

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1208

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| In the Matter of |) | |
| |) | |
| PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY |) | ORDER |
| |) | |
| Draft 2012 Requests for Proposals. |) | |

DISPOSITION: ORDER NO. 06-550 CLARIFIED

On December 1, 2006, PacifiCorp, dba Pacific Power & Light Company (PacifiCorp), filed a motion for clarification of Order No. 06-550. In that order, we selected Boston Pacific and the Accion Group as the Oregon independent evaluator (IE) for PacifiCorp's Request for Proposals (RFP). PacifiCorp seeks clarification on the role of the Oregon IE, if the RFP is not conditionally or finally approved. Specifically, PacifiCorp requests an order clarifying whether, under such circumstances, the company: (1) should retain the Oregon IE; (2) may seek acknowledgment of the final short-list and rate recovery of the resources acquired through this RFP; and (3) may recover appropriately incurred Oregon IE fees through deferred accounting.

DISCUSSION

The Northwest Independent Power Producers Coalition (NIPPC), the Citizens' Utility Board of Oregon (CUB), the Industrial Customers of Northwest Utilities (ICNU), and the Public Utility Commission of Oregon Staff (Staff) each filed a response to PacifiCorp's motion. Although the three issues PacifiCorp has raised in its request for clarification are interrelated, we address each separately.

1. Retention of an Oregon IE

Positions of the Parties

Staff, NIPPC, and ICNU agree that PacifiCorp should retain an Oregon IE to review its bidding process even if the company's RFP is not conditionally or finally approved. Staff contends that the Commission's competitive bidding guidelines, adopted in Order No. 06-446, make clear that PacifiCorp should retain an IE regardless of whether the Commission approves the RFP. First, Staff cites general language that requires a utility to use an IE "for all RFPs." See Order No. 06-446 at 6 (emphasis added). Staff contends the retention of an IE is necessary to meet the Commission's requirement for "an independent overseer of the process." *Id.* Second, Staff cites

language requiring the continued role of an IE if the utility seeks acknowledgment of its final short list: “The IE will participate in the RFP acknowledgment proceeding.” *See id.* at 14.

Even if PacifiCorp does not seek acknowledgement of a final short list if the RFP is not approved, NIPPC, ICNU, and Staff believe the continued engagement of an IE would be beneficial to all parties in this RFP. Staff refers to its earlier comments filed in this proceeding, where Staff observed that the role of the Oregon IE

remains relevant if the Commission does not approve PacifiCorp’s 2012 RFP and the company nevertheless proceeds with the RFP process. If in six to eight years from now PacifiCorp seeks to put into rates the resources it selected through the process, the Commission will be faced with determining whether those resources were prudently acquired. In doing so, the Commission will consider the concerns that led to its rejection of the RFP. The Oregon IE’s activities, including assessment of RFP design and a Closing Report, will help inform the Commission’s decision.

Staff’s Reply Comments at 4 (Oct 13, 2006).

CUB offers a different opinion. CUB argues that an IE is of no further assistance if the RFP is not approved. CUB explains that, under such circumstances

[t]he Commission will already have said that the RFP is invalid in that it has failed the fairness and reasonableness standards in the Competitive Guidelines. No further expense should be undertaken in furtherance of an invalid RFP. If the Company attempts to rectify the RFP in response to a Commission order that disapproves an earlier RFP, then the process can begin anew. If the RFP is conditionally approved, then, of course, the IE should continue its participation in the process.

CUB Response at 6 (Dec 11, 2006).

Resolution

For reasons cited by NIPPC, ICNU and Staff, we agree that PacifiCorp should retain an Oregon IE to review its bidding process even if the company’s RFP is not conditionally or finally approved. As Staff notes, our competitive bidding guidelines emphasize the need for an independent review of the RFP process, and that an IE should be used for all RFPs. More importantly, even without Commission approval, PacifiCorp may proceed to issue the RFP, generate a short list, and develop a bid resource. (*See discussion below.*) In such instances, the IE’s continued oversight of the bidding process

and closing report will greatly benefit any subsequent proceedings in which PacifiCorp might seek acknowledgement of its short list or rate recovery of acquired resources.

Accordingly, if the Commission does not fully or conditionally approve PacifiCorp's RFP, PacifiCorp should retain the Oregon IE as follows: If PacifiCorp seeks acknowledgment of its final short list, the company should fully retain the IE to allow its participation in the acknowledgment proceeding. If the company decides not to seek acknowledgment of a final short list, PacifiCorp should retain the Oregon IE through the submission of its closing report.

2. Acknowledgment of the final short-list and rate recovery of resources

Positions of the Parties

Staff, NIPPC and ICNU agree that PacifiCorp may seek acknowledgement of the final short-list and subsequent rate recovery of any resources acquired through the RFP. ICNU emphasizes that the acceptance or rejection of an RFP does not resolve ratemaking issues. NIPPC adds that, because the Commission's new bidding guidelines do not provide the utility with a guarantee that an approved RFP would lead to an acknowledgement of a short list or to rate recovery of the final resource chosen, nothing prevents the utility from seeking these actions from the Commission for a non-approved RFP. NIPPC and ICNU point out, however, that the fact that the RFP was not finally or conditionally approved may tend to weigh strongly against the utility when it seeks Commission decisions on these matters.

While agreeing that PacifiCorp may seek, and bear the risk of, rate recovery of any used and useful asset at anytime, CUB reads our competitive bidding guidelines to preclude acknowledgement of a final short list when the RFP has not been approved. Because these guidelines allow a utility to seek acknowledgment of resources that end up in the short list as a result of the RFP, CUB believes an approved RFP is a logical and necessary prerequisite for a valid short list. In other words, CUB contends that, without a valid RFP, there cannot be a valid short list, and therefore there cannot be Commission acknowledgment of that short list.

Resolution

We do not share CUB's opinion that RFP approval is a required prerequisite to Commission acknowledgment of a final short list. While we did not specifically address this issue in our competitive bidding order, we did indicate that acknowledgment would focus on whether the utility's final short list was consistent with its acknowledged IRP. *See* Order No. 06-446 at 15. Consequently, even in the absence of an approved RFP, a utility might be able to obtain acknowledgment of a short list if it can demonstrate the final choice of resources is aligned with its acknowledged IRP. That said, we do not expect such requests to be common and, in order to obtain

acknowledgment, the utility must demonstrate that it has overcome the previously identified deficiencies that prevented Commission approval of the RFP.

We also agree with all parties that PacifiCorp may seek cost recovery of any resources acquired through this RFP, even if the RFP is not approved. As we explained in our competitive bidding order, the approval of an RFP “is simply a determination on the three criteria set out in the guideline—that is, whether the utility’s RFP is constituent with its acknowledged IRP, whether the RFP satisfies these [competitive bidding] guidelines, and whether the utility’s proposed bidding process is fair.” Order No. 06-446 at 9. Our acceptance or rejection of an RFP may be relevant in a future ratemaking proceeding, especially if the utility takes actions inconsistent with the Commission decision. Nonetheless, the lack of an approved RFP does not automatically bar cost recovery.

3. Recovery of Oregon IE costs

Positions of the Parties

Due to the cited benefits of an Oregon IE, even in the absence of an approved RFP, NIPPC, ICNU and Staff agree that PacifiCorp should be allowed to recover the costs of the IE through appropriate deferred accounting. As NIPPC explains, the retention of an Oregon IE is a good “investment” for PacifiCorp’s Oregon customers, as the customers can be expected to benefit from a fairly and independently reviewed bidding process.

Again, CUB contends that an IE is of no further assistance if the RFP is not approved. Thus, CUB maintains that, if an RFP is not approved, a utility’s recovery of costs should be limited to those incurred up and until the time the Commission disapproves the RFP.

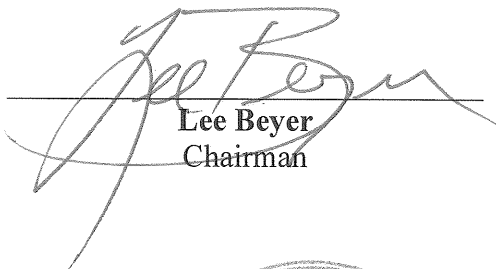
Resolution

We conclude that, even if the RFP is not conditionally or finally approved, PacifiCorp may recover appropriately incurred Oregon IE fees through deferred accounting. As noted above, the role of the Oregon IE remains relevant despite the absence of an approved RFP. The Oregon IE’s activities, including assessment of the bidding design and analysis contained in its closing report, will help inform any subsequent decision on acknowledgement of a short list or the prudence of acquired resources.

ORDER

IT IS ORDERED that Order No. 06-550 is clarified, consistent with the terms of this order.

Made, entered, and effective DEC 20 2006.



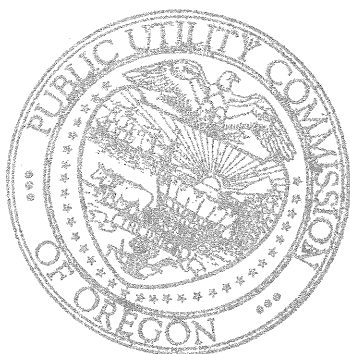
Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
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.