for an alternative review period shorter than 100 days, the electric company must demonstrate good cause for the alternative review period.
- (b) Any person may request an extension of the review period of up to 30 days per request upon a showing of good cause.
- (10) The Commission or an administrative law judge may establish an alternate review period and may set deadlines for public comment on a draft RFP by providing notice to the parties, generally within 10 days of the electric company's filing of the draft RFP.

OAR 860-089-0300

Resource Ownership

- (1) An electric company may submit or allow its affiliates to submit bids in response to the electric company's request for proposals. Electric company and affiliate bids must be treated in the same manner as other bids.
- (a) Any individual who participates in the preparation of an electric company or affiliate bid may not participate in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company and must be screened from that process.
- (b) Any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.
- (2) An electric company may propose a benchmark resource in response to its RFP to provide a potential cost-based alternative for customers. The Commission encourages the electric company to make elements of the benchmark resource owned or secured by the electric company (e.g. site, transmission or fuel arrangements) available for use in third-party bids. 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 860-089-0250 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.~~

(3) If the acquisition may result in ownership of a generation resource by the electric company, the Commission encourages and the electric company ~~will not allow third parties to submit bids using elements secured by the electric company (e.g. site, transmission, or fuel arrangements) then the electric company must include with its draft RFP filing under OAR 860-0XX-0250 a statement explaining why it would not be in the interests of the electric company's customers~~ to make such elements secured by the electric company (e.g. site, transmission or fuel arrangements) available for use in third-party bids for resources to be owned by the electric company or owned by third parties after construction.

(4) An electric company may consider ownership transfers within an RFP solicitation.

(5) The electric company issuing the RFP must allow independent power producers to submit bids with and without an option to renew and may not require that bids include an option for transferring ownership of the resource.

OAR 860-089-0350

Benchmark Resource Score

(1) Prior to the opening of bidding on an approved RFP, the electric company must submit to Commission Staff and the IE for review and comment a detailed score for any benchmark resource with supporting cost information, any transmission arrangements and all other information necessary to score the benchmark resource. The electric company must apply the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids.

(2) If, during the course of the RFP process, the Commission or the IE determines that it is appropriate to update any bids, the electric company must also make the equivalent update to the score of the benchmark resource.

(3) Before the IE provides the electric company an opportunity to score other bids, the electric company must submit the final benchmark resource score developed in consultation with the IE, cost information and other related information shared under this section, either in hard copy in a sealed envelope or a digital copy on electronic media, to the IE and Commission Staff.

OAR 860-089-0400

Bid Scoring and Evaluation by Electric Company

(1) The purpose of this rule is to ensure that the electric company engages in a transparent bid-scoring process using objective scoring criteria and metrics.

(2) The electric company must provide all proposed and final scoring criteria and metrics in the draft and final RFPs, respectively.

(3) The electric company must base the scoring of bids and selection of an initial shortlist on price and, as appropriate, non-price factors. Non-price factors should be converted to price factors where practicable. The electric company must use the following approach to develop price and non-price scores, unless an alternative approach is approved by the Commission when it reviews the final draft RFP.

(a) Price scores must be based on the prices submitted by bidders and calculated using units that are appropriate for the product sought and technologies anticipated to be employed in responsive bids using real-levelized or annuity methods. The IE may authorize adjustments to price scores on review of information submitted by bidders.

(b) Non-price scores should, when practicable, primarily relate to resource characteristics identified in the electric company's most recent acknowledged IRP Action Plan or IRP Update and may be based on conformance to standard form contracts. Non-price scoring criteria must be objective and subject to self-scoring analysis by bidders.

(c) Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements.

(d) Scoring criteria may not be based on renewal or ownership options, except insofar as these options affect costs, revenues, benefits or prices. Any criteria based on renewal or ownership options must be explained in sufficient detail in the draft RFP to allow for public comment and Commission review of the justification for the proposed criteria.

(4) The electric company may select an initial shortlist of bids after it has scored the bids and identified the bids with top scores. Following selection of an initial shortlist of bids, the electric company may select a final shortlist of bids.

(5) Selection of the final shortlist of bids must be based on bid scores and the results of modeling the effect of candidate resources on overall system costs and risks using modeling methods that are consistent with those used in the Commission-acknowledged IRP, unless an alternative method is approved by the Commission when it reviews the final draft RFP.

(a) The electric company must use a qualified and independent third-party expert to review site-specific critical performance factors for wind and solar resources on the initial shortlist before modeling the effects of such resources.

(ab) In addition, the electric company must conduct, and consider the results in selecting a final short list, a sensitivity analysis of its bid rankings that demonstrates the degree to which the rankings are sensitive to:

(A) Changes in non-price scores; and

(B) Changes in assumptions used to compare bids or portfolios of bids, such as assumptions used to extend shorter bids for comparison with longer bids, or assumptions used to compare smaller bids or portfolios with larger ones. For example, the electric company may assume that shorter bids will continue to be available with the same characteristics after the bid term rather than adding "generic fill" assumptions to the end of these bids to extend them for comparison with others.

(b) For any bids on the final short list that provide for the possibility of electric company or affiliate ownership of the resource, the IE must conduct a project finance due diligence review. This review must make a determination of whether or not, subject to any conditions, the electric company or affiliate ownership resource would receive third-party project financing to construct and operate the proposed resource at the costs and bid prices submitted into the RFP. If a final bid selected for contract

~~negotiation is a power purchase agreement without electric company ownership options, then the IE must perform a similar review for this bid. The IE must produce a comprehensive report on the cost and performance assumptions of any bids reviewed under this subsection. For a power purchase agreement subject to this review, the IE must, if necessary, propose any necessary adjustments to the bid price or performance assumptions used in the bid scoring or both that would be necessary to provide project financing for the construction and operation of the proposed resource. Additionally, the IE must propose to the electric company any necessary adjustments to the bid scoring for bids with the possibility of electric company or affiliate ownership of the resource. The IE must provide a final report of these analyses to the Commission Staff with a copy to the electric company and interested parties in the final short list acknowledgment proceeding.~~

(6) The electric company must provide the IE and Commission Staff with full access to its production cost and risk models and sensitivity analyses. When the IE and Commission Staff concur that appropriate protections for protected information are in place, the electric company must provide access to such information to non-bidding interested parties that request the information in the final short list acknowledgment proceeding.

OAR 860-089-0450

Independent Evaluator Duties

(1) The IE will oversee the competitive bidding process to ensure that it is conducted fairly, transparently, and properly.

(2) The IE must be available and responsive to Commission Staff throughout the process, and must provide Commission Staff with the IE's notes of all conversations and the full text of written communications between the IE and the electric company and any third-party that are related to the IE's execution of its duties.

(3) The IE must consult with the electric company on preparation of the draft RFP and submit its assessment of the final draft RFP to the Commission when the company files the final draft for approval.

(4) The IE must check whether the electric company's scoring of the bids and selection of the initial and final shortlists are reasonable.

(5) If the RFP allows bidding by the issuing electric company or an affiliate of the company, or includes resource ownership options for the electric company, the IE must independently score the affiliate bids and bids with ownership characteristics or options, if any, and all or a sample of the remaining bids as the IE, in consultation with Commission Staff, finds appropriate to determine whether the company's selections for the initial and final shortlists are reasonable. When the IE does not score all bids, and while a request for acknowledgment of a final shortlist is pending before the Commission, as provided in OAR 860-089-0500, a participant in the acknowledgment proceeding may request that the Commission direct the IE to score all remaining bids or a broader sample.

(6) The IE must also evaluate the unique risks and advantages associated with any company-owned resources (including but not limited to the electric company's benchmark), and may apply the same evaluation to third-party bids, including an evaluation of the following issues:

- (a) Construction cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs);
- (b) Reasonableness of forced outage rates;
- (c) End effect values;
- (d) Environmental emissions costs;
- (e) Reasonableness of operation and maintenance costs;
- (f) Adequacy of capital additions costs;
- (g) Reasonableness of performance assumptions for output, heat rate, and power curve; and
- (h) Specificity of construction schedules or risk of construction delays.

(76) The IE must review the reasonableness of any score submitted by the electric company for a benchmark resource. Once the electric company and the IE have both scored and evaluated the competing bids and any benchmark resource, the IE and the electric company must compare results and attempt to reconcile and resolve any scoring differences. If the electric company and IE are unable to do so, the IE must explain the differences in its closing report to the Commission. The electric company and the IE must both report their scores to Commission Staff before any reconciliation.

(87) The IE must review the electric company's sensitivity analysis of the bid rankings required under OAR 860-089-0400 and provide a written assessment to Commission Staff prior to when the electric company requests acknowledgment of the final short list.

(98) The IE must prepare a closing report for the Commission after the electric company has selected its final shortlist. The IE's closing report must include an evaluation of the applicable competitive bidding processes in selecting for the least-cost, least-risk acquisition of resources and allowing for the opportunity for diverse ownership.

(109) Unless the Commission determines there is no need for further IE participation, the IE must participate in the final short list acknowledgment proceeding initiated by the electric company, and must continue to participate if, at the time of acknowledgment of the electric company's final shortlist, the Commission chooses to require IE involvement through final resource selection. In addition to making a decision on acknowledgment, Commission Staff and other parties, including bidders, may request that the Commission require expanded IE involvement. Upon such a request or its own consideration, the Commission may require an IE to be involved in the competitive bidding process through final resource selection.

OAR 860-089-0500

Final Short List Acknowledgement and Result Publication

(1) After an RFP has been issued under the rules in this Division, the electric company must request that the Commission acknowledge the electric company's final shortlist of bids before it may enter any resulting contracts. If granted by the Commission, acknowledgement has the same legal force and effect as a Commission-acknowledged IRP in any future cost recovery proceeding.

(2) A request for acknowledgement must include, at a minimum, the IE's closing report, the electric company's final shortlist of responsive bids, all sensitivity analyses and a discussion of the consistency between the final shortlist and the electric company's last-acknowledged IRP Action Plan or acknowledged IRP Update.

(3) The Commission will generally issue a decision on the request for acknowledgment within 60 days of receipt of the electric company's filing.

(4) The electric company must make a non-confidential filing in the RFP docket providing the average bid score and the average price of a resource on its final shortlist.

(5) Following execution of all contracts resulting from an RFP or cancellation of the RFP, the electric company must provide information, on request, to a bidder about the bidder's bid score.

OAR 860-089-0550

Protected Information

The electric company may request a protective order be issued under OAR 860-001-0080 in order to make available protected information required to be shared under this Division. Such protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any benchmark resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, Commission Staff, and the IE and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in RFP review and approval, final shortlist acknowledgement and cost-recovery proceedings.