

BEFORE THE OREGON PUBLIC UTILITY COMMISSION

In the Matter of)
NORTHWEST INDEPENDENT POWER)
PRODUCERS COALITION) **UM 1182**
Petition for an Investigation Regarding)
Competitive Bidding)
_____)

**NORTHWEST INDEPENDENT POWER PRODUCERS COALITION
OPENING COMMENTS**

Pursuant to the procedural order in this docket, the Northwest Independent Power Producers’ Coalition (NIPPC) hereby submits its opening comments in this Investigation Regarding Competitive Bidding.

Background

NIPPC is a trade association whose members include independent power producers active in the Pacific Northwest energy system.¹ NIPPC represents the interests of its members in encouraging public policies to achieve least cost and reliable electric power through competitive wholesale markets in the Pacific Northwest. NIPPC members own and control approximately 3400 MW of thermal generating capacity in Oregon and

¹ NIPPC’s members include Calpine Corporation, Constellation Control and Dispatch, Duke Energy, EPCOR, National Energy Systems Co., Northwest Energy Development, Sempra Energy Global Enterprises, Suez Energy North America, Inc., TransAlta Energy Marketing, Inc., and Transcanada.

Washington. Currently, approximately 40% of this operating capacity is committed under contract. By 2008, only 12% of this capacity will be contracted for by in-region utilities. As a practical matter, this means that many competitive power supplies are available to meet Oregon's consumer needs now and in the future. In NIPPC's opinion, fairly conducted competitive bidding is one of the most valuable and reliable paths that the Oregon Public Utility Commission (Commission) could take to connect Oregon's electric consumers to these supplies and to lower consumer costs.

The Commission adopted competitive bidding guidelines in 1991 as a way of augmenting Oregon's least-cost planning efforts. *Regarding Competitive Bidding by Investor-Owned Electric Utility Companies*, 127 PUR4th 306, 310 (OPUC 1991) (1991 Order). While much of the 1991 Order remains current, time and experience indicate that aspects of the 1991 Order bear reexamination and modification.² This investigation into competitive bidding is therefore timely and appreciated.³

In particular, NIPPC appreciates the positive input of Staff in the workshops leading up to these comments; Staff has facilitated discussion

² See, "Northwest Independent Power Producers Coalition Petition For An Investigation Regarding Competitive Bidding," dated December 2, 2004, pp. 2-7.

³ This docket regarding competitive bidding is being conducted simultaneously with a companion a review of Integrated Resource Planning (IRP) guidelines in Docket No. UM 1056. Competitive bidding is a logical follow-on to an IRP, and should assist the utility in fulfilling resource strategies identified in the IRP in the most cost effective way.

and in some instances compromises that have narrowed the differences between the parties and therefore limited the extent of these comments.

NIPPC' Proposal Regarding Competitive Bidding

Attachment A to these Opening Comments is NIPPC's preferred approach to a competitive bidding process; NIPPC's proposal is not duplicated verbatim in these comments. The proposal does not require a radical departure from the Commission's existing guidelines, but it does differ from the Commission's 1991 Order in the following four ways.

1. The Commission should give more explicit guidance regarding utility use of competitive bidding to acquire resources. The 1991 Order directs utilities to "use the competitive bidding process to obtain at least a portion of its electric resources in the future," but the Order does not require the utilities "to obtain all of their future power needs through the bidding process." 1991 Order, 127 PUR4th at 311. NIPPC does not propose to change the existing directive that utilities obtain a portion of their resources from competitive bidding, nor would NIPPC suggest that the utility should be prohibited from building or owning its own resources. Rather, NIPPC proposes that the Commission change the emphasis of its competitive bidding guidelines:

As a general rule, utilities should subject all Major Resource acquisitions (defined as resources greater than 5 years duration and 5

MW or greater quantity), including its own resources, to a competitive challenge in a competitive bidding process. Exceptions should be allowed but limited.

This new guideline, in other words, directs competitive solicitations for Major Resource acquisitions as a general rule, even when a utility-owned resource is the utility's preferred option. This proposal does not require that all resources be non-utility resources, nor does it change the role of the Commission or usurp the prerogative of utility management. Rather, it provides a systematic approach to acquisition that tests the utility's resource preferences along side non-utility resources. It should also assist the Commission (and the utility in most instances) in assuring that utility customers benefit to the maximum possible extent from competitive power supplies.

2. Utility and utility affiliates should be permitted to participate in competitive solicitations, provided utility and non-utility resources are comparably evaluated. The Commission's current policy states that "a utility or its affiliate should not submit bids in response to its own bid solicitation" but indicates that the time could come when that prohibition should be reexamined. 1991 Order, 127 PUR4th at 316. NIPPC recommends that the Commission permit utility self-build and ownership options and affiliate options to "bid" into the utility's request for proposals

(RFP), provided that the RFP process is structured to put utility and non-utility resources on as level a playing field as can be achieved in a regulated process. In this instance, “level playing field” means that utility and non-utility resources are evaluated side-by-side using the same rules and according to the same scoring and bid evaluation criteria.

For some time, NIPPC has sought policies that help achieve competitive wholesale markets in the belief that competitive wholesale markets best assure that electric consumers achieve service at the lowest practical cost. It was for this reason that NIPPC supported retention of the Commission’s “market valuation”⁴ rule in Docket No. UM 1066. Allowing utilities and affiliates to participate in RFPs alongside independent power and other non-utility bids increases the number of competitors and should permit the side-by-side comparisons that NIPPC thinks would benefit consumers. Therefore, NIPPC urges the Commission to adopt a new guideline:

Utility and affiliate resources should be permitted to compete in a utility’s RFP process, but may only do so when the process is structured to assure that the utility resource is fairly and comparably evaluated alongside non-utility bids.

⁴ OAR 860-038-0080(1)(b). NIPPC intends that the “market price” of a utility resource would be the price at which the utility bid its resource in a competitive solicitation, thus requiring utilities to compete fairly and live with their bargain as independent power would be required to live with their bargain under the same circumstances.

As the Commission will see in NIPPC's next proposal, absent the use of a market valuation rule for utility resources, if the utility prefers to acquire an owned, self-build, or affiliate resource, then the utility/affiliate resource should be subjected to a competitive challenge in an RFP in which a truly independent evaluator participates at the outset to assure that utility and non-utility resources are comparably scored and evaluated.

3. In any RFP in which a utility or affiliate resource competes with non-utility bids, an Independent Evaluator (IE) should be employed to assure the process is fair to non-utility bidders. The Commission's existing rule leaves the utility with the responsibility for evaluating bids and selecting resources. 1991 Order, 127 PUR4th at 309.

NIPPC has no serious reservations about the ability of Oregon's utilities to fairly evaluate bids in situations where there is no competing utility or affiliate resource either directly considered in the solicitation process or indirectly "waiting in the wings." When the utility prefers to acquire its own resource, the experience of NIPPC members is that the utility cannot fairly evaluate a competitor's resource alongside its own: the utility cannot negotiate with itself for the best deal. NIPPC's proposal, then, is to require that an independent evaluator be involved with the utility's RFP from the beginning to help establish and enforce the rules of the game.

Therefore, NIPPC proposes that any utility RFP follow one of two paths: the Standard RFP for instances when the utility seeks resources but does not intend to build its own or acquire from an affiliate, and the Non-Standard RFP⁵ for instances when the utility does intend to own resources or an affiliate will also bid. Both RFPs should follow certain procedures, such as conducting workshops on the proposed RFP, the filing of the proposed RFP with the Commission for public comment and approval, and conducting the RFP in accordance with the Commission's approval order and RFP guidelines. The Non-Standard RFP, however, will be distinguished from a Standard RFP through the use of an independent evaluator (IE).

An IE is more than a monitor of the process; the evaluator is integral to assuring a comparable evaluation of resources. The IE should be chosen from firms which are qualified to evaluate utility and non-utility projects and bids and are independent from market participants at the time of the bid. The IE should be paid through bid fees assessed on all bidders (including the utility) and designed to recover the reasonably expected costs of the IE's work. The IE should report to the Commission or Staff, as the Commission prefers, but should not report to the utility. The IE should be involved from the very outset of the Non-Standard RFP and should assist the utility in

⁵ "Non-Standard RFPs" are called "Benchmark RFPs" in NIPPC's Straw Proposal, but the concept is the same. *See*, Attachment A.

developing scoring and bid evaluation criteria. The IE should accept and validate the utility's "bid," which in this instance means the details of the utility's preferred resource including the score(s) assigned to the utility's resource according to the same scoring and evaluative criteria that will apply to non-utility bids. The IE may independently score and evaluate all bids or validate the utility's scoring as the IE deems appropriate or as the Commission directs. The IE's scoring and evaluation results should be available to non-bidding intervenors under the terms of a protective order that limits the use of the information to cost recovery proceedings in which the chosen resource is at issue.

Therefore, NIPPC urges the Commission to consider the following new guideline for RFPs:

Utilities may use Standard RFPs when no utility- or affiliate-owned resource is being considered. If a utility-or affiliate-owned resource is preferred, then the utility will conduct a Non-Standard RFP and the services of an Independent Evaluator will be employed from the beginning of the process to assure that utility and non-utility resources are scored and evaluated comparably.

4. A utility may request that the Commission acknowledge a Standard or Non-Standard RFP process, with the same legal effect as for an IRP. Using well-structured and fairly-conducted RFPs to acquire resources identified in a utility's IRP Action Plan strategy should further the Commission's objective of acquiring the best resource value for customers.

NIPPC believes that the Commission should have a keen interest in these RFPs, because they also should assist the Commission reviewing the prudence of resources in cost recovery proceedings.

Therefore, NIPPC recommends that the Commission should adopt policies that encourage the utility to undertake competitive solicitations. Utilities that undertake RFPs and acquire resources from an RFP submission should be permitted to seek Commission acknowledgement of the RFP process, with acknowledgement having the same legal effect as acknowledgement does for an IRP. See, *In the Matter of the Investigation into Least-Cost Planning for Resource Acquisitions by Energy Utilities in Oregon*, OPUC Order No. 89-507 (April 20, 1989)(Slip Op.), at pp. 6-7. While NIPPC does not propose that an RFP should result in pre-approval of a chosen resource, an acknowledged RFP process should carry weight with the Commission in any cost-recovery and rate-making proceedings that follow in which the resource is at issue. NIPPC recommends the following guideline:

Following the completion of an RFP process, a utility may request that the Commission acknowledge the RFP process. A decision to acknowledge would be based on the utility's compliance with the Commission's competitive bidding guidelines and any other information the Commission deems relevant. "Acknowledgement" has the same meaning and legal effect as the term has in Integrated Resource Planning.

Of course, because the various proposals in this docket leave utility management with its traditional role of choosing the resources it will acquire, regardless of the outcome of an RFP, the Commission should reserve for itself the right not to acknowledge an RFP process. This action, too, would have weight in a cost recovery proceeding.

Comments Regarding Staff's Straw Proposal

Staff undertook workshops and informal discussions with all parties about needed changes to existing competitive bidding guidelines. Perhaps not surprisingly, Staff's Straw Proposal reflects many of NIPPC's views as well as the views of utilities and interested parties. Similarly, NIPPC's straw proposal⁶ reflects input from Staff and other parties, including consumer groups and the utilities. With the exceptions noted below, NIPPC supports the Staff's approach as reflected in the Staff Straw Proposal.

1. Imputed Debt. Paragraph 8.c of the Staff proposal states:

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.

From NIPPC's vantage point, the prospect of burdening a market bid with the "cost" of imputed debt in a competitive solicitation has all of the indicia

⁶ See, Attachment A.

of the butcher's finger on the scale at the meat market: it tilts the scale, it cannot work to your advantage, and customers pay for it. The disadvantageous effect of imputed debt on market bids is greatly heightened in a non-Standard RFP where a utility or affiliate resource is also at issue. Therefore, NIPPC strongly recommends that imputed debt *not* be a consideration in bid evaluation or selection, but rather be reserved for resource cost recovery proceedings where imputed debt, if any, can be verified factually and its effect on utility costs treated fairly.⁷

If the Commission determines that it will permit considerations of imputed debt in a non-Standard RFP as Staff suggests, then the IE should be empowered to undertake an analysis of the impact of a utility-owned resource on the utility's capital structure and costs so that the two resources may be evaluated comparably. As importantly, how imputed debt was used in a bid evaluation must be an important element of the Commission's review of the RFP after its conclusion.

NIPPC proposes modifying Staff's language as follows:

⁷ The extent to which rating agencies "impute" debt has much to do with a Commission's cost recovery policies for market purchases. To the extent that the debt markets see a regulated revenue stream supporting a long term purchase obligation, the less risk they see from the purchase, and the imputed debt value is reduced accordingly. *See*, Northwest Independent Power Producers Coalition Comments on "Debt Equivalency," dated June 3, 2005, in Docket No. UM 1056, page 3. NIPPC supports regulatory policies that permit the utility to recover all prudently incurred purchased power cost according to predictable rules.

8.c. 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. If a utility affiliate or ownership option is included in a short-list of bids, then to the extent that considerations of agency debt imputations are applied to bids, the IE may make a comparable evaluation of the ownership option on the utility's capital structure and costs.

2. Bidders May Bid the Utility Site. Staff's Straw Proposal does not explicitly state that a bidder in a Non-Standard RFP may submit a bid to construct at the utility's site. NIPPC's Straw Proposal recommends this, and NIPPC urges the Commission to make this a part of Oregon's competitive bidding guidelines. It is likely that, even for a "self-build" option, Oregon's utilities would rely on construction and engineering contractors to build out a utility site. Adding a guideline that permits bidders to bid the utility's site, while probably consistent with existing practice, recognizes the value that a competitive third party could bring to the utility's site. Therefore, NIPPC proposes to modify Staff's proposed language as follows:

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. Bidders may bid to develop the utility's site.

This approach requires that the site and necessary transmission arrangements be identified to bidders in a Non-Standard RFP, if not already identified in the utility's IRP Action Plan.

Conclusion

For all the reasons stated in these comments, NIPPC requests that the Commission revise its competitive bidding guidelines as recommended by NIPPC and as reflected in Staff's Straw Proposal.

DATED this 30th day of September, 2005.

For NIPPC:

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ATTACHMENT A

NIPPC Straw Proposal - UM 1182 September 30, 2005

1. The IRP is conducted first. If the utility's IRP shows new resources are needed, then the utility's IRP Action Plan will also identify the preferred resource strategy, specifically describing the types of technologies, characteristics, and tenures of each new resource in the utility's preferred resource strategy. If the utility prefers to own one or more of the resources identified in its Action Plan, then the utility will so indicate in the IRP. For any resource the utility prefers to own, the utility will further identify the site location and transmission arrangements for the utility resource. The utility's resource (including affiliate resources and build, own, transfer resources) will be considered the "Benchmark Resource" for purposes of the RFP rule.
2. The Commission's policy should support RFPs for all "Major Resource" acquisitions identified in the IRP Action Plan. "Major Resources" are resources with durations greater than 5 years and quantities greater than 50 MW. RFPs are not required for "Non-Major Resources," defined as resources with durations of 5 years or less and quantities of 50 MW or less. If the utility seeks to acquire a Major Resource without conducting an RFP, then the utility must in its IRP Action Plan identify the resource, explain its reasons for proceeding without an RFP, and request a waiver of the RFP process for the identified resource.
3. Resources identified in the Action Plan will be acquired following either (a) a Standard RFP process, where a Benchmark Resource is not considered, or (b) a Benchmark RFP process, where non-utility/affiliate power producers compete in the RFP with the utility's Benchmark Resource.
4. Standard RFP. If the utility identifies a need for new resources but does not identify a Benchmark Resource in its IRP Action Plan, then the utility conducts a Standard RFP bid process.
 - a. Not less than 60 days before the utility opens a Standard RFP to bidding, the utility announces its intent to conduct an RFP, develops bid scoring and evaluation criteria, specifically discloses types, terms, and/or characteristics of resources sought, conducts a workshop with potential bidders and non-bidding intervenors to receive comments on the proposed RFP, and files its description of the proposed RFP process, including proposed bid scoring and evaluative criteria, with the Commission. The utility's decision criteria for the Standard RFP shall be consistent with the utility's IRP decision criteria.

- b. The Commission takes public comments on the proposed RFP process, including proposed bid scoring and evaluation criteria, and approves the utility's proposal with any conditions or adjustments.
 - c. The utility conducts the bidding process, scores the bids, selects a short list, and undertakes negotiations with bidders on the short list.
 - d. Within a reasonable time following the utility's selection of final resource providers, the utility submits the results of the RFP and its negotiations to the Commission for acknowledgement. All results of the RFP, including scoring and bid evaluation results, will be made available to the Commission, Commission staff, and non-bidding intervenors and consumer advocates subject to a protective order that limits use of the information to cost-recovery proceedings in which the selected resource is at issue.
 - e. If the utility is unsatisfied with the results of the RFP, the utility may conduct another Standard RFP. In no event may the utility acquire a Benchmark Resource (except Non-Major Resources) without conducting a Benchmark RFP process, as described in paragraph 5, below.
5. Benchmark RFP. Except for Non-Major Resources, if the utility's Action Plan identifies a Benchmark Resource as part of the utility's preferred resource portfolio, then the Benchmark Resource must be evaluated in a Benchmark RFP process, as follows:
- a. Not less than 90 days before the utility opens a Benchmark RFP process to bidding, the utility announces its intent to conduct a Benchmark RFP.
 - b. Utility and staff will select an Independent Evaluator (IE) from among a qualified slate of candidates. The IE chosen may not provide consulting services to participants in energy markets. The IE will be retained by and report to the Commission or Commission staff, as directed by the Commission. The IE will be paid 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.
 - c. The utility and IE (with staff consultation) will draft the proposed Benchmark RFP, including scoring and bid evaluation criteria. Benchmark RFP decision criteria shall be consistent with the utility's IRP decision criteria. The scoring methodology will include the means by which the IE and the utility will score both pre- and post-commercial operation aspects for which the utility proposes traditional ratemaking treatment of the Benchmark Resource. The utility and the IE will conduct workshops on the Benchmark RFP process and scoring and evaluation criteria, and solicit public comment on the proposed Benchmark RFP from bidders and non-bidding intervenors and consumer advocates. The Commission will then review the Benchmark RFP process, accept comments on

- the proposal, and approve the Benchmark RFP with any conditions and modifications deemed necessary.
- d. Prior to the opening of bidding, the utility will submit a detailed description of its Benchmark Resource and a proposed “Benchmark Score” to the IE. The Benchmark Resource description will include the utility’s cost estimate, location, transmission arrangements, and all other information necessary to score the Benchmark Resource. The Benchmark Score will be the score assigned to the Benchmark Resource using the same bid scoring and evaluation criteria that will be used to score market bids. The IE will validate the utility’s cost information and may challenge the utility’s estimate and score. The utility and IE should try to resolve differences, but the utility will make the final decision. The results of the IE’s validation of the utility’s cost estimate and score, including any differences between the utility and the IE, will be made available to non-bidding intervenors under protective order that limits use of the information to cost recovery proceedings at which selected resources are at issue. The final Benchmark Resource description and Benchmark Score will be sealed and held by the IE and the Commission until the bidding has concluded in the Benchmark RFP.
 - e. Bidders may bid to develop the utility’s site.
 - f. The utility and the IE will score all bids separately but using the same information. The IE may, in addition to scoring the bids, evaluate all bids in order to assess the risks and advantages associated with each bid, including the utility’s Benchmark Resource. Risks and advantages associated with bids, including the utility’s Benchmark Resource, include risks of cost overruns, operating problems, and resulting regulatory disallowances for such matters as equipment failures and outages, disruptions in fuel supply, fuel cost escalation, ineffective cost or management controls; costs of replacement capacity, energy and ancillary services; and, other unanticipated cost increases or events that would affect the total cost of the utility’s and non-utility’s resource bids. The IE may place a value or range of values on these risks to assist in bid and Benchmark Resource evaluation.
 - g. Debt equivalency will not be added to market bids as part of bid scoring and evaluation.
 - h. Once competing bids have been scored and evaluated by the utility and the IE, the two may compare results, including comparing results of the utility’s Benchmark Score to market bid scores. Both the IE and the utility will make the results of their scoring and evaluation available to the Commission, Commission Staff, and non-bidding consumer advocates, subject to confidentiality agreement or protective order which limits permissible use of the information to cost-recovery proceedings in which selected resources are at issue.

- i. The utility is free to make its resource choice regardless of the scoring and evaluation results of the utility and the IE. If the utility's resource choice differs from the resource that would have been indicated by the IE's scoring and evaluation, then the utility will submit its choice and supporting rationale to the Commission for review. The Commission will take comments on the utility's choice, and will issue an order either acknowledging or declining to acknowledge the utility's choice.
6. The utility may otherwise request that the Commission acknowledge the its RFP process, with acknowledgement of the RFP having the same legal force and effect as IRP acknowledgement in any future cost recovery proceeding at which the selected resources are at issue. For purposes of the competitive bidding rule, "acknowledgement" shall have the same meaning as assigned to that term in OPUC Order No. 89-507, slip opinion, at p. 6-7.⁸

⁸ "Rate-making decisions will not be made in the Least-Cost Planning process. [...] When a utility requests approval of expenditures or inclusion of a plant in rate base, the utility must demonstrate the justness and reasonableness of its rates at the time the resource comes on line. [...] If a resource is used and useful, the resource itself must be included in rate base. However, the full cost of the resource is not necessarily includable in rate base. [...] Consistency of resource investments with least-cost planning principles will be an additional factor that the Commission will consider in judging prudence. [...] Consistency with the plan may be evidence in support of favorable rate-making treatment of the action, although it is not a guarantee of favorable treatment. Similarly, inconsistency with the plan will not necessarily lead to unfavorable ratemaking treatment, although the utility will need to explain and justify why it took an action inconsistent with the plan."

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September 30, 2005

VIA Electronic Mail & U.S. Mail

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Re: UM 1182; NIPPC Opening Comments and Straw Proposal

Enclosed for filing is an original of NIPPC's opening comments and attached Straw Proposal in this docket. A hard copy of these comments will follow in the U.S. Mail.

Please call me if you have any questions.

Very truly yours,

/s/ Susan K. Ackerman

Susan K. Ackerman
Attorney for NIPPC

Enclosures

Certificate of Service

I certify that I have this day served the foregoing document upon all parties of record in UM 1182 by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to all parties or attorneys of parties, attached below.

Dated this 30th day of September, 2005.

/s/ Susan K. Ackerman
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