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January 14, 2010

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83702

RE: IPUC Case No. GNR-E-08-03

Dear Ms. Jewell,

On November 26, 2008, the Northwest and Intermountain Power Producers Coalition ("NIPPC") filed a petition with the Idaho Public Utilities Commission ("Commission") requesting that the Commission open a generic investigation into the desirability of initiating competitive bidding guidelines for procurement of supply-side resources by the regulated utilities under its authority.

On December 22, 2009, NIPPC filed a motion with the Commission requesting a procedural schedule in the above referenced matter and that this docket be amended to eliminate its generic status and limit the issues to be explored to only Idaho Power. NIPPC recognized that the other two relevant electric utilities operating in Idaho already comply with competitive procurement rules in the other states in which they operate. Rocky Mountain Power does not object to NIPPC's motion.

PacifiCorp dba Rocky Mountain Power has extensive experience with competitive procurement guidelines, rules or laws in the states of Oregon, Washington and Utah. Rocky Mountain Power's generation and transmission resources are system allocated therefore it is subject to each of the procurement rules, laws, and guidelines of these three jurisdictions, (reference copies attached). This unique experience has caused the company to be very concerned about multiple states with conflicting provisions. The company is also concerned about provisions that apply to the acquisition of renewable energy since speed and agility are required to be able to successfully participate in the renewable energy market, and protracted regulatory processes have proven to be incompatible with customer's interests. Given the company's experience, we respectfully request the opportunity to share that experience and the company's concerns with the Commission in whatever manner the Commission deems appropriate.

Rocky Mountain Power agrees with NIPPC and Avista that it is not necessary for the Idaho Commission to develop competitive procurement rules for utilities that already comply with competitive bidding rules in other states. The Company is providing copies of the procurement rules from Oregon, Washington and Utah for the Commission's reference.

Rocky Mountain Power supports NIPPC's request to narrow the proceeding to apply only to Idaho Power. If the Commission grants NIPPC's request Rocky Mountain Power respectfully requests that the Commission expressly state in its order that any guidelines or rules developed or promulgated in this proceeding apply only to Idaho Power.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey Larsen" with a stylized flourish at the end.

Jeffrey K. Larsen

Vice President, Regulation

Cc: Scott Woodbury
Bart Kline
Michael G. Andrea
Peter Richardson

WAC 480-107-015

Wash. Admin. Code 480-107-015

WASHINGTON ADMINISTRATIVE CODE
TITLE 480. UTILITIES AND TRANSPORTATION COMMISSION
CHAPTER 480-107. ELECTRIC COMPANIES-PURCHASES OF ELECTRICITY FROM QUALIFYING FACILITIES AND INDEPENDENT POWER PRODUCERS AND PURCHASES OF ELECTRICAL SAVINGS FROM CONSERVATION SUPPLIERS

Current with amendments adopted through November 4, 2009.

480-107-015. The solicitation process.

(1) Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate in the RFP process. Bidders may propose a variety of energy resources including: Electrical savings associated with conservation; electricity from qualifying facilities; electricity from independent power producers; and, at the utility's election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property. Qualifying facility producers with a generation capacity of one megawatt or less may choose to participate in the utilities' standard tariffs without filing a bid.

(2) A utility may participate in the bidding process as a power supplier, or may allow a subsidiary or affiliate to participate in the bidding process as a power supplier, on conditions described in WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. The utility's RFP submittal must declare the utility's or affiliate's participation and must demonstrate how the utility will satisfy the requirements of WAC 480-107-135.

(3) Timing of the solicitation process.

(a) The rules in this section do not apply when a utility's **integrated resource plan**, prepared pursuant to WAC 480-100-238, demonstrates that the utility does not need additional capacity within three years.

(b) A utility must submit to the commission a proposed request for proposals and accompanying documentation no later than one hundred thirty-five days after the utility's **integrated resource plan** is due to be filed with the commission. Interested persons will have sixty days from the RFP's filing date with the commission to submit written comments to the commission on the RFP. The commission will approve or suspend the RFP within thirty days after the close of the comment period.

(c) A utility must solicit bids for electric power and electrical savings within thirty days of a commission order approving the RFP.

(d) All bids will remain sealed until expiration of the solicitation period specified in the RFP.

(4) In addition to the solicitation process required by these rules, a utility may, at its own discretion, issue an RFP that limits project proposals to resources with specific characteristics. In addition, a utility, at its own discretion, may

issue RFPs more frequently than required by this rule.

(5) Persons interested in receiving commission notice of a specific utility's RFP filings can request the commission to place their names on a mailing list for notification of future RFP filings by that utility.

Statutory Authority: RCW 80.01.040 and 80.04.160. 06-08-025 (Docket No. UE-030423, General Order No. R-530), S 480-107-015, filed 3/28/06, effective 4/28/06.

<General Materials (GM) - References, Annotations, or Tables>

WAC 480-107-015, WA ADC 480-107-015
WA ADC 480-107-015

END OF DOCUMENT

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1182

In the Matter of an Investigation Regarding)
Competitive Bidding.)

ORDER

DISPOSITION: GUIDELINES ADOPTED

On December 3, 2004, the Northwest Independent Power Producers' Coalition (NIPPC) filed a petition asking the Public Utility Commission of Oregon (Commission) to open an investigation regarding competitive bidding requirements for new supply-side resource acquisitions applicable to Oregon's investor-owned electric utilities.

The Commission subsequently opened an investigation. Numerous conferences and workshops were held, as well as a public workshop with the Commissioners. The process culminated with written opening and reply comments, which were filed in September and October 2005.

Intervening parties are Citizens' Utility Board of Oregon (CUB), Northwest Energy Coalition (NVEC), Renewable Northwest Project (RNP), Portland Metropolitan Association of Building Owners and Managers (BOMA), Idaho Power Company (Idaho Power), NIPPC, Portland General Electric Company (PGE), PacifiCorp, Industrial Customers of Northwest Utilities (ICNU), Oregon Department of Energy (ODOE), Cascade Natural Gas Corporation (Cascade), Northwest Natural Gas Company (NWN), Avista Corporation (Avista) and Commission staff (Staff).

Opening comments were filed by NIPPC, Idaho Power, PacifiCorp, ICNU, PGE and Staff. CUB, RNP and NVEC filed joint opening comments. Reply comments were filed by ODOE, NIPPC, Idaho Power, PacifiCorp, PGE and Staff. RNP and NVEC filed joint reply comments.

Competitive Bidding Goals

In Order No 91-1383, the Commission adopted policies and guidelines regarding competitive bidding for investor-owned electric companies in Oregon.

Those goals have guided us well over the years. Therefore, we are making only slight modifications to those 1991 goals. The revised goals are:

1. Provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints;
2. Complement Oregon's integrated resource planning process;
3. Not unduly constrain utility management's prerogative to acquire new resources;
4. Be flexible, allowing the contracting parties to negotiate mutually beneficial exchange agreements; and
5. Be understandable and fair.

Finally, we agree with Staff that the Request For Proposal (RFP) process is a "means to promote and improve the resource actions identified in the utility's IRP [Integrated Resource Plan] Action Plan." *See*, Staff Reply Comments at 7. Changes occur from the time an Action Plan is acknowledged to when an RFP is released. The changes may be simple, due merely to the passage of time, or dramatic, such as the Western power crisis in 2000. While a utility's Action Plan establishes a roadmap, it is not in the customer's best interest for any utility to march lockstep without any deviation from the plan. We have found that flexibility is important in meeting the goals set out above.

Competitive Bidding Guidelines

After receiving considerable input from the parties, Staff prepared a straw proposal that updated the current competitive bidding process. This proposal was distributed to the parties, who then filed comments regarding the proposal. Staff made some suggested changes to its initial straw proposal in light of parties' comments. These changes are incorporated in Staff's reply comments.

We have considered all of the parties' comments and made our own changes to the straw proposal filed by Staff. In adopting our own, we have reorganized and renumbered the guidelines as originally presented by Staff in its straw proposal. In the following discussion, we will explain the rationale for our guidelines, and address some of the comments filed by the participants. We do not, however, summarize and address all of the comments. The revised competitive bidding guidelines, attached as Appendix A and incorporated herein, take into account the experience we have gained since we adopted the initial guidelines in 1991. While we are adopting a set of guidelines, we have drafted them with both mandatory and permissive language so that the involved utilities will clearly understand our preferences.

We address each as it appears in Appendix A, followed by comment about the specific guideline.

Adopted Bidding Guidelines

1. RFP Requirement: *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.*

Comment

The definition of Major Resources includes two thresholds: the duration of the resource must be greater than five years, and the resource output must be greater than 100 MW. The parties did not agree on either threshold.

In its straw proposal, Staff recommended a threshold of five years. In general, all parties agree with this threshold except for the utilities. The utilities believe that a ten-year duration is a more appropriate threshold for triggering an RFP, so that they would have the necessary flexibility to pursue mid-term resources. Further, the utilities express concern with regulatory time commitments needed for approval, as well as the time commitment by the utility in completing the RFP process.

As to output, Staff initially recommended a quantity threshold of 50 MW but, in response to the parties' comments, does not oppose a higher threshold. The utilities seek a higher threshold of 100 MW. In addition, PGE argues that the resource output should be defined as MWa rather than MW. PGE contends that MWa ensures that non-dispatchable, intermittent or energy limited resources, such as wind and hydro power, are treated on a comparable basis with other technology types with higher expected capacity factors. RNP and NWEA thought the resource quantity could be increased to 100 MW to accommodate some of the utilities' concerns. RNP, however, opposed PGE's proposed use of MWa, noting such use would allow a utility to acquire wind projects as large as 300 MW without bidding. ICNU and NIPPC support Staff's initial 50 MW threshold, but provide little justification for the lower standard.

We hold that the duration threshold should be five years and the resource output threshold should be 100 MW. While we understand the issues of regulatory time commitments, and the limited exposure to customers of utilities acquiring mid-term resources of five to ten years in duration, we believe that resources greater than five years, with a resource output of more than 100 MW, should undergo a bidding process to ensure obtaining least-cost resources for customers. We will review the practical effects of the duration threshold over the next several years and revise it, if necessary.

Idaho Power raises two concerns not related to the duration or size of these thresholds. First, Idaho Power explains that, unlike other Oregon utilities, its practice is to conduct RFPs on a resource-by-resource basis. Idaho Power hopes to continue this approach, enabling it to preserve the benefits associated with the diversity reflected in the IRP's preferred portfolio. Second, Idaho Power believes that the acquisition of certain large capital-intensive resources, such as a large jointly-owned thermal plant, might not lend itself

to a traditional RFP process because of project complexity, site-specific design and multiple parties which may be involved.

The guideline does not require a utility to conduct an all-resource bid. Accordingly, Idaho Power, or any other utility, may seek competitive bids on a resource-by-resource basis. Furthermore, as to questions on whether an RFP process may not be suitable for the acquisition of certain resources, a utility may seek a waiver of the bidding requirement under the next guideline discussed below.

2. Exceptions to RFP Requirement: *A utility is not required to issue an RFP under the following circumstances:*

- a. Acquisition of a Major Resource in an emergency or where there is a time-limited resource opportunity of unique value to customers.*
- b. Acknowledged IRP provides for an alternative acquisition method for a Major Resource.*
- c. Commission waiver on a case-by-case basis.*

Within 30 days of a Major Resource acquisition under Subsection (a) above, the utility must file a report with the Commission explaining how the requisite conditions have been met for acting outside of the RFP requirement. The report must be served on all the parties and interested persons in the utility's most recent rate case, RFP and IRP dockets.

When requesting a waiver under Subsection (c) above, the utility must file its request with the Commission and serve the request on all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The Commission will issue an order addressing the waiver request within 120 days, taking such oral and written comments as it finds appropriate under the circumstances.

Comment

Staff's straw proposal included an exception to the RFP process in emergencies or when action is needed to take advantage of a time-limited resource opportunity. PacifiCorp contends this waiver should also include similar situations involving "self-build" resources. Staff supports PacifiCorp's proposal. NIPPC does not oppose PacifiCorp's waiver proposal, but questions how a utility self-build resource could ever be utilized in response to an emergency or to take advantage of a time-limited opportunity.

We are cognizant that emergencies arise or specific, time-limited resource opportunities become available, requiring utility action without an RFP process. When those events occur, however, we want to be notified, in some detail, as to why the utility did not use an RFP process for acquiring the Major Resource.

Further, there may be situations, such as that previously discussed under Guideline 1, where a utility decides to ask for a waiver of the RFP process. We are

committed to resolving such requests quickly, using less than a full contested case process. We find this to be appropriate, as we are not making any ratemaking decisions when we waive an RFP requirement. We do not anticipate, however, that utilities will be asking for many such waivers, as we see competitive bidding to be the appropriate method for obtaining Major Resources.

3. Affiliate Bidding: *A utility may allow its affiliates to submit RFP bids. If affiliates are allowed to bid, the utility must blind all RFP bids and treat affiliate bids the same as all other bids.*

4. Utility Ownership Options: *A utility may use a self-build option in an RFP to provide a potential cost-based alternative for customers. A site-specific, self-build option proposed in this way is known as a Benchmark Resource. A utility may also consider ownership transfers within an RFP solicitation.*

Comment

These guidelines are taken from part of Guideline 9 in Staff's straw proposal. Staff's terminology used in its initial straw proposal generated comment. Idaho Power notes that, because it routinely employs an independent consultant in its RFP process, the company does not distinguish between "Standard" and "Non-Standard" RFPs. PacifiCorp and PGE propose more descriptive terms be used to differentiate between RFPs with and without a utility self-build option. PacifiCorp also cautions that the term "Benchmark Resource" should be limited to a utility's self-build options. PacifiCorp explains that other options may be evaluated against a "benchmark," which could be the market or other market options.

We have addressed the parties' concerns about terminology by dispensing with labels. Indeed, as further discussed below, such distinctions generally are not needed because all RFPs now require the use of an independent evaluator. To address PacifiCorp's specific concern, we define a Benchmark Resource as a site-specific, self-build option for which there is a commitment to proceed if it is the resource selected through the RFP. This definition does not preclude a utility from designating the market as an alternative comparator during the RFP evaluation process. If no resources are acquired through the RFP because bids are inferior to the evaluation benchmark, we do not expect an emergency self-build shortly thereafter.

Other comments focused on whether independent power producers should be given an opportunity to build on the utility's site as part of an RFP that includes a self-build option. NIPPC, ICNU, and CUB are in favor of such an opportunity; PGE and PacifiCorp oppose it. PGE explains that, if bidders have access to the utility's site, then the utility should be given access to bidders' sites. Staff raises some legal problems with requiring utilities to provide independent bidders access to utility sites.

We will not require a utility to offer its site locations for development by independent power producers. Granted, a utility could allow a resource to be built upon a particular named piece of utility property. However, that is a decision to be made by the

utility. We share Staff's concerns, raised after consultation with the Department of Justice, whether this Commission has the legal authority to implement the NIPPC and ICNU recommendation. Rather, we adopt Staff's suggestion that the utility be encouraged to offer its site for third party development, as PacifiCorp proposed in its RFP for resources in 2012, docket UM 1208.

Finally, CUB and ODOE argue that independent bidders should be given the right to use a utility's transmission facilities. Again, PGE opposes such access, and contends that any use of PGE transmission facilities would have to comply with requirements mandated by the Federal Energy Regulatory Commission (FERC).

We will not impose third party access to a utility's transmission facilities beyond the access allowed under FERC rules. We encourage utilities, however, to provide information on the availability of transmission facilities and planned projects to bidders.

5. Independent Evaluator (IE): *An IE must be used in each RFP to help ensure that all offers are treated fairly. Commission Staff, with input from the utility and interested, non-bidding parties, will recommend an IE to the Commission, which will then select or approve an IE for the RFP. The IE must be independent of the utility and likely, potential bidders, and also be experienced and competent to perform all IE functions identified in these Guidelines. The IE will contract with and be paid by the utility. The IE should confer with Commission staff as needed, on the IE's duties under these Guidelines. The utility may request recovery of its payments to the IE in customer rates.*

Comment

The parties addressed various issues related to the use, qualifications, selection, reporting, and costs of an IE. As to use, the parties generally focus on need for an IE when an affiliate or self-build option is involved. NIPPC explains that, in such situations, an IE is integral to assuring a comparable evaluation of resources.

We conclude that an IE should be used for all RFPs. While an IE's role is not as involved for an RFP without ownership options or Affiliate Bidding, we find that using an IE has value. We want an independent overseer of the process. As for qualifications, all parties agree on the need for impartiality, but the utilities claim Staff's straw proposal—excluding all candidates providing, or those that have recently provided, consulting services to participants in the western energy markets—is too limiting. Such a restriction, according to PacifiCorp, would preclude the ability to obtain an IE with sufficient experience. PacifiCorp contends that guidelines should balance the need for both independence and experience, without sacrificing one or the other. Staff is persuaded by this argument and supports PacifiCorp's recommendation.

We adopt PacifiCorp's proposal that the guidelines should seek a qualified IE in terms of both independence and experience. We also adopt PacifiCorp's recommendation that any IE candidate disclose any actual or potential conflicts to help the Commission assess independence.

Parties have different views on the process used to select an IE. Staff originally proposed that the IEs be selected by the utility and Staff from a list of qualified candidates. ICNU believes that only Staff, with input from non-bidding parties, should select the IE. ODOE proposes that the utility should be allowed to participate in the IE selection, but not have the final authority to select. Most parties agree that, once selected, the IE should report to Staff, not the utility.

We believe the utility and non-bidders should participate in the process and provide input to Staff. Staff, however, should make a final recommendation to the Commission for approval, which could be accomplished at a public meeting. In approving a final selection, we will give due consideration to an IE already selected for the RFP by another state commission.

We further conclude that the contract for the IE's services should be entered into by the utility and IE. The utility should pay the IE and otherwise manage and administer the contract. The Commission should not be a party to the contract. We recognize that such a contractual arrangement fails to provide the Commission or Staff the legal right to control or direct the IE's activities in response to any reporting requirement and may be problematic. Nonetheless, we are confident that, in the interest of obtaining RFP acknowledgement, the utility will encourage the IE to consult and confer with Staff to help address any actions needed on the part of the IE.

Finally, with regard to IE costs, Staff originally proposed that the IE be paid by the utility through assessments on all bidders, including the utility. In comments, however, most parties, including Staff, favor the payment by the utility with possible recovery from customers. ODOE explains that adding IE costs to the already high cost of preparing a bid might discourage bidder participation, particularly for small projects, as is often the case with renewable resource and cogeneration projects.

We agree that if an IE is useful to the process, and we believe that to be so, then the cost of the IE should be included in rates. Utilities may request deferred accounting to track the costs of IEs for later prudence review and potential inclusion in rates.

6. RFP Design: *The utility will prepare a draft RFP and provide it to all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The utility must conduct bidder and stakeholder workshops on the draft RFP. The utility will then submit a final draft RFP to the Commission for approval, as described in Guideline 7 below. The draft RFPs must set forth any minimum bidder requirements for credit and capability, along with bid evaluation and scoring criteria. The utility may set a minimum resource size, but Qualifying Facilities larger than 10 MW must be allowed to participate. The final draft submitted to the Commission must also include standard form contracts. However, the utility must allow bidders to negotiate mutually agreeable final contract terms that are different from ones in the standard form contracts. The utility will consult with the IE in preparing the RFPs, and the IE will submit its assessment of the final draft RFP to the Commission when the utility files for RFP approval.*

Comment

This guideline combines features originally set forth in Guidelines 9 and 10 of Staff's straw proposal. In Guideline 9, Staff referred to the joint responsibility of the utility and IE to draft certain RFP requirements and develop minimum bidder criteria. Staff also proposed the utility allow opportunities for public involvement in the RFP and, to facilitate such input, provide 60-day advanced notice of its intention to conduct an RFP and possibly conduct workshops. In Guideline 10, Staff recommended that the utility may propose minimum bidder requirements for credit and capability, and that such requirements would also be subject to public comment during the RFP design.

In comments, RNP supports the proposed public input opportunities. Idaho Power, however, raises concerns about the release of bid evaluation and scoring criteria during public workshops. Idaho Power considers the criteria to be proprietary information that should be afforded protection. PacifiCorp also raises concerns about Staff's use of the word "may" in recommending that a utility may propose minimum bidder requirements. PacifiCorp is concerned that such language might suggest that minimum bidder requirements are not necessary. On this issue, Idaho Power provides a list of minimum bidder attributes the company customarily establishes, with the assistance of an independent consultant. PacifiCorp and Staff agree that the IE and other parties should be allowed to review the proposed minimum bidder requirements, which should be approved by the Commission. Lastly, ODOE contends that all resources over 10 MW should be allowed to bid, in order to be consistent with the Commission's limit for standard avoided cost rates and standard contracts for Qualifying Facilities, and that bids should not be excluded because of the lack of transmission capabilities.

In adopting the guideline above, we revise the language to clarify that the utility is responsible for preparing the draft RFP, conducting bidder and stakeholder workshops, and submitting the final RFP to the Commission for approval. The utility must, however, consult with the IE during these activities, and the IE will submit an assessment of the final RFP to the Commission during the approval phase discussed below.

We also modify the language used in the straw proposal to require the utility to conduct bidder and stakeholder workshops. We required PacifiCorp to utilize this open process in its 2004 RFP, and believe it should be mandatory to allow all interested persons the ability to participate and provide input on the RFP design. We remove, however, the 60-day advance notice requirement proposed in Staff's straw proposal. This requirement apparently was based on current practice under Order No. 91-1383, which contemplates Commission review and approval of a draft IRP in 60 days. Under the guideline adopted above, the utility must widely distribute copies of the draft RFP and conduct workshops with interested parties. We decline to establish a minimum time period for such activities, but expect the utilities to provide ample time to ensure an adequate opportunity for public input.

In response to PacifiCorp's concerns about minimum bidder requirements, we accept Staff's explanation that its straw proposal was not intended to alter the principles,

articulated in Order No. 91-1383, that utilities should address the credit and capability of prospective bidders in order to protect ratepayers.

We agree with ODOE with respect to qualifying facilities under the Public Utility Regulatory Policies Act, and include language that prohibits utilities from excluding Qualifying Facilities larger than 10 MW from participating. In addition, we add language to the guideline to make clear that a utility should be willing to negotiate on the terms of the standard contract to achieve comparable outcomes. We conclude, however, that ODOE's other concern about bidders that lack transmission capabilities is more appropriately addressed during the review of an individual RFP.

Finally, with respect to evaluation and scoring criteria, we conclude that bidders should be given enough information during the RFP design process to determine how important different project and bidder characteristics are to the utility. Specific scoring criteria, such as points awarded for non-price factors, will be limited to non-bidding parties under the terms of Guideline 12, further addressed below.

7. RFP Approval: *The Commission will solicit public comment on the utility's final draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment and Commission review should focus on: (1) the alignment of the utility's RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process. After reviewing the RFP and the public comments, the Commission may approve the RFP with any conditions and modifications deemed necessary. The Commission may consider the impact of multi-state regulation, including requirements imposed by other states for the RFP process. The Commission will target a decision within 60 days after the filing of the final draft RFP, unless the utility requests a longer review period when it submits the final draft RFP for approval.*

Comment

We made two primary modifications to Staff's straw proposal to address concerns raised by commenting parties. First, in response to ICNU's questions about the length of time needed for Commission approval of an RFP, we extend the review period by 15 days, to 60 days. While we expect that interested persons will have been involved in the RFP process during its drafting and will have the opportunity to raise concerns and obtain information prior to the utility formally filing the RFP, we extend the process to address any concerns about discovery. Second, we add language proposed by PacifiCorp to clarify the focus of the Commission's review in approving an RFP, and to acknowledge that this review may include consideration of requirements imposed by other state commissions.

To respond to other concerns about the effect of Commission approval of an RFP, we clarify that Commission approval is simply a determination on the three criteria set out in the guideline—that is, whether the utility's RFP is consistent with its acknowledged IRP, whether the RFP satisfies these guidelines, and whether the utility's proposed bidding process is fair. The approval is simply that: the RFP meets these criteria, does not meet the

criteria, or would meet the criteria with certain conditions and modifications. Any ratemaking determinations would occur at a later time.

8. Benchmark Resource Score: *The utility must submit a detailed score for any Benchmark Resource, with supporting cost information, to the Commission and IE prior to the opening of bidding. The score should be assigned to the Benchmark Resource using the same bid scoring and evaluation criteria that will be used to score market bids. Information provided to the Commission and IE must include any transmission arrangements, and all other information necessary to score the Benchmark Resource. If, during the course of the RFP process, the utility, with input from the IE, determines that bidder updates are appropriate, the utility may also update the costs and score for the Benchmark Resource. The IE will review the reasonableness of the score(s) for the Benchmark Resource. The information provided to the Commission and IE will be sealed and held until the bidding in the RFP has concluded.*

Comment

We adopt this guideline without substantive modification from Staff's straw proposal. We acknowledge PGE's concern about the inclusion of transmission arrangements, and agree that a utility should not be required to reveal this information to other bidders. As PGE notes, a utility should have the same opportunity as other bidders to keep this type of information blinded from other bidders.

We reject ICNU's suggestion that, if bidder updates are allowed, the IE should evaluate whether the opportunity for updates resulted in favoring the utility or an affiliate resource. We are satisfied that, in such situations, the opportunity to rebid or provide updates would be extended to all bidders. Any concerns about the timing of the updates may be raised during the acknowledgement for the final short-list of bids. We also find that the guidelines are clear enough on the equal treatment of the Benchmark Resource, and conclude there is no need to add language, proposed by ODOE, to clarify that the term "bids" includes the Benchmark Resource.

9. Bid Scoring and Evaluation Criteria:

a. Selection of an initial short-list of bids should be based on price and non-price factors, and provide resource diversity (e.g., with respect to fuel type and resource duration). The utility should use the initial prices submitted by the bidders to determine each bid's price score. The price score should be calculated as the ratio of the bid's projected total cost per megawatt-hour to forward market prices, using real-levelized or annuity methods. The non-price score should be based on resource characteristics identified in the utility's acknowledged IRP Action Plan (e.g., dispatch flexibility, resource term, portfolio diversity, etc.) and conformance to the standard form contracts attached to the RFP.

b. Selection of the final short-list of bids should be based, in part, on the results of modeling the effect of candidate resources on overall system costs and risks. The portfolio modeling and decision criteria used to select the final short-list of bids must be

consistent with the modeling and decision criteria used to develop the utility's acknowledged IRP Action Plan. The IE must have full access to the utility's production cost and risk models.

c. Consideration of ratings agency debt imputation should be reserved for the selection of the final bids from the initial short-list of bids. The Commission may require the utility to obtain an advisory opinion from a ratings agency to substantiate the utility's analysis and final decision.

Comment

CUB, NWECC, and RNP filed joint comments recommending several modifications to Staff's straw proposal on bid scoring and evaluation criteria. First, the public interest parties recommend that the selection of the initial short-list of bids should not be based on a comparison of resources of different fuel types. Rather, they prefer selection from pools of each type of resource. Staff disagrees, and responds that a utility may improve diversity by having an initial short-list with different fuel types from an all-source bid, or by running simultaneous resource specific solicitations. Staff explains that resource-specific bids should occur at the same time in case the market yields different costs than assumed in the IRP, indicating a preference to acquire some types of resources over others. We agree with Staff's proposed approach, but add language in subsection (a) to require resource diversity in the initial short-list.

CUB, NWECC, and RNP also recommend additional procedures be used if the bids and other updated information are significantly different from the original inputs used in the IRP. The parties define "significantly different" to mean that the average bids in the initial short-list for each resource type differ by more than 20 percent from those modeled in the IRP. If that threshold is met or exceeded, the public interest parties contend that the utility should re-run the modeling used in the IRP. Staff, PGE and PacifiCorp oppose the proposal. Staff explains that such additional process would divert time and resources determining whether any bid differences are significant, rather than focusing those resources on determining the best combination of bids. We agree and prefer to view the competitive bidding process as a search process aimed at helping find the best combination of resources for ratepayers. As stated in subsection (b) of this guideline, we expect the utility to apply the same analytical approach and judgment in selecting the final short-list as it did in developing its acknowledged IRP Action Plan. For example, it should apply the same tradeoff between cost and risk in the bid process as it did in the IRP, and not simply focus on expected cost at the acquisition stage.

Staff, PGE and ODOE recommend other refinements to the guideline. Following publication of its straw proposal, Staff filed comments proposing that utilities be allowed to propose environmental scoring based on the environmental analysis included in its acknowledged IRP. PGE supports Staff's suggestion, adding that it provides the flexibility needed to adapt to changing circumstances and links the environmental scoring to the IRP analysis process. We share Staff's and PGE's view, but conclude that no modifications are required, given the guideline's link to the IRP in subsections (a) and (b). Similarly, we agree

with ODOE that utilities should, in selecting initial short-list bids and the final short-list, include the transmission and generation integration costs. Again, we believe the guideline, as written, includes that requirement.

Idaho Power and PGE raise questions about the ability of a utility to provide an IE with access to production cost and risk models. The utilities explain that certain licensing agreements with software vendors may preclude an IE's ability to access these analytical tools. We acknowledge the utilities' concerns. We expect, however, that utilities will take all reasonable actions necessary to obtain a license that allows an IE to access these models, and will justify any failure to do so when seeking RFP approval.

Finally, many parties focus on how to address debt imputation for power purchase agreements (PPA). PGE and PacifiCorp want debt imputation considered at all stages of bidding and scoring, while Staff recommends that debt imputation only be considered at the final stage. Other parties, such as NIPPC, recommend that debt imputation not be considered at all in the bid scoring and evaluation.

To consider debt imputation at all stages is too cumbersome a process and not necessary to meet the goals of these guidelines. We understand that by considering debt imputation solely at the final stage, we risk giving an advantage to resources with imputed debt in determining the initial short-list. We do not consider that risk to be significant, however. Further, we agree with Staff that reserving analysis of imputed debt until the final stage decreases the possibility of disqualifying a power purchase agreement that should be considered.

10. Utility and IE Roles in the RFP Process:

- a. *The utility will conduct the RFP process, score the bids, select the initial and final short-lists, and undertake negotiations with bidders.*
- b. *The IE will oversee the RFP process to ensure that it is conducted fairly and properly.*
- c. *If the RFP does not allow affiliate bidding and does not include ownership options (i.e., the utility is not including a Benchmark Resource or considering ownership transfers), the IE will check whether the utility's scoring of the bids and selection of the short-lists are reasonable.*
- d. *If the RFP allows affiliate bidding or includes ownership options, the IE will independently score the utility's Benchmark Resource (if any) and all or a sample of the bids to determine whether the selections for the initial and final short-lists are reasonable. In addition, the IE will evaluate the unique risks and advantages associated with the Benchmark Resource (if used), including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.*

e. Once the competing bids and Benchmark Resource (if used) have been scored and evaluated by the utility and the IE, the two should compare results. The utility and IE should attempt to reconcile and resolve any scoring differences. If the two are unable to agree, the IE should explain the differences in its Closing Report.

Comment

We made several revisions to this guideline as originally proposed in Staff's straw proposal. First, we modify the language to make it consistent with our earlier decision to require an IE for all RFPs. Second, we clarify the role of the IE in the RFP process. ICNU recommends, and Staff concurs, that the IE should independently review, rather than merely "validate," the utility's bid scoring. We agree, provided that the RFP allows affiliate bidding or includes ownership options. We add language to clarify this role, and to require the IE to score the Benchmark Resource, and as many bids as the IE believes to be necessary to conclude that the process was fair and the result was reasonable. We do not impose such a requirement where the utility is not including a Benchmark Resource or considering ownership transfers or affiliate bids. In such cases, the IE need only validate the utility's scoring.

Third, ICNU also proposes that, if differences arise between the utility's and the IE's scoring, the IE should be under no obligation to work with the utility to reconcile the differences. On this matter, we share Staff's opinion that the IE and the utility should attempt to resolve differences in bid scoring and evaluation. We agree with ICNU, however, that compromise should not be required, and have added language accordingly.

Fourth, pursuant to PGE's proposal, we modify language, set forth in subsection (d), to make the discussion on risk more neutral. We reject, however, PacifiCorp's recommendations that the Benchmark Resource option should not be treated and evaluated like a bid and that non-price factors, such as possible cost overruns, should not be considered. We recognize that Benchmark Resources are different from other bids in that price and performance is not fixed. Such differences, however, emphasize the need to consider the additional risk customers bear in deciding the best option from the RFP. This risk to customers is present even if the actual costs of the Benchmark Resource are equally likely to be lower or higher than projected in the RFP.

11. IE Closing Report: *The IE will prepare a Closing Report for the Commission after the utility has selected the final short-list. In addition, the IE will make any detailed bid scoring and evaluation results available to the utility, Commission staff, and non-bidding parties in the RFP docket, subject to the terms of a protective order.*

Comment

While this guideline generated little discussion or dissension, we modify the language of straw proposal to recognize that the IE will be involved in the acknowledgment process (See Guideline 13), and should complete the Closing Report before then, and to clarify that the IE's bid scoring and evaluation results will be subject to protective order (See Guideline 12).

12. Confidential Treatment of Bid and Score Information: *Bidding information, including the utility's cost support for any Benchmark Resource, as well as detailed bid scoring and evaluation results will be made available to the utility, Commission staff and non-bidding parties under protective orders that limit use of the information to RFP approval and acknowledgment and to cost recovery proceedings.*

Due to the competitive nature of the power market and generation development business, PacifiCorp raises concerns about the disclosure of detailed bid scoring and evaluation results to non-bidding consumer advocates. PacifiCorp explains that these parties may include entities that could use this information to the commercial disadvantage of bidders or the utility. RNP and Staff believe that such information should be made available. Staff suggests that PacifiCorp's concerns could be addressed through heightened protective procedures. We agree with RNP and Staff that non-bidding parties should have access to this information and have written the guideline accordingly.

13. RFP Acknowledgment: *The utility may request that the Commission acknowledge the utility's selection of the final short-list of RFP resources. The IE will participate in the RFP acknowledgment proceeding. Acknowledgment has the same meaning as assigned to that term in Commission Order No. 89-507. RFP acknowledgment will have the same legal force and effect as IRP acknowledgment in any future cost recovery proceeding. The utility's request should discuss the consistency of the final short-list with the company's acknowledged IRP Action Plan.*

The final suggested guideline by Staff in its straw proposal provides the utility an opportunity to ask for Commission acknowledgment of the final short-list of RFP resources. ICNU questions the value of this process, noting that it does not appear to limit utility bias or otherwise improve the process. To the contrary, ICNU suggests such approval only benefits utilities by providing greater assurance that their resource procurement process will be found reasonable in a subsequent rate proceeding. If the Commission is inclined to acknowledge the results of the RFPs, ICNU recommends the Commission defer this issue until it has been proven that the utilities are not biasing the results. PacifiCorp, Idaho Power, PGE, NIPPC and Staff favor Commission acknowledgement. These parties contend such acknowledgement would have the same meaning as that used in the IRP process. Consequently, Staff and the other parties believe that acknowledgment would not restrict the Commission's ability to disallow costs of resources acquired through the RFP process.

We adopt the proposal to allow the utilities the ability to request Commission acknowledgement. Such Commission action would carry the same weight as an

acknowledgment of an IRP—that is, a conclusion that the final short-list seems reasonable, based on the information provided to the Commission at that time. It will not, as ICNU fears, provide a guarantee of favorable ratemaking treatment during rate recovery. Moreover, Commission acknowledgement is not mandatory. The Commission may decline to acknowledge. We also direct the utility to explain whether its final short-list is consistent with the near-term resource acquisitions identified in its acknowledged IRP.

ODOE recommends that the Commission should acknowledge resource amounts, rather than final short-lists. ODOE provides little explanation to support this recommendation, but it appears the agency is concerned that the utility will not acquire sufficient resource diversity. We decline ODOE's proposal. If adopted, we are concerned that such acknowledgment would segment the short-list and weaken the utility's bargaining position. Moreover, ODOE's apparent concerns about resource diversity are mitigated by the utility's ultimate responsibility for obtaining the best deal in terms of cost and risk through the RFP process.

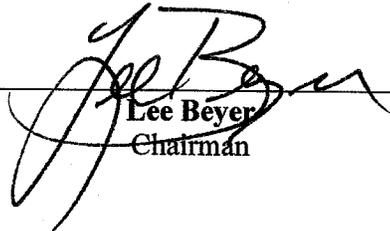
CONCLUSION

For the reasons set forth above, we conclude that the RFP guidelines, attached as Appendix A, should be adopted. These guidelines become effective on the date this order is entered, and apply to all pending and future RFP proceedings.

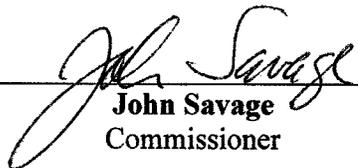
ORDER

IT IS ORDERED that the RFP guidelines, attached as Appendix A, are adopted.

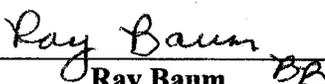
Made, entered, and effective AUG 10 2006.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum BB
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.

UM 1182
Competitive Bidding Guidelines

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.
2. **Exceptions to RFP Requirement:** A utility is not required to issue an RFP under the following circumstances:
 - a. Acquisition of a Major Resource in an emergency or where there is a time-limited resource opportunity of unique value to customers.
 - b. Acknowledged IRP provides for an alternative acquisition method for a Major Resource.
 - c. Commission waiver on a case-by-case basis.

Within 30 days of a Major Resource acquisition under Subsection (a) above, the utility must file a report with the Commission explaining how the requisite conditions have been met for acting outside of the RFP requirement. The report must be served on all the parties and interested persons in the utility's most recent rate case, RFP and IRP dockets.

When requesting a waiver under Subsection (c) above, the utility must file its request with the Commission and serve the request on all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The Commission will issue an order addressing the waiver request within 120 days, taking such oral and written comments as it finds appropriate under the circumstances.

3. **Affiliate Bidding:** A utility may allow its affiliates to submit RFP bids. If affiliates are allowed to bid, the utility must blind all RFP bids and treat affiliate bids the same as all other bids.
4. **Utility Ownership Options:** A utility may use a self-build option in an RFP to provide a potential cost-based alternative for customers. A site-specific, self-build option proposed in this way is known as a Benchmark Resource. A utility may also consider ownership transfers within an RFP solicitation.
5. **Independent Evaluator (IE):** An IE must be used in each RFP to help ensure that all offers are treated fairly. Commission staff, with input from the utility and interested, non-bidding parties, will recommend an IE to the Commission, which will then select or approve an IE for the RFP. The IE must be independent of the utility and likely, potential bidders and also be experienced and competent to perform all IE functions identified in these Guidelines. The IE will contract with and be paid by the

utility. The IE should confer with Commission staff as needed on the IE's duties under these Guidelines. The utility may request recovery of its payments to the IE in customer rates.

6. RFP Design: The utility will prepare a draft RFP and provide it to all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The utility must conduct bidder and stakeholder workshops on the draft RFP. The utility will then submit a final draft RFP to the Commission for approval, as described in paragraph 7 below. The draft RFPs must set forth any minimum bidder requirements for credit and capability, along with bid evaluation and scoring criteria. The utility may set a minimum resource size, but Qualifying Facilities larger than 10 MW must be allowed to participate. The final draft submitted to the Commission must also include standard form contracts. However, the utility must allow bidders to negotiate mutually agreeable final contract terms that are different from ones in the standard form contracts. The utility will consult with the IE in preparing the RFPs, and the IE will submit its assessment of the final draft RFP to the Commission when the utility files for RFP approval.

7. RFP Approval: The Commission will solicit public comment on the utility's final draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment and Commission review should focus on: (1) the alignment of the utility's RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process. After reviewing the RFP and the public comments, the Commission may approve the RFP with any conditions and modifications deemed necessary. The Commission may consider the impact of multi-state regulation, including requirements imposed by other states for the RFP process. The Commission will target a decision within 60 days after the filing of the final draft RFP, unless the utility requests a longer review period when it submits the final draft RFP for approval.

8. Benchmark Resource Score: The utility must submit a detailed score for any Benchmark Resource, with supporting cost information, to the Commission and IE prior to the opening of bidding. The score should be assigned to the Benchmark Resource using the same bid scoring and evaluation criteria that will be used to score market bids. Information provided to the Commission and IE must include any transmission arrangements and all other information necessary to score the Benchmark Resource. If, during the course of the RFP process, the utility, with input from the IE, determines that bidder updates are appropriate, the utility may also update the costs and score for the Benchmark Resource. The IE will review the reasonableness of the score(s) for the Benchmark Resource. The information provided to the Commission and IE will be sealed and held until the bidding in the RFP has concluded.

9. Bid Scoring and Evaluation Criteria:

- a. Selection of an initial short-list of bids should be based on price and non-price factors and provide resource diversity (e.g., with respect to fuel type and resource duration). The utility should use the initial prices submitted by the bidders to determine each bid's price score. The price score should be calculated as the ratio of the bid's projected total cost per megawatt-hour to forward market prices using real-levelized or annuity methods. The non-price score should be based on resource characteristics identified in the utility's acknowledged IRP Action Plan (e.g., dispatch flexibility, resource term, portfolio diversity, etc.) and conformance to the standard form contracts attached to the RFP.
- b. Selection of the final short-list of bids should be based in part on the results of modeling the effect of candidate resources on overall system costs and risks. The portfolio modeling and decision criteria used to select the final short-list of bids must be consistent with the modeling and decision criteria used to develop the utility's acknowledged IRP Action Plan. The IE will have full access to the utility's production cost and risk models.
- c. Consideration of ratings agency debt imputation should be reserved for the selection of the final bids from the initial short-list of bids. The utility should obtain an advisory opinion from a ratings agency to substantiate its analysis and final decision, if requested by the Commission.

10. Utility and IE Roles in RFP Process:

- a. The utility will conduct the RFP process, score the bids, select the initial and final short-lists, and undertake negotiations with bidders.
- b. The IE will oversee the RFP process to ensure that it is conducted fairly and properly.
- c. If the RFP does not allow affiliate bidding and does not include ownership options (i.e., the utility is not including a Benchmark Resource or considering ownership transfers), the IE will check whether the utility's scoring of the bids and selection of the short-lists are reasonable.
- d. If the RFP allows affiliate bidding or includes ownership options, the IE will independently score the utility's Benchmark Resource (if any) and all or a sample of the bids to determine whether the selections for the initial and final short-lists are reasonable. In addition, the IE will evaluate the unique risks and advantages associated with the Benchmark Resource (if used), including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.

- e. Once the competing bids and Benchmark Resource (if used) have been scored and evaluated by the utility and the IE, the two should compare results. The utility and IE should attempt to reconcile and resolve any scoring differences. If the two are unable to agree, the IE should explain the differences in its Closing Report.

11. IE Closing Report: The IE will prepare a Closing Report for the Commission after the utility has selected the final short-list. In addition, the IE will make any detailed bid scoring and evaluation results available to the utility, Commission staff, and non-bidding parties in the RFP docket subject to the terms of a protective order.

12. Confidential Treatment of Bid and Score Information: Bidding information, including the utility's cost support for any Benchmark Resource, as well as detailed bid scoring and evaluation results will be made available to the utility, Commission staff and non-bidding parties under protective orders that limit use of the information to RFP approval and acknowledgment and to cost recovery proceedings.

13. RFP Acknowledgment: The utility may request that the Commission acknowledge the utility's selection of the final short-list of RFP resources. The IE will participate in the RFP acknowledgment proceeding. Acknowledgment has the same meaning as assigned to that term in Commission Order No. 89-507. RFP acknowledgment will have the same legal force and effect as IRP acknowledgment in any future cost recovery proceeding. The utility's request should discuss the consistency of the final short-list with the company's acknowledged IRP Action Plan.

Utah Administrative Code

The Utah Administrative Code is the body of all effective administrative rules as compiled and organized by the Division of Administrative Rules (Subsection 63G-3-102 (5); see also Sections 63G-3-701 and 702).

Download the [RTF file](#)

Rule R746-420. Requests for Approval of a Solicitation Process.

As in effect on September 1, 2009

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R746-420-1. General Provisions.

(1) A Soliciting Utility filing for approval of a proposed Solicitation and Solicitation Process in accordance with the Energy Resource Procurement Act (Act) shall file a request for approval of the proposed Solicitation and Solicitation Process (Application) which shall include testimony and exhibits which provide:

- (a) A description of the Solicitation Process the Soliciting Utility proposes to use;
- (b) A copy of the complete proposed Solicitation with appendices, attachments and draft pro forma contracts if applicable;
- (c) Information to demonstrate that the filing complies with the requirements of the Act and Commission rules;
- (d) Descriptions of the criteria and the methodology, including any weighting and ranking factors, to be used to evaluate bids;
- (e) Information directing parties to all questions and answers regarding the Solicitation and Solicitation Process posted on an appropriate website;
- (f) Information on how participants in the pre-issuance Bidders' conference should submit advance written questions to the Soliciting Utility that are to be addressed at the pre-issuance Bidder's conference;
- (g) A list of potentially interested parties to whom the Soliciting Utility has sent or will send notices of the filing of the request for approval of the proposed solicitation with the Commission; and
- (h) Other information as the Commission may require.

(2) At the time of filing, or earlier if practicable, the Soliciting Utility shall provide to the Independent Evaluator, data, information and models necessary for the Independent Evaluator to analyze and verify the models.

(3) Pre Bid-Issuance Procedures. Prior to applying for approval of a proposed Solicitation:

(a) The Soliciting Utility shall give advance notice to the Commission as soon as practicable that it intends to conduct a Solicitation Process but not later than 60 days prior to the filing of the draft Solicitation and Solicitation Process to enable the Commission to promptly hire an Independent Evaluator;

(b) The Soliciting Utility shall hold a pre-issuance Bidders' conference in Utah, with both in-person and conference call participation at least 15 days prior to the time the Solicitation is filed for approval. Interested persons may attend this conference. The Soliciting Utility shall ensure that all questions and answers, made at the pre-issuance Bidder's conference, are provided or recorded in writing to the extent practicable;

(c) At the pre-issuance Bidder's conference, the Soliciting Utility should describe to the attendees in attendance the process, timeline for Commission review of the draft Solicitation and opportunities for providing input, including sending comments and/or questions to the Independent Evaluator; and

(d) No later than the date of filing of the proposed Solicitation, the Soliciting Utility shall issue a notice to potential bidders regarding the timeline for providing comments and other input regarding the draft Solicitation.

(4) Process for Approval of a Solicitation.

(a) Comments on the Soliciting Utility's Application shall be filed with the Commission within 45 days after the filing of the Application. The Independent Evaluator shall provide comments within 55 days after the filing of the Application. The Soliciting Utility shall file reply comments within 65 days after the filing of the Application.

(b) An Approved Solicitation and related documents shall be posted on an appropriate website as determined by the Commission order approving the Solicitation. Notice of the website posting of a Solicitation shall be sent to the potential bidders identified by the Soliciting Utility and as otherwise directed by the Commission.

(c) All material modifications to the terms and schedule of the Approved Solicitation must be approved by the Commission.

R746-420-3. Solicitation Process.

(1) General Requirements of a Solicitation Process.

(a) All aspects of a Solicitation and Solicitation Process must be fair, reasonable and in the public interest.

(b) A proposed Solicitation and Solicitation Process must be reasonably designed to:

(i) Comply with all applicable requirements of the Act and Commission rules;

(ii) Be in the public interest taking into consideration:

(A) whether they are reasonably designed to lead to the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of the Soliciting Utility located in this state;

(B) long-term and short-term impacts;

(C) risk;

(D) reliability;

(E) financial impacts on the Soliciting Utility; and

(F) other factors determined by the Commission to be relevant;

(iii) Be sufficiently flexible to permit the evaluation and selection of those resources or combination of resources determined by the Commission to be in the public interest;

(iv) Be designed to solicit a robust set of bids to the extent practicable; and

(v) Be commenced sufficiently in advance of the time of the projected resource need to permit and facilitate compliance with the Act and the Commission rules and a reasonable evaluation of resource options that can be available to fill the projected need and that will satisfy the criteria contained within Section 54-17-302(3)(c). The utility may request an expedited review of the proposed Solicitation and Solicitation Process if changed circumstances or new information require a different acquisition timeline. The Soliciting Utility must demonstrate to the Commission that the timing of the Solicitation Process will nevertheless satisfy the criteria established in the Act and in Commission rules.

(2) Screening Criteria - Screening in A Solicitation Process.

(a) In preparing a Solicitation and in evaluating bids, the Soliciting Utility shall develop and utilize, in consultation with the Independent Evaluator (if then under contract) and the Division of Public Utilities, screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest.

(b) Reasonable initial screening criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of and initial rankings based upon the following factors:

(i) Cost to utility ratepayers;

(ii) Timing of deliveries;

(iii) Point of delivery;

(iv) Dispatchability/flexibility;

(v) Credit requirements;

(vi) Level of change to pro forma contracts included in an approved Solicitation Process;

(vii) Transmission, Interconnection and Integration costs and benefits;

(viii) Commission-approved consideration of impacts of direct or inferred debt;

(ix) Feasibility, including project timing and the process for obtaining necessary rights and permits;

(x) Adequacy and flexibility of fuel supplies;

(xi) Choice of cooling technology and adequacy of water resources;

(xii) Systemwide benefits of transmission infrastructure investments associated with a project;

(xiii) Allocation of project development risks, including capital cost overruns, fuel price risk and environmental regulatory risk among project developer, utility and ratepayers; and

(xiv) Environmental impacts.

(c) In developing the initial screening and evaluation criteria, the Soliciting Utility, in consultation with the Independent Evaluator (if then under contract) and the Division of Public Utilities, shall consider the assumptions included in the Soliciting Utility's most recent Integrated Resource Plan (IRP), any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option.

(d) The Soliciting Utility may but is not required to consider non-conforming bids to the Request For Qualifications (RFQ) or Request For Proposals (RFP). The Soliciting Utility will provide advance notice to the Independent Evaluator of its decision consider a non-conforming bid.

(3) Screening Criteria - Request for Qualifications and Request of Proposals.

(a) Prior to the deadline for responding to the RFP, the Soliciting Utility may utilize a RFQ.

(b) The Independent Evaluator will provide each of the bidders with a Bid number once the Soliciting Utility, in consultation with the Independent Evaluator, has determined that the bidder has met the criteria under the RFQ.

(c) Reasonable RFQ screening criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of the following factors:

(i) Credit requirements and risk;

(ii) Non-performance risk;

(iii) Technical experience;

(iv) Technical and financial feasibility; and

(v) Other reasonable screening criteria that are applied in a fair, reasonable and nondiscriminatory manner.

(d) The RFQ should instruct each potential bidder to state in its RFQ response whether it is an affiliate of the Soliciting Utility or will contract with an affiliate of the Soliciting Utility.

(4) Disclosures. If a Solicitation includes a Benchmark Option, the Solicitation shall include at least the following information and disclosures:

(a) Whether the Benchmark Option will or may consist of a Soliciting Utility self-build or owned option (Owned Benchmark Resource) or if it is a purchase option (Market Benchmark Resource);

(b) If an Owned Benchmark Option is used, a description of the facility, fuel type, technology, efficiency, location, projected life, transmission requirements and operating and dispatch characteristics of the Owned Benchmark Option. If a Market Benchmark Option is used, the Soliciting Utility must disclose that a market option will be utilized and any inputs that will be utilized in the evaluation;

(c) A description and examples of the manner in which resources of differing characteristics or lengths will be evaluated;

(d) That bids will receive Bid numbers from the Independent Evaluator. The blinded personnel will not have access to any information concerning the relationship between the Bid numbers and the Blinded bids until after selection of the final short list;

(e) Assurances that resource evaluations will be conducted in a fair and non-

preferential manner in comparison to the Benchmark Option;

(f) Assurances that the Benchmark Option will be validated by the Independent Evaluator and that no changes to any aspect of the Benchmark Option will be permitted after the validation of the Benchmark Option by the Independent Evaluator and prior to the receipt of bids under the RFP and that the Benchmark Option will not be subject to change unless updates to other bids are permitted; and

(g) Assurances that the non-blinded personnel will not share any non-blinded information about the bidders with employees or agents of a Soliciting Utility or its affiliates who are or may be involved in the development of a Solicitation, the evaluation of bids, or the selections of resources (Evaluation Team) until after selection of the final shortlist.

(5) Disclosures Regarding Evaluation Methodology. A Solicitation shall include a clear and complete description and explanation of the methodologies to be used in the evaluation and ranking of bids, including a complete description of:

(a) All evaluation procedures, factors and weights to be considered in the RFQ, initial screening and final evaluation of bids;

(b) Credit and security requirements;

(c) Pro forma power purchase and other agreements; and

(d) The Solicitation schedule.

(6) Disclosures Regarding Independent Evaluator. The Solicitation shall describe the Independent Evaluator's role in a manner consistent with Section 54-17-203, including:

(a) An explanation of the role of the Independent Evaluator;

(b) Contact information for the Independent Evaluator; and

(c) Directions and encouragement for potential bidders to contact the Independent Evaluator with any questions, comments, information or suggestions.

(7) General Requirements. The Solicitation Process must:

(a) Satisfy all applicable requirements of the Act and Commission rules and be fair, reasonable and in the public interest;

(b) Clearly describe the nature and all relevant attributes of the requested resources;

(c) Include clear descriptions of the amounts and types of resources requested, the required timing of deliveries, acceptable places of delivery, pricing options, transmission constraints, requirements and costs that are known at the time, scheduling requirements, qualification requirements, bid and selection formats and procedures, price and non-price factors and weights, credit and security requirements and all other information reasonably necessary to facilitate a Solicitation Process in compliance with the Act and Commission rules;

(d) Utilize an evaluation methodology for resources of different types and lengths which is fair, reasonable and in the public interest and which is validated by the Independent Evaluator;

(e) Ensure that bidders will timely receive the data and information determined by the Soliciting Utility, in consultation with the Independent Evaluator or as directed by the Commission, to be necessary to facilitate a fair and reasonable competitive bidding process and all information reasonably requested by bidders;

(f) Impose credit requirements and other participation and bidding requirements that are non-discriminatory, fair, reasonable, and in the public interest;

(g) Permit a range of commercially reasonable alternatives to satisfy credit and security requirements;

(h) Permit and encourage negotiation with final short-list bidders for the benefit of ratepayers taking into account increased value but also not unreasonably increasing risks to ratepayers;

(i) Provide reasonable protections for confidential information of bidders; subject to disclosure pursuant to appropriate protective order to the Independent Evaluator and otherwise as required by the Commission;

(j) Provide reasonable protections for confidential information of the Soliciting Utility, subject to disclosure pursuant to appropriate protective order to the Independent Evaluator and otherwise as required by the Commission;

(k) Ensure that if any information that may affect the Solicitation Process is to be shared by the Soliciting Utility with any bidder or with the employees or agents of a Soliciting Utility or its affiliates who may be involved in the development or submission of a Benchmark Option used in a Solicitation (Bid Team), excluding confidential, proprietary or competitively sensitive Benchmark- or bid-specific information or negotiations, that the same information is shared with all bidders in the same manner and at the same time.

(8) Process Requirements for Benchmark Option. In a Solicitation Process involving the possibility of a Benchmark Option:

(a) The Evaluation Team, including non-blinded personnel, may not be members of the Bid Team, nor communicate with members of the Bid Team during the Solicitation Process about any aspect of the Solicitation Process, except as authorized herein.

(b) The names and titles of each member of the Bid Team, the non-blinded personnel and Evaluation Team shall be provided in writing to the Independent Evaluator.

(c) The Evaluation Team may solicit written comments on matters of technical expertise from the members of the Bid Team. All such communications to or from the Bid Team must be in writing. The Independent Evaluator must participate in all such communications between members of the Bid Team and Evaluation Team and must retain a copy of all such correspondence to be made available in future Commission proceedings. The Independent Evaluator must also make available to the bidder about whose bid the Bid Team's technical expertise was sought a written copy of the correspondence between the Evaluation and Bid Teams. Any response to such correspondence from the bidder must be in writing to the Independent Evaluator and must be conveyed to the Evaluation Team. The Independent Evaluator must provide its own or third party verification of the reasonableness of any technical information solicited from the Bid Team or bidder before it may be used in any evaluation.

(d) There shall be no communications regarding blinded bid information, either directly or indirectly, between the non-blinded personnel and other Evaluation Team members until the final shortlist is determined except as authorized herein, which communications shall be done in the presence of the Independent Evaluator. The non-blinded personnel must not reveal to other Evaluation Team members, either directly or indirectly in any form, any blinded information regarding the identity of any of the bidders.

(e) The Evaluation Team shall have no direct or indirect contact or

communication with any bidder other than through the Independent Evaluator until such time as a final shortlist is selected by the Soliciting Utility.

(f) Each member of the Bid Team and Evaluation Team, including non-blinded personnel, shall promptly execute a commitment and acknowledgment that he or she agrees to abide by all of the restrictions and conditions contained in these Commission rules. These acknowledgments shall be filed with the Commission within 10 days of their execution.

(g) Should any bidder or a member of the Bid Team attempt to contact a member of the Evaluation Team, such bidder or member of the Bid Team shall be directed to the Independent Evaluator for all information and such communication shall be reported to the Independent Evaluator by the Evaluation Team within seven business days.

(h) All relevant costs and characteristics of the Benchmark Option must be audited and validated by the Independent Evaluator prior to receiving any of the bids and are not subject to change during the Solicitation except as provided herein.

(i) All bids must be considered and evaluated against the Benchmark Option on a fair and comparable basis.

(j) Environmental risks and weight factors must be applied consistently and comparably to all bid responses and the Benchmark Option.

(k) The Solicitation must allow power purchase contract terms equivalent to the projected facility life of the Benchmark Option. The Commission may waive this requirement during review of the draft Solicitation and Solicitation Process for good cause shown.

(l) If the Soliciting Utility is subject to regulation in more than one state concerning the acquisition, construction, or cost recovery of a significant energy resource, the Soliciting Utility shall explain the degree to which it has taken into account the likelihood of resource approval and cost recovery in other jurisdictions in exercising its judgment in selecting the Benchmark Option.

(9) Issuance of A Solicitation.

(a) The Soliciting Utility shall issue the approved Solicitation promptly after Commission approval of the Solicitation and Solicitation Process.

(b) Bidders shall be directed to submit bids directly to the Independent Evaluator in accordance with the schedule contained in the Solicitation.

(c) The Soliciting Utility shall hold a pre-Bid conference in Utah, with both in-person and conference call participation available, at least 30 days before the deadline for submitting responsive bids.

(10) Evaluation of Bids.

(a) The Independent Evaluator shall "blind" all bids and supply blinded bids to the Soliciting Utility and make blinded bids available to the Division of Public Utilities subject to the provisions of an appropriate Commission-issued protective order.

(b) The Independent Evaluator shall supply such information regarding bidders and bids to non-blinded personnel as is necessary to enable such personnel to complete required credit and legal evaluations.

(c) The Soliciting Utility must cooperate fully with the Independent Evaluator.

(d) Subject to an appropriate confidentiality agreement approved by the

Commission, the Soliciting Utility shall timely provide to the Independent Evaluator and the Division of Public Utilities full access to all relevant personnel of the Soliciting Utility, together with all data, materials, models and other information, including confidential information and forward pricing curves, used or to be used in developing the proposed Solicitation, preparing the Benchmark Option, or screening, evaluating or selecting bids.

(e) The Soliciting Utility, monitored by the Independent Evaluator, shall conduct a thorough evaluation of all bids in a manner consistent with the Act, Commission Rules and the Solicitation.

(f) The Independent Evaluator shall pursue a reasonable combination of auditing the Soliciting Utility's evaluation and conducting its own independent evaluation, in consultation with the Division of Public Utilities, such that the Independent Evaluator can fulfill its duties and obligations as set forth in the Act and in Commission Rules.

(g) The Soliciting Utility, the Division of Public Utilities and the Independent Evaluator may request further information from any bidder. Any communications with bidders in this regard shall be conducted only through the Independent Evaluator. The Soliciting Utility shall be informed in a timely manner of the content of any communications between the Independent Evaluator and a bidder, but communications shall be conducted on a confidential or blinded basis.

(h) In order to facilitate both an independent evaluation function and an auditing function, the Independent Evaluator shall have access to all information and resources utilized by the Soliciting Utility in conducting its analyses. The Soliciting Utility shall provide the Independent Evaluator with complete and open access to all documents, information, data and models utilized by the Soliciting Utility in its analyses. The Independent Evaluator shall be allowed to actively and contemporaneously monitor all aspects of the Soliciting Utility's evaluation process in the manner it deems appropriate so that the Soliciting Utility's evaluation process is transparent to the Independent Evaluator. The Soliciting Utility shall have an affirmative responsibility to respond promptly and fully to any request for reasonable access or information made by the Division of Public Utilities or the Independent Evaluator. To the extent the Independent Evaluator determines through its audit or independent evaluation that its evaluation and the Soliciting Utility's yield different results, the Independent Evaluator shall notify the Soliciting Utility and the Division of Public Utilities and attempt to identify reasons for the differences as early as practicable. Where practicable, the Soliciting Utility, the Division of Public Utilities and the Independent Evaluator shall attempt to reconcile such differences. If the differences cannot be reconciled to the Independent Evaluator's satisfaction, the Independent Evaluator will promptly notify the Commission.

(i) The Independent Evaluator shall be responsible for unblinding all bids included on the final short-list and providing relevant contact information to the Soliciting Utility for final negotiations with these short-listed bidders. The Independent Evaluator shall monitor any negotiations with short-listed bidders.

(j) The Division of Public Utilities and the Independent Evaluator may, through the Independent Evaluator, ask the PacifiCorp Transmission group to conduct reasonable and necessary transmission analyses concerning bids received. Any such analyses shall be provided to the Division of Public Utilities, the Independent Evaluator and the Soliciting Utility. The Soliciting Utility may, in a general rate case or other appropriate Commission proceeding, include and the Commission will allow, recovery in the Soliciting Utility's retail rates of any reasonable amounts paid by the Soliciting Utility for those analyses.

R746-420-4. Qualifications of Independent Evaluator.

(1) An Independent Evaluator must:

(a) Demonstrate qualifications, expertise and experience to perform all of the functions of the Independent Evaluator as contemplated by the Act and Commission rules;

(b) Demonstrate independence from the Soliciting Utility and potential bidders identified by the utility or determined by the Commission;

(c) Be experienced and competent to facilitate necessary communications, including operation and control of a website for all purposes contemplated by Commission rules;

(d) Provide statements of interest to the Commission which disclose:

(i) any contracts or other economic arrangements of any kind between the Soliciting Utility or likely bidders and the Independent Evaluator or any affiliates that currently exist, that have existed within the past ten years, or that have been promised or are expected in the future; and

(ii) memberships in trade organizations; and

(e) File with the Commission a full copy of any agreement of any type between the Independent Evaluator and the Soliciting Utility or any likely bidder or any affiliates.

(2) While performing services related to the Solicitation, the Independent Evaluator shall not accept employment from nor communicate with bidders and the Soliciting Utility regarding future employment or contract opportunities.

R746-420-5. Payments to Independent Evaluator.

(1) Payments to the Independent Evaluator selected by the Commission shall be paid by the Soliciting Utility in accordance with terms and conditions specified by the Commission.

(a) The Commission and the Independent Evaluator shall execute a contract approved by the Commission with such terms and conditions as the Commission may approve.

(b) Invoices for the Independent Evaluator's services shall be sent as directed by contract.

(c) After an invoice is reviewed and approved, it will be forwarded to the Soliciting Utility for payment to the Independent Evaluator.

(d) Unless the Commission directs otherwise in connection with a Solicitation, the expenses of the Independent Evaluator shall be reimbursed as follows:

(i) The Soliciting Utility is authorized to collect bid fees that are reasonable under the circumstances of up to \$10,000 per bid to defray costs of the Independent Evaluator; and

(ii) The Soliciting Utility may, in a general rate case or other appropriate Commission proceeding, include and the Commission will allow, recovery in the Soliciting Utility's retail rates of any additional amounts paid by the Soliciting Utility for the Independent Evaluator.

R746-420-6. Functions of Independent Evaluator.

(1) The Independent Evaluator shall perform all functions contemplated by the Act or Commission rules, in coordination with and under the contract with the

Commission.

(2) The functions of the Independent Evaluator shall include the following:

- (a) Facilitate and monitor communications between the Soliciting Utility and bidders;
- (b) Review and validate the assumptions and calculations of any Benchmark Option;
- (c) Analyze the Benchmark Option for reasonableness and consistency with the Solicitation Process;
- (d) Analyze, operate and validate all important models, modeling techniques, assumptions and inputs utilized by the Soliciting Utility in the Solicitation Process, including the evaluation of bids;
- (e) Receive and "blind" bid responses;
- (f) Provide input to the Soliciting Utility on:
 - (i) the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest in preparing a Solicitation and in evaluating bids;
 - (ii) the development of initial screening and evaluation criteria that take into consideration the assumptions included in the Soliciting Utility's most recent IRP, any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option;
 - (iii) whether a bidder has met the criteria specified in any RFQ and whether to reject or accept non-conforming RFQ responses;
 - (iv) whether and when data and information should be distributed to bidders because it is necessary to facilitate a fair and reasonable competitive bidding process or has been reasonably requested by bidders;
 - (v) negotiation of proposed contracts with successful bidders; and
 - (vi) other matters as appropriate in performing the duties of the Independent Evaluator under the Act and Commission rules, or as directed by the Commission;
- (g) Ensure that all bids are treated in a fair and non-discriminatory manner;
- (h) Monitor, observe, validate and offer feedback to the Soliciting Utility, the Commission, and the Division of Public Utilities on all aspects of the Solicitation and Solicitation Process, including:
 - (i) content of the Solicitation;
 - (ii) evaluation and ranking of bid responses;
 - (iii) creation of a short list(s) of bidders for more detailed analysis and negotiation;
 - (iv) post-Bid discussions and negotiations with, and evaluations of, short list bidders; and
 - (v) negotiation of proposed contracts with successful bidders;
- (i) Offer feedback to the Soliciting Utility on possible adjustments to the scope or nature of the Solicitation or requested resources in light of bid responses;
- (j) Solicit additional information on bids necessary for screening and evaluation

purposes;

(k) Advise the Commission at all stages of the process of any unresolved disputes or other issues or concerns that could affect the integrity or outcome of the Solicitation Process;

(l) Analyze and attempt to mediate disputes that arise in the Solicitation Process with the Soliciting Utility and/or bidders, and present recommendations for resolution of unresolved disputes to the Commission;

(m) Participate in and testify at Commission hearings on approval of the Solicitation and Solicitation Process and/or approval of a Significant Energy Resource Decision;

(n) Coordinate as appropriate and as directed by the Commission with staff or evaluators designated by regulatory authorities from other states served by the Soliciting Utility;

(o) Perform such other evaluations and tasks as the Commission may direct;

(p) At the request of the Commission and subject to the existence or negotiation of appropriate contractual arrangements, participate in the evaluation of a request for an Order to Proceed under Section 54-17-304 and testify at any Commission hearings regarding the same; and

(q) No part or provision of this rule shall prevent or preclude the Commission from removing or dispensing with any function, responsibility, service or task of the Independent Evaluator in a particular case or proceeding as the Commission may determine is appropriate in the circumstances of such case or proceeding.

(3) Communications

(a) Communications between a Soliciting Utility and potential or actual bidders shall be conducted only through or in the presence of the Independent Evaluator. Bidder questions and Soliciting Utility or Independent Evaluator responses shall be posted on an appropriate website. The Independent Evaluator shall protect or redact competitively sensitive information from such questions or responses to the extent necessary.

(b) The Soliciting Utility may not communicate with any bidder regarding the Solicitation Process, the content of the Solicitation or Solicitation documents, or the substance of any potential response by a bidder to the Solicitation, except through or in the presence of the Independent Evaluator.

(c) The Soliciting Utility shall provide timely and accurate responses to any request from the Independent Evaluator, including requests from bidders submitted by the Independent Evaluator, for information regarding any aspect of the Solicitation or the Solicitation Process.

(4) Reports

(a) The Independent Evaluator shall prepare at least the following confidential reports and provide them to the Commission, the Division of Public Utilities and the Soliciting Utility:

(i) Monthly progress reports on all aspects of the Solicitation Process as it progresses;

(ii) Final Reports as soon as possible following the completion of the Solicitation Process. Final reports shall include analyses of the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest;

(iii) Other reports the Independent Evaluator deems appropriate; and

(iv) Other reports as the Commission may direct.

(b) The Independent Evaluator shall prepare at least the following public reports and provide them to the Commission and all Interested Parties:

(i) Final report, without confidential information, analyzing the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest;

(ii) Comments and recommendations with respect to changes or improvements for a future Solicitation Process; and

(iii) Other reports as the Commission may direct.

(c) Upon advance notice to the Soliciting Utility, the Independent Evaluator may conduct meetings with intervenors during the Solicitation Process to the extent determined by the Independent Evaluator or as directed by the Commission.

(d) If at any time the Independent Evaluator becomes aware of any violation of any requirements of the Solicitation Process or Commission rules, the Independent Evaluator shall immediately notify the Soliciting Utility and the Commission. The Independent Evaluator shall report any actions taken by the Soliciting Utility and any other recommended remedies to the Commission.

(e) The Independent Evaluator shall document all substantive correspondence and communications with the Soliciting Utility and bidders, shall make such documentation available to parties in any relevant proceedings upon proper request and subject to the terms of a protective order if the request contains or pertains to confidential information. Within six months after the end of the Solicitation Process, the Independent Evaluator shall provide a copy of this documentation to the Soliciting Utility. The Soliciting Utility shall maintain a complete record of its analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and all materials submitted in response to discovery requests. The Soliciting Utility shall retain such documentation for a period of at least 10 years. A party to a proceeding may petition the Commission to require specified additional materials to be maintained for a specified period.

KEY

significant energy resource, solicitation process, order to proceed, filing requirements

Date of Enactment or Last Substantive Amendment

August 28, 2007

Authorizing, Implemented, or Interpreted Law

54-17-100 et seq.

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