

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re

Inquiry on Regulatory Treatment of
Renewable Energy Resources

Docket No. UE-100849

COMMENTS

1 The Northwest & Intermountain Power Producers Coalition (“NIPPC” or “Coalition”) welcomes the opportunity to comment in the Commission’s Inquiry on Regulatory Treatment for Renewable Energy Resources. The Coalition advocates for competitive procurement of all types of generation including but not limited to renewable energy resources. NIPPC encourages the Commission, if it opens a rulemaking, to consider how giving regulated electric companies reasonable incentives to pursue competitive procurement of renewables will help them meet the standards of I-937 and serve the public interest in other ways as well.

2 Apart from the significant contribution that privately-owned, *i.e.*, non-utility generators make to the electricity sector¹ NIPPC’s advocacy for competitive procurement by utilities is consistent with national regulatory policy. After completing a study on trends in competitive procurement that it jointly commissioned with the Federal Energy Regulatory Commission (FERC), the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) unanimously commended “State public utility

¹ Approximately 40 percent of the nation’s power plants are owned and operated by non-utility wholesale generators. The figure in the Western Interconnection is approximately 18 percent.

commissions to consider implementing the Study’s recommendation, where appropriate for the type of industry structure, market design, and regulatory paradigm in which their utility companies operate.”²

3 NIPPC sees the present Inquiry and any resulting rulemaking as well-suited to consideration of competitive procurement. While the focus of the present inquiry is on renewable energy and ways in which the Commission may choose to guide its development, NIPPC respectfully suggests the Commission examine approaches that will yield the least cost, least risk renewable generation for inclusion in utility resource portfolios. For example, the Commission’s issues list raise questions about prudence and cost recovery of renewable generation investments. Including competitive bidding requirements can provide an open and transparent mechanism to ensure that only prudent and reasonable costs are incurred and passed on to ratepayers.

4 In that spirit, NIPPC offers tangible suggestions for additions to and changes in Commission policy which would if adopted spur competitive procurement and thereby yield significant benefits to ratepayers without unduly compromising utilities’ shareholder value.

5 Utilities under the Commission’s jurisdiction generally have not been proactive about securing power under long-term power purchase agreements (“PPAs”). From the standpoint of utility shareholders, this is understandable.³ The resistance that flows from it is not, however, in the ratepayers’ interest.

² Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices: a study prepared by the Analysis Group, June 2008, for NARUC/FERC
<http://www.naruc.org/Publications/NARUC%20Competitive%20Procurement%20Final.pdf>.

NARUC Board of Directors resolution concerning the study recommendations:
<http://www.naruc.org/Resolutions/EL%20Resolution%20on%20the%20NARUC-FERC%20Study%20of%20Model%20State%20and%20Utility%20Practices%20for%20Competitive%20Procurement%20of%20Retail%20Electric%20Supply.pdf>

³ “All regulation is incentive regulation – whether carefully structured or not. To the extent there is a misalignment of utility and customer interests in this situation [signing PPAs], it is a function of an antiquated regulatory scheme that provides a utility with a return on generation investment but, in contrast, allows the utility *at best* to recover its

6 The Electricity Power Supply Association (EPSA), the national competitive power advocacy organization with which NIPPC is associated, has prepared constructive materials documenting the value of and approaches to competitive procurement.⁴ NIPPC has also, on multiple occasions, made the case for competitive procurement.⁵ NIPPC suggests that competitive procurement for utility generation resources is, in several fundamental respects, a matter of common sense.

7 First, government agencies make it their practice to competitively procure services and equipment that they need to operate. It is inconceivable, for example, that the State of Washington would sole source additions to its vehicle fleet or not let a competitive bid before purchasing new computers. Contractors chosen to build government sponsored infrastructure projects are always chosen competitively.

8 Second, it is never a good idea to purchase services from a vendor that is unable to complete an assignment at cost and on time. No one appreciates contractors who irresponsibly exceed their bids, leaving the consumer holding the bag for their cost overruns. But the “cost of service” model for rate regulation implicitly enables, if not encourages, this type of behavior.

out-of-pocket costs of a PPA.” Supplemental Comments of PacifiCorp to FERC-NARUC Study: Competitive Procurement of Retail Electricity Supply.

<http://www.naruc.org/Publications/Compendium%20of%20Comments%20on%20July%202008%20Competitive%20Procurement%20Paper.pdf>

⁴ Getting the Best Deal for Electric Utility Customers: A Concise Guidebook for the Design, Implementation and Monitoring of Competitive Power Supply Solicitations: report prepared by the by Boston Pacific Company, Inc., 2004, for the Electricity Power Supply Association
http://www.epsa.org/documents/industry/merchantPower/Policy_Guide.pdf

⁵ Northwest & Intermountain Power Producers Coalition comments in Oregon Public Utility Commission Docket, LC 48 regarding Portland General Electric Company 2009 IRP, February 2, 2010
<http://edocs.puc.state.or.us/efdocs/HAC/lc48hac132720.pdf>

9 And finally, it is inadvisable to buy a used car from your brother-in-law. Should the car turn out to be a lemon, you cannot respond as decisively if you had purchased the car from a business or at least from outside the family. Costs incurred by utilities in the course of fulfilling their obligation to serve are, of course, regulated but only up to a point. This is because regulators may find it difficult to hold utilities fully accountable for their errors. For example, scrupulous accountability may lead, in the case of publically traded companies, to a Wall Street downgrade that affects ratepayers as well as utility shareholders. It is no wonder utilities decline to make irreversible commitments to abide by their original cost estimates for self-built power projects.

10 All this is in contrast to the IPPs whose winning bids in a competitive solicitation are made exclusively at their shareholders' risks.

11 Competitive procurement of generation by utilities helps serve the public interest in a number of ways. The Coalition submits the following list for the Commission's consideration of some of the ways that IPPs add value by diversifying ownership within utility resource portfolios.

12 Independent Power Producers provide utilities and the Commission:

- A yardstick against which to help evaluate utilities' own plans for new, self-built resources.
- Assumption of "dry hole" resource risk, which in the case of wind power, can prove dramatic.⁶
- Cost savings in purchasing generation equipment and in contracting for balance of plant construction due to IPPs' international development activity and longstanding relationships with manufacturers and EPC contractors.

⁶ Capacity Factor Impact on Wind Power Financials: prepared by Ted Risher, The Energy Group, February 27, 2009, for NIPPC <http://www.nippc.org/upload/Wind%20Capacity%20Factor%20Pres.pdf?r=23204>

- Reduced technology risks triggered either by premature obsolescence or equipment failures that occur with all types of generation technologies.
- Increased assurance of availability given that IPPs are paid on their contracted plants' actual running time.
- Access to the most highly energetic, constructible and transmission-accessible wind farm sites.
- Enhanced credit capacity that financially robust IPPs can offer at levels attractive to both financial markets and regulators.
- Willingness to manage through contentious permitting including NIMBY opposition unsuited to utility public (and investor) relations.

13 And, finally, one overarching characteristic that IPPs share will be that of special interest to the Commission. IPPs are:

- Willing to compete amongst one another for the opportunity to conduct business over the long-term with utilities.

14 NIPPC submits that the Commission should, through this process, try to create a climate that promotes broad participation by IPPs in bidding to supply generation that will help utilities to timely meet their renewables targets in the most reliable and cost-effective manner. IPPs are understandably sensitive when utilities circulate Requests for Proposals (RFPs) with little or no intent to actually contract for power. While developers are by nature optimistic and willing to give their prospective customers the benefit of the doubt, the most sophisticated and experienced IPPs will bypass RFPs where the outcome is pre-ordained. Examples of "pre-ordained" may be instances where the utility submits a proposed power project into its own RFP, where its own substantial investment in utility-owned resources precludes it from contracting for additions of the same resource, or when it conducts an RFP

only in order to collect information from the market. There are all too many instances where utility RFPs, advertised as competitive, failed to deliver competitive results.⁷

15 Over the years, utilities have offered numerous justifications for objecting to signing long-term PPAs. Many of these are dubious, while others arise from the construct of rate-base, rate of return regulations. Among these is the so-called “rate based penalty” or debt equity assessment that Standard & Poors, although notably not its sister rating agencies, has promulgated. NIPPC sincerely hopes that the Commission will conduct a workshop on the topic where various experts can share perspectives and findings.⁸ In the context of competitive procurement, the Oregon Public Utility Commission adopted policy that has contained the debt equity issue’s influence in utility RFPs. This is one example of how this Commission can fine tune its rules and the rate-making process to ensure that the public gets the benefits of diversity in the supply of the renewable energy needed to met the requirements of I-937.

⁷ One such example can be found in neighboring Idaho. The Idaho Public Utilities Commission noted the phenomenon even as it granted Idaho Power authority for it to proceed with its self-built Langley Gulch Power Plant that the utility selected in a “competitive” bidding process. The Commission found that: “The Company should, however, be concerned about perception that the third-party consultant was directed by the Company and there was a bias in the selection process. The actual and perceived flaws in the RFP process, we find, while not fatal to the Company’s resource selection, clearly demonstrate a need for a separate proceeding to consider RFP competitive bidding rules and guidelines.”

http://www.puc.idaho.gov/internet/cases/elec/IPC/IPCE0903/ordnotc/20090901FINAL_ORDER_NO_30892.PDF
The Commission’s competitive procurement docket is listed as: Case Number IPC-10-03.

⁸ PPA Debt Equivalence Update: presentation by Meg Meal, December 9, 2008 to NIPPC

<http://www.nippc.org/upload/Meg%20Meal's%20Board%20Meeting%20presentation%20120908.pdf?r=673346>

Electric Utility Resource Planning: The Role of Competitive Procurement and Debt Equivalency:

prepared by GF Energy LLC, July 2005 for Electric Power Supply Association

http://www.epsa.org/forms/uploadFiles/63CE00000024.filename.EPSA_Debt_Equivalency_Report_Final_070705.pdf.

Imputed Debt: A Regulatory and Cost-of-Capital Perspective: prepared by Ron Knecht, May 9, 2006 for Western Power Supply Forum

<http://www.nippc.org/upload/Knecht%20presentation%20on%20debt%20equivalency%20050906.pdf?r=117312>.

16 In its summary recommendations for mitigating utility bias toward self-built resources the NARUC/FERC study prepared by the Analysis Group identified a variety of methods to safeguard against “self-dealing” by utilities in procurement of new, incremental resources. The authors’ recommendations included:

- The engagement of a third party independent monitor (“IM”) and/or independent evaluator (“IE”).
- Measures to increase the transparency of the procurement process.
- Providing potential bidders with detailed information needed to prepare competitive bids including “non-price” factors.

17 The Commission’s current procurement policy, which was last updated in 2003,⁹ does not adequately address several important recommendations raised by the Analysis Group in their report. We urge the Commission to revisit its overall procurement policy at some future – but not too distant – date in this or a companion docket. That way, the Commission can approach these issues from the ground up.

18 Within the context of this Inquiry, we recommend areas where the Commission could consider taking meaningful action. The first policy NIPPC recommends has been adopted by a number of states.¹⁰ Specifically, in the event that a non-utility generator(s) is chosen through a competitive procurement and a PPA negotiated, NIPPC recommends that the utility’s rate recovery for the PPA be treated as “per se prudent.” This policy would minimize the utility’s regulatory risk and dramatically scale back time required for regulatory

⁹ AMENDATORY SECTION, Amending Docket No. A-030832, General Order No. R-509, filed 10/29/03, effective 11/29/03.

¹⁰ Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices: a study prepared by the Analysis Group, June 2008, for NARUC/FERC
<http://www.naruc.org/Publications/NARUC%20Competitive%20Procurement%20Final.pdf>.

review. The open, competitive process would protect ratepayers, likely better than outside, after-the-fact, regulatory review.

19 The second policy NIPPC recommends to mitigate utilities' self-build bias is for the Commission to adopt policy that would effectively remove the imputed debt issue as a "deal killer" in competitive procurement. The Commission could find, as did the Oregon Public Utility Commission, that: "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."¹¹

20 The third policy recommendation NIPPC proposes is intended to incentivize utilities to execute PPAs. The Coalition's concept is the Commission, working with the utilities and stakeholders, would craft an objective set of metrics to define "successful" PPAs. The metrics, once developed, would allow for clear assessment of the extent to which a PPA met or exceeded its negotiated price for delivered power. After these metrics are consulted over the course of several years that provide the basis for designating a "successful" PPA. If, beginning in the third year and subsequent years, the contract is deemed successful, then the utility could be permitted to earn higher at a higher rate within its authorized rate of return band as an incentive for prudently managing that specific PPA. Thus, rate payers would benefit from lower cost competitive renewable power and utility shareholders would benefit from effective use of PPAs, partially offsetting the lower earnings from a smaller rate base. The public interest is better served.

21 The fourth policy that NIPPC proposes is a modest disincentive for utilities to pursue green field self-builds outside the context of a competitive procurement process where they

¹¹ Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446, Appendix A, p. 3 August 10, 2006. <http://apps.puc.state.or.us/orders/2006ords/06-446.pdf>

compete against IPPs. The Coalition suggests the Commission develop a mechanism to hold utilities accountable for the specific costs of power projects that they choose to develop outside of a competitive procurement. While NIPPC recognizes the difficulty of such a policy, it is hard to see how it is in the public interest for rate payers to absorb cost overruns incurred by a utility that could have been avoided by pursuing competitive procurement. NIPPC suggests that the Commission begin by requiring the utility to post its best estimate covering the development, construction and early operation of its self-built power plant in advance. Then, in conjunction with determining the plant's value as used and useful, the utility would be required to accept rate recovery only up to its pre-advertised level – and no more.

22 NIPPC believes that the Commission has the authority to enact policies such as these under its legislative mandate. NIPPC respectfully suggests that the rulemaking(s) required to enact these four policies would be worth undertaking. Consideration of these and/or other concepts that would increase the likelihood of utilities contracting long term with IPPs would be well worth the requisite investment of time and resources.

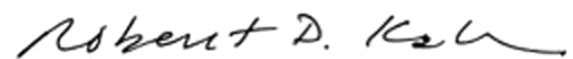
23 The Coalition appreciates the thoughtfulness and open-mindedness with which the Commissioners and staff are approaching this Inquiry. We are hopeful that these considerations will lead to policy initiatives that result in increased investment by IPPs and

utilities capable of delivering reliable, cost-effective renewable power at little or no risk to Washington electric consumers.

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