

MEMORANDUM

UM 1773

Obsidian Renewables, LLC

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SUMMARY

This memorandum was prepared to assist *“PGE and other stakeholders to engage in timely dialogue with respect to any issues or concerns regarding the proposed RFP, and direct the IE to include a discussion of any resolution of these issues in its final report”* as provided in Oregon PUC Order 16-221, issued June 8, 2016.

Obsidian wanted to raise and respond to various of the concerns to the Power Purchase Agreement and to the comparative terms and conditions of proposals under PPA structure compared to the Build – Transfer structure as noted by participants in this docket.

DISCUSSION

Identified and suggested changes to the PPA and to the RFP process:

1. Grid interconnection and Services.
 - a. Capital Expenditures. PPA proposals are required to finance system upgrades to PGE’s transmission system (if any). PGE should identify the integration costs for transmission system upgrades it will incur to bring Owned variable resources and include those costs in its scoring of any owned resources to eliminate any bias in favor of Owned systems.

This is a change to the RFP scoring process, not a PPA change.

- b. In-System Integration Expenses. PGE should identify the costs it expects to incur to deliver an Owned resource into its system and offer to make its in-system integration services available to PPA resources at that cost. PGE has and has recently acquired quick dispatch and balancing resources to integrate renewable generation and those capabilities should be available to PPA resources at cost to avoid creating a bias in favor of Owned resources and to lower the overall cost to ratepayers.

Section 3.3.3 to the PPA should be supplemented to add language for PGE to identify its cost for those integration services and offer to provide the services at that cost. This would apply where PGE is the balancing authority or where the integration services are provided by PGE rather than the applicable balancing authority.

Under certain types of integration arrangements, it is understood this will allow PPA projects to avoid BPA integration service charges and instead pay less expensive PGE integration service charges, benefiting ratepayers by lowering the PPA cost of service.

Suggested changes to the PPA are needed. [Would the changes be made to 3.3.4?]

- c. Scheduling Expenses. PGE should identify the scheduling services costs it assumes to schedule Owned variable resources and offer to make its existing scheduling services (or its preferred third party provider of such services) available to PPA resources at the same cost. Again, the level playing field would be expected to benefit ratepayers.

Section 3.3.1 of the PPA should be supplemented to add language for PGE to identify its internal costs or the charges of its third party scheduler and offer to make those services available on the same terms to PPA resources.

2. Compensation for all renewable energy and RECs delivered.

- a. Scheduled and Delivered. The PPA provides that PGE will pay only for the quantity of Energy actually Scheduled and delivered. PGE will also pay for the RECs for Energy generated but not Scheduled. PPA Section 2.3.2.

Obsidian understands that frequent under-scheduling and over-scheduling of modest amounts is inevitable and handled by the balancing authority. Obsidian also understands the balancing authority conducts a periodic netting of under-scheduled and over-scheduled hours, and if the result of the netting is under-scheduled hours the balancing authority pays for the additional energy it received.

Section 2.3 to the PPA, "Delivery Period" should be modified by adding a new paragraph:

"(c) Facility Output is expected to vary from Energy Scheduled to some extent during many operating hours. The balancing authority or other provider of balancing services is obligated to deliver scheduled Energy to PGE. The balancing authority periodically conducts a netting of overscheduled and under scheduling Energy and makes financial settlement with Seller for the net difference between Energy Scheduled and Energy delivered over a period of time, such as a month. In determining whether a payment is due under paragraph 2.3.2 (a) or (b), the net calculation from the balancing authority for the period of netting will be used."

- b. Windy and Sunny Year Penalty. Under the PPA, Sellers are paid for unexpected additional power in a particularly windy year or particularly sunny year at a 25 percent discount. There is no corresponding penalty for an Owned project.

Section 2.3.3 to the PPA should be modified by adding the words "weather adjusted" in the second line after the words "Expected Output".

c. PGE Control over Project Ownership. In the PPA, PGE has the right to step in and try to purchase the facility any time the owner is contemplating selling it. Section 2.4. This even applies when the project admits tax equity (clearly a mistake) or when a purchase option is exercised under a lease financing (again, a mistake I am sure). The Section should be modified into a request that the owner let PGE know whenever it has any plans to sell the property.

A second right of first offer arises after the agreement is terminated because the project is late. Section 3.2.14. This 45 day first offer window (when the project is no longer even planning to sell power to PGE) could greatly interfere with a late project's ability to get over the finish line and stem its losses. It will interfere with project financing. The language requires the terminated project, on ultimate completion to first reoffer the power to PGE under the terms of the cancelled contract. PGE has 45 days to respond. The language also restricts bringing in tax equity or a new ownership partner (even a minority partner) unless the new investor is itself bound to the right of first offer. It was PGE that terminated the agreement for the project being late and collected late charges and liquidated damages. Its control should end there.

A third way the PPA gives PGE control over project ownership is its right to approve of a change of control, reasonably. Again, this should exclude the admission of tax equity and should exclude partnership flips and partnership redemptions. It should also exclude the exercise of purchase options under a lease financing structure.

3. Accurate identification of and apples to apples comparison of all ratepayer risks, costs and benefits with the PPA structure and the Ownership structures.
 - a. Construction risks of delay, cost overruns, material breach by general contractor. In a PPA those are borne by the energy provider. In an Ownership structure those are borne by ratepayers and shareholders. The non-price factor scoring should favor PPAs on this point.
 - b. Long term equipment risk; Premature equipment failure; Latent construction defects. In a PPA, the risks that equipment fails to perform as expected after the warranty period are borne by the energy provider. In an Ownership structure those risks are borne by ratepayers and shareholders. The non-price factor scoring should favor PPAs on this point.
 - c. Decommissioning costs; site restoration. End of life costs in a PPA those are borne by the energy provider. In an Ownership structure those costs are borne by ratepayers. The non-price factor scoring should favor PPAs on this point.
 - d. Impact of inflation in excess of projections. To a very large extent solar and wind resources are naturally hedged against inflation because a substantial portion of their total lifetime expense is incurred during construction. But there is an inflation and cost escalation risk with respect to property taxes, operations and maintenance, insurance cost, scheduling and transmission costs. In a PPA structure those risks are generally

borne by the energy provider and in an Ownership structure those risks are generally borne by ratepayers. The non-price factor scoring should favor PPAs on this point.

- e. Residual value in the project. Well maintained solar equipment is expected to perform up to thirty years or longer, albeit at a degraded level. Energy and capacity may be worth more or less in 20 years than the contract price in year 20 under the PPA. Under a PPA structure, the benefit of higher values for energy and capacity and the risk of lower values for energy and capacity belong to the energy provider. In an Ownership structure the ratepayers would secure the benefit and carry the risk of that residual value. **Examples: PGE dams have residual value. Boardman has residual risk.** If the non-price factor scoring favors an Owned project for its residual value, the positive scoring should be reduced somewhat to reflect the potential for that value turning out to be a residual risk.
- f. Residual value in the site. At the end of the useful life of the equipment, the site remains permitted and approved as an energy facility, with interconnection infrastructure in place. The site may be repowered with modern equipment and continue in service indefinitely. This benefit offsets and may exceed the risk identified in paragraph c., above. This benefit is less able to be realized on leased land. The non-price factor scoring would favor an Owned project on this point.

Suggested procedure to implement a more accurate comparison of the risks and benefits of the structures would be to change the scoring matrix as suggested.

Identified and suggested changes for ensuring greater integrity to the project selection process:

- A. Available Transmission and Alternative. PGE should identify transmission paths where PGE has (or expects within the relevant RPS timeframe to have) available transmission pathways so as to allow a system to tie in from a more remote location as “in-system.” Alternative: do not allow PGE to purchase a resource that will be scored or evaluated as “in – system” from a remote location so that all projects are scored with transmission. Once a project is committed, PGE can arrange for transmission in the manner it determines.

If PGE has unused transmission rights on its system or from third party transmission services, those should be managed and scored so as to not favor an Owned project compared to a PPA. Ratepayers should be indifferent whether existing transmission resources are used by (and charged to) a PPA resource or used by (and charged to) a company owned resource. What ratepayers should be concerned about is scoring an Owned resource higher by comparison to a PPA proposal because the Owned system will use existing transmission capability not known to or made available to the PPA competitor.

This is very significant because transmission costs will likely comprise more than 20 percent of the cost per megawatt under PPA proposals. A company proposal with in-system

transmission (i.e. no transmission charge) from a windy or sunny area will easily prevail in the scoring process, even if it is otherwise the higher-cost alternative.

- B. Bid Bond vs. Performance Bond. The bid materials seem to require bidders to post a bond prior to entry into a definitive contract in a very large amount that could be lost or put at risk under very poorly defined circumstances. The idea that a letter of credit could be called or cash collateral could be forfeit under vague or somewhat arbitrary circumstances would be commercially unreasonable and out of market.

Based on the two projects Obsidian would like to submit, the bid bonds would aggregate \$20 million. The requirement effectively bars Obsidian from participating in the RFP. The amount of Obsidian's bid bond would be 200 times greater than PGE's maximum liability for its breach of its obligations under the confidentiality agreement. The bid bond is on top of the bid fee, which is nonrefundable under all circumstances.

This provision is entirely unreasonable. It stifles competition. It is absurd for PGE to suggest it will be permitted to claim damages from a bid bond for failure to enter into a definitive contract over something as complex and unique as Oregon's largest solar farm still in development.

The Bid Bond requirement of Section 7.1.2 of the RFP requirements must be eliminated.

Please reference:

<http://edocs.puc.state.or.us/efddocs/HAC/um1773hac151655.pdf>