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**V. Denise Saunders**  
Associate General Counsel

February 22, 2013

***Via Electronic Filing and U.S. Mail***

Oregon Public Utility Commission  
Attention: Filing Center  
550 Capitol Street NE, #215  
PO Box 2148  
Salem OR 97308-2148

**RE: PGE's Reply to Northwest and Intermountain Power Producer's Coalition**

Attention Filing Center:

Enclosed for filing in the above-captioned docket are an original and one copy of Portland General Electric Company's ("PGE") Reply to Northwest and Intermountain Power Producer's Coalition's February 13<sup>th</sup> letter to the Commission.

Please note that Attachment B to PGE's letter and collective Exhibit 1 to Attachment B are **CONFIDENTIAL** and subject to protection by General Protective Order No. 11-097. Attachment B and collective Exhibit 1 are being provided in electronic format (CD) and have been placed in a separately sealed envelope bearing the legend "CONFIDENTIAL."

This letter and the enclosed filing are being filed by electronic mail with the Filing Center and provided by electronic mail to all the parties on the UM 1535 service list. PGE is simultaneously serving the CD containing confidential Attachment B and collective Exhibit 1 upon all parties who have signed the protective order.

An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "V. Denise Saunders" with "for V. Denise Saunders" written below it.

V. DENISE SAUNDERS  
Associate General Counsel

VDS:qal  
Enclosures  
cc: UM 1535 Service List



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*Via Electronic Filing and U.S. Mail*

Public Utility Commission of Oregon  
550 Capitol Street N.E., Suite 215  
Salem, Oregon 97301-2551

**RE: UM 1535 - Request for Proposals for Capacity and Baseload Energy Resources**

Dear Commissioners:

Portland General Electric Company (PGE) submits this letter in response to the February 13, 2013 letter of the Northwest and Intermountain Power Producers Coalition (NIPPC). In its letter NIPPC asks the Commission “to encourage PGE to return to the Commission’s RFP process or at least collect the relevant information regarding PGE’s decision while it is still available for production.” As discussed more fully below, PGE has never deviated from the Commission’s RFP process. PGE has carefully followed the Commission’s RFP Guidelines and Orders and has gone to great lengths to comply with suggestions from the Commission, its staff, and stakeholders to ensure the RFP process has been fair, robust, and transparent. PGE is providing the Commission with responses to the questions included in Attachment 2 to NIPPC’s February 13<sup>th</sup> letter (See Attachment B) and will cooperate with the independent evaluator (IE) in ensuring that the Commission has any relevant information that it desires regarding the RFP process.

**1. PGE has Engaged in a Robust and Protracted Public Process with Extensive Commission Oversight**

NIPPC’s letter begins by emphasizing the importance of Commission review prior to major utility decisions. PGE recognizes the value of Commission input and review and believes that the record of the RFP demonstrates that, not only has PGE kept the Commission and stakeholders informed about PGE’s resource procurement actions, but PGE has gone to great lengths to adapt its activities to address concerns raised by the Commission and stakeholders.

PGE first described its intent to issue an RFP for energy and capacity resources in its 2009 IRP action plan which was acknowledged by the Commission in November of 2010. In the intervening two and a quarter years PGE has engaged in extensive public process and review of its RFP. The process has included the opportunity to provide input on the selection of the IE, multiple opportunities for Commission staff, parties and bidders to comment (with eight submissions of letters or comments by NIPPC), two public meetings, four workshops for bidders, two workshops for stakeholders, and 191 responses to questions from bidders and stakeholders

posted on the independent evaluator's website.

At every turn, PGE has worked diligently to address concerns raised by the Commission, staff, stakeholders, bidders, and the IE. In particular, PGE made significant changes to the RFP in order to satisfy concerns raised by NIPPC and keep the process moving forward. These changes included retracting our initial draft capacity RFP and reissuing it as a combined capacity and energy RFP, opening up PGE-owned sites to third party bidders, removing consideration of dynamic transfer rights from the initial evaluation of bids, and adding more detailed credit requirements to the RFP.

The Commission has engaged in diligent oversight of the process. As NIPPC notes “[t]he Commission has properly shown interest in ensuring PGE’s RFP is conducted in a fair manner.” NIPPC at 2. Commission staff attended all workshops and commented on every phase of the process. More importantly, consistent with its RFP Guidelines, the Commission appointed an independent evaluator to oversee the process to ensure that it was conducted fairly and properly. *See*, Order No. 06-446, Guideline 10b, at 12. The Guidelines direct the IE to consult and confer with Commission Staff as necessary. *Id.* at 7. It is our understanding that the IE and Staff met regularly, and that Staff was engaged fully in the process, utilizing the IE website to keep abreast of all developments. The Commission has considered the RFP in two public meetings and, in June of 2012, issued an order approving the combined RFP.

PGE has included, as Attachment A, a chronology of the opportunities for Commission and public input and review of the RFP. As the chronology shows, the two year process has provided ample opportunities for review and oversight.

## **2. Because Bid Prices Have Expired. Acknowledgment of the Final Short List is Not Feasible nor Prudent**

NIPPC’s newest complaint about PGE’s RFP is that PGE is not seeking acknowledgment of the final short list. NIPPC admits that PGE is not required to seek acknowledgment<sup>1</sup> and, contrary to NIPPC’s intimations, PGE has never previously sought acknowledgment of a short list under the Commission’s RFP Guidelines.

In this case, the protracted nature of the RFP process has made acknowledgment infeasible. Bids were submitted over six months ago. PGE initially asked bidders to hold their prices firm for 140 days and had to ask bidders to extend their prices once, due to additional regulatory process initiated by filings made by NIPPC and one of its members in December. Even with the extension, bid prices expired on January 31, 2013 – the day after the IE released its final report. As soon as the IE released its Final Report, PGE acted promptly, while bid prices were still valid, to finalize the short list, issue a notice to proceed with the winning bid for the flexible capacity

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<sup>1</sup> NIPPC was a very active participant in the development of the Competitive Bidding Guidelines and, at no time during that process, did NIPPC suggest that acknowledgment of the short list should be required. At least one key stakeholder, ICNU, questioned the value of the acknowledgment process. Order No. 06-446 at 14.

resource, initiate negotiations with the top bidder for the energy resource, and inform the Commissioners, Staff, and key stakeholders (including NIPPC) of our plans. PGE did not think it was in the best interest of its customers to risk losing competitive prices by asking bidders to continue to hold prices firm in order to engage in a discretionary regulatory process. Nor did PGE believe that extending the process would be fair to bidders who, in some cases, began preparing their bids when the first draft of the capacity RFP was released almost two years ago. Moreover, PGE's need for the resources is imminent. Our most recent IRP Update continues to show a need for the flexible capacity resource beginning in 2015, a mere two years away and indicates the need for base load energy in 2016.

As discussed above, PGE engaged in a robust and transparent process with heavy involvement by the Commission and stakeholders. The IE verified that the "RFP was conducted in a fair and unbiased manner and that the Final Short List accurately identified the Bids with the most value for PGE customers." *See*, IE Final Report (January 30, 2013) at 2. Given PGE's efforts to ensure a fair process, the extensive public involvement to date, and the positive findings of the IE, PGE determined that it would be unfair to bidders, risky to customers, and simply imprudent to further delay the process by exercising its discretion to seek acknowledgment of the final short list.

### **3. An Acknowledgment Process is Not Needed in order to Retain the IE through Negotiations**

Contrary to NIPPC's assertions, an acknowledgment proceeding is not necessary to determine whether it is appropriate for PGE to retain the IE through negotiations. Commission Order No. 11-340 provides that at the time of acknowledgment of the final short list, parties may request IE involvement through final resource selection. *See*, Order No. 11-340 at 4. PGE, mindful of NIPPC and other stakeholders' historic and strong insistence that the IE be retained during negotiations when there is a utility self-build option on the short-list of RFP resources, has willingly agreed to include the IE in the negotiations for the energy resource.<sup>2</sup> *Id.* at 3. PGE informed the IE, Commission Staff, and NIPPC of this fact on the day it identified the final short list. The IE and Commission Staff agreed to employ this process. NIPPC did not object. An acknowledgment process is not necessary for the purpose of allowing parties to request IE involvement in negotiations since PGE has already agreed to do so.

### **4. PGE will Continue to Cooperate with the IE to ensure that the Commission and Non-bidding Parties Receive all Information required by the RFP Guidelines**

PGE recognizes that RFP Guideline 11 requires the IE to make detailed bid scoring and evaluation results available to the utility, Commission staff, and non-bidding parties in the RFP docket, subject to the terms of a protective order. PGE will continue to provide the IE with

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<sup>2</sup> There will be no negotiations for the flexible capacity resource, as PGE has given a notice to proceed to the winning bidder, and there is no benchmark resource on the final short list for the seasonal flexibility products.

whatever assistance it needs to satisfy the Guideline. In addition, PGE is including responses to the questions included as Attachment 2 to NIPPC's February 13<sup>th</sup> letter, for the Commission's review. See Attachment B. Our responses also address the issues raised on page 4 of NIPPC's letter. Finally, PGE recognizes that under the Commission's guidelines and PGE's contract with the IE, the IE is to confer with Staff as needed. Thus, the IE is available to Staff and the Commission to clarify any matters concerning the bid evaluation and scoring process.

#### **5. There is no Need for Additional Regulatory Process**

As discussed above, PGE will provide the Commission with any relevant information that it desires concerning PGE's RFP. Along these lines, PGE's Attachment B provides the Commission with responses to the questions included as Attachment 2 to NIPPC's February 13<sup>th</sup> letter, under the protective order. The Commission has the authority to request information concerning PGE's RFP from PGE or the IE. See, Order No. 06-446, Guideline 5, at 6. It does not need to conduct an investigation, hold a public hearing or engage in any other regulatory process in order to obtain such information.<sup>3</sup>

Further, there is nothing to suggest that any kind of investigation is warranted. NIPPC has not alleged that PGE failed to follow any law, regulation, order, or guideline. Nor have there been any claims of misconduct or any wrongdoing on the part of PGE. To the contrary, in its Final Report the independent evaluator stated that it was "unaware of any instance where PGE personnel favored any bidder over another, including the treatment of proposals from the PGE Self-Build teams that developed proposals for the Carty site and for Port Westward. To the contrary, the IE believes PGE personnel went to great lengths to treat all bidders equally and without bias." IE Final Report at 38. NIPPC has provided no claim or evidence to suggest otherwise.

Finally, the Commission's Guidelines, appropriately, do not provide for public review or comment on the selection of the final resource -- that decision is left to the utility. The Commission has historically recognized that utility management is fully responsible for making decisions and accepting the consequences of those decisions. See also, *Pacific Tel. & Tel. Co. v. Flagg*, 189 Or 370, 396-97 (1950) ("the determination of what is reasonable in conducting the business of the utility is the primary responsibility of management"). PGE has completed all of the required and appropriate regulatory process with regard to its RFP. While we recognize that the prudence of our final decisions will be reviewed by the Commission when we seek rate recovery, no additional process is warranted with regard to the conduct of the RFP.

#### **6. Conclusion**

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<sup>3</sup>In fact, it would be impractical, if not impossible, to hold a public hearing to discuss scoring and bid evaluation when the Commission's RFP Guidelines require such information to be kept confidential. See, Order No. 06-446, Guideline 12, at 14.

PGE has completed all of the required regulatory processes with regard to its Power Supply RFP. Throughout the process, PGE has worked diligently to address any concerns raised by the Commission, staff, stakeholders, and bidders. The independent evaluator retained to oversee the process concluded that the "RFP was conducted in a fair and unbiased manner and that the Final Short List accurately identified the Bids with the most value for PGE customers." IE Final Report at 2. PGE will continue to work with the IE to ensure that the Commission has any relevant information concerning the process and resource selection. There is simply no reason to engage in any additional process at this time.

Respectfully Submitted,



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**UM 1535**  
***PGE's Request for Proposals for Capacity and Baseload Energy Resources***

**Chronology of Public Input and Review**

<b>Date</b>	<b>Event</b>
02/18/11	PGE files application for selection of an Independent Evaluator
03/28/11	Staff Report to OPUC (recommending that Accion Group, Inc. serve as the Independent Evaluator and noting no objection from NIPPC, CUB, ICNU or ODOE)
04/05/11	<b>PUBLIC MEETING</b>
04/11/11	Commission Order (approving selection of Accion Group, Inc. as the Independent Evaluator)
04/21/11	PGE releases Draft RFP for capacity resources
04/26/11	PGE sends copy of Draft RFP to UE 215, LC 48 & UM 1345 service lists
04/11 – present	Bidders and Stakeholders able to submit questions via Accion site
05/10/11	NIPPC's Comments on the Draft Capacity Request for Proposals dated April 21, 2011 (letter)
05/11/11	PGE's Stakeholder Pre-RFP Workshop
05/12/11	PGE's Bidder Pre-RFP Workshop
05/20/11	NIPPC's Comments regarding issues discussed at the bidders' workshop (letter)
05/23/11	PGE submits final draft RFP to OPUC for approval
06/03/11	Independent Evaluator Assessment of PGE's Draft 2011 RFP for Capacity Power Supply Resources
06/22/11	<b>Parties and Staff submit comments on final draft RFP to OPUC</b> (comments filed by Staff, NIPPC, RNP, CUB & ICNU)
07/08/11	PGE submits reply comments to OPUC
07/21/11	Staff Report to OPUC
07/26/11	<b>PUBLIC MEETING</b>
09/27/11	OPUC combines RFPs for capacity (UM 1535) and energy (UM 1534) resources
01/04/12	PGE provides new combined draft RFP to all interested parties pursuant to Order No. 11-371

01/18/12 Stakeholder and Bidder pre-RFP workshops

01/25/12 PGE submits final draft RFP to OPUC for approval

02/16/12 Robert Kahn's (NIPPC) letter to Jim Lobdell Re: PGE's Request for Proposals- UM 1535

02/22/12 **Parties and Staff submit comments on final draft RFP to OPUC** (comments filed by Staff, NIPPC, CUB & ICNU)

03/07/12 PGE submits reply comments to OPUC

04/27/12 Technical Specifications for PGE sites made available

05/11/12 **Parties submit comments on Technical Specifications to OPUC**

05/14/12 Report of the Independent Evaluator for PGE 2012 Capacity Power Supply Resources RFP

05/18/12 PGE submits reply comments to OPUC

06/01/12 Staff Report to OPUC

06/01/12 ICNU letter to OPUC providing additional comments on draft RFP

06/05/12 **PUBLIC MEETING**

06/07/12 Commission Order (approving PGE's Final Draft RFP with conditions)

06/13/12 EPC-1 RFP Bidder's Workshop and Site Visit (PW2 Generating Station)

06/14/12 EPC-2 RFP Bidder's Workshop and Site Visit (Carty Generating Station)

10/5/12 Troutdale Energy Center's Letter to Commissioners

10/12/12 NIPPC's Response in Support of Troutdale Energy Center's Request for Hearing

10/22/12 NIPPC's Reply to PGE's Response  
ICNU's Comments in response to issues raised by Troutdale Energy Center

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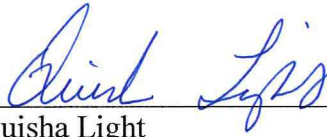
**Sources:** **Accion Website** - <https://portlandgeneralrfp.accionpower.com/capacity2011/home.asp>; **OPUC Website (UM 1524, In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Selection of an Independent Evaluator for multiple requests for proposals,** <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16642>; **UM 1535, In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Request for Proposals for Capacity and Baseload Energy Resources,** <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16694>)



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused **PORTLAND GENERAL ELECTRIC COMPANY'S REPLY to NORTHWEST AND INTERMOUNTAIN POWER PRODUCER'S COALITION** to be served by electronic mail and by First Class U.S. Mail, postage prepaid and properly addressed, to those parties on the attached service list for OPUC Docket UM 1535. **Confidential copies of Attachment B and collective Exhibit 1 have been provided to those parties who have signed General Protective Order No. 11-097.**

Dated at Portland, Oregon, this 22<sup>nd</sup> day of February, 2013.



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**SERVICE LIST 02/22/13  
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