

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2059

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of 2020 All-
Source Request for Proposal.

ORDER

DISPOSITION: 2020 ALL SOURCE REQUEST FOR PROPOSALS APPROVED,
SUBJECT TO MODIFICATION AND CONDITION

This order memorializes our decision, made and effective at our July 2, 2020 Special Public Meeting, to approve PacifiCorp, dba Pacific Power's 2020 All Source Request for Proposals (RFP). As explained below, our approval includes guidance on several RFP issues, a modification to one RFP provision, and a condition for a potential RFP change. This order also explains our intent for next steps.

I. INTRODUCTION

We review this RFP consistent with our recent decision on PacifiCorp's 2019 IRP. Through that decision, we acknowledged the RFP as an action item, and explained that we would rely heavily on the RFP process for additional analysis on the proper scope of PacifiCorp's procurement.¹ We set out conditions describing off-system sales sensitivities and customer rate impact analysis to come later in the RFP process. We described how the additional analysis will assist with our review of the shortlist size and provide additional visibility into the risks and benefits of the procurement to utility customers.

¹ *In the Matter of PacifiCorp, 2019 Integrated Resource Plan*, Docket No. LC 70, Order No. 20-186 (Jun 8, 2020).

We also review this RFP for compliance with our relatively new competitive bidding rules, which expanded our previous competitive bidding guidelines.² Our rules describe that an RFP must have an Independent Evaluator (IE), and in April 2020 we approved PA Consulting to oversee this RFP.³ The rules contain minimum requirements for a draft RFP, including bidder requirements, form contracts, terms allowing for bidder negotiation, and bid evaluation and scoring criteria.⁴

Finally, our RFP review is heavily influenced by the filings submitted by PacifiCorp, Commission Staff, the IE, and the three active parties at this stage of the proceeding—the Northwest and Intermountain Power Producers Coalition (NIPPC), Renewable Northwest (RNW), and Swan Lake North Hydro. We held one Commission workshop to learn more about PacifiCorp’s screening and ranking methodologies. We reviewed three sets of comments on the draft RFP from the IE, and we reviewed two sets of comments from PacifiCorp, Staff and parties. The filings show that dozens of issues were raised and resolved before our July 2, 2020 Public Meeting, and we appreciate the parties’ efforts and the assistance of the IE in guiding the process. In our review of the RFP, we reference the June 26, 2020 version that PacifiCorp filed in this docket.

II. DISCUSSION

Our competitive bidding rules describe a two-step process to ensure the Commission and stakeholders are engaged early and often in RFP design. The first step is when a utility describes its initial scoring and associated modeling in its IRP or in its IE selection docket;⁵ the second step is full RFP design and Commission review for approval, conditional approval, or disapproval. For the 2020 All Source RFP, we granted a waiver for PacifiCorp to skip the first step and advance directly to the second step.⁶ By approving the IE selection, Staff and the IE could use the available time for their RFP design review. Nonetheless due to PacifiCorp’s deadline of October 15, 2020, to begin its transition cluster study, and a longer-term deadline at the end of 2023 for the Investment Tax Credit (ITC), Staff and the IE had only a little over two months to complete their RFP review, and some of PacifiCorp’s modeling was not complete at the time of our Public Meeting. In the future we intend to build in as much time as circumstances allow so that we have a deliberate RFP review process, consistent with the spirit of our competitive bidding rules.

² *In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources*, Docket No. AR 600, Order No. 18-324 (Aug 20, 2018).

³ Order No. 20-114 (Apr 8, 2020).

⁴ OAR 860-089-0250.

⁵ OAR 860-089-0250(2).

⁶ Order No. 20-114.

PacifiCorp satisfied our competitive bidding rules' minimum RFP requirements for a draft RFP.⁷ With the consensus of Staff, the IE and the parties, we found that PacifiCorp complied with the rules and that the RFP, as modified based on our deliberation and decisions on the remaining contested issues, will result in a fair and competitive process.⁸ These issues are grouped by minimum eligibility requirements for bidders, pro forma contract terms, and modeling/scoring uncertainties. Below we provide directives for two issues and guidance for the remaining issues.

A. Minimum Eligibility Requirements

PacifiCorp's draft RFP lists 31 minimum eligibility requirements, and we issued directives on two of these. In sum, minimum eligibility requirement number 8 regarding Current or Threatened Litigation is removed, however, PacifiCorp may work with the IE to disqualify a bidder on a case-by-case basis. Minimum eligibility requirement number 30 is conditioned, such that if FERC should issue an order on rehearing that changes the transition interconnection cluster study cutoff date before August 10, 2020, then PacifiCorp will change date references throughout the RFP documents so that it aligns with the cutoff date in the FERC order.

1. *Current or Threatened Material Litigation*

As proposed, minimum eligibility requirement number 8 provides that bidders with current or threatened material litigation against PacifiCorp may be rejected. The requirement describes a dispute in excess of \$5 million, excludes certain complaints before a state commission or before FERC, and requires PacifiCorp to consult with the IE before rejecting any bidder.

Parties opposed this requirement. NIPPC stated the provision would have harmful impacts on the competitive market. The IE explained that, even if it was consulted on a bid rejection decision, ultimately it would be PacifiCorp's decision to remove a bidder from further consideration as the provision was drafted. The IE recommended that we strike this requirement because, even without an explicit eligibility requirement, PacifiCorp would have the ability to consult with the IE and make the case for rejecting a bidder. Staff supported the IE's recommendation.

⁷ OAR 860-089-0250(3).

⁸ OAR 860-089-0250(5).

At the Public Meeting, we adopted the IE's recommendation and directed PacifiCorp to modify the draft RFP accordingly. We found the blanket requirement unnecessarily broad and considered that PacifiCorp, in consultation with the IE, would be able to disqualify a bidder on a case-by-case basis without a blanket provision, in the event there is a bidder engaged in current or threatened litigation with the company that meets the threshold that would otherwise have been set by the blanket exclusion and is likely to significantly impair development of a sustained business relationship.

2. Transition Interconnection Cluster Study Cutoff Date

The second minimum eligibility requirement on which we deliberated involves the cutoff date for participation in PacifiCorp's transition cluster study. Currently PacifiCorp's newly revised Open Access Transmission Tariff (OATT) contains a January 31, 2020 Transition Close Date (also referred to as the cutoff date) for the transition cluster study. Staff requested a condition stating that, should FERC issue an order on rehearing that changes the transition cluster study cutoff date before August 10, 2020, then PacifiCorp shall move the date in its RFP bidder eligibility provision so it aligns with the date in the FERC order. NIPPC and RNW also request a later cutoff date. RNW presented a detailed proposal, which NIPPC supported, for allowing bidders with interconnection applications filed after the cutoff date to participate in the RFP.

We adopted Staff's condition for the RFP to reflect any FERC-ordered change to the cutoff date that is received by August 10, and this language is included as a condition in this order. We found the uncertainty associated with interconnection costs too great to order any other changes, such as those proposed by RNW. Even if bidders agreed to bear the risk of higher than expected interconnection costs, as RNW proposed, we agreed with the IE that significant interconnection cost increases that bidders were unable to bear could lead to bid failures, undermining the stability of the shortlist and introducing the very uncertainty that linking the RFP and the cluster study was meant to mitigate. Instead, we explained that this order would reflect our concern over excluding potential bidders who could bring significantly lower cost resources to this RFP, and our interest in understanding the full universe of low-cost resources that could connect to transmission upgrades that retail customers will pay for. We stated that, if the January cutoff date is still in place after August 10, we may ask PacifiCorp for more visibility into what projects are missing from the RFP that could have bid with a later cutoff date, and based on that information we may consider future stages of this process, such as another RFP (as suggested by the IE) or a Request for Information (RFI).

B. Pro Forma Contract Terms

NIPPC raised four specific unresolved concerns with the pro forma contract language. We considered these issues and decided to leave PacifiCorp's language as drafted. Two of the issues, terminal value and performance guarantees, may cause utility bias in bid evaluations due to differences between bids proposing a build-transfer agreement (BTA) and a power purchase agreement (PPA). We committed to address terminal value and performance guarantees in our order to ensure we monitor these issues going forward.

1. Terminal Value and Option to Renew

Second, NIPPC questioned whether a PPA bidder could use an option to renew so that a PPA may be fairly compared against the terminal value benefit that is an input to BTA bids.⁹ We have previously recognized potential bias towards utility ownership when a terminal value benefit applies to utility-owned proposals without a comparable option to renew benefit for PPA bids.¹⁰ At the Public Meeting, PacifiCorp stated that a PPA bidder can offer an option to renew in this RFP. The IE will further assess the size and appropriateness of terminal values and options to renew once bids are scored, and we will monitor the impact of these components in our review. We expect the company and the IE to demonstrate that terminal value assumptions are appropriately conservative and to make visible instances in which even conservative terminal value assumptions determine short list position.

2. PPA Performance Guarantees

NIPPC explained generally that PPA pricing represents cost certainty for PacifiCorp (on a \$/MWh basis), while with a BTA, PacifiCorp's ratepayers are potentially exposed to any costs to maintain, upgrade, and operate the facility throughout its life. NIPPC explained that disparate approaches for operations and maintenance (O&M) costs are a particular concern with these RFP documents and more broadly in ratemaking. In these RFP documents, NIPPC found the O&M services agreement for the BTA provides minimal customer protections in the event of resource underperformance, whereas the PPA contains a 90 percent annual output guarantee paired with liquidated damages. NIPPC and the IE found that higher performance standards for a PPA could lead to higher O&M costs in PPA bids compared to BTA bids. NIPPC explained this issue is

⁹ PacifiCorp All Source RFP Main Document at 29 (June 26, 2020).

¹⁰ *In the Matter of PacifiCorp 2017R Request for Proposals*, Docket No. UM 1845, Order No. 18-178 at 12 (May 23, 2018) ("we share concerns raised by participants about PacifiCorp's treatment of PTC benefits and use of a terminal value adder... the IE found that the terminal value adder applied to company-owned resources added significant benefits to PacifiCorp's portfolio but not to the PPA portfolio.").

compounded due to future ratemaking treatment that may allow BTA resources to recover actual O&M costs, while a PPA will only be paid for its delivered output.

The IE, Staff, and PacifiCorp agreed to a partial solution where O&M cost assumptions will be included in BTA bid evaluation from initial screening through the final shortlist. For the unresolved concerns with the RFP documents, the IE states that it will be vigilant during the actual evaluation process to prevent utility bias. For broader ratemaking differences, the IE recommends the Commission consider a process for ratemaking O&M disallowances if PacifiCorp encounters availability limitations on BTA projects. NIPPC stated that a rate case disallowance is rare, and that the Commission should hold a BTA to the assumptions provided in the RFP bid, and if the BTA misses those performance levels then PacifiCorp and its shareholders should cover those costs.

We indicated a strong interest in examining any differences between the BTA bids and the PPA bids in this RFP so that we may assess the risk of O&M costs estimates, and project performance levels. If we find the BTA and PPA differences persist throughout this RFP, we will further consider potential ratepayer risk mitigation solutions when reviewing the shortlist.

3. *Waiver of Jury Trial*

First, NIPPC and Staff asked that we remove a PPA term that waives parties' rights to a jury trial. The IE concurred with NIPPC that the term was atypical for utility procurements. PacifiCorp responded that the jury trial language is a negotiable commercial term and further, that modification of this term will not affect a bidder's non-price score. PacifiCorp also explained its position that the provision is not atypical. We were comfortable with PacifiCorp's explanation for why the provision should be left as is, and committed to memorialize our understanding that a bidder may seek to modify this term without any scoring penalty, and that the provision is subject to negotiation.

4. *Cure Period*

Third, there was some uncertainty over whether PacifiCorp allows a cure period, which gives a seller a period of time to reach commercial operation after a delay. PacifiCorp clarified that PPA pro forma section 11.1(b) contains a cure period that applies to a delayed project. We committed to point out the cure period language in this order.

C. Modeling Uncertainties — Geographically Distant Proxies

NIPPC and Staff raised a concern over how PacifiCorp will estimate projected renewable resource performance data, such as expected hourly capacity factor information. Parties explained their concern with PacifiCorp using an existing resource as a proxy for a bid-in project when the two projects are geographically distant from each other, for example on the other side of a mountain. We determined this methodological concern can be addressed during bid evaluation, with extra focus on the specific bids that may be impacted.

D. Next Steps

Our decision on PacifiCorp's 2019 IRP requires review of a set of sensitivities and extra analysis on potential customer rate impacts. Our engagement with this analysis will begin in a Public Meeting before the end of September 2020, where we ask Staff, the IE, and PacifiCorp to summarize the terms of the off-system sales sensitivities that they have discussed and concluded would best address the questions our IRP order identified. At the September meeting we also would like updates on any FERC order in ER20-924, a summary of bidding activity, an update on how scoring methodology impacts the bids, and a description of how the IE is tracking terminal value and O&M costs/performance guarantees that could cause utility ownership bias.

Two weeks in advance of the September Public Meeting, we ask that Staff, the IE or PacifiCorp file a status report or a rough draft describing their development of the sensitivities described in the IRP. After reviewing the parties' status report we will post an agenda for the meeting

III. ORDER

IT IS ORDERED that PacifiCorp, dba Pacific Power's 2020 All Source Request for Proposals (RFP) is approved with the following modification and condition:

1. Modification: Remove the "Current or Threatened Litigation" provision that is currently minimum eligibility requirement number 8, with additional guidance provided in the body of this order.

2. Condition: Should the Federal Energy Regulatory Commission (FERC) issue an order on rehearing that changes the transition interconnection cluster study cutoff date before August 10, 2020, then PacifiCorp is to change the date that is currently listed in minimum eligibility requirement number 30 so that it aligns with the date in the FERC order.

Made, entered, and effective Jul 16 2020.

Megan W. Decker

Megan W. Decker
Chair

Letha Tawney

Letha Tawney
Commissioner



Mark R. Thompson

Mark R. Thompson
Commissioner

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.