

October 26, 2018

VIA ELECTRONIC FILING

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Re: Docket U-161024—Pacific Power & Light Company’s Reply Comments

On August 24, 2018, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to File Written Comments (Notice), requesting comments on draft rules related to electric competitive procurement (WAC 480-107). In response to the Notice, Pacific Power & Light Company (Pacific Power), a division of PacifiCorp, and other stakeholders submitted initial comments. The Commission held a workshop on October 2, 2018, to further discuss the draft rules and the initial comments filed by stakeholders. At the Commission workshop, staff requested additional comments and draft language. Staff subsequently issued a Notice of Opportunity to File Written Reply Comments on October 11, 2018, that included questions for consideration. Pacific Power appreciates this additional opportunity to provide feedback and submits these additional comments in response to Staff’s October 11th notice (Second Notice) and in response to stakeholder comments filed with the Commission on September 21, 2018.¹

Pacific Power looks forward to continuing to engage with staff and other stakeholders to finalize draft rules that ensure transparency and adequate review without compromising the interests of customers.

TOPICS FOR ADDITIONAL CONSIDERATION

1. INDEPENDENT EVALUATOR REQUIREMENT

In its initial comments, Pacific Power recommended that an independent evaluator (IE) be used for any competitive bidding process that is required under the draft rules. In the Second Notice, staff proposes a new requirement for use of an IE: the new proposal would allow a shortened approval process for the request for proposal (RFP) in instances of earlier engagement of the IE during the development of the RFP. The new proposal would shorten the comment period on the proposed RFP to 30 days if the utility retains the services on an IE for the RFP and the IE was retained early enough in the process to inform development of the RFP

¹ Pacific Power filed comments in response to the Notice on September 21, 2018, and incorporates those comments herein by reference.

Staff poses two questions with respect to this proposal:

- a. Does the incentive of a shortened regulatory approval process for the RFP encourage the use of an IE?
- b. Does the use of an IE adequately assure sufficient review of the RFP considering the tradeoff in the length of the stakeholder comment period?

As detailed in the company's initial comments and reiterated at the workshop, Pacific Power supports use of an IE for all RFPs where the 100 megawatt (MW) threshold (this is Pacific Power's suggested MW threshold) has been triggered. An IE provides value to all parties, not just the utility, by increasing bidder confidence and therefore promoting robust participation in the RFP process. An IE can also provide critical technical support to the Commission during its review of the RFP and throughout the bidding process, including on matters that are unrelated to ownership structure or any alleged utility bias. Allowing for a shortened comment period is an additional benefit that an IE could provide. By engaging this independent third-party, stakeholders, bidders, and the Commission are assured that the RFP will be conducted in a transparent and appropriate manner. A lengthy comment period in addition to the use of the IE is simply not necessary. The company reiterates its comments submitted on September 21, 2018, on this issue and also its comments provided at the workshop including its experience that IE costs should not be viewed as a barrier to expansion of IE engagement. It is the company's experience that bidder fees substantially pay the costs associated with engagement of an IE and therefore any costs to ratepayers are outweighed by the associated benefits.

2. ROLE OF THE INDEPENDENT EVALUATOR

Pacific Power's initial comments recommended further clarification regarding the IE's role and insertion of language that would allow for cost recovery of the IE expense not covered by bidder fees. Pacific Power continues to support its proposed changes to the draft rules, as set forth in more detail in its initial comments.

As stated in the Second Notice, there was significant discussion at the workshop regarding the role of the IE. Staff now requests additional information regarding the proper role of the IE including the following four questions:

- a. How deeply should the IE be involved in the development of the RFP? Should an IE independently score all bids, a sampling of bids, or only bids resulting in utility ownership?
- b. How should the IE be involved in communication between the utility and bidders?
- c. Should there be a requirement that the IE document and file all communications with the Commission?
- d. In situations where there is a direct conflict between the IE and the utility should additional process be proscribed?

It is the company's experience, and expectation, that an IE would review all bids including the benchmark and third-party offerings. The IE's score of the benchmark bids is performed separately and submitted to the Commission without sharing the results with the utility. In

addition, IEs generally score the bids using an independent scoring methodology (*i.e.*, a methodology that is different from the utility's).

The IE is copied on all bidder communications and invited to attend all telephonic communications. Pacific Power recommends that this level of communication be maintained going forward. In addition, under RFPs conducted by the company bidders are afforded the option to submit questions directly to the IE for the IE to submit to the utility on a "blind" basis. This further increases bidder confidence in the RFP process.

While the company supports this level of communication and transparency with the IE, because of the extensive nature of communications during the RFP process it would be unduly burdensome to require that the IE document and file all such communications with the Commission as a matter of course, much of which would need to be treated as confidential. There may be thousands of emails exchanged during the RFP process; the costs of providing these communications is likely to be outweighed by the benefits. Instead, the company supports providing communications to the Commission on an as-needed basis through the discovery process. Therefore, the company would support formalizing the communication retention practices that have occurred in previous RFPs conducted by Pacific Power. For example, many IEs maintain websites for communications with bidders that capture these communications and Pacific Power establishes a specific mailbox for RFP communications to ensure that the information is captured and accessible in the event of a dispute, need for validation, or in order to respond to a data request. With a communication retention requirement it is not necessary to burden the Commission with automatic filings of this information.

Finally, the company finds that the provisions in the draft rules that allow the utility and stakeholders to file comments in response to the final IE report are adequate to address any conflicts between the IE and utility findings. Additional process is unnecessary as long as this provision remains in the final rules.

3. CONSERVATION RFP

The Commission's Second Notice states that option three for Conservation RFPs, as set forth in the draft rules, appears to be the only option that the utilities would use. With respect to Option 3, Staff poses the following two additional questions:

- a. What additional guidance on the development of such a framework would be useful, either in rule or in an adoption order? And
- b. What particular rule language would allow sufficient flexibility to the utility while ensuring conservation RFPs are performed on a cadence to ensure the utility pursues all cost-effective conservation at the lowest reasonable cost?

As an initial matter, the company recommends that all three proposed options contained in the draft rules remain in the final rules to allow flexibility. This flexibility is important for delivery in smaller markets like Pacific Power's Washington service area. As stated in more detail in the company's previous comments filed in this proceeding, Pacific Power has historically procured

conservation program delivery across multiple states in an effort to secure the best pricing and value for its customers, including those customers located in Washington.

For the 2018–2019 biennial conservation period, approximately 77 percent of the biennial savings (excluding market transformation and low-income weatherization savings) in Pacific Power’s 2019 annual conservation plan is being delivered through competitively procured third-party contracts that originated during the second and third quarters of 2016 and the second quarter of 2018. This procurement approach would comply with both Options 1 and 2 as currently set forth in the draft rules. The ability to utilize one of these two options to comply with the draft rules is administratively efficient for Pacific Power and its demand-side management advisory group. In addition, retention of these two options does not preclude use of Option 3 in the future.

In response to Staff’s specific questions, the company supports addition of language to the proposed options that makes clear that savings associated with market transformation and low-income weatherization are excluded. To provide this clarity, Pacific Power provides the following proposed language:

(3) A utility must acquire conservation and efficiency resources, excluding market transformation or low-income weatherization programs, through a competitive procurement process. A utility must use one of the following options:

The company does not require any additional clarification regarding Option 3 but reiterates its discussion above that retention of Options 1 and 2 (in addition to Option 3) would provide sufficient flexibility to utilities while ensuring that all cost-effective conservation is pursued at the lowest reasonable cost. As stated in Pacific Power’s September 21st comments, the conservation RFP process is already designed and functioning to ensure least cost and best value to customers. Retention of all three options will allow this well-functioning system to continue.

4. MARKET PURCHASES RESOURCE ADEQUACY EXEMPTION

Staff poses four questions in the Second Notice regarding the automatic exemption set forth in the draft rules as WAC 480-107-015(4)(b) that would provide an automatic exemption when the utility plans to satisfy its identified resource need for capacity with short-term market purchases so long as “sufficient regional adequacy to support these forecasted market purchases has been identified by the Northwest Power and Conservation Council...[.]” The Second Notice states that Staff’s questions are intended to determine how the draft rules can limit the degree of reliance on the market a utility may have in order to qualify for this automatic exemption. The questions are as follows:

- a. If this idea were to be incorporated into rule, what level of reliance on the market would be reasonable?
- b. Should the degree of reliance be tied to a separate metric? If so, what metric should be used?
- c. Should an RFP be required for firm resources whenever there is significant market risk?

- d. This section also uses the undefined term “short-term market purchases.” Please provide comments on the following proposed definition: “Purchases of energy or capacity on the spot or forward market contracted for a term less than four years.”

The company agrees that greater flexibility should be included in the draft rules with respect to this automatic exemption. This flexibility could be achieved by simply adopting staff’s proposed definition for short-term market purchases. The definition already includes a restriction that contracts be less than four years. No additional parameters should be placed on these transactions.

As discussed in the company’s previous comments, Pacific Power believes it is most appropriate to rely on the company’s own market risk assessment as developed in the integrated resource plan (IRP). The IRP preferred portfolio will almost always include short-term market purchases, as these purchases allow the company to plan for its fluctuating resource need requirements and also because the company does not plan to enter into long-term transactions unless a long-term resource need is identified. However, the preferred portfolio will not include more short-term purchases than what the IRP analysis shows is available. In addition, the company reiterates its concerns that using the Northwest Power and Conservation Council’s (NWPPCC’s) assessment is insufficient for PacifiCorp because the company’s system reaches beyond the area considered in this assessment.

In the same vein, Pacific Power believes that any discussion around the appropriate level of market reliance or metrics should occur within the IRP process. As staff anticipates, if the IRP shows that the remaining resource need should be filled by short-term market purchases taking into consideration market risk and depth, it is unnecessary to create additional process by requiring the utility to file an RFP.

Pacific Power’s understanding is that these automatic exemptions to the RFP rules is intended to reduce the number of requests for waiver of the rules. If the new rules continue to require that NWPPCC’s power supply adequacy assessment shows sufficient regional adequacy, this may create situations where Pacific Power, who is not as affected by the smaller region’s resource needs, will need to request waiver of the rules on a regular basis.

In addition, Pacific Power recommends that the draft rules include a provision that allows short-term market RFPs an automatic exemption of proposed WAC 480-107-015(8). Proposed WAC 480-107-015(8) requires that all bids remain sealed until the expiration of the solicitation period specified in the RFP. Market RFP bids are typically faxed or emailed to the company and may be evaluated in a timeframe as short as two hours. These bids are not sealed to ensure that prices are aligned with ever-changing market conditions, and this benefits customers by allowing the company to capture attractive market pricing and opportunities.

5. RFP TRANSPARENCY

Staff has requested feedback regarding its proposed edits to Public Counsel’s redlines to the section of the draft rules that would require utilities to include (in the RFP) a sample evaluation rubric. Public Counsel proposed the following language:

The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or provides a detailed explanation of the aspects of each criterion that would result in the bid receiving higher priority.

Staff has suggested the following additional redline to this proposed language:

The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or provides a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving higher priority.

With respect to this proposed revision, Staff poses the following three questions:

- a. Is this language sufficient to elicit the transparency stakeholder's desire in an RFP? Is this language reasonably flexible?
- b. Will this requirement result in the utility being tied to and limited to criterion established prior to review of the bids that does not fit or account for the complexity of the evaluation of actual bids?
- c. Should instead the utility be required to establish contemporaneous documentation of its criterion prior to receipt of bids and provide its contemporaneous reasoning for any changes to its criterion?

Pacific Power agrees that providing the option to include either a quantification of the weight each criterion will be given or a detailed explanation of the criteria that would result in the bid receiving higher priority provides adequate flexibility. As discussed in the company's initial comments, the company has concerns that releasing too much information regarding the company's evaluation procedure could reduce the competitive nature of the RFP process. However, with the flexibility to provide a narrative (*i.e.*, detailed description) of how certain criteria will be evaluated these concerns are mitigated. This language should also be acceptable to bidders who are looking for additional information for how to frame their proposals to the company because it will indicate what criteria will be evaluated most favorably by Pacific Power.

6. RESPONSE TO OTHER STAKEHOLDERS

The company has responded above to certain comments provided by stakeholders regarding the need and role of the IE. In addition to these responses to stakeholder comments, Pacific Power also responds to the following topics raised by stakeholders in comments and at the Commission workshop.

Requirement to engage an IE where there is the Possibility of Utility Ownership

At the Commission Workshop and in initial comments, several stakeholders expressed support for use of an IE for RFPs where there is the possibility of utility ownership in addition to an RFP

where there is a possibility of utility self-build. The company does not object to this recommendation to the extent that its recommendation for use of an IE in all RFP scenarios required under the draft rules is adopted. The company proposes the following language to WAC 480-107-AAA specifically address this scenario:

- (b) the utility, its subsidiary, or an affiliate is allowed to submit a bid; or
- (c) the RFP accepts bids with “build-transfer” ownership structures under which ownership of the project will be transferred to the utility, its subsidiary, or an affiliate upon project completion.

The company has reviewed the language suggested by Renewable NW and Northwest and Intermountain Power Producers Coalition (NIPCC) but finds that the language suggested by Renewable NW lacks specificity. As discussed in Pacific Power’s initial comments and at the Commission Workshop, the company supports use of an IE for all RFPs where the resource need is greater than 100 MW. However, if an IE is to only be used for any RFP where there is the anticipation of utility bids or utility ownership, the definition of utility ownership must be more clearly defined. For example, Renewable NW suggests using the language “the RFP allows for bids that *could* result in utility ownership.” (emphasis added). This language appears to require an IE under all circumstances because there is no time frame that limits when utility ownership would need to occur.

Similarly, the language proposed by NIPPC would require use of an IE if “the solicitation *may* result in acquisition of a resource that the utility will own at some point during the resource’s operation.” (emphasis added). NIPPC’s comments do not support use of an IE under all circumstances but the language proposed by NIPPC would essentially create such a requirement.

Role of IE

Several stakeholders provided feedback at the Commission workshop that the IE’s role should be as an “auditor” of the RFP process. The company does not disagree that this is an appropriate role for the IE to take; as an auditor, the IE would review the RFP process conducted by the utility, including a review of the bid selection process. The IE’s confirmation that the bid selection was reasonable will not serve as a prudence determination. However, this finding should serve as a rebuttable presumption that the utility’s actions were reasonable. Allowing the findings of the IE to serve as a strong indicator of prudence is appropriate because the IE will be reviewing the utility’s actions and decisions in real time, whereas a prudence review may not occur for several years. Reviewing the reasonableness of the utility’s actions at the time they are undertaken is valuable because the IE will be making such a determination based on the information available at the time the decision is made. Reliance on this IE determination will prevent the possibility of conducting a prudence review using “new” information unknown or unavailable to the utility when the bid was selected.

Cost Caps on Utility Bids (NIPPC para 61)

In its initial comments NIPPC recommends institution of a cost cap on utility owned resources that can be included in customer rates. NIPPC argues that a cost cap would remove the risk from

ratepayers and place it with utilities. While the company does not necessarily support a cost cap, the use of an IE during the RFP process will address this concern. IEs review and evaluate bids, including bids submitted by utilities, and therefore the IE can identify any concerns in its reports to the Commission regarding the specific risks of each bid. If the IE determines that a risk exists with respect to the costs proposed by a utility bid, the IE can recommend additional due diligence and/or steps to mitigate such risk. The Company notes that this role of the IE would be limited to evaluation of a bid and would not extend to actual rate impacts; rate impacts and rate recovery should remain squarely within the jurisdiction of the Commission. In addition, cost caps go against well-established principles of traditional ratemaking that require prudence review after-the-fact. Establishing a cost cap during the RFP is effectively a pre-prudence determination by the Commission that all costs in excess of the cap are imprudent. The company also notes that under the traditional prudence review process, the utility wears *all* risk until the asset is determined prudent by the Commission and placed into rates. This construct effectively mitigates against imprudent utility action and, as such, cost caps are not necessary. In addition, unlike non-utility bids, if the company's costs end up being less than what was bid, customers would receive the benefit of the lower cost.

Use of Utility Assets to Provide Power Generation

NIPCC proposes that the draft rules be revised to require utilities to provide bidders with the option to use utility assets to provide power generation. NIPCC argues that this proposal is warranted because utilities are able to recover the operating costs associated with these generation assets and not allowing bidders to take advantage of these assets would result in lower cost proposals. Pacific Power opposes this proposal as beyond the scope of the Commission's jurisdiction; any requirement that a utility must offer its facilities to bidders would create an unconstitutional taking of utility property. In addition, NIPCC provides no basis for its allegation that this revision would result in lower bid costs.

Due Diligence Review of Utility Proposals

NIPCC has suggested that the IE's role should be expanded to include performance of a financial due diligence for any utility bid. NIPCC argues that this due diligence review would help level the playing field because independent power producers are subject to this level of scrutiny with respect to bids submitted. This suggestion should be rejected and was in fact, recently rejected by the Public Utility Commission of Oregon.² As determined by the Oregon commission, the benefit of this proposed additional review is not likely to outweigh the associated costs and delays to the RFP process. An IE may not have the requisite financial experience to perform such a review. Furthermore, it is not clear that this additional step is necessary in light of the other protections afforded by the draft rules that ensure that utility and non-utility bids are evaluated in an equitable manner.

² *In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources*, Public Utility Commission of Oregon Docket No. AR 600, Order No. 18-324 at 15-16 (August 30, 2018).

Consultations with Stakeholders

NIPPC recommends that the draft rules be revised to make clear that utilities should consult with all interested parties during development of the RFP and also that the draft rules make clear that stakeholders are entitled to discovery during the RFP process. To avoid delays with the RFP development and implementation, Pacific Power recommends that consultations with stakeholders be limited to the RFP rules but not the type of generation sought by the RFP. The need sought by the RFP will be determined through the utility's IRP process and therefore the appropriate place to provide feedback on generation need is through the IRP process. In addition, Pacific Power would support a workshop and comment process but not a formal discovery process. Formal discovery is not contemplated as part of non-adjudicative proceedings and is likely to delay selection of a winning bid and expand the scope of the RFP process. Further, this level of stakeholder involvement is unnecessary in light of Pacific Power's recommendation to expand the requirement to engage an IE.

Request for Clarification

Finally, in its initial comments NIPPC requests clarification regarding the language included in the draft rules under WAC 480-107-015(4) that states that an RFP is not required if the utility's "identified resource need will be acquired under an existing tariff." The company joins NIPPC's request for clarification regarding this provision.

7. CONCLUSION

The proposed rules present an important opportunity to streamline the RFP process and reduce the need for waivers or exemptions. The comments provided above together with the company's proposed redline edits are intended to further these goals. Pacific Power appreciates the opportunity to provide these comments in response to the proposed rules and looks forward to further discussions on the next draft of proposed rules.

Please contact Ariel Son at (503) 813-5410 if you have any questions.

Sincerely,

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