

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1182(1)

In the Matter of

NORTHWEST INDEPENDENT POWER
PRODUCERS COALITION

Petition for an Investigation Regarding
Competitive Bidding

Joint Closing Comments of Renewable
Northwest Project and the Citizens' Utility
Board of Oregon

Renewable Northwest Project (RNP) and the Citizens' Utility Board of Oregon (CUB) submitted separate Opening Comments in this docket. RNP, in its Opening Comments, supported two modifications to the request for proposal (RFP) process that the Public Utility Commission (PUC or "Commission") highlighted in Order No. 11-01 (UM 1276). The Commission offered the modifications as possible ways to achieve the Commission's goal of addressing what it described in UM 1276 as utility self-build bias.¹ RNP relies upon its Opening Comments to explain its support for changes to the major resource threshold: lowering the threshold for acquisition of solar, geothermal, and possibly biomass resources, and refining the threshold to ensure that large combined resource additions are evaluated in an RFP without impairing certainty for small acquisitions. CUB made a similar proposal in its Opening Comments, encouraging that the Commission consider requiring that bids be solicited on an all-resource basis to avoid issues regarding the threshold.

¹ RNP and CUB advance from the premise that the Commission concluded in UM 1276 that utility self-build bias persists despite the presence of the current RFP guidelines. Staff's Opening Comments appear to depart from a different premise—namely, that the "self-build bias has been significantly mitigated with the adoption of the current guidelines." *See* Staff's Opening Comments (UM 1182(1)), page 3. Those different starting premises, while both potentially defensible positions prior to the decision in UM 1276, could provide some explanation for the differing recommendations in this docket.

In these Closing Comments, RNP and CUB make four responsive points pertaining to the Commission's question whether the IE should continue through negotiation. First, RNP and CUB agree with various parties that, because the Commission's primary reason for retaining the independent evaluator (IE) through negotiation would be to address what the Commission recognized as utility self-build bias in UM 1276, it would be appropriate to focus IE participation through negotiation on RFPs in which a utility self-build option is present. The Commission could retain the discretion to order continuation of the IE through negotiation in other appropriate cases, but require it only where a utility self-build option is present.

Second, there is little cause to believe that having an IE observe the negotiation process would usurp utility decision making or the Commission's determination of prudence, nor limit any of the negotiating parties' motivation to pursue its best deal. The Commission did not appear to credit these risks when it ordered the IE to continue in UM 1368 and UM 1429, nor do such dire consequences appear to have resulted from those dockets. From what PacifiCorp indicates, the role of the IE during negotiations in those dockets seems consistent with what the parties and the Commission have envisioned here: the IE's "oversight will focus on the reasonableness and fairness of negotiation and selection" and will "ensure all parties communicate effectively and that all disputes are resolved quickly." *See* PacifiCorp's Opening Comments (UM 1182(1)), page 5 fn.6. This type of participation through negotiation will not be a novel concept for IEs—indeed, some will have had experience with it already (*see* RNP Opening Comments (UM 1182(1)), page 3 fn.3)—. This is also a function that an IE should be able to carry out professionally without overstepping its designated role as a neutral observer.

Third, the utilities argue that bidders themselves would be negatively impacted by the IE continuing to participate through the negotiation process—*i.e.*, because developers would be deterred from participating in RFPs, unwilling to disclose compromise positions, or reluctant to negotiate aggressively. By contrast, potential bidders have not indicated to RNP or CUB that the fundamentals of the RFP process or negotiation would change dramatically if the IE continued to participate through the negotiation process. Moreover, in the utilities' comments regarding potential bidders' likely views on IE continuation, the utilities do not give weight to any positive elements like improved bidder confidence in the overall fairness of the RFP resource selection process.

Finally, in considering the potential benefits of IE continuation, several parties focused primarily on the value of the IE's final report following negotiation, and particularly its evidentiary value in future ratemaking proceedings. RNP and CUB encourage the Commission to focus instead on the deterrence benefits of the IE's presence during negotiation. The presence of an IE could be most beneficial in deterring and possibly heading off uneven treatment of bids or negotiating parties before such treatment could potentially taint the negotiation and resource selection. Again, the IE's presence does not mean that parties will have to negotiate gingerly or that utilities must offer the same terms to every project; it merely means that utilities will have a reminder to stay aware of avoiding potential self-build bias during the critical final phase of resource selection.

Considerable resources and effort are invested in mitigating effects of what the Commission recognized in UM 1276 as a utility self-build bias in development of the RFP short list. Continuation of the IE's participation through the negotiation process is a relatively modest, incremental measure to protect that initial investment through the end

of the process. RNP and CUB appreciate the opportunity to provide comments in this docket.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **JOINT CLOSING COMMENTS OF RENEWABLE NORTHWEST PROJECT AND THE CITIZENS' UTILITY BOARD OF OREGON** on the following persons on April 22, 2011, 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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