

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1182(1)
PHASE I

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation Regarding Competitive Bidding.

ORDER

DISPOSITION: GUIDELINE 13 MODIFIED; FURTHER PROCEEDINGS
ORDERED

I. INTRODUCTION

In this docket on August 10, 2006, the Public Utility Commission of Oregon (Commission) adopted competitive bidding requirements for investor-owned electric utilities' new supply-side resource acquisitions.¹ These guidelines were built upon the foundation established in Order No. 91-1383, which first delineated the Commission's competitive bidding policies and guidelines.²

After conducting an investigation into the potential for a utility to have a bias towards utility-owned resources in reviewing requests for proposals received during the competitive bidding process, the Commission concluded that its competitive bidding guidelines need to be improved to better address this "self-build bias."³ The Commission reopened this docket to "further examine issues related to our competitive bidding guidelines."⁴ We identified three specific issues to be addressed: (1) whether the role of the independent evaluator should be expanded by retaining the independent evaluator through negotiations and final resource selection (Guideline 11); (2) whether the threshold for a "major resource" should be lowered to include more projects in the competitive bidding process (Guideline 1); and

¹ Order No. 06-446.

² *In the Matter of an Investigation into Competitive Bidding by Investor-Owned Electric Utility Companies*, Docket No. UM 316, Order No. 91-1383 (Oct 18, 1991).

³ *In the Matter of the Public Utility Commission of Oregon Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build v. Buy Bias*, Docket No. UM 1276, Order No. 11-001 (Jan 3, 2011).

⁴ *Id.* at 6.

(3) determination of the appropriate analytic framework and methodologies to use to evaluate and compare resource ownership to purchasing power from an independent power producer (Guideline 10(d)). During a prehearing conference on January 26, 2011, the parties requested that the Commission divide this docket into two phases. The first two issues would be addressed in Phase I; the third issue would be addressed in the Phase II. Comments were submitted in Phase I by Commission Staff; Portland General Electric Company (PGE); PacifiCorp, dba Pacific Power (Pacific Power); Idaho Power Company; the Citizens' Utility Board of Oregon (CUB); the Industrial Customers of Northwest Utilities (ICNU); the Renewable Northwest Project (RNP); the NW Energy Coalition; and the Northwest and Intermountain Power Producers Coalition (NIPPC).

In this order, we resolve the first issue by concluding that the role of the independent evaluator (IE) does not need to be expanded through negotiations and final resource selection in all cases, but we reserve the right to require increased IE involvement on a case-by-case basis. We resolve the second issue by declining to lower the threshold for a "major resource" to include more projects in the competitive bidding process. We find, however, that the problem of a utility sizing projects to avoid the competitive bidding requirements needs to be further addressed, and we provide a straw proposal to guide further proceedings on this issue.

II. DISCUSSION AND RESOLUTION

A. Should the role of the IE be expanded by retaining the IE through negotiations and final resource selection?

In the guidelines adopted in Order No. 06-446, the Commission requires that an IE be used in each request for proposal (RFP) to help ensure that all bids are treated fairly. Guideline 11 provides that the role of the IE ends when the utility selects the final short list of proposals.⁵ In this case, the question is whether expanding the role of the IE through negotiations with the short-list bidders and final resource selection will reduce a utility's self-build bias.

1. *Parties' Positions*

Staff. Staff asserts that the costs of expanding the role of the IE outweigh the potential benefits. Staff states that the presence of the IE may hinder or unduly influence negotiations and may make bidders reluctant to disclose information. Staff also notes that including the IE may create logistical difficulties, and is unlikely to produce information that could not already be obtained through discovery in a ratemaking proceeding. Staff believes it is sufficient for the Commission to have the authority to expand the IE's role if warranted in a particular case, and suggested that the Commission require Staff to make a recommendation about the advisability of continued IE involvement at the time of acknowledgment of a utility's short list of bidders.

PGE. PGE argues that requiring IE involvement during negotiations and final resource selection would be inconsistent with the Commission's competitive bidding goals and would not address any perceived self-build bias. PGE believes an expanded IE role would increase

⁵ See Order No. 06-446 at 6, 13.

the length and cost of the RFP process, but would not increase the fairness of the process. PGE also shares Staff's concern that inclusion of the IE could have a chilling effect on negotiations.

Pacific Power. Pacific Power does not support expanding the role of the IE. Pacific Power states that the IE's role would be unclear, that the metrics that the IE would use to evaluate fairness have not been established, and that it is uncertain how the IE's evaluation would be used. Pacific Power shares PGE's concern that retaining the IE through final resource selection would create logistical problems, increase costs, and may create a chilling effect on negotiations.

Idaho Power. Idaho Power does not believe that the benefits of retaining the IE through final resource selection would outweigh the costs. Idaho Power believes that the current guidelines already make the process transparent and fair without overly burdening bidders or being too costly for customers. Idaho Power argues that an expanded IE role would increase costs, would lengthen the process, and may deter potential bidders and chill negotiations without providing corresponding benefits. Idaho Power believes that prudence review already ensures fairness.

CUB. CUB supports expanding the role of the IE through negotiations and final resource selection. CUB believes that IE involvement would not be a burden on the process, would not compromise confidential information, and would not impose significant additional costs. CUB also joins in RNP's comments.

ICNU. ICNU conditionally supports an expanded IE role. ICNU believes the IE role should be expanded only when there is a utility ownership option on the utility's short list of RFP resources. ICNU supports an expanded role if the potential negative consequences, including increased costs for ratepayers and a more cumbersome and expensive RFP process, are adequately addressed. ICNU's primary concern is that the benefits will not outweigh the increased costs.

RNP. RNP argues that the benefits of retaining the IE through final resource selection will outweigh the costs. Specifically, RNP asserts that expanded IE involvement will promote comparable negotiation treatment of short-list bidders, will deter unfair treatment or give the IE the ability to report unfair treatment, will facilitate negotiations, and will increase confidence that the process is fair. In contrast, RNP believes costs are minimal.

NIPPC. NIPPC believes that expanding the IE's role through final resource selection will ensure fairness. NIPPC asserts that the utilities' concerns about logistics and costs can be adequately addressed, and that the IE's presence would not be a deterrent to bidders. NIPPC agrees with ICNU that the IE's role should only be expanded when there is a utility self-build option on the short list of RFP resources.

2. *Resolution*

We agree with staff and the utilities that expanding the role of the IE through negotiations and final resource selection in all cases would increase costs and burden the RFP process without compensating benefits. We believe, however, that an expanded IE role may be warranted in certain cases, particularly in cases when a utility self-build option is included in the utility's short list as suggested by ICNU and NIPPC. We therefore conclude that Guideline 11 should not be modified to expand the role of the IE through negotiations and final resource selection in all cases, but we reserve the right to require expanded IE involvement on a case-by-case basis.

As proposed by staff, we modify Guideline 13 to require Staff, at the time of acknowledgement of the utility's final short list of RFP resources, to make a recommendation regarding whether the Commission should require IE involvement through final resource selection. Other parties, including bidders, may also request expanded IE involvement at that time, and the Commission may expand the IE's role on its own motion. If the role of the IE is expanded in a particular case, the additional IE costs will be recoverable in rates.

B. Should the threshold for a "major resource" be lowered to include more projects in the competitive bidding process to further mitigate the self-build bias?

Guideline 1 from Order No. 06-446 states: "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."⁶ Under this guideline, it is possible for a utility to avoid the competitive bidding requirements by sizing its resource acquisitions under 100 MW. The question in this case is whether lowering the threshold for a major resource below 100 MW would include more projects in the competitive bidding process and further mitigate the self-build bias.

1. *Parties' Positions*

Staff recommends that the Commission decline to lower the threshold because it would not address the problem of utilities potentially sizing projects to avoid the competitive bidding requirements. PGE, Pacific Power, Idaho Power, CUB, ICNU, NIPPC, and the NW Energy Coalition agree that the threshold should not be lowered. RNP was the only party to support lowering the threshold, but only for certain types of resources, such as solar or geothermal projects.

All parties except NIPPC and Pacific Power agree that the definition of major resource should be modified to clarify when multiple smaller projects will be considered a single major resource for the purposes of applying the competitive bidding guidelines. Staff and Idaho Power proposed specific criteria; ICNU gives suggestions for the type of metrics the criteria should include. NIPPC does not object to the development of criteria, but does not think that it is necessary so long as the Commission continues to give heightened scrutiny in rate recovery proceedings of projects potentially designed to avoid the competitive bidding

⁶ Order No. 06-446 at 3.

guidelines. Pacific Power is willing to participate in the development of criteria, but believes the criteria proposed in this docket have not been sufficiently vetted.

Staff proposes the following criteria for determining when multiple small projects should be considered together under Guideline 1: (1) generating plants are located on one or more adjacent parcels of land or on parcels within a five-mile radius; (2) the construction of the plants is performed by the same contractor, or under the same contract, or multiple contracts entered into within two years of each other; (3) if phased, the utility must demonstrate that each phase would independently qualify as a single facility; and (4) other factors that demonstrate that each plant is not a separate and distinct facility based on its construction, operation, on-line date, or maintenance agreements. ICNU states that the criteria should include metrics based on project proximity, electrical interconnectivity, similarity of the resources, and timing of the on-line date of the resources.

Idaho Power proposes the following criteria: (1) the projects have common, or substantially the same, ultimate ownership; (2) the projects share a common location (the same parcel or adjacent parcels of land); (3) the projects were recognized as a single project in a license or permit from a federal, state, county, city, or local authority. Idaho Power proposes that projects be considered distinct if developed in phases and each phase is expected to be completed more than one year apart. Idaho Power states that options for future expansion of a resource should not be included in the capacity calculation.

2. *Resolution*

We agree with the majority of the parties that the threshold for a “major resource” should not be lowered. We find that the 100 MW threshold ensures that the competitive bidding guidelines apply to most major resource acquisitions, and lowering the threshold is unlikely to address the self-build bias. We also agree, however, that the definition of major resource needs to be modified to address the problem of a utility sizing projects to avoid competitive bidding requirements. Criteria need to be adopted that clarify when multiple small projects should be considered a major resource.

We make the following straw proposal:

If multiple small generating projects totaling 100 MW or more meet the following criteria, then there is a rebuttable presumption that the multiple projects are a “major resource” and the competitive bidding guidelines apply:

- (1) The generating plants are located on one or more adjacent parcels of land or on parcels within a five-mile radius; and
- (2) Construction of the plants is performed by the same contractor, or under the same contract, or under multiple contracts entered into within two years of each other.


The utility bears the burden of rebutting this presumption. If multiple small projects meet these criteria, but the utility believes that other factors show that each plant is a separate and distinct facility, then the utility may request that the Commission find that the projects do not qualify as a major resource. If the utility proceeds without making this request and without following the competitive bidding guidelines, then the utility may attempt to rebut the presumption that it should have followed the guidelines when the utility seeks recovery of the costs of the project in rates.

We request that interested parties participate in a workshop to discuss this straw proposal and submit one round of comments for the Commission's consideration. The assigned administrative law judge will convene a prehearing conference to set a schedule for the workshop and comments.


III. ORDER

IT IS ORDERED that Guideline 13 adopted in Order No. 06-446 is modified to require Staff of the Public Utility Commission of Oregon to make a recommendation about whether the Commission should require independent evaluator involvement through final resource selection at the time of acknowledgement of the utility's final short list of resources, and to allow other parties, including bidders, to request expanded independent evaluator involvement at that time.

Made, entered, and effective SEP 01 2011.



John Savage
 Commissioner





Susan K. Ackerman
 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 Court of Appeals in compliance with ORS 183.480 through 183.484.