

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 77

In the Matter of
PACIFICORP, dba PACIFIC POWER,
2021 Integrated Resource Plan

INVENERGY LLC'S REPLY IN
SUPPORT OF NORTHWEST &
INTERMOUNTAIN POWER
PRODUCERS COALITION'S
REQUEST FOR CERTIFICATION, OR
IN THE ALTERNATIVE, REQUEST
FOR CLARIFICATION

I. INTRODUCTION

Invenergy LLC (“Invenergy”) submits this reply to address two issues raised by NewSun Energy LLC (“NewSun”) in its response to the requests filed by PacifiCorp and the Northwest & Intermountain Power Producers Coalition (“NIPPC”) for certification, or in the alternative, request for clarification of the January 21, 2022 ruling (“Ruling”) by Administrative Law Judge (“ALJ”) Katherine Mapes in Docket LC 77. As stated in Invenergy’s comments filed in support of NIPPC’s request, Invenergy is not a party in LC 77 and does not seek party status. Rather, Invenergy submitted comments – and now submits this Reply – in support of NIPPC’s request and to substantiate NIPPC’s contention pursuant to OAR 860-001-0110(2) that the Ruling, as it applies to project-specific information received from bidders, “may result in detriment to the public interest” and that “good cause exists for certification.”

Invenergy submitted proposals in response to PacifiCorp’s 2020 “All-Source” RFP (“2020AS RFP”) and, in doing so, designated project-specific information that Invenergy deemed confidential, as required by Section 2.D of the 2020AS RFP. Two

Invenergy projects were included on the Final Shortlist; Invenergy is in negotiations with PacifiCorp to enter into definitive agreements with PacifiCorp with respect to both projects. Invenergy's concern is in maintaining the confidentiality of project-specific information it designated as confidential.

II. PROJECT SPECIFIC PRICE INFORMATION AND PROJECT-SPECIFIC PLANT OPERATING CHARACTERISTICS SHOULD BE PROTECTED FROM DISCLOSURE TO COMPETITORS

Invenergy explained in its prior filing the potential harm from disclosure of project-specific bid information, including both price information and project performance information, to competitors. Although NewSun agrees that project specific *price* information should be redacted from any disclosure by PacifiCorp, NewSun contends that “primary plant operating characteristics” should be available to GPO signatories in LC 77 because “IRP modeling . . . primarily relies on the inputs of plant size, availability, dispatchability, production levels and their variations relative to their supply inputs (wind and sun, for example, for renewables).”¹

What NewSun does not explain is why its ability to participate in LC 77 and comment on the IRP modeling is dependent on knowing project-specific operating characteristics for projects that are *not yet under contract* to PacifiCorp and therefore are not yet and may never be committed to supplying power to PacifiCorp. As with project-specific price information, what NewSun refers to as “primary plant operating characteristics” should be redacted from any disclosure to competitors under the GPO. That information is not relevant to understanding the characteristics of projects

¹ See NewSun's Response to Requests for Certification at 4.

contractually tied to the PacifiCorp system, may not be representative of the characteristics of projects available to PacifiCorp in the future, and would provide a competitor with a distinct and unfair advantage in any future competitive bidding to PacifiCorp or to other offtakers in the region.

**III. THE EXCEPTION TO CONFIDENTIALITY IN PACIFICORP'S PRO
FORMA NON-DISCLOSURE AGREEMENT DOES NOT APPLY TO
LC 77**

As NewSun points out,² PacifiCorp's pro-forma non-disclosure agreement ("NDA") includes an exception:

(b) Upon the establishment of a docket or proceeding relating to the Bid before any public service commission, public utility commission, or other agency having jurisdiction over PacifiCorp, Recipient's obligations to Disclosing Party with respect to the Confidential Information will automatically be governed solely by the rules and procedures governing such docket and not by this Agreement.

The quoted language, however, concerns only "establishment of a docket or proceeding relating to the Bid." "Bid" as used in the NDA refers to the bid "submitted in response to PacifiCorp's 2020AS Request for Proposals." LC 77 is a docket established as part of the integrated resource planning process, a forward-looking planning process.³ Even Guideline 13, "Resource Acquisition," under the Commission's Order No. 07-002 does not look backward to a prior RFP, but forward by requiring the electric utility to:

² See NewSun's Response to Requests for Certification at 22.

³ As provided in OAR 860-027-0400,

"Integrated Resource Plan" or "IRP" means the energy utility's written plan satisfying the requirements of Commission Order Nos. 07-002, 07-047 and 08-339, detailing its determination of future long-term resource needs, its analysis of the expected costs and associated risks of the alternatives to meet those needs, and its action plan to select the best portfolio of resources to meet those needs.

- Identify its proposed acquisition strategy for each resource in its action plan.
- Assess the advantages and disadvantages of owning a resource instead of purchasing power from another party.
- Identify any Benchmark Resources it plans to consider in competitive bidding.

Thus, contrary to NewSun’s contention, the NDA does not amount to consent by bidders to disclosure of their bidder-designated confidential information in a future IRP proceeding. LC 77 is not a docket or proceeding established to challenge, interpret or adjudicate bids under the 2020AS RFP, including Invenergy’s bids. Rather, this docket will end with the Commission’s acknowledgment of PacifiCorp’s 2021 IRP. Under the terms of the NDA, therefore, bidders in the 2020AS RFP – including Invenergy – did not agree that disclosure of their project-specific, confidential bid information would be governed by the rules and procedures of this or any other *IRP* docket.

IV. CONCLUSION

Invenergy does *not* object to the disclosure of its bidder-designated confidential information to other signatories to the General Protective Order or any modified protective order, including the Oregon PUC, ALJs, staff, or any other interested party that is *not* a competitor. The promotion of fair competition under an RFP, however, cannot rely on the fiction that employees and executives, once aware of the confidential bidding

information of their competitors, will forget it in contexts outside of this particular proceeding.

Dated this 18th day of March 2022.

Respectfully submitted,



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