

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1182(1)

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation Regarding Competitive Bidding.

ORDER

DISPOSITION: COMPETITIVE BIDDING GUIDELINE NO.1 MODIFIED

I. INTRODUCTION

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 (3) determination of the appropriate analytic framework and methodologies to use to evaluate and compare resource

¹ Order No. 06-446.

² *In the Matter of an Investigation into Competitive Bidding by Investor-Owned Electric Utilities*, 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.

ownership to purchasing power from an independent power producer (Guideline 10(d)).⁵ During a prehearing conference on January 26, 2011, the parties requested that the Commission divide this docket into two phases.⁶ The first two issues were addressed in Phase I; the third issue will be addressed in Phase II.

On September 1, 2011, we issued Order No. 11-340 in Phase I of this docket. We resolved 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 resolved the second issue by declining to lower the threshold for a “major resource” to include more projects in the competitive bidding process, but we requested comments on a straw proposal developed to address the problem of a utility sizing projects to avoid the competitive bidding requirements. In this order, we discuss the parties’ comments on the straw proposal and modify Guideline 1.

II. DISCUSSION AND RESOLUTION

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.”⁷ Under this guideline, it is possible for a utility to avoid the competitive bidding requirements by sizing its resource acquisitions under 100 MW.

In Order No. 11-340, we concluded that the threshold for a “major resource” should not be lowered because 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 concluded that the definition of major resource needs to be modified to address the problem of a utility sizing projects to avoid competitive bidding requirements. We found that criteria need to be adopted to clarify when multiple small projects should be considered a single major resource under the competitive bidding guidelines. We invited comments on 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.

⁵ *Id.* at 6.

⁶ ALJ Conference Memorandum at 1 (Jan 26, 2011)

⁷ Order No. 06-446 at 3.

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.⁸

Comments on the straw proposal were filed on by Commission Staff; Portland General Electric Company (PGE); PacifiCorp, dba Pacific Power (Pacific Power); and Idaho Power Company. The Citizens' Utility Board of Oregon, the Industrial Customers of Northwest Utilities, and the Northwest and Intermountain Power Producers Coalition (collectively the Joint Parties) filed joint comments on the straw proposal.

1. Parties' Positions

The parties generally support the Commission's proposed criteria. Staff and the Joint Parties suggest some clarifying changes. Pacific Power also submits clarifying changes and proposes a 30-day process for requesting a Commission decision that multiple projects that meet the criteria should nonetheless be considered separate and distinct. Staff notes that it believes such requests will be infrequent, and therefore no specific timeframe for a decision is necessary.

PGE recommends adoption of more detailed criteria. PGE contends that its proposed criteria will increase efficiency and reduce the regulatory uncertainty associated with resource acquisition, which PGE states is already a "lengthy and cumbersome" process. PGE also states that using the terms "small generating project" or "plant" could create confusion when a utility seeks to acquire only a portion of the capacity of a generating plant.

Idaho Power supports the Commission's criteria, with some clarifying revisions, but prefers the more extensive criteria proposed by PGE. Idaho Power also suggests adopting an expedited process, similar to the process for requesting a general waiver under Guideline 2, for a Commission decision that multiple projects meeting the criteria should nonetheless be considered separate and distinct.

The parties agree that the first sentence of the Commission's proposed criteria should be changed to correctly reflect the size threshold from Guideline 1 in Order 06-446. Thus, "totaling 100 MW or more" should be changed to "totaling more than 100 MW." The parties also agree that the Commission should clarify the terms "adjacent parcels" and "five-mile radius." The parties also note that the Commission should clarify its use of "small generating project" versus "generating plants."

⁸ Order No. 11-340 at 5-6.

2. Resolution

We agree with the parties that we should change the proposed criteria to use consistent terminology and to more accurately reflect the current competitive bidding guidelines. To address the parties' concerns, we make the following changes to our straw proposal:

If multiple small ~~generating projects~~ resources totaling more than 100 MW or ~~more~~ and meet the following criteria, then there is a rebuttable presumption that the multiple ~~projects~~ small resources are a single "~~mMajor rResource~~"²² and the competitive bidding guidelines apply:

(1) The ~~generating plants~~ small resources are located on one parcel of land or on two or more adjacent parcels of land, ~~or on parcels within a five-mile radius~~ the generation equipment of any small resource is within five miles of the generation equipment of any other small resource; and

(2) Construction of the ~~plants~~ resources is performed by the same contractor, or under the same ~~contract~~, or under multiple contracts entered into within two years of each other.

A single area of land is considered one parcel even if there is an intervening public or railroad right of way.

The utility bears the burden of rebutting this presumption. If multiple small ~~projects~~ resources meet these criteria, but the utility believes that other factors show that each ~~plant~~ resource is a separate and distinct ~~facility~~, then the utility may request that the Commission find that the ~~projects~~ resources do not qualify as a ~~single mMajor rResource~~. 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~~ resource in rates.

We also agree with the utilities that it is useful to provide more specificity about the process for requesting a Commission determination that multiple small resources meeting the criteria should nonetheless be considered separate and distinct. To request this determination, the utility should follow the process for requesting a waiver set forth in Guideline 2 of Order No. 06-446.

We decline to adopt the more detailed criteria suggested by PGE because we find it too proscriptive. PGE is free to use its additional criteria to demonstrate (on a case-by-case basis when a waiver is requested) that multiple small resources should not be considered a single major resource under the competitive bidding guidelines.

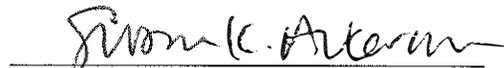
III. ORDER

IT IS ORDERED that Guideline 1 adopted in Order No. 06-446 is modified as set forth in Appendix A.

Made, entered, and effective JAN 10 2012.



John Savage
Commissioner



Susan K. Ackerman
Commissioner



Stephen M. Bloom
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.

APPENDIX A

Competitive Bidding Guideline 1, originally adopted in Order No. 06-446, is modified as follows:

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. **If multiple small generating resources total more than 100 MW and meet the following criteria, then there is a rebuttable presumption that the multiple small resources are a single Major Resource and the competitive bidding guidelines apply:**

- a. **The small resources are located on one parcel of land or on two or more adjacent parcels of land, or the generation equipment of any small resource is within five miles of the generation equipment of any other small resource; and**
- b. **Construction of the resources is performed by the same contractor, or under the same contract, or under multiple contracts entered into within two years of each other.**

A single area of land is considered one parcel even if there is an intervening public or railroad right of way.

The utility bears the burden of rebutting this presumption. If multiple small resources meet these criteria, but the utility believes that other factors show that each resource is separate and distinct, then the utility may request that the Commission find that the resources do not qualify as a single 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 resource in rates.