



May 13, 2005

VIA ELECTRONIC MAIL
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Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

RE: Docket Nos. UE-030311 / UE-030423 / UG-030312

Dear Ms. Washburn:

The Northwest Independent Power Producers Coalition (“NIPPC” or, “the Coalition”) submits the following comments in response to the notice dated April 22, 2005.

While NIPPC appreciates the opportunity to comment, the Coalition continues to maintain that the Commission’s deliberations would be better served with a less constrained and more robust dialogue than that now called for in these rulemakings. As NIPPC and other parties noted in correspondence sent last year,¹ there are a host of evolving issues related to integrated resource planning and utility procurement that warrant exploration above and beyond the relatively narrow confines of the requested response to staff’s draft rules. The value of a more open and expansive process is underscored by the fact that the last workshop in these dockets was held two years ago.

NIPPC submits the following comments in direct response to staff’s “discussion drafts,” while reserving the right to may add additional comments at a future date.

¹ Letter dated July 30, 2004 sent to: Commissioners Showalter, Hemstad and Oshie authored by: Ralph Cavanagh, Natural Resources Defense Council; Nancy Hirsh, Northwest Energy Coalition; Robert Kahn, Northwest Independent Power Producers Coalition and Rachel Shimshak, Renewable Northwest Project.

NIPPC maintains that the goal of least cost planning, or, preferably, “integrated resource planning” (IRP) is to survey and evaluate the fullest possible range of resource types, costs, and associated risks. Competitive solicitations, when conducted in a fair, accurate and transparent manner, are an important tool in assuring that the widest range of diversified opportunities are made available. Truly competitive solicitations attract a wide field of independent power producers (IPPs) willing to bid. Solicitations also provide a real world basis for later determining the prudence of utility power purchase and investment decisions. When implemented in sequence, IRP followed by competitive solicitation, the utility is most likely to have obtained the best possible resource(s) for its customers.

In circumstance where utility (or affiliate) self-built resources are envisioned for generation options, NIPPC, and its sister organizations around the nation, advocate mechanisms for mitigating perceived and actual self-dealing by utilities participating side by side with independent power producers in competitive solicitations.²

Staff’s bidding rules discussion draft is inadequate in addressing this important issue. Current requirements are insufficient, and the proposed added language in WAC 480-107-135 (1), offers scant assurance. We urge the Commission be more explicit in protecting the integrity of the bidding process from the unfair risk of self-dealing.

Among the concepts NIPPC proposes to reduce the risks of distortion of competitive solicitations are:

- Bidders must be made aware of what type of bids the buyer is looking for as well as by what parameters by which they will be judged;
- All bidders should have to meet the same requirements and be evaluated under the same standards (including resource life) so that no single bidder has an unfair advantage over another bidder;
- Soliciting utilities that submit a self-build alternative shall be required to commit to the bid price without modification in the same manner that third-party bidders are required to bid. If the Request for Proposals (RFP) permits “cost-plus” bids, such bids must not hold the consumer hostage with a series of cost overruns. The bids must be forced to make reasonable assumptions of potential costs and be held to those estimates;

² *Getting the Best Deal for Electric Utility Customers: A Concise Guidebook for the Design, Implementation and Monitoring of Competitive Power Supply Solicitations*, Boston Pacific Co., Inc., 2004 and various filing by the Northwest Independent Power Producers Coalition in recent and ongoing dockets of the Oregon Public Utilities Commission: LC-33; UM 1066; UM 1182.

- An independent entity, reporting to the Commission, and paid for by all bidders, should be empowered to monitor and/or manage bid evaluations in such a way as to eliminate the risk of self-dealing.

The preparation of the RFP itself is one obvious place where steps can be taken to assure a fair, accurate and transparent bidding process. The staff discussion draft characterizes RFP design process as limited to written comments with the Commission staff presumably communicating, at its discretion, with utility personnel (WAC 480-107-025 (6)).

NIPPC has seen real value in other jurisdictions where a draft RFP is posted for public comment and a workshop held to provide bidders and others with an opportunity to gather and comment on the design of the RFP. (Puget Sound Energy has followed this procedure with its recent RFPs.) Washington rules should be revised to assure a similar opportunity for broad, open consultation with potential bidders and stakeholders.

While the Coalition places great emphasis on transparency, there clearly are limits to the efficacy of this value. NIPPC is concerned that no provision for the confidentiality of bids and bid information is offered. Language in 408-107-035(3) indicates certain information will be made public, but there should also be a right on the part of the bidder to have specific information withheld from public view. Adding such a provision will protect bidders from the impairment of unique competitive advantages, particularly in those instances when there are multiple solicitations from several utilities at market simultaneously or near contemporaneously.

NIPPC recognizes that the credibility of a solicitation can be eroded by the underperformance of the bidders themselves. The Coalition believes that it is reasonable for utilities to expect rigorous demonstration of capability. The proposed section 107-075(5) only requires a letter of intent to demonstrate site control. NIPPC believes that developers should present greater evidence of site control and assurances that their sites lack any fatal flaws that could later compromise negotiations or even contract compliance.

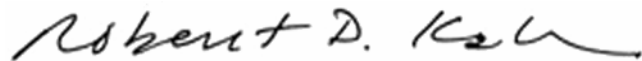
NIPPC members with experience in bidding solicitations around the county have found that these processes may take a long time. Since developer fees or deposits may be required, the Coalition recommends that in that case, such deposits be subject to return with interest when an IPP's bid proposal is rejected. The combination of undue delays and exorbitant deposit requirements can stand in the way of attracting a wide field of developers.

The definition of "material changes" (107-075(4)) is inadequate and should be better characterized. The staff draft refers to a bidder's replacement in the event that some material change occurred after the bidder's selection. Utility discretion in this area is problematic. NIPPC maintains that the definition should relate back to the bid specifications, e.g., " a 'material change' is a change that would have caused

the revised project to rank lower than projects not selected under the circumstances applicable at the time the change occurs." This would permit, as an example, price revisions if they would likely be required for all projects (e.g., gas price forecasts change or the price of steel changes, since these would apply across the board).

Finally, 107-004(2) is overly open-ended and should be revised at the end of the provision to say, "where required by law," instead of the overly flexible statement: "in appropriate circumstances..." After all, special deals broached by a utility could be "an appropriate circumstance." For example, "appropriate circumstances" could be construed to allow a multi-state utility to suspend bidding and "spontaneously" offer the output of an out-of-state facility to Washington under favorable terms. While this may be an attractive option for consumers, it should be called out in the IRP and bid in alongside other resource offerings in a competitive solicitation rather than pursue approval through a suspension.

The Northwest Independent Power Producers Coalition appreciates the effort that staff has invested in crafting the proposed revisions to the current IRP and bidding rules. We look forward to engaging in a collaborative effort with staff and in conjunction with the state's utilities and stakeholder groups, in work that we trust will result in the best interest of Washington's electric consumers.

A handwritten signature in black ink that reads "Robert D. Kahn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert D. Kahn, Executive Director

cc: Graciela Etchart (getchart@wutc.wa.gov)