

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 11, 2006**

REGULAR X **CONSENT** **EFFECTIVE DATE** April 11, 2006

DATE: April 3, 2006

TO: Public Utility Commission

FROM: Lisa Schwartz

THROUGH: Lee Sparling, Ed Busch and Bonnie Tatom

SUBJECT: PACIFIC POWER & LIGHT: (Docket No. UM 1118) Request for proposals for renewable generation resources (RFP 2003-B) filed in compliance with Commission Order No. 91-1383.

STAFF RECOMMENDATION:

Staff recommends the Commission find that PacifiCorp's March 21, 2006, amendment to RFP 2003-B is consistent with Order No. 04-091 and the company's acknowledged 2004 Integrated Resource Plan (IRP).

Staff also recommends that the Commission modify condition 4 in Order No. 04-091 to address PacifiCorp's updated power purchase agreement (PPA) and additional pro forma contracts. Specifically, staff recommends that PacifiCorp be allowed to use its pro forma PPA, Build/Own/Transfer agreement, Engineer/Procure/Construction agreement, and Site Sale agreement in the bidding process with the following provisos:

- a) The company must modify its scoring standard so that a bidder's score is not reduced for modifying the agreement in a manner that benefits or is neutral to the company and its customers; and
- b) The company will allow bidders to negotiate final contract terms that are different from the generic agreement so long as such negotiated terms constitute contract provisions that are acceptable to PacifiCorp on a legal, contractual, credit and other business basis.

Further, staff recommends that the Commission expressly note that, by allowing PacifiCorp's use of a generic agreement, the Commission is neither approving the agreements in their entirety nor endorsing any specific term of the agreement.

DISCUSSION:

On February 3, 2004, the Commission approved, with conditions, PacifiCorp's request for proposals for 1,100 megawatts (MW) of renewable generation resources (RFP 2003-B). See Order No. 04-091. On March 21, 2006, the company filed an amendment to RFP 2003-B to allow new bidders to participate and allow previous bidders to update their bids using refined pro forma agreements.

PacifiCorp states that allowing new bidders at this time will benefit ratepayers by allowing the company to review proposals from the entire pool of bidders currently available. With the closing of the Mid-American Energy Holding Company (MEHC) transaction, PPM Energy is no longer affiliated with PacifiCorp. PPM Energy is one of the largest developers of wind projects in the country and through this amendment would be eligible to bid. Conversely, bids from any MEHC affiliates would be ineligible for consideration.

While staff disagrees that opening the process to new bidders is a "non-substantive amendment" to the Commission-approved RFP 2003-B, as PacifiCorp asserts in its filing, staff supports the amendment, which would expand the pool of bidders to include PPM Energy and potentially other new bidders.

The amendment to RFP 2003-B provides the following schedule, subject to change:

Notice to market	March 21, 2006
RFP bidder conference	March 24, 2006
Notice of Intent to Bid Form due	March 27, 2006
Proposals due	April 12, 2006
Evaluation complete	April 19, 2006
Target for completing negotiations	June 2006

The aggressive schedule is designed to make use of federal Production Tax Credits set to expire at the end of 2007. Further, as part of its purchase of PacifiCorp, MEHC committed to develop 400 MW of renewable resources by 2007, including 100 MW by March 21, 2007, if cost-effective to do so.¹ Staff also notes the company's need to move forward with such projects or risk losing funds set aside by the Energy Trust of Oregon to offset any above-market costs of new renewable resources.

The Commission's competitive bidding guidelines provide for a 60-day public review period of the filed draft RFP before the final RFP is formally issued. Public review is to

¹ Including the recently acquired 64.5 MW wind project in Idaho and a 42 MW geothermal power plant in Utah expected to be on-line by year-end 2007.

address compliance with the guidelines. Public comments are due to staff within 30 days of the filing date. Staff reviews the RFP and reports its conclusions and recommendations at a Commission public meeting. In addition, the Commission takes comments at the public meeting at which the RFP is considered. See Order No. 91-1383.

PacifiCorp's current filing is an amendment to RFP 2003-B, not a new RFP. As such, the public review timeline described in Order No. 91-1383 does not apply.

The company provided notice to its bidders list on March 21 and held a bidder conference on March 24, 2006. Staff participated in the conference, where PacifiCorp gave a presentation on the amendment and answered questions related to such areas as demonstrating turbine availability and land control, estimating transmission costs given the tight schedule, and how bids will be evaluated.

Throughout PacifiCorp's two year-long RFP process, the company asked bidders to refresh their proposals, including areas such as pricing, representations related to on-line date and acquisition of wind turbines, and status of interconnection and transmission agreements. The current amendment would provide another opportunity for existing bidders to refresh their bids in this manner, as well as expand the projects the company can consider toward meeting its near-term IRP targets and MEHC commitments.

For these reasons, as well as time constraints for making use of tax credit and Energy Trust financial incentives, staff supports PacifiCorp's request for a Commission decision on its amendment at the April 11, 2006, public meeting.

PacifiCorp will continue to evaluate proposals using the criteria identified in the approved RFP 2003-B, including conformance with a pro forma contract. However, the company has made changes to the PPA that accompanied the original RFP to address issues and updated information that arose in negotiations to date. The company also has developed pro forma contracts for three additional options: Build/Own/Transfer agreement, Engineer/Procure/Construction (EPC) agreement and Site Sale agreement. PacifiCorp will exercise the EPC option only where it can combine it with a bidder's site sale agreement and the parties agree to submit a Build/Own/Transfer agreement.

Prior to the current amendment, PacifiCorp's RFP was focused on PPAs. However, bidders were not precluded from proposing other transaction structures. In fact, condition 1.e. in Order No. 04-091 requires PacifiCorp's RFP summary report, due 45 days after completion of negotiations, to state the number of total bids and number of short-listed bids offering the company an equity position or turnkey ownership. The

company also clarified its intention to consider alternative transaction structures in response to a question at the February 11, 2004, bidders conference.²

As staff stated in its report for the Commission's February 3, 2004, public meeting, PacifiCorp considers conformance with a generic agreement in its evaluation of bids for two reasons: (1) to identify the terms that accompany the bid price and (2) to allow an easier comparison of bids, resulting in a more timely evaluation process.

Condition number 4 in Order No. 04-091 states:

PacifiCorp may use its proposed generic power purchase agreement (PPA) in the bidding process with the following provisos:

- a) The company must modify its scoring standard so that a bidder's score is not reduced for modifying the PPA in a manner that benefits or is neutral to the company and its customers; and
- b) The company will allow bidders to negotiate final contract terms that are different from the generic PPA so long as such negotiated terms constitute contract provisions that are acceptable to PacifiCorp on a legal, contractual, credit and other business basis.

The order further states: "[T]he Commission expressly notes that, by allowing PacifiCorp's use of a generic PPA, it is neither approving the PPA in its entirety nor endorsing any specific term of the PPA."

Through its order on PacifiCorp's current filing, the Commission should modify condition 4 to address the updated PPA and new pro forma contracts for other transaction structures. The Commission also should state that it is not approving these generic agreements in any manner.

The Commission determined that an independent evaluator was not required for RFP 2003-B because it did not include a self-build option and affiliates were ineligible to bid. These conditions remain under the current amendment. Nevertheless, the amendment states PacifiCorp's intention to share with regulators and regulatory stakeholders, subject to confidentiality provisions, the details of the resources being considered as

² Bidder: *Is PacifiCorp open to an equity share of the project?* PacifiCorp: *Yes. However, bidders should not assume that PacifiCorp is obligated to undertake such an investment. See RFP 2003-B Bidders Conference Q&A, February 11, 2004, question no. PP19.*

negotiations progress and prior to committing to any transactions. Staff has proposed a similar process in its comments on updating the Commission's competitive bidding guidelines.

Finally, staff notes it has determined that a utility's estimate of integration costs for wind projects should not be based on its long-range planning target for wind. Instead, estimates of first-year integration costs should be based on existing wind penetration levels with the addition of the proposed project. Integration costs through year five of the project should be based on the utility's projected trajectory of wind acquisitions in each year and associated integration costs. Integration costs should be fixed at the year five level (adjusted for inflation) for the remainder of the project life.

Staff is not seeking Commission action on this issue at this time to allow for timely consideration of PacifiCorp's amendment to RFP 2003-B. However, staff will review integration cost assumptions in a rate case when the utility is seeking cost recovery.

PROPOSED COMMISSION MOTION:

PacifiCorp's March 21, 2006, amendment to RFP 2003-B is consistent with Order No. 04-091 and the company's acknowledged 2004 Integrated Resource Plan. Condition 4 in Order No. 04-091 is modified as follows:

PacifiCorp may use its updated pro forma power purchase agreement, Build/Own/Transfer agreement, Engineer/Procure/Construction agreement, and Site Sale agreement in the bidding process with the following provisos:

- a) The company must modify its scoring standard so that a bidder's score is not reduced for modifying the agreement in a manner that benefits or is neutral to the company and its customers; and
- b) The company will allow bidders to negotiate final contract terms that are different from the generic agreement so long as such negotiated terms constitute contract provisions that are acceptable to PacifiCorp on a legal, contractual, credit and other business basis.

The Commission expressly notes that, by allowing PacifiCorp's use of generic agreements, the Commission is neither approving the agreements in their entirety nor endorsing any specific term of the agreements.