

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the matter of

Puget Sound Energy’s Draft 2021
Request for Proposals for All Sources

DOCKET NO. UE-210220

NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION
COMMENTS

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition (“NIPPC”)¹ appreciates this opportunity to submit comments to the Washington Utilities and Transportation Commission (the “Commission”) on Puget Sound Energy’s (“PSE’s”) Proposed All-Source Request for Proposals (“Proposed RFP”). Overall, NIPPC appreciates PSE’s diligent work that it invested into preparation of the Proposed RFP, and believes that it is generally consistent with most of the Commission’s new competitive procurement administrative rules. NIPPC also notes that PSE has proactively addressed some issues that NIPPC has raised in prior comments, including allowing for and providing greater specificity regarding PSE’s plan to make its transmission resources available to independent power producers.

¹ NIPPC is a trade association whose members and associate members include independent power producers (“IPPs”) active in the Pacific Northwest and Western energy markets. The purpose of NIPPC is to represent the interests of its members in developing rules and policies that help achieve a competitive electric power supply market in the Pacific Northwest. NIPPC’s members include IPPs which may bid into PSE’s Proposed RFP. NIPPC is committed to fair and open-access transmission service, cost effective power sales, consumer choice in their energy supply, and fair, competitive power markets in the Northwest and adjacent markets.

However, NIPPC is concerned that the Proposed RFP needs several significant adjustments to ensure a competitive process occurs. As written, the Proposed RFP is biased in favor of a utility ownership option, as there are several onerous and inappropriate penalties on non-ownership bids. Further, there are aspects of the proposed scoring process that are not transparent, which makes it difficult to adequately review and assess its reasonableness. For these and other reasons, NIPPC strongly encourages the Commission to conditionally approve the Proposed RFP, and order PSE to make revisions prior to releasing it to bidders.

II. COMMENTS

A. **The Proposed RFP’s Bid Adder on PPAs is Contrary to the Legislature’s Intent and Exacerbates the Biases Towards Utility Ownership Options**

The Proposed RFP commits the same fatal flaw as the RFP PSE submitted and withdrew in 2020: it uses a hypothetical cost in a way that harms PPA bids. The purpose of allowing a utility to earn a return on a PPA was to level the playing field between PPA bids and utility ownership bids.² However, the bid adder has the practical impact of making it more likely that the final selected resource is utility owned. This cost adder should be eliminated.

The legislature authorized the Commission to allow utilities to receive a bid on PPAs in the Clean Energy Transformation Act (“CETA”). Section 21 of CETA states, in relevant part:

(1) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with major projects . . . selected in the electrical company’s solicitation

² See generally *In Re PSE’s Proposed All-Generation Sources RFP*, Docket No. UE-200414, NIPPC Comments (July 6, 2020).

of bids for delivering electric capacity, energy, capacity and energy, or conservation. . . . Creation of such a deferral account does not by itself determine the actual costs of the resource or power purchase agreement, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding.

(2) The costs that an electrical company may account for and defer for later consideration by the commission pursuant to subsection (1) of this section include all operating and maintenance costs, depreciation, taxes, cost of capital associated with the applicable resource or the execution of a power purchase agreement. Such costs of capital include:

. . .

*(b) For the duration of a power purchase agreement, a rate of return of no less than the authorized cost of debt and no greater than the authorized rate of return of the electrical company, which would be multiplied by the operating expense incurred by the electrical company under the power purchase agreement.*³

In plain language, Section 21 envisions the following sequence of events: 1) a utility issues an RFP; 2) a PPA resource wins the RFP; 3) the utility executes the PPA and agrees to pay the PPA prices to the Seller for delivered energy and/or capacity; 4) a utility defers PPA costs, including a return to the utility, for later inclusion in rates; and 5) at some point, in a utility's general rate case "or other proceeding," the Commission decides if the utility may recover some or all of the deferred costs from ratepayers. The Commission may decide that the PPA return is not in the public interest and disallow it. The Commission has not established any standards regarding what types of PPAs are eligible, what the standards will be for allowing a rate of return, or what that return might be.

³ 2019 Wash. Sess. Laws ch. 288 § 21 (codified at RCW 80.28.410) (emphasis added).

NIPPC understands the purpose of Section 21 to be to reduce the utility ownership bias. NIPPC has commented extensively on this utility ownership bias, most recently in the Commission’s rulemaking to update its utility procurement rules.⁴ The result of the utility ownership bias is that many resources that would otherwise be in the interests of utility customers specifically or society generally do not now provide the utility with earnings or other financial incentives, and the resources are therefore not always procured. This harmful result requires the sort of policy intervention that the Washington state legislature enacted in CETA’s encouragement of a rate of return on PPAs. Absent policy intervention, it can be difficult for non-utility resources to overcome the utility’s bias in favor of its own resources.

The utility ownership bias can be difficult to quantify, but it exists. One way to address the problem would be to include specific penalties or cost adders to bids that contemplate utility ownership. In other words, to reduce the incentive, impose a cost adder for utility ownership options. This is a reasonable approach because utility owned generation is often more expensive and has greater risks than PPAs.

The legislature decided to take a different approach, and instead addressed this bias by providing an incentive for PPAs. This will reward utilities for doing the right thing. It also serves to remove the negative incentive against ownership, and make the utility more indifferent toward entering into a PPA. If the utility makes the same profit,

⁴ *In re Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity*, Docket No. UE-190837, NIPPC Comments at 1-4, Attach. A-D (Mar. 13, 2020) (discussing the utility ownership bias and incorporating NIPPC’s comments from the Commission’s earlier related rulemaking, specifically Docket No. UE-161024).

or at least has the possibility of making a profit, by entering into a PPA, then the utility is more likely to choose the actual least cost and least risk generation resource.

Rather than encouraging PPAs, however, PSE proposes to make it more difficult for PPAs to win RFPs by making them look more expensive than other bids. The Proposed RFP would effectively penalize PPAs by adding costs onto their bids, which could have the practical impact of a PPA losing this RFP while it may have won an RFP in which there was no PPA penalty.

NIPPC recommends that the Commission prohibit PSE from using the proposed “cost adder” in the RFP screening process. NIPPC takes no position, at this time, on what costs PSE actually defers, so long as PSE complies with CETA. NIPPC also stands prepared to engage with PSE and the Commission on the best potential ways to implement the return on PPA authorization, such as consideration of PPAs on a portfolio basis or identification of categories of contracted resources most deserving of earning the utility a return.

Relatedly, NIPPC notes that the Proposed RFP allows PSE to reject a bid after the RFP if PSE does not receive an order acceptable to PSE, which might include a ratemaking order authorizing PSE to receive a return.⁵ The Commission should prohibit PSE from rejecting a winning PPA bid on the sole grounds that the Commission does not ultimately award a return on the PPA.

⁵ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 37 (May 10, 2021).

B. The Proposed RFP Will Provide Insufficient Data to the Independent Evaluator and Is Inconsistent with WAC 480-107-023(4) and -035(4)

Under the newly revised RFP rules, PSE “must provide the independent evaluator [(“IE”)] with all data and information necessary to perform a thorough examination of the bidding process and responsive bids,”⁶ and the IE must, among other things, score and rank the qualifying bids.⁷ In adopting the new rules, the WUTC stated that, “we expect that the [IE] will have access to the models that the utility uses to compare responsive bids, be able to adjust inputs and assumptions in those models and run the models if necessary, or have the utility adjust and run the model.”⁸

The Proposed RFP does not appear to meet this expectation. It states that PSE’s IE will receive “reasonable access to information, meetings and communications related to offers submitted by all respondents.”⁹ This is insufficient. PSE should revise its Proposed RFP to reflect the IE’s access to all necessary data and information, including any models that PSE proposes to use.

C. The Proposed RFP’s Restriction on Updating Bids to Phase 2 Bidders Is Unfair and Inconsistent with WAC 480-107-075(4)

Another item of concern in the Proposed RFP is the restriction that only Phase 2 bidders are able to submit an updated and lower bid.¹⁰ Phase 1 bidders should also have an opportunity to submit an updated and lower bid. This correction would be more fair

⁶ WAC 480-107-023(4).

⁷ WAC 480-107-035(4).

⁸ *In Re Amending, Adopting, and Repealing Sections of WAC 480-107 Relating to Purchases of Electricity*, Docket No. UE-190837, General Order R-602 at 10 (Dec. 28, 2020).

⁹ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 27.

¹⁰ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 24.

and also more consistent with WAC 480-107-075(4). The rule requires that PSE and its IE suspend negotiations and re-rank bids after a bidder makes any “material changes,” including “material price changes,” to its bid after bid ranking.¹¹ PSE should allow all bidders that meet the RFP’s minimum requirements the same opportunity to revise their bids.

D. The Proposed RFP’s Preference for Network Integration Transmission System Does Is Confusing and There Is Not Adequate Information for Bidders to Choose a Cost-Effective Point of Delivery

The Proposed RFP states that there is a “preference” for bidders with network integration transmission service (“NITS”).¹² However, this is confusing, as bidders cannot request NITS, per the terms of PSE’s Open Access Transmission Tariff (“OATT”).¹³ NITS is only available for load-serving entities, such as PSE’s merchant function.¹⁴ Thus, this preference may discriminate against bidders who are not load-serving entities. This requirement should be removed.

It is unclear why PSE would propose the NITS requirement. If (as NIPPC suspects) the basis for the above requirement is a concern about cost-effectively delivering power to load (i.e., the on-system costs that PSE may incur), then PSE should clearly inform bidders about the most economic points of delivery (“POD”). If PSE has preferred PODs, it should identify them, state the basis for the preference, and identify the incremental costs of delivering elsewhere. Sharing this information would allow

¹¹ WAC 480-107-075(4).

¹² PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 13.

¹³ PSE OATT, Part III, Sections 28.1 and 28.6,
https://www.oasis.oati.com/woa/docs/PSEI/PSEIdocs/PSE_Tariff_-_10-6-20_final.pdf.

¹⁴ PSE OATT, Part III, Section 28.6.

bidders to make informed decisions about where to offer their power to PSE. It would be a feasible approach, unlike the requirement for NITS.

E. The Requirement for Hourly Scheduling May Prevent Economic Sub-Hourly Scheduling

The Proposed RFP states that “PSE requires delivery of as-generated renewable energy on a firm hourly schedule with all associated environmental attributes.”¹⁵ This apparent ban on sub-hourly scheduling is neither explained nor appropriate. FERC requires utilities to accept at least 15-minute scheduling.¹⁶ The least-cost option might entail using intrahour or dynamic scheduling and paying the balancing authority for ancillary services rather than paying for hourly deliveries. Therefore, the Proposed RFP should be revised to ensure that any least-cost bid with sub-hourly scheduling is not excluded from the analysis.

F. PSE Should Explain How It Will Assess Term Sheet Edits for Risk, Particularly Because Three (3) Business Days Is Insufficient to Cure Many Issues

PSE’s plan to “assess proposed edits to the term sheets submitted from bidders by screening for terms and conditions that present unreasonable or excessive risk to PSE or its customers” should be clarified and revised.¹⁷ The Proposed RFP does not explain what risks might be deemed unreasonable or excessive, and it should do so. If PSE decides that such risk is a “fail” rather than a “pass,” the bidder will have only three business days to remedy.¹⁸ Even in the best of circumstances, this may not be sufficient

¹⁵ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 11.

¹⁶ *Integration of Variable Energy Resources*, Order No. 764, 139 FERC ¶ 61,246 at PP. 20, 22, 91 (June 22, 2012).

¹⁷ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 25.

¹⁸ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 25.

time for a bidder to cure an issue. Here, the Proposed RFP will leave bidders in the dark as to: 1) what might result in a failing grade; and 2) if PSE scores a proposal as a fail, what changes could be sufficient to achieve a pass. The Proposed RFP needs to clarify the sorts of risks that PSE may deem unreasonable and excessive. It should also clarify what will be needed to cure any issue. Finally, a longer time period, like fifteen (15) business days would be more reasonable.

NIPPC notes that it would be discriminatory for PSE to require a bidder that initially receives a failing grade to do more to achieve a passing grade than PSE requires of other bidders. The only way to avoid this discrimination (or to identify it, if it occurs) is to provide clarity on the requirements.

G. PSE’s Plan to Calculate ELCC Values Is Incomplete and Likely Inaccurate, Particularly in the Treatment of Biomass, Solar, and Solar Plus Storage

The Proposed RFP states that “The Phase 1 quantitative analysis will approximate the ELCC value of each proposed RFP resource using the ELCC value of a comparable generic resource from PSE’s 2021 IRP analysis” and “[t]he Phase 2 quantitative analysis will be based on resource-specific ELCC values calculated for each Phase 2 resource.”¹⁹ Further, not all Phase 1 bidders will progress to Phase 2.²⁰ In effect, the Proposed RFP will ignore whether a project-specific ELCC is better than that of a generic resource while making a critical decision about the project’s cost-competitiveness. Further, the projects that PSE excludes from Phase 2 might never be examined for their project-specific ELCC. This makes it possible that: 1) a least-cost option is overlooked; and 2)

¹⁹ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 9.

²⁰ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 24.

no one will be able to verify or contest PSE’s likely position that it ultimately selected the least-cost options. The Proposed RFP should be revised to avoid both results.

NIPPC notes this is not an unlikely outcome. Solar resources, for instance, may generally be disadvantaged. The Proposed RFP lists only one generic solar resource, and its ELCC is a mere four percent.²¹ By contrast, there are five generic wind resources, with an average ELCC of nearly 32%, or eight times the ELCC of the generic solar resource.²² It is possible that a solar resource might bid in with a project-specific ELCC higher than four percent yet fail to proceed to Phase 2. Even compared only against other solar resources, the projects with the best ELCCs might be disadvantaged by otherwise having higher costs. The Proposed RFP should not pre-judge whether a project with higher costs is least-cost overall, considering the project-specific ELCC.

If a generic resource ELCC is to be used, then NIPPC has the following additional concerns. First, the list of generic resources in the Proposed RFP appears incomplete relative to the generic resources identified in the 2021 IRP.²³ All generic resource ELCCs—if they are ultimately used—should be clearly disclosed.

Second, NIPPC notes it is unclear what ELCC value might be used for any resource that lacks a corollary generic resource, such as solar plus storage. This could result in the under-valuation of certain resource. It should be clarified.

²¹ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 10.
²² See PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 10.
²³ E.g., PSE 2021 IRP, Docket No. UE-200304, PSE 2021 IRP at 7-28 (Apr. 1, 2021) (listing the ELCC for generic resources not included in the Proposed RFP, including Generic WY West Wind, generic ID Wind, Generic WY East Solar, and Generic WY West Solar).

Finally, NIPPC has two concerns regarding the Proposed RFP’s ELCC valuation for biomass facilities. The generic ELCC value is 0%, because “the 2021 IRP assumes that biomass does not have a firm fuel supply.”²⁴ The Proposed RFP states that “[i]f a resource can demonstrate firm fuel supply, then it would receive a higher ELCC value in our quantitative analysis.”²⁵ First, PSE should disclose the higher ELCC value it might provide, assuming the biomass facility has a firm fuel supply. Second, PSE should allow non-biomass facilities to similarly receive a higher ELCC value if they are able to demonstrate that the 2021 IRP assumptions will not apply.

H. PSE Should Explain Its Proprietary Model and How It Will Conduct Term Normalization

The Proposed RFP relies heavily upon PSE’s proprietary Portfolio Screening Model (“PSM”), which is not transparent and not sufficiently explained.²⁶ As discussed in an earlier section, it is unclear whether even the IE will have adequate access to the model or its inputs to fulfil fundamental IE responsibilities, such as scoring bids and evaluating the scoring process for fairness. The Proposed RFP should more clearly explain how the PSM will treat bids, what underlying assumptions it will apply, and how any third-party, including the IE, will be able to verify the results as fair and reasonable.

²⁴ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 10, 10 n.12.

²⁵ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 10 n.12.

²⁶ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 23, Exhibit A at A-2; *see also* PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 29 (“Except to the extent required by law or regulatory order, PSE shall have no obligation under this All-Source RFP to provide the models and data used in its evaluation process to respondents or other third parties.”).

One particular concern regarding PSE's PSM is the issue of how it treats bids with different term lengths, including utility ownership bids which may have a term length of depreciable life of the asset that is longer than the several potential PPA term lengths. This issue presents a problem inherent in a solicitation that attempts to equitably compare a longer-term obligation placed in rate base (typically 30-plus years) and the shorter-term PPA or other IPP structure, such as a tolling agreement (typically 15 to 25 years). With all other factors being equal, the IPP option will be far less expensive to the ratepayer in the early years, and the utility owned resource declines in costs in its later years due to front loading of rate-base costs and returns in normal rate-of-return ratemaking.²⁷ Additionally, the longer-lived utility owned resource requires the RFP evaluation to include present value and levelization analysis to compare the ratepayer costs of these resources in the RFP. This is an area where major errors can be made.

NIPPC is concerned that PSE's PSM may inappropriately attempt to conduct term normalization or use so-called "generic fill." These approaches assume that the least-cost bid is one of a certain length, and it adjusts shorter-term bids to produce an adjusted bid price as if the bid were of the utility-selected length. These adjustments may include "generic fill," which involves adding hypothetical assumed costs, usually from a generic resource in an IRP, to the underlying bid. There is obviously a significant risk of errors in this form of evaluation of bids.²⁸

²⁷ Of course, the assumed lower costs of the utility-owned resource in the latter years are only possible if the facility costs and performs as advertised in those future years without unexpected capital upgrades, unlike the IPP plant which typically has a fixed price.

²⁸ The Oregon Commission has recognized this potential for errors and need for close scrutiny. *In Re Rulemaking Regarding Allowances for Diverse Ownership*

These approaches are likely to disadvantage shorter-term bids, which are really the bids that should be encouraged in times of rapid technological change. It is also possible that PSE intends to use a different approach, which could be either better or worse than the above. It is impossible to tell from the Proposed RFP. NIPPC recommends that the Commission order PSE to revise the Proposed RFP to clarify how it intends to assess the risks and benefits of resources with different term lengths, and allow additional comments on PSE’s specific approach.

I. The Proposed RFP’s PPA Term Sheet Imposes an Inappropriate Jury Trial Waiver

The Proposed RFP requires PPA bidders, but not ownership-option bidders, to waive their constitutional right to a jury trial.²⁹ No bidder should have to waive that right to sell power to PSE. NIPPC is aware of at least one instance where a utility proposed a jury waiver, and an IE concurred with NIPPC that the provision is “atypical for utility procurements.”³⁰ This provision should be deleted.

of Renewable Energy Resources, Or. Docket No. AR 600, Order No. 18-324 at 21-22 (Aug. 30, 2018) (“In the context of an RFP, it is important to understand when utility assumptions embedded in generic fill, or other IRP values, become the determinative or dominant factor in a resource decision. For example, when a resource is lowest cost and lowest risk in the near term, but because of a short term length it is not selected due to the assumptions associated with “generic fill,” that decision should be subject to greater scrutiny.”).

²⁹ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit E at E-14, Exhibit F at F-10, Exhibit G at G-12.

³⁰ *In Re PacifiCorp Application for Approval of 2020 All-Source RFP*, Or. Docket No. UM 2059, Independent Evaluator’s Assessment of PacifiCorp’s Final Draft 2020AS RFP at 22.

Even if it was not inappropriate to mandate a jury trial waiver on bidders as a general matter, the absence of any similar provision for ownership-option bids makes this waiver requirement discriminatory.

J. The Proposed RFP’s PPA Term Sheet Imposes an Assignment Provision that Could Be Onerous

The Proposed RFP term sheet for PPA bids imposes an assignment provision that is onerous because it limits the ability for standard, commercially reasonable assignments. In addition to other assignment requirements, assignees for any PPA must also have at least “a minimum of three (3) years’ experience in the clean energy generation and operation business, including owning, controlling or operating for at least three (3) years a minimum of [five hundred (500) MW] of clean energy generation capacity.”³¹ This restriction is unduly onerous and should be deleted. For example, the minimum bid size in the RFP is 5 MW (non-inclusive),³² and it is possible that smaller developers or generation owners with limited assets may not have the required experience.

K. The RFP is Too Subjective, and the Non-Price Factors Should Be Limited and the Price Factors Clarified

The Proposed RFP proposes to score bids 70/30 on price and non-price factors. Non-price factors are inherently subjective and allow for the opportunity to unfairly bias the evaluation. Non-price factors also handicap the IE from applying a largely quantitative analysis. NIPPC recommends no more than an 80/20 allocation.

³¹ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit G at G-12.

³² PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 31.

As a general matter, NIPPC recommends that non-price factors be eliminated as much as possible because they can bias the results. Although there will always be certain factors or characteristics of a specific resource proposal that cannot be fully reflected in the bidders' proposed pricing, there are still principles that should govern the small and narrow non-price factors. The key principles that should inform what are appropriate "non-price" scoring factors to include in an RFP are:

- The weighting of any specific Non-Price scoring factors should reflect the magnitude of costs or benefits of that factor relative to the price evaluation score, so that the weighting of evaluation factors reflects PSE's best estimate of the actual costs or benefits to ratepayers of any non-price factor relative to the total costs and benefits of the resource.
- Non-Price Scoring Factors should not result in double-counting costs or savings that have already been captured in the Price Scoring Evaluation (i.e., no double-counting of costs or benefits already embedded in the bidder's bid price and contracting requirements). To do otherwise will distort the true cost and value of the proposed resource to the detriment of PSE ratepayers.
- The assignment of non-price "points" to any resource in the evaluation process should be explained and justified based on a clear nexus between the direction (i.e., cost or benefit) and magnitude of the non-price cost or benefit to ratepayers, and the assignment of non-price points added or subtracted from the price score assigned to each bid must be directionally correct (i.e., non-price evaluation factors that represent costs not embedded in the bid price should be subtracted from the price score and benefits that are not captured in the bid price score should result in points added to the bid price score.
- All non-price scoring factors should be applied uniformly and objectively to all ownership types in a non-discriminatory manner.

As discussed below, NIPPC has concerns that there is insufficient clarity on how PSE and the IE will score bids. This arises in both the non-price factors as well as the price factors, particularly at least one factor appears to potentially be counted in both places.

1. PSE Should Clarify Why And How Some Cost Factors Are Not Assumed To Be Included in PPA Bids

Fairly scoring PPA bids requires an acknowledgment of the many factors that are already incorporated into PPA bids. However, the Proposed RFP appears to identify a number of cost factors that are at risk of being double-counted both in the PPA price and in the additional cost factors. These include: 1) expected or potential carbon control or mitigation costs; 2) fuel and fuel transportation cost; 3) transmission cost; and 4) ancillary services.³³ There may also be others, since the Proposed RFP does not provide a complete list of cost factors (which it ought to).³⁴ PSE should remove these cost factors, or explain why they will not appear in PPA bids and how it will ensure PPA bids do not mistakenly incorporate these costs. In addition, PSE should identify all other cost factors, and remove those that are duplicative of non-price factors.

2. PSE Should Clarify the Fuel Cost Factor and Consider Allowing Fuel Tolling Bids

As noted above, one unclear cost factor for PPAs is “fuel and fuel transportation cost.”³⁵ This cost factor could be reasonable for bids that involve a fuel tolling agreement. A fuel tolling agreement is an essential aspect of any off-take agreement from a gas-fired plant and may be preferred for a pumped storage facility. Its absence here may well violate the requirement that RFPs include standard form contracts, as the

³³ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-2.

³⁴ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-2.

³⁵ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-2.

term sheets included are necessarily incomplete without the tolling agreement.³⁶

However, not all bids will require a tolling agreement. The Proposed RFP should recognize the availability of a fuel tolling agreement and clarify that the fuel cost factor will only apply to bids where a fuel tolling agreement is used.

3. PSE Should Clarify Transmission and Ancillary Services Cost Factors

Two other cost factors that are unclear are those for transmission and ancillary services. These might be appropriate in the circumstance that PSE is taking title to power at the busbar and handling transmission itself. However, from the non-price scoring criteria, that does not appear to be the case. Instead, PSE appears to score bids higher when the bidder already has a fully executed transmission agreement.³⁷ This approach leaves it unclear what PSE aims to accomplish with these cost factors. It appears possible that PSE could double-count a penalty against bidders without finalized transmission arrangements: 1) once in the non-price scoring for not having an executed transmission agreement; and 2) again in the price scoring for having potential transmission costs.

4. PSE's Treatment of Imputed Debt Is Inappropriate

Another proposed cost factor is the "Cost to rebalance debt/equity ratio for imputed debt and consolidated debt."³⁸ NIPPC strongly opposes any consideration of imputed debt when evaluating competitive bids, particularly when one of the resources

³⁶ WAC 480-107-025(8).

³⁷ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-7.

³⁸ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-2.

evaluated is a utility ownership option. In a situation where both utility and non-utility bids are evaluated, the use of imputed debt can bias the results against PPA options.

There is a wide range of risk and benefit associated with both power purchases and utility self-build options. Debt imputation is an item that investor-owned utilities consider a risk of power purchase options. As background, financial rating agencies evaluate a utility's debt-to-equity ratio in assigning ratings. When a utility executes a PPA, the agencies may consider the associated costs to the utility as debt, thus altering the debt-to-equity ratio. However, many different factors affect a utility's debt-to-equity ratio, and imputed debt is not a significant one.

While NIPPC understands the utility's concern with maintaining a healthy finance sheet, the impact to a utility's finance from one PPA as imputed debt should not be overstated such that utility resources are overvalued when compared to a non-affiliated option. First, any consideration of imputed debt should be clear, and it is not clear how PSE will calculate the "cost to rebalance debt/equity ratio for imputed debt" as it plans. Second, there should not be any consideration of imputed debt for power purchases without a comparable evaluation of the risks associated with utility self-builds, as this would seriously bias the results of any bid evaluation.

There are two preferred solutions to this question. First, imputed debt should be one component of an IRP analysis in which the risks and rewards of owning vs. renting resources are evaluated. In such an analysis, all advantages and disadvantages of purchases and ownership options may be evaluated comparably, in a public forum, and the impact of such an evaluation would inform the utility, the Commission, and consumer advocates regarding the value of the two alternatives.

A second option, which is not incompatible with the first, is for the question of imputed debt to be considered in the context of a cost recovery proceeding for the resource, when actual facts are available to the Commission, rather than the utility's assertion that debt will be imputed and costs will rise.³⁹

A third, but less preferable option is for the IE to comparably evaluate all risks and benefits associated with utility purchases alongside those associated with power purchases. This should include, but not be limited to, imputed debt issues. If the Commission selects this option and allows imputed debt to be considered during the RFP process, then NIPPC urges the Commission to require imputed debt to be considered only after the RFP short-list is established. The same IE in this RFP (Boston Pacific Company) previously agreed with this approach for a PacifiCorp RFP. It reported to the Oregon Commission that, under the approach NIPPC now proposes:

the debt equivalence issue is left out of the evaluation process and left as a potential part of the post final-shortlist considerations. Debt imputation, or debt equivalence is a controversial topic driven by the fact that some credit rating agencies view PPAs and Tolling Agreements as the functional equivalent of debt, treating a portion of the payments under these agreements as *hypothetical* debt to the Company's balance sheet. The Commission has the power to request [utilities] to obtain an advisory opinion from a credit rating agency if it wishes to substantiate claims of harm from debt equivalence issues. This is a fair solution because the question of possible harm to ratepayers via this debt equivalence issue

³⁹ The Oregon Commission has previously taken this stance. *In Re Commission Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build-vs.-Buy Bias*, Or. Docket No. UM 1276, Order No. 11-001 at 13 (Jan. 3, 2011) (“First, with regard to the debt imputation issue, we allow the utilities to raise the impact on this practice on credit ratings and earnings in individual rate proceedings. We believe that this issue is more appropriately addressed in the context of an overall examination of a utility's cost of capital.”).

requires a broader discussion of possible balance sheet effects from self-build options and offsetting risk mitigation with third-party bids.⁴⁰

5. PSE's Penalty for Recent Litigation Is Inappropriate

Another non-price scoring factor of concern is the adjustments if a bidder has been engaged in recent material disputes.⁴¹ This requirement should be clarified. The Proposed RFP (but not the rubric) states that *recent* means “within past five years” and *material* generally means disputes involving “legal breaches of greater than \$5 million.”⁴² These two clarifications should appear on the rubric itself.

Additionally, the Proposed RFP should not consider any litigation where the dispute did not involve a breach by the bidder (i.e., disputes about breaches by the non-bidder counterparty, etc.). The focus of the RFP should not be on protecting PSE's shareholders from the risk of litigation, but to obtain the best deal for ratepayers. And the best deal for ratepayers depends on the number and diversity of bids that are received and fully evaluated, which will be reduced if this non-price factor remains in its current form.

L. PSE Should Provide an Opportunity to Comment on Any Developing QF Interconnection Documents and Procedures Prior to RFP Approval

The Proposed RFP states that “PSE is currently developing an agreement and associated procedures for interconnection and transmission of QF resources.”⁴³ This sort

⁴⁰ *In Re PacifiCorp Request for Approval of Final Draft 2011 All Source RFP*, Or. Docket No. UM 1540, Oregon IE's Assessment of PacifiCorp's All Source RFP Design at 18 (Nov. 10, 2011). The Oregon Commission approved PacifiCorp's RFP with this design. Or. Docket No. UM 1540, Order No. 12-111 at 1 (Mar. 27, 2012).

⁴¹ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-6.

⁴² PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-8.

⁴³ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 13.

of policy change should be transparently and publicly pursued. PSE should be required to publish its agreement and procedures as quickly as possible, and the Commission should require PSE to hold an opportunity to comment on any change to interconnection procedures prior to RFP approval.

M. The Proposed RFP Needs Much More Specificity and Clarifications

In this section, NIPPC provides a list of various issues where the Proposed RFP lacks sufficient clarity and/or specificity. NIPPC suggests that PSE clarify or remove the following items:

- The statement that “PSE may differentiate between technology upgrades and new classes of technology in assigning scores for deployment,”⁴⁴ because it is unclear how any differentiation would ultimately result in different scores. If this is retained, then PSE should provide specific information regarding how the scores will be established.
- The notation that the list of cost factors is “not limited to” the identified items, because all cost factors should be identified.⁴⁵
- The requirement that bidders not impose credit requirements on PSE,⁴⁶ because it is not clear what this means.
- The credit requirements that PSE intends to impose on bidders.⁴⁷

The last item is of particular concern. It is essential that bidders understand their requirements early on in the process, yet the Proposed RFP does not clearly spell out what the credit requirement is, what performance assurance would be required without the credit, and when a performance assurance would need to be provided. It merely

⁴⁴ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-6.

⁴⁵ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-2.

⁴⁶ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 33.

⁴⁷ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 39.

states that a performance assurance will be required and must be “acceptable to PSE.”⁴⁸ NIPPC would recommend that any credit requirement be limited to a maximum performance assurance of \$100/kW before commercial operation and \$50/kw after commercial operation starts. Lower credit requirements may be appropriate. Those amounts would be more consistent with market practice and fairer to PPA bidders.

Finally, NIPPC has identified two general questions that PSE should address. First, PSE should clarify the distinction (if any) between the cost adders “[e]xpected or potential carbon control or mitigation costs” and “[c]ost to meet environmental compliance, including capital improvements and/or capacity limitations and restrictions.”⁴⁹ NIPPC notes that the first is a cost factor applicable to PPA bids, while the second is not.⁵⁰ This needs to be clarified.

Second, NIPPC understands that PSE has endeavored to provide a fillable form for bidders to use which will produce an immediate error if the form itself identifies an error. PSE appears to be requiring bidders to rectify these automated errors prior to the filing date, with no ability to cure.⁵¹ By contrast, errors identified by a human review have three business days to cure.⁵² It is unclear how PSE will handle a situation where an attempt to cure a human-identified error causes an automation error. NIPPC asks PSE to clarify that the three business days to cure (or the extended 15 business day cure period,

⁴⁸ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 39.

⁴⁹ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-2.

⁵⁰ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources, Exhibit A at A-2.

⁵¹ PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 23.

⁵² *E.g.*, PSE 2021 All-Source RFP for Renewable and Peak Capacity Resources at 23.

as suggested earlier in these comments) will generally apply to all errors, whether computer- or human-identified.

III. CONCLUSION

For the foregoing reasons, NIPPC respectfully requests that the Commission condition its approval of the Proposed RFP on the proposed revisions and clarifications discussed herein.

Dated this 17th day of May 2021.

Respectfully submitted,



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