



State of Utah
Department of Commerce
Division of Public Utilities

CHRIS PARKER
Executive Director

ARTIE POWELL
Director, Division of Public Utilities

GARY HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Reply Comments

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Artie Powell, Director

Doug Wheelwright, Utility Technical Consultant Supervisor

David Williams, Utility Analyst

Date: June 12, 2020

Re: **Docket No. 20-035-05**, Application of Rocky Mountain Power for Approval of Solicitation Process for 2020 All Source Request for Proposals

Reply Comments

The Utah Division of Public Utilities (“Division”) makes these Reply Comments in Docket No. 20-035-05 regarding the Application of Rocky Mountain Power for Approval of Solicitation Process for 2020 All Source Request for Proposals (Application).

Background

PacifiCorp, doing business as Rocky Mountain Power (the Company), wants to solicit bids for new resources to meet projected capacity and energy needs up to the amount identified in the 2019 Integrated Resource Plan (2019 IRP). The Company filed its Application in this docket on April 9, 2020 seeking approval of the solicitation process for its 2020 All Source Request for Proposals (2020AS RFP).

Initial comments for parties other than the Independent Evaluator (IE) were due May 22, 2020. Comments from the IE were due June 3, 2020. In this memorandum the Division replies to

select initial comments made by the Utah Office of Consumer Services (OCS), the Utah Association of Energy Users (UAE), and the IE.

Discussion

Gateway South Analysis

In its initial comments, the OCS referenced the recent Order from the Commission in the 2019 Integrated Resource Plan docket (2019 IRP Order).¹ In the 2019 IRP Order, the Commission found the Company was in compliance with the relevant guidelines in its development of the IRP. However, the Commission declined “to acknowledge or approve the Action Plan submitted with the 2019 IRP” and stated that the “reasonableness and prudence of some of the specific proposed Action Plan items included in the 2019 IRP are being considered in other dockets...”²

One of the Commission’s concerns regarding the 2019 IRP Action Plan was that the Company’s proposed 400-mile Aeolus-to-Mona transmission line (Gateway South) was not sufficiently analyzed:

We find two basic deficiencies in the analysis placing Gateway South in the Action Plan. First, PacifiCorp did not model the Preferred Portfolio without the yet-to-be built Gateway South as a presumed component. Second, PacifiCorp excluded from its modeling a potential alternative transmission expansion case evaluated by NTTG [Northern Tier Transmission Group] in its 2018-2019 Regional Transmission Plan that demonstrated sufficient merit to warrant PacifiCorp’s further study.³

The Commission did not order any further analysis in the IRP docket; instead, it stated that other dockets will have evidence presented on the reasonableness of specific action items. The Commission did not prescribe a specific docket for the Company to further analyze Gateway South. The Company has several candidate dockets in which to present further study of Gateway South and the NTTG alternate expansion case, including:

1. The current RFP approval docket;

¹ Order, PacifiCorp’s 2019 Integrated Resource Plan (2019 IRP Order), issued May 13, 2020, Docket No. 19-035-02.

² *Id.* at 21 and 27.

³ *Id.* at 22 (bracketed text added).

2. A docket under Utah Code Ann. § 54-17-401 through 404 (if requested by the Company);
3. A general rate case; and
4. A certificate of public convenience and necessity (CPCN) docket for Gateway South.

However, the latter three options would all take place after the selection of the winning bids under the current RFP. The outcome of the Gateway South analysis will have an impact on whether acquiring the winning bids will “most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers” of the Company in Utah. Therefore, the OCS recommends that the Commission should:

direct PacifiCorp to incorporate plans within its RFP documents explaining how it will evaluate scenarios without the GWS [Gateway South] project, and how it will consider other alternatives including the referenced NTTG alternative transmission expansion case.⁴

The OCS also notes that if Gateway South were denied, and the current RFP docket did not take that possibility into account, the RFP might have to be re-issued.

The Division agrees that if no further analysis on Gateway South is performed by the Company before selecting bids for the current RFP, the ultimate disposition of Gateway South could impact whether the selected bids would likely result in the lowest reasonable cost to Utah ratepayers. Therefore, the Division recommends that analysis be performed in the current docket. At the least, the analysis should compare scenarios with and without Gateway South and the NTTG transmission plan, as referenced in the 2019 IRP Order. It would make sense to also evaluate the PTC extension and Wyoming wind tax issues at the same time.⁵

If the Commission does not require the Company perform the analysis described above in the current RFP docket, the Division recommends that the Company be required to describe its timeline for complying with the 2019 IRP Order in the RFP. The bidders deserve to have

⁴ Comments from the Office of Consumer Services (OCS Initial Comments), Docket No. 20-035-05, May 22, 2020, p. 3 (bracketed text added).

⁵ In the 2019 IRP Order, the Commission stated: “[W]e fully expect that dockets related to resource approval or a certificate of public convenience and necessity would include adequate evaluation of the PTC extension. We also expect those dockets to give meaningful attention to potential future increases in the Wyoming wind tax.” 2019 IRP Order p. 12.

transparency regarding the approval process of Gateway South and evaluation of alternatives, and how it could affect the winning bids. The Division recommends that the following be included in the RFP (again, assuming the Company does not address the Commission's modeling concerns in the RFP docket):

- The docket(s) in which the Company expects to address the Commission's IRP modeling concerns, and timelines to the extent known;
- How Gateway South will factor into the planned modeling analysis and the cluster study (e.g. does all analysis assume its construction, and at what costs and timeline); and
- The implications for the winning bids of the RFP if Gateway South is not approved as assumed in the modeling analysis and cluster study (e.g., would the RFP be canceled and reissued)

In its initial comments, the IE recommends that:

PacifiCorp hold a Transmission Workshop separate from the Bidders Conference to address transmission issues, including issues identified by OCS and Interwest regarding the Gateway South transmission project, other transmission options available for bidders, and provide an overview of the Cluster study process it intends to implement for this RFP.⁶

The Division supports this recommendation. At this workshop, the Company can address its plans to comply with the 2019 IRP Order.

Deadline for Bid Eligibility

In its Initial Comments, the IE recommended that:

unless there are any specific reasons to the contrary, it appears reasonable to us that projects in the queue as of April 1, 2020 should be allowed to bid. As Interwest notes, this will allow the potential for more competition while not creating any fairness issues since it appears that potential bidders may not have known in advance that January 31, 2020 would be the cutoff date.

The Division supports this recommendation, pending any issues raised by the Company. The Division reviewed the interconnection queue and determined that this change would make ten

⁶ Task A7 Report of the Utah Independent Evaluator Regarding PacifiCorp's Draft All Source Request for Proposals (IE Initial Comments), Docket No. 20-035-05, June 3, 2020, p. 43.

additional LGI projects eligible to bid, with a combined proposed capacity of 1,934 MW, in a variety of locations.⁷

UAE Initial Comments

The Division supports the Utah Association of Energy User's (UAE's) comments regarding the risks of build-transfer agreements (BTAs) versus the risks of power purchase agreements (PPAs). UAE points out that PPA projects assume some risks that BTA projects do not, including curtailment, revenue requirement costs, and performance guarantees.⁸ The Division recommends that the Company work with the IE to address whether it is feasible to address these issues in evaluating PPA projects against BTA projects. Similarly, the Division supports the OCS's comments recommending that the Company explain the evaluations of BTA bids and PPA bids with respect to terminal costs and the calculation of revenue requirements.⁹

IE Comments on Non-Price Factors

The Division supports IE Comments with regard to non-price criteria in the RFP. The IE notes that 5% of the total 25% score in the non-price criteria is reserved for "Conformity to RFP Requirements."¹⁰ The Division agrees that:

the majority of the criteria listed here are really minimum eligibility requirements and not non-price evaluation criteria. Arguably, PacifiCorp would actually give 1% to a proposal that probably should be rejected as non-conforming.¹¹

⁷ Interconnection queue spreadsheet downloaded from PacifiCorp Transmission's OATI website, at <http://www.oasis.oati.com/ppw/>

The list is found under the "Generation Interconnection and TSR Queues" folder. As in the Division's initial comments, only large projects (LGI) were counted. The 1,934 MW represent the LGI projects in the queue with request dates between January 31, 2020 and April 1, 2020.

⁸ Initial Comments of the Utah Association of Energy Users on PacifiCorp's Proposed Solicitation Process Docket No. 20-035-05, May 22, 2020, pp.

⁹ OCS Initial Comments, pp. 5-6.

¹⁰ IE Initial Comments p. 36, citing the Company's Application, Appendix L, Non-Price Factor 1.

¹¹ *Id.* at 36-7.

Therefore, the Division agrees that the RFP scoring should “reallocate all or most of the 5% of the 25% to other criteria that reflect more significantly on project viability.”¹²

The Division also agrees with the IE that the section on contract compliance in Appendix L is confusing. This section describes the points awarded for “Contract Conformance” as follows:

Bid states that redline and comments will be provided upon selection = 0%
Comments provided / No redline = 5%
Comments and redline provided = 10%¹³

These criteria are discussed in Section 4 of the Draft 2020AS RFP (Section 4.C. for PPA agreements, and Section 4.D. for BTA agreements).¹⁴ Taking the PPA pro forma agreement as an example, the Application states:

The bidder’s proposal must contain their redline to the applicable pro forma documents based on the specific bid; Appendix E-2 – PPA Documents and/or Appendix E-3 – BSA Documents. The redline should contain all of Bidder’s exceptions to the terms and conditions of the pro forma document. Bidders objecting to terms should provide alternate language and context to the objections for PacifiCorp to evaluate the alternate language. A bid that only provides a statement of “to discuss” or similar non-substantive commentary on the pro-forma agreement terms will be considered a non-conforming bid and subject to potential rejection in this RFP.¹⁵

The Division finds this language unclear when read in conjunction with Appendix L. As the IE Initial Comments point out, a bidder could provide a redline with a large number of redlines that would ultimately be unacceptable to the Company, yet still receive the full 10%, while a bidder who chose to wait until selection to hire an attorney to review the language would receive 0%. It is also not clear whether a bid that states “comments will be provided upon selection” will be rejected as non-conforming (as Section 4.D. implies), or simply receive 0% for that category (as Appendix L states).

¹² *Id.* at 37.

¹³ See Application for Approval of Solicitation Process, Docket 20-035-05, filed April 10, 2020. The Draft 2020AS RFP and Associated Appendices (2020AS RFP) is attached to the Direct Testimony of Bruce W. Griswold. The non-price factors are summarized in Appendix L of the 2020AS RFP.

¹⁴ 2020AS RFP, Section 4, pp. 16-18.

¹⁵ 2020AS RFP, Section 4.D., p. 17.

It is also not clear whether the redlines and contract exceptions to be provided in the initial bid are binding throughout the process, or simply an opening negotiation position with the expectation that the contract terms will be changed through further negotiation once the final shortlist is selected. In other words, if a bidder does not object to a contract provision in its initial bid, does that mean it cannot raise that issue later in the process? If the initial redline is binding, the RFP should so state. If the initial redline is not binding, it is not clear why a bidder who didn't want to spend the money to have an attorney mark up the contract until it makes the shortlist should be penalized in the initial stages of the RFP. If the initial redline is not binding, a bidder could provide an initial mark-up simply to get the full 10%, while later on changing its position and suggesting contract changes that are detrimental to ratepayers. This would defeat the purpose of the scoring category. Therefore, the Division request clarity regarding the scoring of this category. The Division also agrees with the IE that this category should be reduced to a total of 5%, as opposed to 10%.

Cc: Michele Beck, Utah Office of Consumer Services
Jana Saba, Rocky Mountain Power