

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1182

In the Matter of an Investigation Regarding ) ORDER  
Competitive Bidding. )

**DISPOSITION: GUIDELINES ADOPTED**

On December 3, 2004, the Northwest Independent Power Producers' Coalition (NIPPC) filed a petition asking the Public Utility Commission of Oregon (Commission) to open an investigation regarding competitive bidding requirements for new supply-side resource acquisitions applicable to Oregon's investor-owned electric utilities.

The Commission subsequently opened an investigation. Numerous conferences and workshops were held, as well as a public workshop with the Commissioners. The process culminated with written opening and reply comments, which were filed in September and October 2005.

Intervening parties are Citizens' Utility Board of Oregon (CUB), Northwest Energy Coalition (NVEC), Renewable Northwest Project (RNP), Portland Metropolitan Association of Building Owners and Managers (BOMA), Idaho Power Company (Idaho Power), NIPPC, Portland General Electric Company (PGE), PacifiCorp, Industrial Customers of Northwest Utilities (ICNU), Oregon Department of Energy (ODOE), Cascade Natural Gas Corporation (Cascade), Northwest Natural Gas Company (NWN), Avista Corporation (Avista) and Commission staff (Staff).

Opening comments were filed by NIPPC, Idaho Power, PacifiCorp, ICNU, PGE and Staff. CUB, RNP and NVEC filed joint opening comments. Reply comments were filed by ODOE, NIPPC, Idaho Power, PacifiCorp, PGE and Staff. RNP and NVEC filed joint reply comments.

**Competitive Bidding Goals**

In Order No 91-1383, the Commission adopted policies and guidelines regarding competitive bidding for investor-owned electric companies in Oregon.

Those goals have guided us well over the years. Therefore, we are making only slight modifications to those 1991 goals. The revised goals are:

1. Provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints;
2. Complement Oregon's integrated resource planning process;
3. Not unduly constrain utility management's prerogative to acquire new resources;
4. Be flexible, allowing the contracting parties to negotiate mutually beneficial exchange agreements; and
5. Be understandable and fair.

Finally, we agree with Staff that the Request For Proposal (RFP) process is a "means to promote and improve the resource actions identified in the utility's IRP [Integrated Resource Plan] Action Plan." *See*, Staff Reply Comments at 7. Changes occur from the time an Action Plan is acknowledged to when an RFP is released. The changes may be simple, due merely to the passage of time, or dramatic, such as the Western power crisis in 2000. While a utility's Action Plan establishes a roadmap, it is not in the customer's best interest for any utility to march lockstep without any deviation from the plan. We have found that flexibility is important in meeting the goals set out above.

### **Competitive Bidding Guidelines**

After receiving considerable input from the parties, Staff prepared a straw proposal that updated the current competitive bidding process. This proposal was distributed to the parties, who then filed comments regarding the proposal. Staff made some suggested changes to its initial straw proposal in light of parties' comments. These changes are incorporated in Staff's reply comments.

We have considered all of the parties' comments and made our own changes to the straw proposal filed by Staff. In adopting our own, we have reorganized and renumbered the guidelines as originally presented by Staff in its straw proposal. In the following discussion, we will explain the rationale for our guidelines, and address some of the comments filed by the participants. We do not, however, summarize and address all of the comments. The revised competitive bidding guidelines, attached as Appendix A and incorporated herein, take into account the experience we have gained since we adopted the initial guidelines in 1991. While we are adopting a set of guidelines, we have drafted them with both mandatory and permissive language so that the involved utilities will clearly understand our preferences.

We address each as it appears in Appendix A, followed by comment about the specific guideline.

## Adopted Bidding Guidelines

**1. RFP Requirement:** *A utility must issue an RFP for all Major Resource acquisitions identified in its last acknowledged Integrated Resource Plan (IRP). Major Resources are resources with durations greater than 5 years and quantities greater than 100 MW.*

### Comment

The definition of Major Resources includes two thresholds: the duration of the resource must be greater than five years, and the resource output must be greater than 100 MW. The parties did not agree on either threshold.

In its straw proposal, Staff recommended a threshold of five years. In general, all parties agree with this threshold except for the utilities. The utilities believe that a ten-year duration is a more appropriate threshold for triggering an RFP, so that they would have the necessary flexibility to pursue mid-term resources. Further, the utilities express concern with regulatory time commitments needed for approval, as well as the time commitment by the utility in completing the RFP process.

As to output, Staff initially recommended a quantity threshold of 50 MW but, in response to the parties' comments, does not oppose a higher threshold. The utilities seek a higher threshold of 100 MW. In addition, PGE argues that the resource output should be defined as MWa rather than MW. PGE contends that MWa ensures that non-dispatchable, intermittent or energy limited resources, such as wind and hydro power, are treated on a comparable basis with other technology types with higher expected capacity factors. RNP and NVEC thought the resource quantity could be increased to 100 MW to accommodate some of the utilities' concerns. RNP, however, opposed PGE's proposed use of MWa, noting such use would allow a utility to acquire wind projects as large as 300 MW without bidding. ICNU and NIPPC support Staff's initial 50 MW threshold, but provide little justification for the lower standard.

We hold that the duration threshold should be five years and the resource output threshold should be 100 MW. While we understand the issues of regulatory time commitments, and the limited exposure to customers of utilities acquiring mid-term resources of five to ten years in duration, we believe that resources greater than five years, with a resource output of more than 100 MW, should undergo a bidding process to ensure obtaining least-cost resources for customers. We will review the practical effects of the duration threshold over the next several years and revise it, if necessary.

Idaho Power raises two concerns not related to the duration or size of these thresholds. First, Idaho Power explains that, unlike other Oregon utilities, its practice is to conduct RFPs on a resource-by-resource basis. Idaho Power hopes to continue this approach, enabling it to preserve the benefits associated with the diversity reflected in the IRP's preferred portfolio. Second, Idaho Power believes that the acquisition of certain large capital-intensive resources, such as a large jointly-owned thermal plant, might not lend itself

to a traditional RFP process because of project complexity, site-specific design and multiple parties which may be involved.

The guideline does not require a utility to conduct an all-resource bid. Accordingly, Idaho Power, or any other utility, may seek competitive bids on a resource-by-resource basis. Furthermore, as to questions on whether an RFP process may not be suitable for the acquisition of certain resources, a utility may seek a waiver of the bidding requirement under the next guideline discussed below.

**2. Exceptions to RFP Requirement:** *A utility is not required to issue an RFP under the following circumstances:*

- a. Acquisition of a Major Resource in an emergency or where there is a time-limited resource opportunity of unique value to customers.*
- b. Acknowledged IRP provides for an alternative acquisition method for a Major Resource.*
- c. Commission waiver on a case-by-case basis.*

*Within 30 days of a Major Resource acquisition under Subsection (a) above, the utility must file a report with the Commission explaining how the requisite conditions have been met for acting outside of the RFP requirement. The report must be served on all the parties and interested persons in the utility's most recent rate case, RFP and IRP dockets.*

*When requesting a waiver under Subsection (c) above, the utility must file its request with the Commission and serve the request on all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The Commission will issue an order addressing the waiver request within 120 days, taking such oral and written comments as it finds appropriate under the circumstances.*

#### Comment

Staff's straw proposal included an exception to the RFP process in emergencies or when action is needed to take advantage of a time-limited resource opportunity. PacifiCorp contends this waiver should also include similar situations involving "self-build" resources. Staff supports PacifiCorp's proposal. NIPPC does not oppose PacifiCorp's waiver proposal, but questions how a utility self-build resource could ever be utilized in response to an emergency or to take advantage of a time-limited opportunity.

We are cognizant that emergencies arise or specific, time-limited resource opportunities become available, requiring utility action without an RFP process. When those events occur, however, we want to be notified, in some detail, as to why the utility did not use an RFP process for acquiring the Major Resource.

Further, there may be situations, such as that previously discussed under Guideline 1, where a utility decides to ask for a waiver of the RFP process. We are

committed to resolving such requests quickly, using less than a full contested case process. We find this to be appropriate, as we are not making any ratemaking decisions when we waive an RFP requirement. We do not anticipate, however, that utilities will be asking for many such waivers, as we see competitive bidding to be the appropriate method for obtaining Major Resources.

**3. Affiliate Bidding:** *A utility may allow its affiliates to submit RFP bids. If affiliates are allowed to bid, the utility must blind all RFP bids and treat affiliate bids the same as all other bids.*

**4. Utility Ownership Options:** *A utility may use a self-build option in an RFP to provide a potential cost-based alternative for customers. A site-specific, self-build option proposed in this way is known as a Benchmark Resource. A utility may also consider ownership transfers within an RFP solicitation.*

#### Comment

These guidelines are taken from part of Guideline 9 in Staff's straw proposal. Staff's terminology used in its initial straw proposal generated comment. Idaho Power notes that, because it routinely employs an independent consultant in its RFP process, the company does not distinguish between "Standard" and "Non-Standard" RFPs. PacifiCorp and PGE propose more descriptive terms be used to differentiate between RFPs with and without a utility self-build option. PacifiCorp also cautions that the term "Benchmark Resource" should be limited to a utility's self-build options. PacifiCorp explains that other options may be evaluated against a "benchmark," which could be the market or other market options.

We have addressed the parties' concerns about terminology by dispensing with labels. Indeed, as further discussed below, such distinctions generally are not needed because all RFPs now require the use of an independent evaluator. To address PacifiCorp's specific concern, we define a Benchmark Resource as a site-specific, self-build option for which there is a commitment to proceed if it is the resource selected through the RFP. This definition does not preclude a utility from designating the market as an alternative comparator during the RFP evaluation process. If no resources are acquired through the RFP because bids are inferior to the evaluation benchmark, we do not expect an emergency self-build shortly thereafter.

Other comments focused on whether independent power producers should be given an opportunity to build on the utility's site as part of an RFP that includes a self-build option. NIPPC, ICNU, and CUB are in favor of such an opportunity; PGE and PacifiCorp oppose it. PGE explains that, if bidders have access to the utility's site, then the utility should be given access to bidders' sites. Staff raises some legal problems with requiring utilities to provide independent bidders access to utility sites.

We will not require a utility to offer its site locations for development by independent power producers. Granted, a utility could allow a resource to be built upon a particular named piece of utility property. However, that is a decision to be made by the

utility. We share Staff's concerns, raised after consultation with the Department of Justice, whether this Commission has the legal authority to implement the NIPPC and ICNU recommendation. Rather, we adopt Staff's suggestion that the utility be encouraged to offer its site for third party development, as PacifiCorp proposed in its RFP for resources in 2012, docket UM 1208.

Finally, CUB and ODOE argue that independent bidders should be given the right to use a utility's transmission facilities. Again, PGE opposes such access, and contends that any use of PGE transmission facilities would have to comply with requirements mandated by the Federal Energy Regulatory Commission (FERC).

We will not impose third party access to a utility's transmission facilities beyond the access allowed under FERC rules. We encourage utilities, however, to provide information on the availability of transmission facilities and planned projects to bidders.

**5. Independent Evaluator (IE):** *An IE must be used in each RFP to help ensure that all offers are treated fairly. Commission Staff, with input from the utility and interested, non-bidding parties, will recommend an IE to the Commission, which will then select or approve an IE for the RFP. The IE must be independent of the utility and likely, potential bidders, and also be experienced and competent to perform all IE functions identified in these Guidelines. The IE will contract with and be paid by the utility. The IE should confer with Commission staff as needed, on the IE's duties under these Guidelines. The utility may request recovery of its payments to the IE in customer rates.*

#### Comment

The parties addressed various issues related to the use, qualifications, selection, reporting, and costs of an IE. As to use, the parties generally focus on need for an IE when an affiliate or self-build option is involved. NIPPC explains that, in such situations, an IE is integral to assuring a comparable evaluation of resources.

We conclude that an IE should be used for all RFPs. While an IE's role is not as involved for an RFP without ownership options or Affiliate Bidding, we find that using an IE has value. We want an independent overseer of the process. As for qualifications, all parties agree on the need for impartiality, but the utilities claim Staff's straw proposal—excluding all candidates providing, or those that have recently provided, consulting services to participants in the western energy markets—is too limiting. Such a restriction, according to PacifiCorp, would preclude the ability to obtain an IE with sufficient experience. PacifiCorp contends that guidelines should balance the need for both independence and experience, without sacrificing one or the other. Staff is persuaded by this argument and supports PacifiCorp's recommendation.

We adopt PacifiCorp's proposal that the guidelines should seek a qualified IE in terms of both independence and experience. We also adopt PacifiCorp's recommendation that any IE candidate disclose any actual or potential conflicts to help the Commission assess independence.

Parties have different views on the process used to select an IE. Staff originally proposed that the IEs be selected by the utility and Staff from a list of qualified candidates. ICNU believes that only Staff, with input from non-bidding parties, should select the IE. ODOE proposes that the utility should be allowed to participate in the IE selection, but not have the final authority to select. Most parties agree that, once selected, the IE should report to Staff, not the utility.

We believe the utility and non-bidders should participate in the process and provide input to Staff. Staff, however, should make a final recommendation to the Commission for approval, which could be accomplished at a public meeting. In approving a final selection, we will give due consideration to an IE already selected for the RFP by another state commission.

We further conclude that the contract for the IE's services should be entered into by the utility and IE. The utility should pay the IE and otherwise manage and administer the contract. The Commission should not be a party to the contract. We recognize that such a contractual arrangement fails to provide the Commission or Staff the legal right to control or direct the IE's activities in response to any reporting requirement and may be problematic. Nonetheless, we are confident that, in the interest of obtaining RFP acknowledgement, the utility will encourage the IE to consult and confer with Staff to help address any actions needed on the part of the IE.

Finally, with regard to IE costs, Staff originally proposed that the IE be paid by the utility through assessments on all bidders, including the utility. In comments, however, most parties, including Staff, favor the payment by the utility with possible recovery from customers. ODOE explains that adding IE costs to the already high cost of preparing a bid might discourage bidder participation, particularly for small projects, as is often the case with renewable resource and cogeneration projects.

We agree that if an IE is useful to the process, and we believe that to be so, then the cost of the IE should be included in rates. Utilities may request deferred accounting to track the costs of IEs for later prudency review and potential inclusion in rates.

**6. RFP Design:** *The utility will prepare a draft RFP and provide it to all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The utility must conduct bidder and stakeholder workshops on the draft RFP. The utility will then submit a final draft RFP to the Commission for approval, as described in Guideline 7 below. The draft RFPs must set forth any minimum bidder requirements for credit and capability, along with bid evaluation and scoring criteria. The utility may set a minimum resource size, but Qualifying Facilities larger than 10 MW must be allowed to participate. The final draft submitted to the Commission must also include standard form contracts. However, the utility must allow bidders to negotiate mutually agreeable final contract terms that are different from ones in the standard form contracts. The utility will consult with the IE in preparing the RFPs, and the IE will submit its assessment of the final draft RFP to the Commission when the utility files for RFP approval.*

Comment

This guideline combines features originally set forth in Guidelines 9 and 10 of Staff's straw proposal. In Guideline 9, Staff referred to the joint responsibility of the utility and IE to draft certain RFP requirements and develop minimum bidder criteria. Staff also proposed the utility allow opportunities for public involvement in the RFP and, to facilitate such input, provide 60-day advanced notice of its intention to conduct an RFP and possibly conduct workshops. In Guideline 10, Staff recommended that the utility may propose minimum bidder requirements for credit and capability, and that such requirements would also be subject to public comment during the RFP design.

In comments, RNP supports the proposed public input opportunities. Idaho Power, however, raises concerns about the release of bid evaluation and scoring criteria during public workshops. Idaho Power considers the criteria to be proprietary information that should be afforded protection. PacifiCorp also raises concerns about Staff's use of the word "may" in recommending that a utility may propose minimum bidder requirements. PacifiCorp is concerned that such language might suggest that minimum bidder requirements are not necessary. On this issue, Idaho Power provides a list of minimum bidder attributes the company customarily establishes, with the assistance of an independent consultant. PacifiCorp and Staff agree that the IE and other parties should be allowed to review the proposed minimum bidder requirements, which should be approved by the Commission. Lastly, ODOE contends that all resources over 10 MW should be allowed to bid, in order to be consistent with the Commission's limit for standard avoided cost rates and standard contracts for Qualifying Facilities, and that bids should not be excluded because of the lack of transmission capabilities.

In adopting the guideline above, we revise the language to clarify that the utility is responsible for preparing the draft RFP, conducting bidder and stakeholder workshops, and submitting the final RFP to the Commission for approval. The utility must, however, consult with the IE during these activities, and the IE will submit an assessment of the final RFP to the Commission during the approval phase discussed below.

We also modify the language used in the straw proposal to require the utility to conduct bidder and stakeholder workshops. We required PacifiCorp to utilize this open process in its 2004 RFP, and believe it should be mandatory to allow all interested persons the ability to participate and provide input on the RFP design. We remove, however, the 60-day advance notice requirement proposed in Staff's straw proposal. This requirement apparently was based on current practice under Order No. 91-1383, which contemplates Commission review and approval of a draft IRP in 60 days. Under the guideline adopted above, the utility must widely distribute copies of the draft RFP and conduct workshops with interested parties. We decline to establish a minimum time period for such activities, but expect the utilities to provide ample time to ensure an adequate opportunity for public input.

In response to PacifiCorp's concerns about minimum bidder requirements, we accept Staff's explanation that its straw proposal was not intended to alter the principles,



articulated in Order No. 91-1383, that utilities should address the credit and capability of prospective bidders in order to protect ratepayers.

We agree with ODOE with respect to qualifying facilities under the Public Utility Regulatory Policies Act, and include language that prohibits utilities from excluding Qualifying Facilities larger than 10 MW from participating. In addition, we add language to the guideline to make clear that a utility should be willing to negotiate on the terms of the standard contract to achieve comparable outcomes. We conclude, however, that ODOE's other concern about bidders that lack transmission capabilities is more appropriately addressed during the review of an individual RFP.

Finally, with respect to evaluation and scoring criteria, we conclude that bidders should be given enough information during the RFP design process to determine how important different project and bidder characteristics are to the utility. Specific scoring criteria, such as points awarded for non-price factors, will be limited to non-bidding parties under the terms of Guideline 12, further addressed below.

**7. RFP Approval:** *The Commission will solicit public comment on the utility's final draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment and Commission review should focus on: (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 RFP and the public comments, the Commission may approve the RFP with any conditions and modifications deemed necessary. The Commission may consider the impact of multi-state regulation, including requirements imposed by other states for the RFP process. The Commission will target a decision within 60 days after the filing of the final draft RFP, unless the utility requests a longer review period when it submits the final draft RFP for approval.*

#### Comment

We made two primary modifications to Staff's straw proposal to address concerns raised by commenting parties. First, in response to ICNU's questions about the length of time needed for Commission approval of an RFP, we extend the review period by 15 days, to 60 days. While we expect that interested persons will have been involved in the RFP process during its drafting and will have the opportunity to raise concerns and obtain information prior to the utility formally filing the RFP, we extend the process to address any concerns about discovery. Second, we add language proposed by PacifiCorp to clarify the focus of the Commission's review in approving an RFP, and to acknowledge that this review may include consideration of requirements imposed by other state commissions.

To respond to other concerns about the effect of Commission approval of an RFP, we clarify that Commission approval is simply 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. Any ratemaking determinations would occur at a later time.

**8. Benchmark Resource Score:** *The utility must submit a detailed score for any Benchmark Resource, with supporting cost information, to the Commission and IE prior to the opening of bidding. The 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, with input from the IE, determines that bidder updates are appropriate, the utility may also update the costs and score for the Benchmark Resource. The IE will review the reasonableness of the score(s) for the Benchmark Resource. The information provided to the Commission and IE will be sealed and held until the bidding in the RFP has concluded.*

#### Comment

We adopt this guideline without substantive modification from Staff's straw proposal. We acknowledge PGE's concern about the inclusion of transmission arrangements, and agree that a utility should not be required to reveal this information to other bidders. As PGE notes, a utility should have the same opportunity as other bidders to keep this type of information blinded from other bidders.

We reject ICNU's suggestion that, if bidder updates are allowed, the IE should evaluate whether the opportunity for updates resulted in favoring the utility or an affiliate resource. We are satisfied that, in such situations, the opportunity to rebid or provide updates would be extended to all bidders. Any concerns about the timing of the updates may be raised during the acknowledgement for the final short-list of bids. We also find that the guidelines are clear enough on the equal treatment of the Benchmark Resource, and conclude there is no need to add language, proposed by ODOE, to clarify that the term "bids" includes the Benchmark Resource.

#### **9. Bid Scoring and Evaluation Criteria:**

*a. Selection of an initial short-list of bids should be based on price and non-price factors, and provide resource diversity (e.g., with respect to fuel type and resource duration). 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 acknowledged 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 based, in part, on the results of modeling the effect of candidate resources on overall system costs and risks. 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 acknowledged IRP Action Plan. The IE must have full access to the utility's production cost and risk models.*

*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 Commission may require the utility to obtain an advisory opinion from a ratings agency to substantiate the utility's analysis and final decision.*

#### Comment

CUB, NWECA, and RNP filed joint comments recommending several modifications to Staff's straw proposal on bid scoring and evaluation criteria. First, the public interest parties recommend that the selection of the initial short-list of bids should not be based on a comparison of resources of different fuel types. Rather, they prefer selection from pools of each type of resource. Staff disagrees, and responds that a utility may improve diversity by having an initial short-list with different fuel types from an all-source bid, or by running simultaneous resource specific solicitations. Staff explains that resource-specific bids should occur at the same time in case the market yields different costs than assumed in the IRP, indicating a preference to acquire some types of resources over others. We agree with Staff's proposed approach, but add language in subsection (a) to require resource diversity in the initial short-list.

CUB, NWECA, and RNP also recommend additional procedures be used if the bids and other updated information are significantly different from the original inputs used in the IRP. The parties define "significantly different" to mean that the average bids in the initial short-list for each resource type differ by more than 20 percent from those modeled in the IRP. If that threshold is met or exceeded, the public interest parties contend that the utility should re-run the modeling used in the IRP. Staff, PGE and PacifiCorp oppose the proposal. Staff explains that such additional process would divert time and resources determining whether any bid differences are significant, rather than focusing those resources on determining the best combination of bids. We agree and prefer to view the competitive bidding process as a search process aimed at helping find the best combination of resources for ratepayers. As stated in subsection (b) of this guideline, we expect the utility to apply the same analytical approach and judgment in selecting the final short-list as it did in developing its acknowledged IRP Action Plan. For example, it should apply the same tradeoff between cost and risk in the bid process as it did in the IRP, and not simply focus on expected cost at the acquisition stage.

Staff, PGE and ODOE recommend other refinements to the guideline. Following publication of its straw proposal, Staff filed comments proposing that utilities be allowed to propose environmental scoring based on the environmental analysis included in its acknowledged IRP. PGE supports Staff's suggestion, adding that it provides the flexibility needed to adapt to changing circumstances and links the environmental scoring to the IRP analysis process. We share Staff's and PGE's view, but conclude that no modifications are required, given the guideline's link to the IRP in subsections (a) and (b). Similarly, we agree

with ODOE that utilities should, in selecting initial short-list bids and the final short-list, include the transmission and generation integration costs. Again, we believe the guideline, as written, includes that requirement.

Idaho Power and PGE raise questions about the ability of a utility to provide an IE with access to production cost and risk models. The utilities explain that certain licensing agreements with software vendors may preclude an IE's ability to access these analytical tools. We acknowledge the utilities' concerns. We expect, however, that utilities will take all reasonable actions necessary to obtain a license that allows an IE to access these models, and will justify any failure to do so when seeking RFP approval.

Finally, many parties focus on how to address debt imputation for power purchase agreements (PPA). PGE and PacifiCorp want debt imputation considered at all stages of bidding and scoring, while Staff recommends that debt imputation only be considered at the final stage. Other parties, such as NIPPC, recommend that debt imputation not be considered at all in the bid scoring and evaluation.

To consider debt imputation at all stages is too cumbersome a process and not necessary to meet the goals of these guidelines. We understand that by considering debt imputation solely at the final stage, we risk giving an advantage to resources with imputed debt in determining the initial short-list. We do not consider that risk to be significant, however. Further, we agree with Staff that reserving analysis of imputed debt until the final stage decreases the possibility of disqualifying a power purchase agreement that should be considered.

#### **10. Utility and IE Roles in the RFP Process:**

*a. The utility will conduct the RFP process, score the bids, select the initial and final short-lists, and undertake negotiations with bidders.*

*b. The IE will oversee the RFP process to ensure that it is conducted fairly and properly.*

*c. If the RFP does not allow affiliate bidding and does not include ownership options (i.e., the utility is not including a Benchmark Resource or considering ownership transfers), the IE will check whether the utility's scoring of the bids and selection of the short-lists are reasonable.*

*d. If the RFP allows affiliate bidding or includes ownership options, the IE will independently score the utility's Benchmark Resource (if any) and all or a sample of the bids to determine whether the selections for the initial and final short-lists are reasonable. In addition, the IE will evaluate the unique risks and advantages associated with the Benchmark Resource (if used), including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.*

*e. Once the competing bids and Benchmark Resource (if used) have been scored and evaluated by the utility and the IE, the two should compare results. The utility and IE should attempt to reconcile and resolve any scoring differences. If the two are unable to agree, the IE should explain the differences in its Closing Report.*

Comment

We made several revisions to this guideline as originally proposed in Staff's straw proposal. First, we modify the language to make it consistent with our earlier decision to require an IE for all RFPs. Second, we clarify the role of the IE in the RFP process. ICNU recommends, and Staff concurs, that the IE should independently review, rather than merely "validate," the utility's bid scoring. We agree, provided that the RFP allows affiliate bidding or includes ownership options. We add language to clarify this role, and to require the IE to score the Benchmark Resource, and as many bids as the IE believes to be necessary to conclude that the process was fair and the result was reasonable. We do not impose such a requirement where the utility is not including a Benchmark Resource or considering ownership transfers or affiliate bids. In such cases, the IE need only validate the utility's scoring.

Third, ICNU also proposes that, if differences arise between the utility's and the IE's scoring, the IE should be under no obligation to work with the utility to reconcile the differences. On this matter, we share Staff's opinion that the IE and the utility should attempt to resolve differences in bid scoring and evaluation. We agree with ICNU, however, that compromise should not be required, and have added language accordingly.

Fourth, pursuant to PGE's proposal, we modify language, set forth in subsection (d), to make the discussion on risk more neutral. We reject, however, PacifiCorp's recommendations that the Benchmark Resource option should not be treated and evaluated like a bid and that non-price factors, such as possible cost overruns, should not be considered. We recognize that Benchmark Resources are different from other bids in that price and performance is not fixed. Such differences, however, emphasize the need to consider the additional risk customers bear in deciding the best option from the RFP. This risk to customers is present even if the actual costs of the Benchmark Resource are equally likely to be lower or higher than projected in the RFP.

**11. IE Closing Report:** *The IE will prepare a Closing Report for the Commission after the utility has selected the final short-list. In addition, the IE will make any detailed bid scoring and evaluation results available to the utility, Commission staff, and non-bidding parties in the RFP docket, subject to the terms of a protective order.*

Comment

While this guideline generated little discussion or dissension, we modify the language of straw proposal to recognize that the IE will be involved in the acknowledgment process (*See* Guideline 13), and should complete the Closing Report before then, and to clarify that the IE's bid scoring and evaluation results will be subject to protective order (*See* Guideline 12).

**12. Confidential Treatment of Bid and Score Information:** *Bidding information, including the utility's cost support for any Benchmark Resource, as well as detailed bid scoring and evaluation results will be made available to the utility, Commission staff and non-bidding parties under protective orders that limit use of the information to RFP approval and acknowledgment and to cost recovery proceedings.*

Due to the competitive nature of the power market and generation development business, PacifiCorp raises concerns about the disclosure of detailed bid scoring and evaluation results to non-bidding consumer advocates. PacifiCorp explains that these parties may include entities that could use this information to the commercial disadvantage of bidders or the utility. RNP and Staff believe that such information should be made available. Staff suggests that PacifiCorp's concerns could be addressed through heightened protective procedures. We agree with RNP and Staff that non-bidding parties should have access to this information and have written the guideline accordingly.

**13. RFP Acknowledgment:** *The utility may request that the Commission acknowledge the utility's selection of the final short-list of RFP resources. The IE will participate in the RFP acknowledgment proceeding. Acknowledgment has the same meaning as assigned to that term in Commission Order No. 89-507. RFP acknowledgment will have the same legal force and effect as IRP acknowledgment in any future cost recovery proceeding. The utility's request should discuss the consistency of the final short-list with the company's acknowledged IRP Action Plan.*

The final suggested guideline by Staff in its straw proposal provides the utility an opportunity to ask for Commission acknowledgment of the final short-list of RFP resources. ICNU questions the value of this process, noting that it does not appear to limit utility bias or otherwise improve the process. To the contrary, ICNU suggests such approval only benefits utilities by providing greater assurance that their resource procurement process will be found reasonable in a subsequent rate proceeding. If the Commission is inclined to acknowledge the results of the RFPs, ICNU recommends the Commission defer this issue until it has been proven that the utilities are not biasing the results. PacifiCorp, Idaho Power, PGE, NIPPC and Staff favor Commission acknowledgement. These parties contend such acknowledgement would have the same meaning as that used in the IRP process. Consequently, Staff and the other parties believe that acknowledgment would not restrict the Commission's ability to disallow costs of resources acquired through the RFP process.

We adopt the proposal to allow the utilities the ability to request Commission acknowledgement. Such Commission action would carry the same weight as an

acknowledgment of an IRP—that is, a conclusion that the final short-list seems reasonable, based on the information provided to the Commission at that time. It will not, as ICNU fears, provide a guarantee of favorable ratemaking treatment during rate recovery. Moreover, Commission acknowledgement is not mandatory. The Commission may decline to acknowledge. We also direct the utility to explain whether its final short-list is consistent with the near-term resource acquisitions identified in its acknowledged IRP.

ODOE recommends that the Commission should acknowledge resource amounts, rather than final short-lists. ODOE provides little explanation to support this recommendation, but it appears the agency is concerned that the utility will not acquire sufficient resource diversity. We decline ODOE's proposal. If adopted, we are concerned that such acknowledgment would segment the short-list and weaken the utility's bargaining position. Moreover, ODOE's apparent concerns about resource diversity are mitigated by the utility's ultimate responsibility for obtaining the best deal in terms of cost and risk through the RFP process.

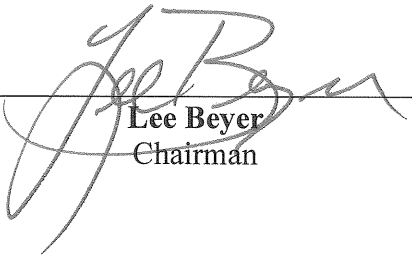
### **CONCLUSION**

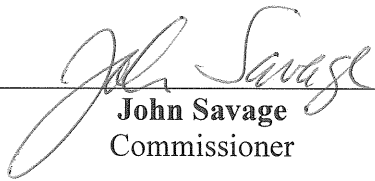
For the reasons set forth above, we conclude that the RFP guidelines, attached as Appendix A, should be adopted. These guidelines become effective on the date this order is entered, and apply to all pending and future RFP proceedings.


**ORDER**

IT IS ORDERED that the RFP guidelines, attached as Appendix A, are adopted.

Made, entered, and effective AUG 10 2006.

  
\_\_\_\_\_  
**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
\_\_\_\_\_  
**Ray Baum** BB  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to 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 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.



**UM 1182**  
**Competitive Bidding Guidelines**

- 1. RFP Requirement:** A utility must issue an RFP for all Major Resource acquisitions identified in its last acknowledged IRP. Major Resources are resources with durations greater than 5 years and quantities greater than 100 MW.
- 2. Exceptions to RFP Requirement:** A utility is not required to issue an RFP under the following circumstances:
  - a. Acquisition of a Major Resource in an emergency or where there is a time-limited resource opportunity of unique value to customers.
  - b. Acknowledged IRP provides for an alternative acquisition method for a Major Resource.
  - c. Commission waiver on a case-by-case basis.

Within 30 days of a Major Resource acquisition under Subsection (a) above, the utility must file a report with the Commission explaining how the requisite conditions have been met for acting outside of the RFP requirement. The report must be served on all the parties and interested persons in the utility's most recent rate case, RFP and IRP dockets.

When requesting a waiver under Subsection (c) above, the utility must file its request with the Commission and serve the request on all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The Commission will issue an order addressing the waiver request within 120 days, taking such oral and written comments as it finds appropriate under the circumstances.

- 3. Affiliate Bidding:** A utility may allow its affiliates to submit RFP bids. If affiliates are allowed to bid, the utility must blind all RFP bids and treat affiliate bids the same as all other bids.
- 4. Utility Ownership Options:** A utility may use a self-build option in an RFP to provide a potential cost-based alternative for customers. A site-specific, self-build option proposed in this way is known as a Benchmark Resource. A utility may also consider ownership transfers within an RFP solicitation.
- 5. Independent Evaluator (IE):** An IE must be used in each RFP to help ensure that all offers are treated fairly. Commission staff, with input from the utility and interested, non-bidding parties, will recommend an IE to the Commission, which will then select or approve an IE for the RFP. The IE must be independent of the utility and likely, potential bidders and also be experienced and competent to perform all IE functions identified in these Guidelines. The IE will contract with and be paid by the

utility. The IE should confer with Commission staff as needed on the IE's duties under these Guidelines. The utility may request recovery of its payments to the IE in customer rates.

**6. RFP Design:** The utility will prepare a draft RFP and provide it to all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The utility must conduct bidder and stakeholder workshops on the draft RFP. The utility will then submit a final draft RFP to the Commission for approval, as described in paragraph 7 below. The draft RFPs must set forth any minimum bidder requirements for credit and capability, along with bid evaluation and scoring criteria. The utility may set a minimum resource size, but Qualifying Facilities larger than 10 MW must be allowed to participate. The final draft submitted to the Commission must also include standard form contracts. However, the utility must allow bidders to negotiate mutually agreeable final contract terms that are different from ones in the standard form contracts. The utility will consult with the IE in preparing the RFPs, and the IE will submit its assessment of the final draft RFP to the Commission when the utility files for RFP approval.

**7. RFP Approval:** The Commission will solicit public comment on the utility's final draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment and Commission review should focus on: (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 RFP and the public comments, the Commission may approve the RFP with any conditions and modifications deemed necessary. The Commission may consider the impact of multi-state regulation, including requirements imposed by other states for the RFP process. The Commission will target a decision within 60 days after the filing of the final draft RFP, unless the utility requests a longer review period when it submits the final draft RFP for approval.

**8. Benchmark Resource Score:** The utility must submit a detailed score for any Benchmark Resource, with supporting cost information, to the Commission and IE prior to the opening of bidding. The 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, with input from the IE, determines that bidder updates are appropriate, the utility may also update the costs and score for the Benchmark Resource. The IE will review the reasonableness of the score(s) for the Benchmark Resource. The information provided to the Commission and IE will be sealed and held until the bidding in the RFP has concluded.

**9. Bid Scoring and Evaluation Criteria:**

- a. Selection of an initial short-list of bids should be based on price and non-price factors and provide resource diversity (e.g., with respect to fuel type and resource duration). 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 acknowledged 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 based in part on the results of modeling the effect of candidate resources on overall system costs and risks. 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 acknowledged IRP Action Plan. The IE will have full access to the utility's production cost and risk models.
- 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 obtain an advisory opinion from a ratings agency to substantiate its analysis and final decision, if requested by the Commission.

**10. Utility and IE Roles in RFP Process:**

- a. The utility will conduct the RFP process, score the bids, select the initial and final short-lists, and undertake negotiations with bidders.
- b. The IE will oversee the RFP process to ensure that it is conducted fairly and properly.
- c. If the RFP does not allow affiliate bidding and does not include ownership options (i.e., the utility is not including a Benchmark Resource or considering ownership transfers), the IE will check whether the utility's scoring of the bids and selection of the short-lists are reasonable.
- d. If the RFP allows affiliate bidding or includes ownership options, the IE will independently score the utility's Benchmark Resource (if any) and all or a sample of the bids to determine whether the selections for the initial and final short-lists are reasonable. In addition, the IE will evaluate the unique risks and advantages associated with the Benchmark Resource (if used), including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.

- e. Once the competing bids and Benchmark Resource (if used) have been scored and evaluated by the utility and the IE, the two should compare results. The utility and IE should attempt to reconcile and resolve any scoring differences. If the two are unable to agree, the IE should explain the differences in its Closing Report.

**11. IE Closing Report:** The IE will prepare a Closing Report for the Commission after the utility has selected the final short-list. In addition, the IE will make any detailed bid scoring and evaluation results available to the utility, Commission staff, and non-bidding parties in the RFP docket subject to the terms of a protective order.

**12. Confidential Treatment of Bid and Score Information:** Bidding information, including the utility's cost support for any Benchmark Resource, as well as detailed bid scoring and evaluation results will be made available to the utility, Commission staff and non-bidding parties under protective orders that limit use of the information to RFP approval and acknowledgment and to cost recovery proceedings.

**13. RFP Acknowledgment:** The utility may request that the Commission acknowledge the utility's selection of the final short-list of RFP resources. The IE will participate in the RFP acknowledgment proceeding. Acknowledgment has the same meaning as assigned to that term in Commission Order No. 89-507. RFP acknowledgment will have the same legal force and effect as IRP acknowledgment in any future cost recovery proceeding. The utility's request should discuss the consistency of the final short-list with the company's acknowledged IRP Action Plan.