

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 23, 2021**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: February 11, 2021

TO: Public Utility Commission

FROM: Rose Anderson

THROUGH: Bryan Conway, JP Batmale, and Kim Herb **SIGNED**

SUBJECT: PACIFIC POWER:
(Docket No UM 1631)
PacifiCorp requests a Partial Waiver of OAR 860-089-0500(2) in its 2020
All Source Request for Proposals (UM 2059).

STAFF RECOMMENDATION:

The Commission should deny Pacific Power's (PacifiCorp or Company) request for waiver of OAR 860-089-0500(2), and direct PacifiCorp to engage in discussions necessary to clarify bid details with bidders, with oversight from the Oregon Independent Evaluator (IE).

DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's request for waiver of OAR 860-089-0500(2).

Applicable Law or Rule

Under ORS 756.040, the Commission "is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction."

The Commission's competitive bidding requirements in OAR Chapter 860, Division 89 apply when an electric utility may acquire a resource or a contract for more than an aggregate of 80 megawatts and five years in length, as specified in OAR 860-089-0100(1).

OAR 860-089-0010(2) says that, "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."

OAR 860-089-0020(9) defines 'resource acquisition' as:

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 a final offer or receipt of a final offer in a two-party negotiation.

Under OAR 860-089-0500(2), an electric company must request acknowledgement of the final shortlist in a Request for Proposals (RFP) before it may begin negotiations.

Analysis

Background

On February 24, 2020, PacifiCorp filed its Application for Approval of 2020 All Source Request for Proposal, docketed as UM 2059. In its initial filing, PacifiCorp proposed a schedule for its activities, including a date of October 19, 2020, for "Begin contract review and negotiations with ISL (subject to OAR waiver)".¹ Pursuant to the first partial schedule filed by Staff, PacifiCorp filed its final draft RFP on April 22, 2020, and the final RFP was approved by the Commission on July 16, 2020. Under the schedule filed by Staff for the remainder of the docket, PacifiCorp is authorized to file its Final Short-List for Acknowledgment with the IE's Closing Report by June 10, 2021. The Commission is scheduled to consider acknowledgment of the filing on September 9, 2021.²

On December 9, 2020, PacifiCorp filed a Petition for Partial Waiver of OAR 860-089-0500(2). In its petition, PacifiCorp states that a partial waiver of

¹ In the Matter of PacifiCorp dba Pacific Power, Application for Approval of 2020 All Source Request for Proposal, Docket UM 2059, Initial Filing, Attachment A at 1 (February 24, 2020).

² UM 2059, Staff's Partial Schedule for Remainder of the RFP Proceeding (August 11, 2020), available at: <https://edocs.puc.state.or.us/efdocs/HAH/um2059hah155156.pdf>

OAR 860-089-0500(2) will allow PacifiCorp to begin Power Purchase Agreement (PPA) negotiations in January 2021 with the developers on the Initial Shortlist (ISL), which will allow PacifiCorp to promptly execute PPAs with Final Shortlist (FSL) developers, and allow successful bidders selected to the FSL to move forward with development and construction sooner.

PacifiCorp proposes that negotiations begin during the time of lower activity while ISL bids are being studied for interconnection through April 15, 2021. PacifiCorp plans to request acknowledgement of the FSL in May 2021 and finalize contracts after that time.

PacifiCorp explains that there are approximately six months between selection of ISL bids and the Company's request for acknowledgement of the FSL, and is requesting a partial waiver of OAR 860-089-0500(2) to begin negotiations during this time, allowing for a more 'expedient and efficient' process. PacifiCorp states that bidders on the ISL support beginning negotiations before PacifiCorp requests acknowledgement.

In PacifiCorp's Petition for Waiver, the Company requests to begin negotiations in January 2021 and states that it would expect negotiations to conclude in March 2021. PacifiCorp states that good cause exists for the waiver because early negotiations can reduce months of negotiation time at the end of the RFP process, allowing bidders to move forward on development and financing.

In Comments filed January 21, 2021, Longroad Energy writes that as a developer with projects on the Initial Shortlist, it supports PacifiCorp's requested waiver.

In Comments filed January 21, 2021, Northwest & Intermountain Power Producers Coalition (NIPPC) recommends the Commission reject the Company's petition and consider providing more time for negotiation by adjusting the RFP schedule.

In Reply Comments filed January 28, 2021, PacifiCorp argues it has shown good cause for a waiver and that the waiver is necessary to prevent harm to customers because extended negotiations could prevent RFP resources from achieving Commercial Operation Dates. PacifiCorp also explains that it is hesitant to engage in any clarifying conversations with bidders regarding bid details because of the OPUC's prohibition on negotiating before FSL acknowledgement is requested.

Staff Position

Staff recommends the Commission deny the Company's request for a partial waiver. OAR 860-089-0010(2) states that an application for a waiver must be filed concurrent with the initiation of a resource acquisition. To comply with this rule, PacifiCorp should

have filed its waiver request concurrent with its filing of the 2020AS RFP. PacifiCorp has not done this.

More importantly, the Company has not shown good cause for its waiver request. PacifiCorp's application states that beginning negotiations early will reduce negotiation time at the backend of the RFP by months. However, the amount of time PacifiCorp estimates it will take to complete negotiations is the same amount of time currently provided in the Oregon RFP docket schedule between the filing of the FSL and the Commission's acknowledgement decision.

In PacifiCorp's waiver request, it estimates that negotiations for the 41 ISL bids could begin in January 2021 and end in March 2021, a timeline of three months. In the UM 2059 RFP schedule, there is also expected to be three months between PacifiCorp's filing of the FSL and the Commission's FSL acknowledgement decision. Staff questions why PacifiCorp finds a three month timeline for negotiating with all 41 ISL bids sufficient, while also finding that a three month timeline for negotiating with the actual FSL bids will be insufficient.

The RFP ISL contains a large number of bids – 41. However, the RFP process should lead to an FSL that is smaller. In some locations, the ISL exceeds the amount of resource capacity that the 2019 IRP estimated could be added to the system without causing the need for expensive transmission upgrades. Further, the ISL contains 45 percent more resource capacity than was selected in the 2019 IRP preferred portfolio. By waiting until the FSL is filed to begin negotiations, as required by the competitive bidding rules, PacifiCorp may reduce the amount of time it needs to spend on negotiations and focus that time on bids under review for acknowledgment.

Staff appreciates the comments of PacifiCorp and parties stating that a longer timeline for negotiations would be beneficial to PacifiCorp and to bidders. Staff proposes that the Commission may be able to help facilitate clarifications needed by the company, without granting PacifiCorp' requested partial waiver. In Reply Comments, PacifiCorp explains that the Company currently does not find it acceptable to ask clarifying questions of bidders without a waiver, because of the risk that this could be perceived as a form of negotiation. Staff recommends that the Commission address this concern and remove any uncertainty by authorizing the Company to ask clarifying questions to bidders in writing as necessary to understand and clarify important bid details.

Staff finds that asking clarifying questions regarding bid details is unlikely to introduce utility bias into the RFP. However, Staff recommends that in order to help mitigate any possible risk of utility bias the Commission should authorize PacifiCorp to engage in any written communications necessary to clarify bid details with bidders, and:

- 1) Include the IE in each of these clarifying communications;
- 2) Request that the IE report to the Commission on whether the communications introduced utility bias into the RFP; and
- 3) Not update any IRP or RFP model as a result of the clarifying communications.

The IRP models are the primary method by which PacifiCorp plans to select its Final Shortlist. Preventing PacifiCorp from updating its IRP models to include information from its clarifying communications will help prevent these communications from introducing any utility bias to the RFP. Allowing for written communications only will simplify the IE's process of determining whether any utility bias was introduced by the communications.

In the alternative, if the Commission does not adopt Staff's recommendation and grants PacifiCorp a partial waiver of OAR 860-089-0010(2), then Staff recommends that the Commission also direct the Company not to update its RFP or IRP models as a result of the negotiations. This will help reduce the potential for the negotiations to influence which projects are included on the Final Shortlist. Additionally, the Company should be required to track its negotiation expenses, including employee time, as customers should not be responsible for any expenses incurred while negotiating contracts for bids that are not later included in the FSL.

Conclusion

PacifiCorp has not followed the RFP rules in requesting its partial waiver of OAR 860-089-0500(2), and has not shown good cause for the waiver. The Commission should deny PacifiCorp's petition for a partial waiver.

In order to help PacifiCorp conduct its RFP as efficiently as possible, the Commission should direct the Company to initiate clarifying communications with bidders in writing, as needed to better understand important bid details.

PROPOSED COMMISSION MOTION:

Deny PacifiCorp's request for partial waiver of OAR 860-089-0500(2).

Direct PacifiCorp to engage in any written communications necessary to clarify bid details with bidders, and:

- 1) Include the IE in each of these clarifying communications;
- 2) Request that the IE report to the Commission on whether the communications introduced utility bias into the RFP; and
- 3) Not update any IRP or RFP model as a result of the clarifying communications.