

ENTERED SEP 14 2017

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1845

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of Final Draft  
2017R Request for Proposals.

ORDER

DISPOSITION: 2017R REQUEST FOR PROPOSALS CONDITIONALLY  
APPROVED, SUBJECT TO MODIFICATIONS

This order memorializes our decision, made and effective at our August 29, 2017 Special Public Meeting, to conditionally approve PacifiCorp, dba Pacific Power's 2017R Request for Proposals (RFP). As explained below, our approval is conditioned on the subsequent acknowledgement of PacifiCorp's 2017 Integrated Resource Plan (IRP), and subject to several modifications to RFP terms requested by the independent evaluator (IE) or parties. This order memorializes our conditional approval, lists our modifications, and explains our expectation for the next steps.

**I. DISCUSSION**

**A. Competitive Bidding Guidelines and RFP Review**

This Commission has adopted competitive bidding requirements to help ensure Oregon's regulated utilities obtain least cost resources for its customers. We first adopted the guidelines in Order No. 91-1383, and subsequently revised and updated them through a series of orders in docket UM 1182.<sup>1</sup>

The guidelines generally require utilities to use a competitive bidding process for all major resource acquisitions, which are defined as resources with durations greater than 5 years and quantities greater than 100 megawatts (MW). A utility must use a public process to prepare the RFP and conduct bidder and stakeholder workshops. Throughout the process the utility must use an IE to help ensure fairness.

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<sup>1</sup> *In the Matter of an Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order Nos. 06-446 (Aug 8, 2006) (adopting new and revised guidelines); Order No. 11-340 (Sep 1, 2011) (modifying guideline to expand role of IE); Order No. 13-204 (Jun 10, 2013) (addressing potential risk items associated with utility-owned resources) and Order No. 14-149 (Apr 30, 2014) (modifying guideline regarding IE and adding requirement utilities seek approval of final shortlist of bidders).

The guidelines also require the utility to submit a final draft RFP for our approval. Our review of a draft RFP focuses on three factors: (1) the alignment of the utility's RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process. After reviewing the final draft RFP and the public comments, we may approve the RFP with any conditions and modifications deemed necessary.

Our review and approval of a final draft RFP is limited in scope. First, a decision to approve an RFP does not constitute any determination on the prudence of the resource acquisition. Any ratemaking determinations would occur at a later time. Second, as we clarified in Order No. 06-446, any approval is:

[S]imply a determination on the three criteria set out in the guideline—that is, whether the utility's RFP is consistent with its acknowledged IRP, whether the RFP satisfies these guidelines, and whether the utility's proposed bidding process is fair. The approval is simply that: the RFP meets these criteria, does not meet the criteria, or would meet the criteria with certain conditions and modifications.

#### **B. RFP Approval Conditioned on IRP Acknowledgement**

At the special public meeting, we approved PacifiCorp's 2017R RFP, subject to the condition that the company subsequently receives our acknowledgment of related action items in its 2017 IRP, which will not occur until December 2017 at the earliest. Our review at this time focuses on the RFP process, and not the need for the Wyoming wind resources and related transmission. We are currently reviewing PacifiCorp's 2017 IRP but have not made any decisions on whether the Wyoming wind resources or the Aeolus to Bridger/Anticline transmission line IRP action items should be acknowledged.

By conditioning our approval subject to subsequent IRP acknowledgement, we have addressed the concern raised by many parties that PacifiCorp is seeking approval of its 2017R RFP prior to IRP acknowledgement. Should PacifiCorp fail to gain acknowledgement of the associated IRP action items, PacifiCorp may proceed with the RFP at its own discretion, outside or partially outside of our competitive bidding process.<sup>2</sup>

The expiring production tax credits (PTCs) and timing of PacifiCorp's IRP review created unique time constraints and our approval here is limited to these unusual circumstances and should not be viewed as a change to our expectation that an RFP is consistent with a previously acknowledged IRP action item. Our goal with conditional approval is to make the RFP itself as fair as possible.

<sup>2</sup> See *In the Matter of PacifiCorp Draft 2012 Request for Proposals*, Docket No. UM 1208, Order No. 06-676 at 2-4 (Dec 20, 2006) (explaining the company should retain an IE to review its bidding process and to develop a closing report on the shortlist even if an RFP is not approved); *In the Matters of the Northwest and Intermountain Power Producers Coalition, Petition for Temporary Rulemaking and Investigations into PacifiCorp's 2016 Requests for Proposal*, Docket Nos. AR 598 and UM 1771, Order No. 16-188 at 2 (May 19, 2016) (explaining that if the company proceeds without an IE it is acting outside of our competitive bidding process).

If the company proceeds to the shortlist review stage, then parties may raise any concerns over how the RFP process was conducted and whether it was fair, along with any other issues related to the shortlist. If the company proceeds to rate recovery, we will continue to scrutinize the resource selection, as we recognized that a rushed process makes it harder to comprehensively review the matter before us, and will ultimately be taken into consideration in future proceedings.

### **C. RFP Modifications from the Public Meeting**

At the public meeting, we also reviewed changes recommended by the IE and parties. Below we discuss our directives for RFP modifications.

#### **1. Existing Power Purchase Agreement (PPA) Eligibility**

PacifiCorp agreed to expand the RFP project eligibility so that an existing wind project that currently has a PPA with the company that will expire before December 31, 2020, will be eligible to bid if the project is proposed to be repowered. This builds upon the IE's previous suggestion which PacifiCorp already included in the revised RFP to allow for repowered and uncommitted existing projects provided they are "new" to the PacifiCorp system and can meet the other requirements to participate in the RFP.

#### **2. Credit Requirements**

PacifiCorp offered that, in negotiation with bidders, it would reduce the security requirements as the developer meets milestones. This builds upon the IE's previous suggestion for clearly defined credit requirements which PacifiCorp already included in the revised RFP.

#### **3. Success Fee**

PacifiCorp agreed to clarify in the RFP that all benchmark and market bids will be responsible for all appropriate bidder fees through the full RFP process including any success fees assigned to final shortlist bids. This addresses the IE's recommendation that the success fee be further clarified to state that benchmark bids are also responsible for a success fee if selected to the final shortlist.

#### **4. One-sided PPA Terms**

PacifiCorp agreed to clarify or adjust several PPA terms as suggested by the IE and Northwest and Intermountain Power Producers Coalition. First, PacifiCorp is lowering the PPA availability guarantee from 95 percent to 85 percent the first year, 93 percent thereafter, and allowing for liquidated damages. Second, we discussed term normalization analysis and annuity based analysis and concluded that the IE's current methodology is sufficient, and asked the IE to explain its analysis in the shortlist report. Third, we agreed with the company that bidders need to produce two years of wind data, but we supported an exception for PPA bidders with less than the full two years.

**5. Benchmark Bid Bias**

With regard to potential benchmark bid bias in RFP terms, we made clear that a future Commission would consider cost overruns and change orders in a prudence review, but did not commit to holding PacifiCorp accountable for benchmark bids' cost and performance assumptions. We requested that the IE monitor benchmark bid terms, so that these issues are monitored throughout the process and not just in subsequent ratemaking.

**6. Litigation**

PacifiCorp agreed to further modify the RFP minimum qualification requirements regarding litigation. We added two points to build upon the company's previous revision to consult with the IE to determine if a bidder should be excluded from the RFP due to threatened or active litigation. First, we increased the materiality threshold to \$5 million, consistent with the company's 2009 All Source RFP issued in December 2009. Second, we specifically asked the IE to scrutinize for fairness any potential exclusions from threatened litigation versus active litigation. We noted that PacifiCorp is a large company and that threatening litigation may fall within normal business practice.

**D. Next Steps**

PacifiCorp committed to report back to us in a public meeting after the Utah Public Service Commission acts on the RFP (shortly after the Utah hearing on September 19). We may take further action on the RFP at that time.


**II. ORDER**

PacifiCorp, dba Pacific Power's 2017R Request for Proposals is conditionally approved subject to the modifications discussed above.

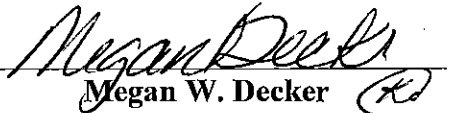
**SEP 14 2017**

Made, entered, and effective \_\_\_\_\_

  
**Lisa D. Hardie**  
Chair

  
**Stephen M. Bloom**  
Commissioner



  
**Megan W. Decker**  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.