



located within PGE's service territory and instead will likely be located in a rural part of Oregon with abundant renewable resources, which will necessitate transmission by a third-party utility, most likely Bonneville Power Administrative ("BPA"), to deliver the energy to PGE's system. There are two aspects of PGE's draft RFP related to transmission that are plainly anticompetitive and unreasonable – (1) the use by PGE of ratepayer funded point-to-point transmission rights, and (2) the onerous scheduling requirements of the draft RFP.

### **1. PGE's Proposal for Use of Transmission Rights is Anticompetitive**

First, PGE proposes in Section 6.1.6 of the RFP that bidders must provide a "reasonable, achievable plan for acquiring long-term firm transmission service," but at the same time PGE will not allow for use of "PGE's transmission rights" by any IPP bidders. *PGE's Draft RFP* at Section 6.1.6. Although this may sound superficially innocuous, it is an anticompetitive approach that allows PGE to use its ratepayer-backed position as a monopolist to its distinct advantage.

The ability to obtain transmission is a critical component of any successful bid where the likely winner will be located off-system in BPA's footprint. However, at the same time, the RFP will only result in acquisition of 100 average megawatts ("MW") of renewable resources. Given the capacity factors of the likely solar or wind resource to prevail, that means around 300 MW of overall transmission capacity on the BPA system is necessary to serve the needs of this RFP. Thus, to require each bidder to individually secure transmission rights makes no sense in the real world. Yet PGE has designed the RFP in a manner that benefits bids, like PGE's benchmark resource, that already hold point-to-point transmission rights.

It is important to understand the basics of transmission to evaluate the unfairness and

unreasonableness of PGE's approach. The first important point is that firm point-to-point transmission cannot be reserved and guaranteed to be available for future use without actually signing a contract for a long-term firm point-to-point transmission. Without such a contract, it is difficult to understand how a bidder could meet PGE's requirement that it have an achievable plan to secure the transmission later. The RFP leaves this question unanswered, and it is safe to assume at this point that bids will be scored lower or potentially eliminated altogether if they do not possess a long-term firm point-to-point transmission agreement with BPA to PGE's system.

The second important point to understand is that to sign a long-term firm point-to-point transmission agreement for 300 MW of transmission capacity is an enormously expensive and generally irreversible undertaking. BPA's current long-term firm point-to-point transmission rate is \$1.471 per kilowatt per month,<sup>1</sup> which calculates to be a charge of \$441,000 per month<sup>2</sup> or \$5,292,000 per year for 300 MW of capacity without considering ancillary services.<sup>3</sup> Under FERC's open access regime and BPA's transmission tariffs, a long-term firm point-to-point transmission agreement is a take-and-pay contract, and if the transmission customer does not use the transmission it must nevertheless pay for the transmission capacity for the entire term of the agreement. And to ensure the right to 20 years of transmission service, the long-term firm point-to-point transmission agreement under the pro forma OATT has a minimum five-year term to secure roll-over rights, resulting in a minimum five-year cost of \$26,460,000 for 300 MW of capacity.<sup>4</sup> FERC has rejected attempts by transmission customers to terminate such agreements

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<sup>1</sup> See <https://www.bpa.gov/Finance/RateInformation/RatesInfoTransmission/FY18-19/BP-18%20Final%20Transmission%20Rate%20Schedules%20and%20GRSPs.pdf>.

<sup>2</sup> \$1.471/kW/month x 300,000 kW of capacity = \$441,000 per month.

<sup>3</sup> \$441,000 per month x 12 months = \$5,292,000 per year.

<sup>4</sup> \$5,292,000 per year x 5 years = \$26,460,000.

and required such customers to pay for the reserved transmission capacity, and previously planned upgrades to the system, even if they do not use such capacity. *See, e.g., Nevada Power Co.*, 109 FERC ¶ 61,177, 61,855 (Nov. 19, 2004).

The salient point here is that a normal market competitor cannot simply sign a contract for 300 MW of long-term firm point-to-point BPA transmission with the hopes it will prevail in PGE's RFP and then easily avoid paying the enormous price tag for the minimum term of five years if instead PGE wins its RFP. Assuming the bidder could not win another RFP or find someone else who wanted to buy the transmission rights, it would be liable to BPA for at least \$26,460,000 for five years of unused transmission. This problem also exists for smaller projects where the cost risk would simply scale down proportional to the size of the project's capacity.

However, this is not a problem for a large utility like PGE because it can likely redirect the transmission rights to another use for its ratepayers for five years, or even if the transmission cannot all be truly used later it will likely just include the costs in its customers' retail rates as another cost of doing business. Given PGE's extensive use of BPA transmission, the Commission would have difficulty ascertaining whether PGE is holding and charging its ratepayers for BPA transmission in excess of its actual needs at any moment in time. Thus, PGE has a distinct advantage in any RFP where an advantage can be gained by holding potentially unneeded point-to-point transmission rights.

Moreover, CREA understands from the analysis of other parties that PGE may even be hoarding transmission capacity in excess of its own needs. *See Comments of Northwest and Intermountain Power Producers Coalition* at 6 & n.2. Indeed, although PGE has not made its arrangements transparent, it is reasonable to assume that PGE has already acquired the long-term

firm point-to-point transmission for its benchmark resource or else the benchmark would itself be unable to meet the RFP's bidding requirements. Additionally, tying up excess transmission capacity for the benchmark and other any uses will certainly reduce the ability of PGE's competitors to demonstrate that they have a viable plan to obtain transmission. Once PGE signs a long-term firm point-to-point transmission agreement, BPA must reserve that capacity and make it unavailable for any other bidder with a more cost-effective bid than PGE's benchmark. Yet PGE will also bar that competitor from using "PGE's transmission" to serve PGE's ratepayers with a more cost-effective resource. See *PGE's Draft RFP* at Section 6.1.6.

There have been serious concerns raised in this RFP with PGE's reservation of transmission capacity for anticompetitive purposes, which necessitate this Commission's attention. If PGE were reserving network transmission on PGE's own system or the interfaces to PGE's system without a finally committed generation resource, it would be a per se violation of FERC's open-access rules. *Entergy Service, Inc. v. FERC*, 375 F3d 1204, 1207-10 (D.C. Cir 2004). Oregon utilities have been subjected to enforcement for such violations. See *In Re Portland General Elec. Co.*, 131 FERC ¶ 61,224, PP 5-7 (June 4, 2010); *Arizona Pub. Serv. v. Idaho Power Co.*, 89 FERC ¶ 61,061, 61,201 (Oct. 18, 1999). In *In Re Portland General Elec. Co.*, FERC's enforcement staff found that PGE unlawfully reserving network capacity without committed generation resources, and FERC explained that "a reason for the requirement to designate resources for the reservation of transmission capacity is so that transmission providers would not have an incentive to tie up valuable transmission capacity in excess of what it needed to serve native load." 131 FERC ¶ 61,224, at P 6.

In the case of point-to-point transmission on BPA's system, FERC placed no limit on the

amount of transmission that may be reserved by transmission customers like PGE, but it also stated that hoarding transmission violates competitive wholesale market principles. *Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 61 Fed.Reg. 21,540, at 21,574 (1996). FERC determined that hoarding of transmission capacity is unlikely to occur because, given the requirement to pay for unused transmission capacity, “it is in the economic self interest of reservation holders [i.e., here, PGE] to make available unused capacity to the market.” *Id.*; see also *Preventing Undue Discrimination & Preference*, 118 FERC ¶ 61,119, at P 811 (Feb. 16, 2007). In this case, PGE has not proposed to make its transmission capacity reservations available for use by the “market,” even though those reservations would go unused if PGE does not prevail in the RFP. This is presumably because PGE does not expect the Commission will require PGE’s shareholders to absorb the cost of that reservation if PGE does not prevail in the RFP.

The whole regulatory construct designed to prevent anticompetitive conduct fails if this Commission allows the transmission customer/monopoly utility to reserve limited transmission capacity for its own exclusive use in a competitive solicitation for generation resources while simultaneously passing on the costs of that reserved transmission to its end-use retail customers. In the case of PGE’s unused BPA transmission rights, therefore, the Commission should either: (1) require a complete auditing and accounting of all of PGE’s BPA transmission rights to ensure PGE’s shareholders remain solely responsible for all costs tied to the benchmark’s transmission arrangements, or (2) require PGE to make that unused BPA transmission transparently known

and available for use by bidders. If the Commission were to approve the RFP without imposing these requirements, it would be inviting anticompetitive conduct and abuse of PGE's ratepayer-backed market power.

## **2. PGE's Scheduling Restrictions Are Anticompetitive**

Next, PGE proposes entirely unreasonable scheduling requirements on IPP bids from resources located outside of PGE's balancing authority area ("BAA"). PGE requires in Section 6.1.7 of the draft RFP that any resource located outside of PGE's BAA must use hourly block scheduling and may not use more cost-effective methods of delivery, like 15-minute scheduling or a pseudo tie into PGE's BAA.

This restriction is entirely unreasonable. Over five years ago, FERC found that this hourly scheduling regime results in unjust and unreasonable transmission charges for intermittent generators, such as the bidders into this RFP. *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, at P 20, 77 Fed. Reg. 41,482 (July 13, 2012). FERC explained that "the hourly scheduling protocols of the *pro forma* OATT reflect historical practices associated with operation of conventional generating resources that are relatively predictable and controllable when compared to [variable energy resources]." *Id.* After investigating the issue, FERC found that the "existing hourly scheduling protocols can expose transmission customers to excessive or unduly discriminatory generator imbalance charges." *Id.* at P 22. Thus, FERC expressly required that *all* transmission customers be entitled to schedule on increments of less than an hour, including 15-minute scheduling. *See id.* PGE asks to eliminate this right to schedule on increments of less than one hour for its competitors in this RFP.

This will not be a problem for any PGE benchmark resource which can be easily pseudo-tied into PGE's BAA, just as the Company-owned Biglow and Tucannon wind farms recently accomplished. Given PGE's decision to move its own wind farms into its BAA, it is safe to assume that PGE believes that BPA's wind balancing charges will exceed the balancing costs in PGE's own BAA, which now benefits from the larger footprint and automated real-time dispatch in the Energy Imbalance Market. But Section 3.8.4 of the pro forma PPA in Appendix A to the draft RFP states that IPPs signing a PPA may not use a pseudo tie. Thus, competitive bidders must use hourly block schedules that FERC has found to result in unjust and unreasonable balancing charges, while PGE-owned bids may pseudo tie into PGE's BAA and avoid scheduling altogether. These requirements are unfair and anticompetitive.

The Commission should require PGE to allow its competitors submitting PPA bids to use the same intra-hour and dynamic scheduling options that PGE has recently itself used for its Company-owned resources.

**B. The Commission Should Eliminate the Penalties on PURPA QFs**

The next problem with the RFP is that PGE proposes to penalize IPPs who intend to exercise PURPA rights. Section 6.1.5 of the draft RFP states, in pertinent part:

Bidders with projects that have an executed contract with PGE or are actively negotiating a contract under Schedule 202 are not eligible to bid the project in this RFP. If a Bidder wishes to withdraw its project from negotiations under Schedule 202, PGE invites the Bidder to bid the project into this RFP, provided the Bidder has notified PGE accordingly.

This restriction is not reasonable. As for bidders actively engaged in Schedule 202 negotiations (which could drag on for many months or years), the Commission's existing RFP



Guideline 6 already allows such non-standard QFs, larger than 10 MW, to bid into PGE's RFP and includes no requirement that they withdraw from PURPA processes.

The restriction that QF projects currently under contract may not bid is equally unreasonable. The PURPA PPA would prohibit the QF from securing a new PPA in this RFP with rates higher than those in the PURPA PPA because PGE's PURPA PPAs provide PGE with discretion to require use of the same rates and terms in any new contract during the term of a terminated PURPA PPA. *See* Order No. 06-538 at 29-30. Thus, if a QF has entered into a PPA with PGE under PURPA but believes it can sell the power under some different configuration at a price competitive enough to win this RFP, PGE's ratepayers would be better off than if that QF simply performed on the PURPA PPA because the resulting prices would necessarily be lower than the prices in the PURPA PPA. For example, a QF that signed a standard PURPA PPA for a 10-MW solar QF may believe it can sell the power at lower cost at a 20-MW capacity and offer to bid that 20-MW project into the RFP to replace the standard PURPA PPA. Thus, allowing a QF project with an executed PURPA PPA to participate could only result in an improvement in pricing to PGE and its ratepayers. It is contradictory for PGE to complain about its overpriced PURPA projects while simultaneously blocking those same PURPA projects from bidding to sell their power at more advantageous conditions to PGE.

In sum, these PURPA restrictions are not reasonable, and instead they appear to CREA to be designed to discourage use of PURPA in the future. The Commission should eliminate the PURPA restrictions.

## CONCLUSION

For the reasons explained above, in addition to numerous other modifications proposed in other parties' comments, the Commission should correct the anticompetitive transmission and PURPA restrictions in the draft RFP.

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