

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 600

In the Matter of

Rulemaking Regarding Allowances for
Diverse Ownership of Renewable Energy
Resources – Competitive Bidding Guidelines.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED AS MODIFIED

This order memorializes our decision, made and effective at our January 17, 2018 Regular Public Meeting, to adopt Staff's recommendation in this matter to open formal rulemaking with direction that the anticipated timeframe for the rulemaking is extended from 90 to 150 days and the Commission Chair will work with the Administrative Hearings Division to adopt a schedule that includes an early opportunity for the Commission to provide direction on policy issues. The Staff Report is attached as Appendix A.

Dated this 17 day of January, 2018, at Salem, Oregon.

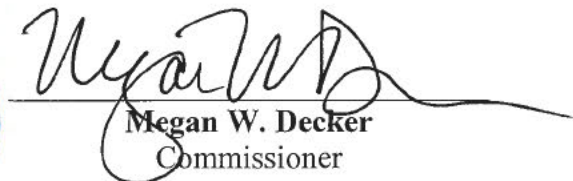


Lisa D. Hardie
Chair



Stephen M. Bloom
Commissioner





Megan W. Decker
Commissioner

ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: January 17, 2018

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: January 10, 2017

TO: Public Utility Commission

FROM: Nolan Moser *JPB for NM*

THROUGH: Jason Eisdorfer and JP Batmale *JE JPB*

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF; (Docket No. AR 600)
Request for approval to open a formal rulemaking for Competitive Bidding Rules.

STAFF RECOMMENDATION:

Staff recommends that the Commission approve issuance of a notice of proposed rulemaking on competitive bidding requirements as set forth in Attachment 1.

DISCUSSION:

Issue

Whether to approve issuance of a notice of proposed rulemaking on competitive bidding requirements.

Applicable Law

The Commission has general authority per ORS 756.040 to protect the customers of a public utility "and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates." Under ORS 756.060, the Commission may adopt reasonable and proper rules relative to all statutes administered by the Commission.

The Commission most recently adopted competitive bidding guidelines in Order No. 14-149. By Order No. 16-188, issued in Dockets AR 598 and UM 1777, the Commission opened this rulemaking docket (AR 600) in order to implement provisions

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of Senate Bill 1547 concerning allowances for diverse ownership of renewable energy resources, and to update competitive bidding guidelines.¹

In Order No. 17-173, the Commission further directed Commission Staff to consider the following issues as part of the AR 600 rulemaking:

- The request for proposal (RFP) development process;
- The methods and assumptions used to compare resources or power purchase agreements (PPAs) of unequal durations, the clarity with which scoring criteria are described in an RFP, and objectivity of non-price scoring factors;
- The Commission's or bidders' access to bid evaluations and documentation of communication between or among the utility, IE, and bidders;
- The set of activities subject to the competitive bidding process, including exceptions and requests for waiving some or all of the requirements; and
- The third-party due diligence review of the financial elements of any utility-owned resource bid that makes the utility's short-list of resource (As proposed by the Northwest & Intermountain Power Producers Coalition).²

Analysis

Staff commenced informal rule development in AR 600 by hosting multiple workshops with stakeholders, focusing on the above issues and the competitive bidding guidelines in general. These initial workshops culminated in an informal draft of competitive bidding rules that Staff circulated on August 21, 2017. Staff received a series of written comments back from stakeholders in September, 2017. Staff then hosted several more workshops to discuss informal draft rule components and potential changes. Staff subsequently developed a final informal draft, attached to this filing as Attachment 1, on consideration of the considerable stakeholder input and discussion in this docket.

Staff requests that the Commission open the formal phase of this rulemaking by approving issuance of a notice of proposed rulemaking. Staff notes that this step does not represent the adoption of the attached rules. Instead, the filing Staff requests will begin the formal rulemaking process, and end the informal phase. The proposed rules, as set forth in Attachment 1, address the following elements:

- *Applicability*

¹ ORS 469A.075 (4)(d).

² Order No. 17-173 p.1-2.

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This section defines how electric companies may request waivers from the applicability of the rules. Generally, Stakeholders support this section; with some noting that the length of time by which the Commission may rule on a waiver request should be more restricted. Staff supports greater clarity for the meaning and intent of proposed and issued waivers.

- *Definitions*
The definitions for this section include several changes as proposed by Stakeholders.
- *Applicability of Competitive Bidding Requirements*
This section changes the applicability standard from the competitive bidding guidelines, which currently apply to a resource of a quantity greater than 100 MW and a duration longer than five years, and under Staff's proposed rule, the threshold is set at more than 50 MW and five years. Staff received extensive comment on this section. In Staff's original draft informal rules, applicability was closely tied to resource ownership. In the previous draft, the rules did not apply to very large resource acquisition RFPs if it did not incorporate or consider electric company ownership, and applied the rules to smaller resource RFPs that did incorporate or consider electric company ownership.

While some stakeholders supported this proposal, others opposed it strongly, arguing that Staff's proposal would represent a dis-incentive to electric company ownership of resources and that it deprived the acquisition process of the valuable services of the independent evaluator. Staff did not share this view, and considered the draft rules to provide optionality to electric companies. However, Staff was responsive to the stakeholder request to remove this optionality for the electric company. As an alternative, Staff proposes in the attached rule lowering the applicability threshold for both conventional and storage resources.

Lowering the threshold is considered important, as a 100MW threshold encompasses major generation investments that would benefit from the rigor imposed by the proposed competitive bidding rules. In addition the informal rulemaking process has revealed a cross-stakeholder appreciation for the value and importance of an IE in the process, and a lower threshold will ensure that more activity is supported by an IE. Staff's proposed lower storage threshold reflects the fact that smaller storage systems may have outsized system impacts and cost that is consistent with the system contributions or costs of larger generation resources.

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- *Engaging an Independent Evaluator*
Included in this section is basic information and procedures for engaging an IE, and the criteria by which the IE selection will be considered.
- *Design of Requests for Proposals*
Procedures for designing and issuing RFPs are included in this section. This section seeks to ensure that information about the content of the RFP has been clearly communicated, either as part of the IRP process or in conjunction with the design and approval of the RFP by the Commission. Staff's proposed rules also work to ensure that ample time is available for Stakeholder and Commission review of the proposed RFP. Some Stakeholders have indicated the amount of time provided under this proposed process is excessive and will delay acquisition of large resources. However, the proposed rules also allow for an electric company to request a reduced review period.
- *Resource Ownership*
The resource ownership section of the rule includes protective language adapted from current guidelines that ensures separation between members of the electric company who may participate in the development of an RFP, and those who may be responsible for responding to it. Staff has included a requirement, which has been strongly opposed by some Stakeholders, that requires an electric company utilizing a company-owned site for a electric company owned bid response that will not be offered to non-utility owned proposers to explain to the Commission why it is in the public interest to restrict the use of the electric company location in this manner.
- *Benchmark Resource Score*
This section describes the process for submitting benchmark score information to the Commission.
- *Bid Scoring and Evaluation by Electric Company*
The bid scoring section has been the focus of numerous workshops and extensive Stakeholder examination. Staff and Stakeholders exchanged edits to this section. The primary goals of Staff's draft of this section is transparent bid scoring and clarity for bidders as to what the utility system needs are, in order that bidders may design proposals that meet those system needs at the lowest cost possible.

In principle, Stakeholders agree that transparency and the concept of "self-scoring" for bidders are important values. Additionally, this section contains

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Staff's proposal to address financial due diligence for utility-owned resource bids, as discussed in Order 17-173.

- *Independent Evaluator Duties*
This section describes the complete responsibilities of the Independent Evaluator, or IE.
- *Final Shortlist Acknowledgement and Result Publication*
The final shortlist section describes how electric companies will request acknowledgement of the shortlist, and describes the effect of acknowledgement of the shortlist.
- *Protected Information*
Staff's rules propose an increase in the amount of information that can be shared with the Commission, Commission Staff, and in certain circumstances, non-bidding parties in the competitive bidding process, while considering the need to allow for the protection of sensitive information.

Once the rulemaking process begins, stakeholders will have the opportunity to provide comments to the Commission as it considers the proposed rules for adoption. Staff expects these rules to be of considerable interest to stakeholders, as has been evident from the robust participation of stakeholders in the informal process to date.

Staff proposes to allow for 90 days of public comment for this process, along with one Commission workshop and one public comment hearing. Staff plans to include a comment schedule with the notice of proposed rulemaking, which will be issued at the direction of the Commission.

Conclusion

To achieve the Commission objectives expressed in Order Nos. 16-188 and 17-173, and to implement the applicable provisions of Senate Bill 1547, Staff requests that the Commission approve the issuance of a notice of proposed rulemaking for competitive bidding requirements, as provided in Attachment 1.

PROPOSED COMMISSION MOTION:

Approve issuance of a notice of proposed rulemaking on competitive bidding requirements.

Resource Procurement for Electric Companies**860-OXX-0010****Applicability of Division XX**

- (1) The rules contained in this Division apply to electric companies, as defined in OAR 860-OXX-0020.
- (2) Upon request or its own motion, the Commission may waive any of the Division OXX rules for good cause shown. A request for waiver must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition, and the request must indicate whether the electric company intends to request acknowledgement of the final short list or resource acquisition.
 - (a) In addition to the filing requirements in OAR Chapter 860, Division 001, an electric company filing a request for waiver under this section must serve the request on all parties and interested persons in the electric company's most recent general rate case, competitive bidding filing, and IRP dockets.
 - (b) The Commission may allow oral and written comment on an electric company's request for waiver as it finds appropriate under the circumstances, and will generally issue an order on the waiver request within 90 days.
- (3) Any request for waiver filed by an electric company after it acquires a resource, if granted, does not result in or equate to the Commission's acknowledgment of the resource acquisition.

860-OXX-0020**Definitions**

For purposes of this Division, unless the context requires otherwise:

- (1) "Acknowledgment" is a finding by the Commission that an electric company's final shortlist of bid responses appears reasonable at the time of acknowledgment and was determined in a manner consistent with the rules in this division.
- (2) "Benchmark resource" is a resource identified in an electric company's response to its own request for proposals that is site-specific and self-built.
- (3) "Commission-acknowledged IRP" means an IRP for which the Commission has issued an order acknowledging the electric company's plan to procure the resource subject to the rules in this division.
- (4) "Electric company" has the meaning given that term in ORS 757.600.
- (5) "Emergency" means a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant failure, that requires an electric company to take immediate action.
- (6) "Independent evaluator" or "IE" refers to a person engaged by an electric company to oversee an RFP process under the rules in this division, and who also reports directly to the Commission Staff during that process.
- (7) "Integrated resource plan" or "IRP" has the meaning given that term in OAR 860-027-0400.

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(8) "IRP Update" means an update to an acknowledged IRP that is filed in accordance with OAR 860-027-0400(9).

(9) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(10) "Qualifying facility" refers to qualifying facilities under 16 USC § 796(17) and (18) (2012).

(11) "Resource acquisition" refers to a process for the purpose of acquiring energy, capacity or storage resources that starts with an electric company's:

- (a) Circulation of a final or draft RFP to third parties; or
- (b) Communication of an offer or receipt of an offer in a two-party negotiation..

(12) "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals from prospective bidders.

OAR 860-0XX-0100

Applicability of Competitive Bidding Requirements

(1) An electric company must comply with the rules in this division when it seeks to acquire energy or capacity resources or to contract for energy or capacity if any of the following apply:

(a) The acquisition is of a resource or a contract for more than 50 megawatts and five years in length.

(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection (1)(a) or (1)(c) of this rule.

(c) The acquisition is of resources more than five years in length that in the aggregate provide the electric company with more than 50 megawatts and these resources:

(A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent, and

(B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other.

(2) An electric company may request that the Commission find that resources presumed to be subject to these rules under subsection (1) (c) of this rule should not be considered in the aggregate. The electric company may make this request before acquiring the resources or if the electric company proceeds without following competitive bidding rules, the request may be made when seeking recovery of the costs of the resources in rates. The electric company bears the burden of rebutting the presumption that the acquisition is subject to these rules by showing each resource is separate and distinct based on other factors.

(3) An electric company must comply with the rules in this division when it seeks to acquire energy storage resources or contracts for a storage resource greater than 25 megawatt hours and with a duration of more than five years.

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(4) An electric company is not required to comply with the rules in this division before seeking to acquire a resource under section (1) or (3) of this rule in the following circumstances:

(a) In an emergency;

(b) When there is a time-limited opportunity to acquire a resource of unique value to the electric company's customers; or

(c) When an alternative acquisition method was proposed by the electric company in the IRP and explicitly acknowledged by the Commission.

(5) Within 30 days of a resource acquisition under OAR 860-0XX-0100(4), the electric company must file a report with the Commission explaining the relevant circumstances. The report must be served on all the parties and interested persons in the electric company's most recent rate case, RFP and IRP dockets.

(6) Resource acquisitions and RFPs for resources or contracts other than those identified in sections (1), and (3) of this rule are not subject to the rules in this Division.

OAR 860-0XX-0200

Engaging an Independent Evaluator

(1) Prior to issuing a request for proposals, an electric company must engage the services of an independent evaluator to oversee the competitive bidding process.

(2) The electric company must notify all parties and interested persons in the electric company's most recent general rate case, RFP and IRP dockets of its need for an IE. The electric company must solicit input from these parties and interested persons regarding the manner in which it intends to solicit proposals.

(3) Commission Staff will recommend an IE to the Commission based in part on the consideration of:

- (a) Any input received from the electric company and interested, non-bidding parties,
- (b) Review of the degree to which the IE is independent of the electric company and potential bidders,
- (c) The degree to which the cost of the services to be provided is reasonable,
- (d) The experience and competence of the IE,
- (e) And the public interest.

(4) The Commission may then select an IE for the RFP.

(5) The electric company is responsible for engaging the services of the IE and is responsible for all fees and expenses associated with engaging the IE's services. The electric company may request recovery of fees and expenses associated with engaging an IE in customer rates.

(6) The electric company's contract with the IE must require that the IE fulfills its duties under the rules in this Division and that the IE confers as necessary with the Commission and Commission Staff on the IE's duties.

(7) The Commission may determine that engagement of an IE under this rule is not necessary when the electric company's RFP explicitly prohibits the submission of proposals that allow the electric company to own the resource that is the subject of any bid or acquire an ownership interest in the resource at a later date.

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OAR 860-0XX-0250

Design of Requests for Proposals

(1) For each resource acquisition, the electric company must prepare a draft request for proposals, and provide the draft to all parties and interested persons in the electric company's most recent general rate case, RFP, IE selection, and IRP dockets. Prior to filing the draft RFP with the Commission, the electric company must consult with the IE in preparing the RFP and must conduct bidder and stakeholder workshops.

(2) The draft RFP must reflect the RFP elements, scoring methodology and associated modeling described in the Commission-acknowledged IRP. The electric company's draft RFP must reference and adhere to the specific section of the IRP in which RFP design and scoring is described.

(a) If the electric company's Commission-acknowledged IRP does not include a specific section devoted to describing the RFP design, scoring methodology and associated modeling process, the electric company must develop and present in a separate filing with the Commission a proposal for scoring and any associated modeling, which must be filed with the Commission before the electric company may prepare the draft RFP. The electric company must consider resource diversity (e.g. with respect to technology, fuel type, resource size, and resource duration) in preparing its proposal. The Commission or an administrative law judge may establish a process for review of the filing.

(b) The filing of a proposal for scoring and any associated modeling under subsection (2)(a) of this rule must be served on all parties and interested persons in the electric company's most recent general rate case, RFP, IE selection, and IRP dockets.

(3) At a minimum, the draft RFP must include:

(a) Any minimum bidder requirements for credit and capability,

(b) Standard form contracts to be used in acquisition of resources,

(c) Bid evaluation and scoring criteria that are consistent with section (2) of this rule and OAR 860-0XX-0400;

(d) Language to allow bidders with which it negotiates to negotiate mutually agreeable final contract terms that are different from the standard form contracts.

(e) Description of how the electric company will share information about bid scores, including what information about the bid scores and bid ranking may be provided to bidders and when and how it will be provided; and

(f) Bid evaluation and scoring criteria for selection of the initial shortlist of bidders and for selection of the final shortlist of bidders consistent with the requirements of OAR 860-0XX-0400.

(4) An electric company may set a minimum resource size in the draft RFP, but it must allow qualifying facilities that exceed the eligibility cap for standard avoided cost pricing to participate as bidders.

(5) Subsequent to taking the steps required under sections (1), (2), (3), and (4) the electric company must file the final draft RFP with the Commission for review and approval. Public comment may be submitted to the Commission on the draft RFP.

(6) The electric company must demonstrate in its RFP filing:

(a) The alignment of the electric company's RFP with an acknowledged IRP;

(b) Whether the RFP satisfies the rules in this Division; and

(c) The overall fairness of the proposed bidding process.

(7) The electric company may explain in its filing the impact of multi-state regulation on RFP development, including the requirements imposed by other states for the RFP process.

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(8) The Commission may approve the RFP with any conditions it deems necessary, upon a finding that the electric company has complied with the provisions of section (6) of this rule.

(9) Subject to the provisions of subsections (a) and (b) of this section, the Commission will generally issue a decision approving or disapproving the RFP within 100 days after the final draft RFP is filed.

(a) An electric company may request an alternative review period when it files the final draft RFP for approval. If the accompanying request is for an alternative review period shorter than 100 days, the electric company must demonstrate good cause for the alternative review period.

(b) Any person may request an extension of the review period of up to 30 days per request upon a showing of good cause.

(10) The Commission or an administrative law judge may establish an alternate review period and may set deadlines for public comment on a draft RFP by providing notice to the parties, generally within 10 days of the electric company's filing of the draft RFP.

OAR 860-0XX-0300

Resource Ownership

(1) An electric company may submit or allow its affiliates to submit bids in response to the electric company's request for proposals. Electric company and affiliate bids must be treated in the same manner as other bids.

(a) Any individual who participates in the preparation of an electric company or affiliate bid may not participate in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company and must be screened from that process.

(b) Any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.

(2) An electric company may propose a benchmark resource in response to its RFP to provide a potential cost-based alternative for customers. If the electric company proposes a benchmark resource but will not allow third-parties to submit bids using elements of the benchmark resource owned or secured by the electric company (e.g. site, transmission or fuel arrangements) the electric company must include with its draft RFP filing under OAR 860-0XX-0250 a statement explaining why it would not be in the interests of the electric company's customers to make such elements available for use in third-party bids for resources to be owned by the electric company or owned by third parties after construction.

(3) If the acquisition may result in ownership of a generation resource by the electric company, and the electric company will not allow third-parties to submit bids using elements secured by the electric company (e.g. site, transmission, or fuel arrangements), then the electric company must include with its draft RFP filing under OAR 860-0XX-0250 a statement explaining why it would not be in the interests of the electric company's customers to make such elements available for use in third-party bids for resources to be owned by the electric company or owned by third parties after construction.

(4) An electric company may consider ownership transfers within an RFP solicitation.

(5) The electric company issuing the RFP must allow independent power producers to submit bids with and without an option to renew and may not require that bids include an option for transferring ownership of the resource.

OAR 860-0XX-0350**Benchmark Resource Score**

- (1) Prior to the opening of bidding on an approved RFP, the electric company must submit to Commission Staff and the IE for review and comment a detailed score for any benchmark resource with supporting cost information, any transmission arrangements and all other information necessary to score the benchmark resource. The electric company must apply the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids.
- (2) If, during the course of the RFP process, the Commission or the IE determines that it is appropriate to update any bids, the electric company must also make the equivalent update to the score of the benchmark resource.
- (3) Before the IE provides the electric company an opportunity to score other bids, the electric company must submit the final benchmark resource score developed in consultation with the IE, cost information and other related information shared under this section, either in hard copy in a sealed envelope or a digital copy on electronic media, to the IE and Commission Staff.

OAR 860-0XX-0400**Bid Scoring and Evaluation by Electric Company**

- (1) The purpose of this rule is to ensure that the electric company engages in a transparent bid-scoring process using objective scoring criteria and metrics.
- (2) The electric company must provide all proposed and final scoring criteria and metrics in the draft and final RFPs, respectively.
- (3) The electric company must base the scoring of bids and selection of an initial shortlist on price and, as appropriate, non-price factors. Non-price factors should be converted to price factors where practicable. The electric company must use the following approach to develop price and non-price scores, unless an alternative approach is approved by the Commission when it reviews the final draft RFP.
 - (a) Price scores must be based on the prices submitted by bidders and calculated using units that are appropriate for the product sought and technologies anticipated to be employed in responsive bids using real-levelized or annuity methods. The IE may authorize adjustments to price scores on review of information submitted by bidders.
 - (b) Non-price scores should, when practicable, primarily relate to resource characteristics identified in the electric company's most recent acknowledged IRP Action Plan or IRP Update and may be based on conformance to standard form contracts. Non-price scoring criteria must be objective and subject to self-scoring analysis by bidders.
 - (c) Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements.
 - (d) Scoring criteria may not be based on renewal or ownership options, except insofar as these options affect costs, revenues, benefits or prices. Any criteria based on renewal or ownership options must be

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explained in sufficient detail in the draft RFP to allow for public comment and Commission review of the justification for the proposed criteria.

(4) The electric company may select an initial shortlist of bids after it has scored the bids and identified the bids with top scores. Following selection of an initial shortlist of bids, the electric company may select a final shortlist of bids.

(5) Selection of the final shortlist of bids must be based on bid scores and the results of modeling the effect of candidate resources on overall system costs and risks using modeling methods that are consistent with those used in the Commission-acknowledged IRP, unless an alternative method is approved by the Commission when it reviews the final draft RFP. The electric company must use a qualified and independent third-party expert to review site-specific critical performance factors for wind and solar resources on the initial shortlist before modeling the effects of such resources.

(a) In addition, the electric company must conduct, and consider the results in selecting a final short list, a sensitivity analysis of its bid rankings that demonstrates the degree to which the rankings are sensitive to:

(A) Changes in non-price scores; and

(B) Changes in assumptions used to compare bids or portfolios of bids, such as assumptions used to extend shorter bids for comparison with longer bids, or assumptions used to compare smaller bids or portfolios with larger ones. For example, the electric company may assume that shorter bids will continue to be available with the same characteristics after the bid term rather than adding "generic fill" assumptions to the end of these bids to extend them for comparison with others.

(b) For any bids on the final short list that provide for the possibility of electric company or affiliate ownership of the resource, the IE must conduct a project finance due diligence review. This review must make a determination of whether or not, subject to any conditions, the electric company or affiliate ownership resource would receive third-party project financing to construct and operate the proposed resource at the costs and bid prices submitted into the RFP. If a final bid selected for contract negotiation is a power purchase agreement without electric company ownership options, then the IE must perform a similar review for this bid. The IE must produce a comprehensive report on the cost and performance assumptions of any bids reviewed under this subsection. For a power purchase agreement subject to this review, the IE must, if necessary, propose any necessary adjustments to the bid price or performance assumptions used in the bid scoring or both that would be necessary to provide project financing for the construction and operation of the proposed resource. Additionally, the IE must propose to the electric company any necessary adjustments to the bid scoring for bids with the possibility of electric company or affiliate ownership of the resource. The IE must provide a final report of these analyses to the Commission Staff with a copy to the electric company and interested parties in the final short list acknowledgment proceeding.

(6) The electric company must provide the IE and Commission Staff with full access to its production cost and risk models and sensitivity analyses. When the IE and Commission Staff concur that appropriate protections for protected information are in place, the electric company must provide access to such information to non-bidding interested parties that request the information in the final short list acknowledgment proceeding.

OAR 860-0XX-0450

Independent Evaluator Duties

(1) The IE will oversee the competitive bidding process to ensure that it is conducted fairly, transparently, and properly.

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(2) The IE must be available and responsive to Commission Staff throughout the process, and must provide Commission Staff with the IE's notes of all conversations and the full text of written communications between the IE and the electric company and any third-party that are related to the IE's execution of its duties.

(3) The IE must consult with the electric company on preparation of the draft RFP and submit its assessment of the final draft RFP to the Commission when the company files the final draft for approval.

(4) The IE must check whether the electric company's scoring of the bids and selection of the initial and final shortlists are reasonable.

(5) If the RFP allows bidding by the issuing electric company or an affiliate of the company, or includes resource ownership options for the electric company, the IE must independently score the affiliate bids and bids with ownership characteristics or options, if any, and all of the remaining bids to determine whether the company's selections for the initial and final shortlists are reasonable. The IE must also evaluate the unique risks and advantages associated with any company-owned resources (including but not limited to the electric company's benchmark), and may apply the same evaluation to third-party bids, including an evaluation of the following issues:

- (a) Construction cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs);
- (b) Reasonableness of forced outage rates;
- (c) End effect values;
- (d) Environmental emissions costs;
- (e) Reasonableness of operation and maintenance costs;
- (f) Adequacy of capital additions costs;
- (g) Reasonableness of performance assumptions for output, heat rate, and power curve; and
- (h) Specificity of construction schedules or risk of construction delays.

(6) The IE must review the reasonableness of any score submitted by the electric company for a benchmark resource. Once the electric company and the IE have both scored and evaluated the competing bids and any benchmark resource, the IE and the electric company must compare results and attempt to reconcile and resolve any scoring differences. If the electric company and IE are unable to do so, the IE must explain the differences in its closing report to the Commission. The electric company and the IE must both report their scores to Commission Staff before any reconciliation.

(7) The IE must review the electric company's sensitivity analysis of the bid rankings required under OAR 860-0XX-0400 and provide a written assessment to Commission Staff prior to when the electric company requests acknowledgment of the final short list.

(8) The IE must prepare a closing report for the Commission after the electric company has selected its final shortlist. The IE's closing report must include an evaluation of the applicable competitive bidding processes in selecting for the least-cost, least-risk acquisition of resources and allowing for the opportunity for diverse ownership.

(9) Unless the Commission determines there is no need for further IE participation, the IE must participate in the final short list acknowledgment proceeding initiated by the electric company, and must continue to participate if, at the time of acknowledgment of the electric company's final shortlist, the Commission chooses to require IE involvement through final resource selection. In addition to making a decision on acknowledgment, Commission Staff and other parties, including bidders, may request that the Commission require expanded IE involvement. Upon such a request or its own consideration, the Commission may require an IE to be involved in the competitive bidding process through final resource selection.

OAR 860-0XX-0500

Final Short List Acknowledgement and Result Publication

- (1) After an RFP has been issued under the rules in this Division, the electric company must request that the Commission acknowledge the electric company's final shortlist of bids before it may enter any resulting contracts. If granted by the Commission, acknowledgement has the same legal force and effect as a Commission-acknowledged IRP in any future cost recovery proceeding.
- (2) A request for acknowledgement must include, at a minimum, the IE's closing report, the electric company's final shortlist of responsive bids, all sensitivity analyses and a discussion of the consistency between the final shortlist and the electric company's last-acknowledged IRP Action Plan or acknowledged IRP Update.
- (3) The Commission will generally issue a decision on the request for acknowledgment within 60 days of receipt of the electric company's filing.
- (4) The electric company must make a non-confidential filing in the RFP docket providing the average bid score and the average price of a resource on its final shortlist.
- (5) Following execution of all contracts resulting from an RFP or cancellation of the RFP, the electric company must provide information, on request, to a bidder about the bidder's bid score.

OAR 860-0XX-0550**Protected Information**

The electric company may request a protective order be issued under OAR 860-001-0080 in order to make available protected information required to be shared under this Division. Such protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any benchmark resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, Commission Staff, and the IE and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in RFP review and approval, final shortlist acknowledgement and cost-recovery proceedings.