BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1182

In the Matter of an Investigation Regarding Competitive Bidding	)))))	OPENING COMMENTS OF THE CITIZENS' UTILITY BOARD, RENEWABLE NORTHWEST PROJECT AND THE NW ENERGY COALITION

The Citizens' Utility Board, the NW Energy Coalition, and the Renewable Northwest Project ("Public Interest Groups") submit these opening comments jointly in UM 1182. We support much of the Staff's straw proposal in this docket and applaud Staff's thorough analysis of these complex questions. We are at odds with the Staff in several important areas, however, so our comments will highlight the issues of disagreement. At the end of these comments is an annotated and redlined version of Staff's straw proposal.

We suggest some minor clarifications and improvements to Staff's straw proposal. Those areas include: IRP before RFP; use of an Independent Evaluator (IE); two types of RFPs (standard and non-standard); Commission approval of the RFP; and, treatment of a utility's (or affiliate's) own bid. In other areas the Staff has either not provided enough detail for its proposal to be understood completely, or has not completely addressed an issue. Those areas include: the development of scoring criteria; and, the interaction between the IRP (and its associated Preferred Portfolio and Action Plan) and the RFP. On these issues we will provide substitute language to the Staff's proposal.

Our interest in this docket stems from our experience that end-users and the environment may be placed at serious risk from utility resource decisions. The reason for this is that the regulatory tool available to the Commission—future disallowance of costs—is blunt and impractical for the task of making sure that a utility's decisions are the right combination of least cost and least risk. Commissions are naturally reluctant to second guess a utility's choices years after its decisions are made. In addition, it is difficult, years after the fact, to determine the effect of any particular resource decision compared to a result if a different choice had been made. Prudence reviews and disallowance of imprudent costs are very important, both to protect ratepayers from unwarranted costs and to create the right incentives for utility decision makers. However, it is extremely important to make good resource decisions in the first place, because ultimately, we believe, ratepayers and the environment, not shareholders, are on the hook for the majority of costs.

Public Interest Groups therefore have two goals. First, that the IRP process will result in a preferred portfolio that effectively takes into account and balances the costs and risks borne by consumers. (The IRP process is being reviewed in UM1056, so we will not discuss it further here.) Second, that the results of the IRP—the Action Plan—be implemented, so far as possible. That is the subject of this proceeding.

The preferred portfolio and action plan that emerge from the IRP cannot, due to its nature, be so specific as to make the RFP process perfunctory. That presents four challenges: (a) bid prices, products and terms will not exactly match the inputs used in the IRP; (b) the many dimensions of a particular resource that were accounted for in the IRP's multivariate analysis cannot be easily represented by a single score; (c) the preferred portfolio is just that: *a set of diverse resources* that *in aggregate* provide the best combination of cost and risk; and, (d) the utility's shareholders' interests are not perfectly aligned with the ratepayers'. We believe the Staff's straw proposal adequately addresses some these issues, but much is left out or unclear from Staff's short write-up that we cannot be sure (we recognize that Staff's Opening Comments may answer some of these questions). We will discuss each in turn.

a. <u>Bids received are different from those modeled in the IRP</u>. If bids are largely reflective of the IRP's assumptions, then the selection process should be relatively uncontroversial. The RFP will simply pick the best bids of the various types of resources determined in the Action Plan. The problem arises if the bids received are significantly different than those modeled in the IRP. Such a result calls the Action Plan into question, and the problem is what should be done in the narrow confines of the RFP process to adjust it? Staff proposes in section 8b to select the final short list by essentially rerunning the IRP modeling process. The Public Interest Groups have reservations about the feasibility of this approach.

b. <u>The many dimensions of a particular resource that were accounted for in the IRP's multivariate analysis cannot be easily represented by a single score</u>. Staff's proposal appears to deal with this with its two-step process. First (section 8a), bids are winnowed down to an initial short-list through a scoring system. We are ok with this only if there is no attempt at this point to compare dissimilar resources. We do not believe the differences between wind and coal, for example, can be captured in one score. We can support this step if the scoring is used only to whittle the number of coal bids and wind bids down to the least costly of each type of resource. That is, the result of this first step should be a short list of the best of the coal bids, best of the wind bids, etc.

c. <u>The outcome should be *a set of diverse resources* that *in aggregate* provide the best combination of cost and risk</u>. We support the goals of Staff's section 8b, but have concerns with its workability. If we understand it correctly, the outcome of this step would be a portfolio of preferred bids.

These first three issues are integral to the scoring and selection process. To best understand our concerns—and our solutions—it is necessary to describe Staff's proposed process (this description was aided by conversations with Mr. Galbraith).

As we understand Staff's proposal, there are two distinct steps. First (Staff's section 8a), bids are winnowed based on a scoring system mainly weighted toward price. At this stage, different types of resources are not compared to each other. Instead, the purpose is to construct an "initial short-list" made up of the best of each resource type. For example, an RFP might bring in 25 bids for gas resources, 25 for wind and 25 for coal. The scoring system would narrow this to the best five or so of each resource, but would not be a means to choose between different resource types.

Public Interest Groups are fully supportive of this first stage in the process.

Staff's second stage (section 8b) is more problematic. In this step candidate portfolios made up of the initial short-list bids are run through the utility's IRP model similarly to how generic candidate portfolios were compared in the IRP, ultimately ending with a new preferred portfolio. This portfolio is what (Staff's section 16) the utility could request acknowledgment of before final negotiations and selection of winning bids.

It is this second stage that gives us pause in a number of areas. First, can the utilities perform this analysis quickly enough to avoid too much delay? Are all inputs to the model updated or only those informed by the bids? That is, if a coal bid, for example, is different from that used in the IRP, Staff's proposal would have that input changed. But shouldn't gas prices, load forecasts and other important factors also be updated at the same time? If not, the analysis would be skewed. But updating so much of the model might delay the process so much as to make it unwieldy.

Staff's concept of the IRP process, especially the development of candidate portfolios and the selection of the preferred portfolio, seems to be much more mechanical than it really is. In our experience, going from a description of possible resources to a preferred portfolio is much more judgment than crank-turning. Let's examine two possible paths Staff's proposal might lead:

(A) <u>Bids and other updated information were consistent with the original IRP inputs</u>. In this case one would expect that the preferred portfolio emerging from the RFP stage 2 would be similar to the Preferred Portfolio from the IRP.

(B) <u>Bids or other updated information were significantly different from the original IRP inputs</u>. In this case, the original IRP outcome—the Preferred Alternative and Action Plan— may be called into question.

If the RFP is on path (A), then there is really no need to re-run the model. In this case we would recommend changing the Staff's proposal that requires re-running the model and instead allowing the utility simply to get on with it. Acknowledgment, if requested, would be to acknowledge the process and the resulting short-list of bids for each resource. The general resource choices are not in question because they are consistent with the IRP's Action Plan; and, there is no changed information that would cast doubt on them. Beyond this, the utility would select the specific resource from the short-list resource pool for each resource type and would enter into contracts. There would be no acknowledgement for the selection of the specific resource so as to continue the incentive to pick the best specific resource and negotiate the best deal.

The real questions arise, on the other hand, if the RFP is on path (B). Staff's proposal is to essentially re-run the IRP modeling using the new information gleaned from the bidders (and possibly other updates). Staff believes this is doable in the short time frame essential to keep bidders from leaving town. We disagree.

Staff evidently believes that re-running the IRP modeling is a mechanical, non-discretionary--and non-controversial—exercise: "Selection of the final short-list of bids should be made on a system basis using the utility's production cost and risk models to identify the least-cost, least-risk combination of resources." (Section 8b) But in fact, "identifying the least-cost, least-risk combination of resources," i.e., selection of the Preferred Alternative, is an exercise in judgment that balances cost and risk. It is not just an output of a computer model. Because of that, if the RFP information is different from the IRP modeling, the process requires data requests, including requests to run sensitivities; and, active participation by intervenors. Condensing this process into too short a time leaves the utility with too much discretion, and the Commission with too little information to acknowledge a decision.

Our Recommendation. We propose that, if possible, a bright line be drawn between path (A) and (B) by defining "significantly different" to mean the average bids in the initial short list for each resource type that are more than 20% above or below those modeled in the original IRP. For circumstances that do not change "significantly," the utility should simply move forward by selecting and negotiating for a resource mix that reflects its Action Plan without having to re-run the IRP models.

If, however, the utility finds, as a result of the bid information, that it is on path (B), then we would move forward with the Staff's proposal to re-run the modeling used in the IRP. However, given the fact that the resulting portfolio would most likely look different from the Preferred Portfolio from the IRP, the utility must expect a much higher level of scrutiny before receiving Commission acknowledgment of the short-list. This will require a more lengthy process than contemplated in the Staff's proposal, we believe.

d. The utility's shareholders' interests are not always aligned with the ratepayers'. The use of an Independent Evaluator (IE) goes a long ways toward ensuring the process is non discriminatory. However, one issue not solved by the IE's presence is the concern that the utility will favor owning rather than "renting" (purchasing output or tolling agreements), and attempt to influence the IRP modeling and RFP scoring processes. This is an important, but complicated subject. Ownership of a resource carries many risks and benefits for ratepayers that are different than those involved from renting a resource. They include potentially lower cost, construction risk, operating risk, optionality, etc. Staff has selected one of these factors—debt imputation—for special consideration in its section 8c. We do not think it is appropriate to consider this one factor separate from the others.

Our Recommendation. We propose that the whole issue of comparing rented vs. owned resources, including debt imputation, be discussed in the IRP process. The result of that discussion should result in direction on how to model the issue in the portfolio analysis. We would then expect that treatment to be incorporated into the scoring and bid evaluation process. But until that time we do not believe that debt imputation should be singled out for treatment apart from the other factors involved in the rent vs. own debate.

Attached is a redlined version of Staff's straw proposal including the clarifications that we believe are needed to allow us to give it our full support. Notes in brackets *[ ]* are explanatory and not intended to be included in the guidelines.

STAFF Straw Proposal
Docket No. UM 1182
Competitive Bidding Investigation
September 26, 2005

Notes in brackets [ ] are explanatory and not intended to be included in the guidelines.

1. **RFP after IRP:** The RFP process should follow the IRP process. If the utility's IRP shows new resources are needed, then the utility's IRP Action Plan should identify the preferred resource strategy, specifically describing the types of technologies, timing, tenure and characteristics of each new resource in the utility's preferred resource portfolio. For each of the resources identified in its IRP Action Plan, the utility should indicate if it plans to consider a utility-owned resource. If the utility plans to consider a utility-owned site it should identify the transmission arrangements.

2. **RFP Requirement:** Utilities must issue RFPs for all Major Resource acquisitions. Major Resources are resources with durations greater than 5 years and quantities greater than ~~50~~ 100 MW.

3. **Exceptions to RFP Requirement:** The RFP requirement does not apply to Major Resource acquisitions, other than self-build resources, in emergencies or in situations where there is a time-limited resource opportunity of unique value to customers. If a utility acquires a Major Resource under such conditions, it shall report the acquisition and the reason for acting outside of the RFP requirement to the Commission, within 30 days of the acquisition. Copies of the report will be served on all participants in the utility's most recent RFP and IRP processes as well as on parties to its most recent rate case.

4. **Waiver of RFP Requirement:** A utility may request Commission acknowledgment of an alternative acquisition method for a Major Resource in the utility's IRP. A utility may also request a waiver outside the IRP process. Such request will be served on all participants in the utility's most recent RFP and IRP processes, as well as on parties to its most recent general rate case. The Commission will issue an Order addressing such requests within 120 days, taking such oral and written comments as it finds appropriate under the circumstances.

5. **Affiliate Bidding:** Utilities may allow affiliates to submit RFP bids. If the utility allows affiliate bidding, then an Independent Evaluator must participate in the Non-Standard RFP. The utility must blind all RFP bids and treat affiliate bids the same as all other bids.

6. **Utility Ownership Options:** Utilities may use a self-build option as a Benchmark Resource in an RFP to provide a cost-based alternative for

customers. Utilities may also consider ownership transfers within an RFP solicitation. If the utility intends to consider ownership options in an RFP, then an Independent Evaluator must participate in the Non-Standard RFP. The utility will submit a bid for its resource at the same time that other bidders submit their bids. Bidders may bid to develop the utility's site and/or use the utility's transmission system and rights.

7. Independent Evaluator (IE): The utility and Commission staff select an IE from a qualified slate of candidates. The IE should not be providing, or recently have provided, consulting services to participants in western energy markets. The IE should report to the Commission staff. The IE should be paid by the utility. ~~through assessments of all bidders including the utility.~~ The bidding fees will be based on the anticipated costs of the IE's services as established between the IE and the Commission staff. The IE will have a role in both Standard and Non-Standard RFPs, though more limited in the former.

8. Bid Scoring and Evaluation Criteria:

a. Selection of an initial short-list of bids should be based on price and non-price factors. This initial screening is not designed to compare different types of resources to each other—that is done in the next screening described in (b). Instead its purpose is to winnow similar resource types to a limited but robust number of bids. *[For example, an RFP might result in 100 bids: 30 gas, 30 coal and 40 wind. This first screening would end up with the best 5-10 of each, based mainly on price.]* The utility should use the initial prices submitted by the bidders to determine each bid's price score. The price score should be calculated as the ratio of the bid's projected total cost per megawatt-hour to forward market prices using real-levelized or annuity methods. The non-price score should be based on ~~resource characteristics identified in the utility's IRP Action Plan (e.g., dispatch flexibility, resource term, portfolio diversity, etc.) and~~ conformance to the standard form contracts attached to the RFP.

b. Selection of the final short-list of bids should be made on a system basis using the utility's production cost and risk models to identify the least-cost, least-risk combination of resources. The portfolio modeling and decision criteria used to select the final short-list of bids must be consistent with the modeling and decision criteria used to develop the utility's IRP Action Plan. The final short-list is not the same as a final list of bidders to whom offers are made. Instead, it is the final group of bids that, together, can produce the final preferred portfolio, and with whom the utility will negotiate actual terms. There is no need to re-run the modeling if the bid information is not significantly different from that used in the original IRP inputs. "Significantly different" means over 20% more or less than values used in the IRP. At the time of modeling, any other inputs such as load and fuel-price forecasts should also be updated. If bid information is significantly different from the values in the IRP, acknowledgement at this stage cannot occur unless sufficient time and opportunity has been given to the public to seek and analyze data. ~~If an IE is used, then the~~ The IE will have full access to the utility's production cost and risk models.

c. Ratings agency debt imputation is only one of a number of factors that influence the rent vs. own decision. The "penalty" of debt imputation may be outweighed by the reduction in operating and construction risk that goes with ownership. *[This one factor should therefore not be treated outside the context of a more comprehensive discussion—and that discussion is best conducted in the IRP.]* Debt imputation should not be used as a factor in the utility's resource selection process unless an agreed-upon methodology to compare rented vs. owned resources can be developed in the IRP process. ~~Consideration of ratings agency debt imputation should be reserved for the selection of the final bids from the initial short-list of bids. The Utility should be willing to obtain an advisory opinion from a ratings agency to substantiate its analysis and final decision, if requested by the Commission.~~

9. RFP Design:

a. Standard RFP: The utility designs and conducts a "Standard RFP and uses an Independent Evaluator" if it will not consider affiliate bids or ownership options in the RFP.

b. Non-Standard RFP: If the utility intends to consider self-build, affiliate, or ownership options in the RFP it must conduct a "Non-Standard RFP" and use an Independent Evaluator.

c. Public Process Regarding RFP Design: Not less than 60 days before the utility intends to conduct a Standard or Non-Standard RFP, the utility should announce its intention to conduct an RFP. The utility and the IE together should draft a "Standard RFP" proposal, including the scoring and bid evaluation criteria. If a utility self-build, affiliate, or ownership option is considered, the utility and the IE together should draft a "Non-Standard RFP." The utility and the IE, as needed, may conduct workshops on the upcoming RFP and will submit its final proposed RFP, including bid evaluation and scoring criteria and standard form contracts, to the Commission for approval, as described in paragraph 11 below.

10. Minimum Bidder Requirements: The utility may propose minimum bidder requirements for credit and capability. If a Non-Standard RFP is used, then the IE should assist in the development of any minimum bidder requirements. Minimum bidder requirements will be subject to public comment during the design of the RFP and to Commission approval of the proposed RFP as described in paragraph 11 below.

11. RFP Approval: The Commission should solicit public comment on the utility's draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment should focus on: (1) the alignment of the utility's draft RFP with the utility's IRP; (2) whether the draft RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the proposed RFP process. After reviewing the draft RFP and the public comments the Commission may approve the RFP with any conditions and modifications deemed necessary. The Commission should consider the impact of multi-state regulation including requirements imposed by other states for the RFP process, such as the timing of the process and the selection and use of an IE. The Commission should act on the proposed RFP within a reasonable time, but no later than 45 days following the filing of the final proposed RFP, unless the utility requests additional time.

12. Benchmark Score: If a utility owns a site that it intends to use as a Benchmark Resource in a Non-Standard RFP, the utility must submit a detailed Benchmark Score, with supporting cost information, to the Commission and IE prior to the opening of bidding. The Benchmark Score should be assigned to the Benchmark Resource using the same bid scoring and evaluation criteria that will be used to score market bids. Information provided to the Commission and IE must include any transmission arrangements and all other information necessary to score the Benchmark Resource. If, during the course of the RFP process, the utility and IE determine that bidder updates are appropriate, the utility will also update the costs of the Benchmark Resource. The IE will review the reasonableness of the cost update and the revised Benchmark Score. The information provided to the Commission and IE will be sealed and held until the bidding in the RFP has concluded.

13. RFP Process/ Analysis:

a. <u>Standard RFP:</u> The utility conducts the RFP process, scores the bids, selects the initial and final short-lists, and undertakes negotiations with bidders.
   i. <u>The IE may validate, sample or independently score all bids, at the discretion of the IE and the Commission.</u>
   ii. <u>Once the competing bids have been scored and evaluated by the utility and the IE, the two should compare results. The utility and the IE should work to reconcile and resolve any scoring differences.</u>

b. Non-Standard RFP:

   i. The utility conducts the RFP process, scores the bids, selects the initial and final short-lists, and undertakes negotiations with bidders.

   ii. The IE validates the utility's Benchmark Score and may validate, sample, or independently score all bids, at the discretion of the IE and the Commission. In addition, the IE evaluates the unique risks and advantages associated with the Benchmark Resource, including the regulatory treatment of construction cost overruns, equipment failures and outages, costs of replacement capacity, energy and ancillary services, and other risks and advantages of the Benchmark Resource to consumers.

   iii. Once the competing bids and Benchmark Resource have been scored and evaluated by the utility and the IE, the two should compare results. The utility and IE should work to reconcile and resolve any scoring differences.

14. IE Closing Report: The IE will prepare a Closing Report for the Commission once it has completed its involvement in the RFP process. In addition, the IE will make its detailed bid scoring and evaluation results available to the utility, Commission staff, and non-bidding consumer advocates.

15. Confidential Treatment of Bid and Score Information: Bidding information, including the utility's cost support for its Benchmark Resource, as well as any detailed bid scoring and evaluation results will be made available to the utility, Commission staff, and non-bidding intervenors under protective orders that limit use of the information to RFP acknowledgment or cost-recovery proceedings in which the RFP resources are at issue.

16. RFP Acknowledgment: The utility may request that the Commission acknowledge the utility's selection of the final short-list of RFP resources. This is an acknowledgment of the short list that comes out of the process described in section 8b, but before final negotiations with individual bidders. The IE will participate in any RFP acknowledgment proceeding. RFP acknowledgment should have the same legal force and effect as IRP acknowledgment in any future cost-recovery proceeding in which the selected resources are at issue. Acknowledgment shall have the same meaning as assigned to that term in OPUC Order No. 89-507.

COMBINED CERTIFICATE OF SERVICE

UM 1182/UM 1056

I hereby certify that I served the foregoing **OPENING COMMENTS OF THE CITIZENS' UTILITY BOARD, RENEWABLE NORTHWEST PROJECT AND THE NW ENERGY COALITION** on the following persons on September 30, 2005, by hand-delivering, faxing, e-mailing, or mailing (as indicated below) to each a copy thereof, and if mailed, contained in a sealed envelope, with postage paid, addressed to said attorneys at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

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DATED this 30th day of September, 2005.

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