BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1773

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Petition for Partial Waiver of Competitive Bidding Guidelines and Approval of Request for Proposals (RFP) Schedule	))))))))))	COMMENTS OF THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION

I. INTRODUCTION

The Northwest and Intermountain Power Producers Coalition ("NIPPC") files these comments regarding Portland General Electric Company's (the "Company" or "PGE") Petition for a Partial Waiver of Competitive Bidding Guidelines and Approval of Request for Proposal ("RFP") Schedule ("Petition"). NIPPC supports PGE's recognition that it needs new renewable resources to meet the state's expanded renewable portfolio standard ("RPS") requirements. NIPPC is also not opposed to the Oregon Public Utility Commission (the "Commission" or "OPUC") allowing PGE to proceed with a renewable RFP, but urges that a number of specific changes be made to correct deficiencies and omissions in the Draft RFP framework for evaluating power purchase agreements ("PPA") versus utility ownership options that strongly bias the evaluation process against independent power producer ("IPP") proposals that may otherwise provide the least cost and least risk resources for PGE ratepayers.

PGE's RFP is biased in favor of utility ownership options because it imposes more burdensome grid integration requirements on PPA bids, ignores many ratepayer costs and risks of utility ownership in the evaluation process, and denies sellers under a PPA arrangement full compensation for all renewable energy and renewable energy certificates ("RECs"). PGE appears to be relying upon its gas plants to provide "low cost" integration services, which should not be used to favor renewable resources that the Company expects to acquire on a build own transfer ("BOT") or other ownership basis. NIPPC recommends that PGE be required to: 1) identify its integration costs for utility ownership options; 2) treat PPA options equitably by accepting bids in which PGE will provide the integration services, and 3) explicitly require PGE to accept and implement generator specific and creative integration options, including direct integration with its transmission system and other options that PGE accepts for its own resources, including dynamic scheduling.

There are other provisions of the RFP that will limit the ability of non-utility ownership options to fairly compete. In order to remedy some of these problems, NIPPC recommends that the RFP be revised to: 1) require PGE to pay the contract price for the actual power delivered and produced; 2) identify any transmission paths where PGE possesses the ability to deliver the output from the winning bidder to PGE's system and allow bidders to incorporate any of PGE's identified transmission rights into their bids; 3) allow IPPs to be fully paid for all electricity generated and delivered; 4) change the scoring weight between price and non-price factors from 60/40 to 80/20; 5) remove any caps on PGE's liability for stealing trade secrets or other bidder confidential material; and

6) ensure that utility ownership operational costs and risks are appropriately accounted for.

While PGE has provided a "nod" to the competitive bidding guidelines, there is insufficient time for stakeholders or the Commission to ensure that the RFP will be fair and balanced to level the playing field between utility and non-utility owned bid options. Given the quick schedule and the use of the same independent evaluator ("IE") that failed to identify major problems with PGE's last RFP. NIPPC is concerned that it has had insufficient time to identify all the potential ways in which this RFP is intended favor utility ownership, although the following comments identify many such instances. Therefore, the Commission should explicitly notify PGE that it expects to see a variety of diverse ownership options selected. In addition, given the lack of assistance by an IE in developing the RFP and the limited opportunity to identify concerns prior to its release, the resulting resource acquisitions should not be presumed reasonable in any way and PGE should be responsible for producing a comprehensive evidentiary record confirming their chosen resources are the least cost and risk to ratepayers.

NIPPC agrees with the Commission Staff's recommendation that stakeholders should be provided an additional opportunity to submit comments on PGE's RFP. NIPPC, however, opposes Staff's proposal that the RFP be allowed to proceed without any revisions or changes. Staff recognizes that any comments submitted after bids have been received "will not be able to inform the RFP design under this schedule. However, the comments will allow stakeholders to identify issues that might influence the scoring of the final bids before a project selection is made and bring this to the attention of the Commission."[1]

PGE should be required to make the revisions identified in these comments **prior** to accepting any bids. At a minimum, the Commission should provide PGE with a strong warning that any RFP that does not fairly address integration costs, transmission access, damages caps, too high non-price factors, and operational costs and risks will be presumed unreasonable. PGE's RFP includes fundamental flaws that cannot be rectified in the scoring of the bids, a short list acknowledgement, or future prudence review. For example, PGE's integration and transmission proposals will likely have the effect of precluding low cost resources from even bidding into the RFP. In other words, fixing the scoring of bids will not provide any help to those bids that were never made. Therefore, the Commission should allow PGE's RFP to proceed, but only after making critically important changes to protect ratepayers and the integrity of the bidding process.

II. BACKGROUND

PGE requested partial waiver of the Commission's competitive bidding guidelines, asserting that changing RPS requirements mandated by the enactment of SB 1547 brought about a significant increased need for renewable resources in 2020 and 2025. PGE argues this "fast-track RFP" is necessary so that PGE can take full advantage of federal production tax credits ("PTC"), which begin to phase-down January 1, 2017. PGE contends that this will result in greater customer savings than using banked renewable energy credits ("RECs") or otherwise delaying renewable additions. And in order to receive the full PTC tax credit, PGE argues that new greenfield wind power

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1 Commission Staff Report at 12.

resources must have commenced construction by December 31, 2016. As such, in addition to the waiver of the Commission's IE selection process, PGE requests the Commission hold a special public meeting and waive its requirement for a 60-day comment period prior to ruling on PGE's RFP.

PGE designed this RFP to mirror its 2012 RFP process. The results of the 2012 RFPs were heavily contested and controversial after PGE selected three utility owned resources, including the 440 megawatt ("MW") natural gas Carty Generating Station ("Carty") bid as a BOT, the 220 MW Port Westward 2 gas plant, and the 266 MW Tucannon wind farm. Both ratepayer advocates (the Industrial Customers of Northwest Utilities and the Citizens' Utility Board) and independent power producers (NIPPC, Calpine, Troutdale Energy Center, Grays Harbor Energy, and Turner Energy Center) challenged the process and the results of the thermal RFPs as being biased in favor of PGE ownership.

PGE intends to use an IE, but to forego the Commission's IE selection process. Instead, PGE has opted to use the IE from its last two RFPs. NIPPC has significant concerns with PGE's use of an IE that failed to raise objections in the company's last RFP and resisted efforts to provide a more level playing field, including changes that could have resulted in PGE acquiring a lower cost and risk resource. NIPPC recognizes that it is too late in the process to switch IEs but is cautiously hopeful that PGE's IE may have learned from the mistakes in the last RFPs, leading everyone involved to be more vigilant and to better protect the interests of ratepayers and competitive markets.

III. COMMENTS

1. PGE Should Not Be Allowed to Use Biased Integration Costs to Promote Ownership Options

The RFP's treatment and requirements regarding integration costs may be a significant barrier to fair treatment of PPA options, helping to justify utility ownership. Bids should properly account for the costs of integration services for variable renewable power, including wind and solar generation. PGE's RFP, however, requires a bidder selling power through a PPA to cover all its integration costs, while it is unclear how integration costs for PGE owned resources will be accounted for (if at all).

The Commission should required PGE to revise its RFP to remove the obstacle associated with improperly accounting for renewable integration costs. First, the Commission should require PGE to detail how and at what cost it plans to integrate utility owned renewable resources. This will ensure that ownership options are fairly scored against PPAs, which are explicitly required to acquire their own integration services. Second, the Commission should allow PPA bidders the option to use PGE's integration services in lieu of other, potentially higher cost, options. Finally, the Commission should require PGE to allow bidders to deliver intermittent resources to its transmission system via dynamic transfer (including pseudo ties) and other flexible options.

Most renewable energy projects will be located outside of PGE's service territory because PGE's service territory does not feature highly energetic wind or solar sites. For example, many bidders will purchase balancing services (imbalance and variable energy resources balancing for wind or solar) from Bonneville Power Administration ("BPA"). Only a pseudo-tie form of delivery to PGE's balancing authority or an otherwise direct interconnection to PGE's system would relieve a project from paying BPA's onerous balancing costs. However, NIPPC understands that PGE's balancing costs are lower than those assessed by BPA – although the RFP is silent on this point. Thus, the Commission should ensure that all bidders have equal access to the most cost effective integration or balancing services.

The RFP requires bidders selling variable renewable power through a PPA to acquire integration services. There are two options to sell power to PGE: 1) "Physical Energy Purchase", which includes PPAs; and 2) "Ownership Position in a Renewable Energy Resource", which includes a variety of options.[2] For "Physical Energy Purchase", the power "must be firm for the 15-minute scheduling intervals."[3] The bidder must make this power firm by acquiring "integration services on their own behalf for the 15-minute interval."[4] PGE will then "impute its cost for firming, regulation, or other ancillary services for integrating the power product beyond the 15-minute interval for purposes of bid evaluation."[5] In the end, an IPP proposing a PPA will be responsible, or otherwise have its bid adjusted, for all integration related costs.

It does not appear that resources ultimately owned by PGE will be required to be firm or be otherwise supported with integration services for the 15-minute interval or have costs imputed beyond the 15-minute interval. For example, while PGE's description of the "Physical Energy Purchase" specifically identifies integration costs, PGE's description of "Ownership Position in a Renewable Energy Resource" does not

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2 Id. § 5.1.
3 Id.
4 Id. § 8.3; see also PPA Term Sheet, Transmission and Scheduling of Energy (Section 3.3).
5 PGE 2016 RFP § 5.1.

mention integration at all.[6] Similarly, PGE's criteria used for scoring bids only references integration services for PPAs.[7]

Integration of utility owned resources, however, is not free. PGE should be required to identify the costs of its own integration services that will be used for any utility owned renewable resources acquired in the RFP. An opportunity should also be provided for staff, as assisted by the newly vigilant IE, to review the Company's costs prior to release of the RFP.

NIPPC assumes that PGE plans to integrate any utility owned resources with its own generation resources, including Port Westward 2 and (when operational) Carty. Port Westward 2 was specifically advertised as a peaking resource to integrate wind generation. Ratepayers are already (or will soon be) paying for the costs of these gas generation resources. These resources should be available to integrate all generation resources procured under this RFP, not only those owned by PGE.

It should be straightforward for PGE to identify its integration costs in the RFP, which then can be reviewed in evaluating bids, any short list acknowledgement and rate recovery proceeding. PGE's estimated integration costs should then be added on to the costs of any bids that include a utility owned resource option. This is necessary to accurately compare the full cost of utility ownership (including integration) and a PPA. Failing to properly include these costs will likely result in bid scoring that will show the

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6 Id.

7 Id. § 8.3. The price factors state that if the bid does not include integration for non-dispatchable and intermittent resources, then PGE will estimate the cost and include in their analysis. PGE 2016 RFP § 8.1. The RFP appears to only apply this to PPA options, and there is no clarity on how PGE will estimate their costs. PGE 2016 RFP § 8.1.

best and least-cost approach is for PGE to select only BOT bids or other acquisitions which lead to utility ownership, even if those options are otherwise more expensive.

The Commission should also condition approval of the RFP based on a requirement that bidders can choose to use PGE's integration services **at cost** in lieu of other integration products. The costs of these integration services should be the same as charged to those providing for utility ownership in their bids. Since PGE's balancing resources are already being used to integrate ownership options, there is no reason why these ratepayer-funded resources should not also be available to allow PGE to obtain the lowest cost resource options regardless of ownership. Ratepayers should be indifferent to whether PGE's generation assets are run to integrate PGE owned renewable resources or renewable PPAs.

In addition to leveling the playing field, allowing all bidders the opportunity to utilize PGE's own integration services will provide PGE with the proper incentive to accurately estimate its integration costs. Even if PGE is required to calculate and account for its own integration costs when comparing bids, PGE will have an incentive to under estimate these costs in order to bias the results toward ownership options. If those costs are used for both PGE owned and non-owned options, then it will mitigate any inaccurate estimates of PGE's own integration costs.

The RFP states "PGE may consider bids proposing to deliver intermittent resources via dynamic transfer."[8] This language is vague and does not ensure that transmission costs in the RFP evaluation will be conducted fairly. Specifically, any dynamic or flexible integration services that PGE uses for its own generation resources

8 PGE 2016 RFP § 8.3.

(including pseudo ties) should be available on an equal basis for non-utility owned generation. Non-traditional approaches to supplying integration should also be permitted. For example, independent power producers that own both renewable and dispatchable generation should be allowed to provide their own integration services.

In sum, if PGE intends to use the integration costs of balancing for its own resources (e.g., Port Westward 2) to evaluate utility-owned bid proposals, it must make those same costs of balancing costs available to PPA-structured bids. This includes explicitly requiring PGE to accept dynamic scheduling (including pseudo ties) from projects physically interconnected to BPA's (or another utility's) balancing area. If PGE will not accept dynamic scheduling from PPA-structured bids, then it must allocate the utility-owned bids the same costs for the third party's integration costs as assumed for the PPA-structured bids.

PGE may some day argue that the increased RPS standard means, not only an increase in the demand for new renewable energy resources, but also additional thermal generation resources needed to provide integration services. An absurd result of this RFP would be for PGE to procure additional utility owned renewable projects, which then drives the utility's need for new thermal resources to provide integration services for these utility owned resources that did not include integration services as part of their bid.

2. PGE Refuses to Pay the PPA Price for All Power Generated and Delivered Under the PPA Option

PGE appears to have designed the RFP to prevent renewable generators that sell power through a PPA from ever being fully paid for all the power that they generate and deliver. Under this RFP the seller pays for expensive balancing services and PGE will not pay for any of a facility's output that exceeds its schedule, even if the power is ultimately delivered and provides benefits to PGE. This is inconsistent with the standard industry practice of the transmission provider ensuring that schedules match deliveries regardless of actual generator output, and placing the under and over generation in a balancing account that is trued up on a monthly basis. The RFP should be revised so that a seller is paid the contract price for all delivered generator output.

As explained above, the seller under a PPA is required to "obtain at its expense all integration and other services required to Schedule such Energy as firm in each 15 minute interval."[9] This provides two benefits to PGE. One, schedules will match deliveries regardless of actual generation. Two, PGE will receive all the power actually generated, even when the generation is greater than the power that is scheduled and delivered. PGE receives the full net output because the seller's balancing services will ensure that power generated above schedules in one 15-minute period is ultimately delivered to PGE, albeit in a different 15-minute period.

Despite paying for expensive balancing services, PGE will not pay the seller the contract price for any resource output above scheduled amounts. Specifically, under Section 2.3 of the PPA Term Sheet (Delivery Period), the seller will not be paid any power generated by the resource in excess of the schedule in any and all 15-minute scheduling periods.[10]

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9 PPA Term Sheet, Transmission and Scheduling of Energy (Section 3.3).

10 PPA Term Sheet, Delivery Period (Section 2.3) ("If Facility Output is equal to or greater than the Energy Scheduled and delivered to PGE at the Deliver Point, PGE will pay (i) the Contract Price for the quantity of Energy so Scheduled and delivered, and (ii) the REC Price Component only for RECs associated with Facility Output not Scheduled . . . .")

A simple explanation of how this discriminatory practice works demonstrates how an IPP selling power via a PPA is disadvantaged in comparison to utility ownership. Under a normal transmission and balancing arrangement with a transmission provider (using BPA as an example), the transmission provider keeps the schedule whole (i.e., firm) for the 15-minute period, even though the project generation will naturally deviate from the schedule. If actual generation is more than is scheduled, the transmission provider keeps the schedule whole by absorbing the excess energy. Alternatively, if the generation is less than scheduled, then the transmission provider supplies additional power to keep the schedule whole. The transmission provider keeps track of these deviations over the course of a month (monthly balancing), effectively accounting for excess generation and delivering it later when generation falls short of schedule. At the end of the month, the transmission provider calculates the net imbalance for the month and pays the seller for any positive **net** imbalance or charges for any **net** negative imbalances.[11]

PGE, however, proposes to reap the benefits of receiving a firm schedule from the renewable resource under a PPA, while at the same time financially penalizing the seller for actually using the costly balancing service it has obtained to provide firm schedules to PGE. Specifically, PGE proposes to ignore the fact that all project output is ultimately delivered to PGE over the course of a month and instead, examine the actual generation against the schedule for each 15-minute period of the month (15-minute balancing) after

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11 Payments or charges are using the average monthly spot price less 10% (for positive balances), or plus 10% (for negative balances). The 10% adder or subtraction is designed to incent the seller to improve scheduling performance, but the design of the balancing service recognizes that "perfect" scheduling in not possible in practice.

the fact. For each and every 15-minute period of the month that PGE determines that project output exceeds schedule, PGE refuses to pay the PPA price, regardless of the fact that the power is ultimately delivered in a later period, which could be as soon as the next hour.

The Commission should require PGE to revise the RFP and use standard industry practices that will not severely penalize an IPP choosing the sell power via a PPA. Without such a modification, a seller will need to factor the projected financial losses into their bid. This is a blatant and unjustified penalty that results in a strong bias against PPAs in favor of utility ownership.

3. Bidders Should Be Allowed to Use Any of PGE's Excess Transmission Rights on Neighboring Systems

PGE may have access to excess transmission rights on third party transmission systems, which bidders should be allowed to utilize. PGE should be required to identify any unused or excess transmission rights on BPA, PacifiCorp or another third-party provider, and allow bidders an opportunity to utilize (and pay for) these firm transmission paths to sell power to PGE through a PPA or asset transfer.

PGE will appropriately require bidders to demonstrate the ability to obtain firm transmission to deliver energy to PGE's load.[12] Actually obtaining transmission rights requires entering into a long-term take-or-pay contract that a bidder could not terminate if it were to lose the RFP. Thus, NIPPC supports both the RFP's general requirement and PGE's specific proposal that secured transmission is not a threshold determinant for

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12 PGE 2016 RFP § 5.2 ("Bidders proposing to interconnect a resource within PGE's system will need to include all incremental costs to deliver, or sink, energy from the resource to PGE's load.").

submitting a bid, but that a bidder must only show "a transmission plan."[13] Instead, transmission issues will be resolved during the negotiation prior to execution of any contracts.[14] This overall approach makes sense because PGE has a small service territory with relatively limited transmission assets, and it would be expensive and difficult to obtain "secured" transmission prior to submitting a bid.

PGE, however, likely possesses its own excess firm transmission rights, which may be used to achieve the least-cost solution in this RFP for the successful bidder. The RFP should identify the transmission paths on which PGE is currently able to deliver energy and the amount of transmission capacity available (including those to which PGE knows it could re-direct its existing rights). In addition, the RFP should allow bidders to either incorporate these rights into their bids or rely upon them during the contract negotiation process.

Given the expedited nature of this RFP, it may be difficult for bidders to prove the availability of third party transmission, considering the time required to complete the transmission service request process. If all viable bidders are making similar transmission requests (even though not all of those projects could be selected in the RFP), the resulting artificial demand for transmission service could preclude any of those projects from consideration. Thus, some bidders could be prevented from demonstrating access to transmission simply because other bidders (which may or may not be viable) are requesting transmission at the same time, and there will be more assumed use of transmission than will materialize. This would artificially reduce the available capacity

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13 PGE 2016 RFP § 5.2.
14 Id.

on the necessary transmission paths and potentially exclude a least cost and risk bid from the RFP because of its inability to demonstrate delivery to PGE. The bottom line is that the failure to be sufficiently flexible (including allowing bidders to rely upon PGE's excess transmission rights) could exclude what might otherwise be the best projects.

In the RFP, PGE should be required to identify the transmission paths on which PGE is currently able to deliver energy and the amount of transmission capacity available (including those to which PGE knows it could re-direct its existing rights). In addition, PGE should make those rights available to bidders at the Company's actual cost to either incorporate these rights into their bids or rely upon them during the contract negotiation process.

4. Price Factors Should Have a Higher Weight

The Commission should require PGE to increase the scoring percentage for price factors from 60% to 80% and reduce the non-price factors from 40% to 20%. PGE's proposal provides the Company with far too much discretion to reject lower cost resources in favor of utility owned options that the Company believes offer greater shareholder value and/or have other desirable characteristics. Given the inherent subjectivity in analyzing non-price factors, it would be inappropriate for PGE to retain this level of discretion in an expedited RFP that will not receive the proper vetting and review prior to the submission of bids. Moreover, the stilted weights handicap the IE from applying its largely quantitative analysis.

The bid scoring methodology includes 40% non-price factors, including 15% "Project Development", 12% "Project Characteristics", 8% "Power Product

Characteristics", and 5% "Credit Factors."[15] Since this RFP is not being used to acquire a resource that has been identified in the Company's integrated resource plan, it is unclear exactly how PGE will determine whether the project and power characteristics are consistent with its plans and operations. PGE's emphasis on vague criteria also significantly differs from PacifiCorp's renewable RFP, which has a 20% maximum for non-price factors.[16] There is simply no reason why "Project Development" under PGE's RFP should by itself nearly exceed all of the non-price factors in PacifiCorp's RFP, which is not a model of fairness for non-ownership bids.

PGE may be using the non-price factors to bias the potential outcomes. For example, in its last thermal RFP PGE placed 15% of the scoring on "Project Characteristics", which included interconnection, transmission rights, and gas transport and storage.[17] These issues related to transmission rights and gas storage proved extremely controversial and among the reasons ratepayers and IPPs believed the RFP was unfair.[18]

The Commission should guard against this potential for manipulation by requiring PGE to reduce the overall percentage of non-price factors used in the scoring methodology. NIPPC recommends proportionally reducing the non-price factors to 20% of the overall bid score.

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15 PGE 2016 RFP § 8.

16 See PacifiCorp 2016 Renewable RFP at 20.

17 Re PGE Request for Proposals for Capacity Resources, Docket No. UM 1535, PGE RFP for Power Supply Resources at 28 (Jan. 25, 2012).

18 See Re PGE Request for Proposals for Capacity Resources, Docket No. UM 1535, Order No. 11-371 at 3-6 (Sept. 27, 2011); Re PGE Request for Proposals for Capacity Resources, Docket No. UM 1535, Order No. 12-215 at 2-3 (June 7, 2012).

5. The Damages Cap Should Be Removed or Significantly Increased

PGE's 2016 Renewable RFP requires bidders to sign an unreasonable Confidentiality and Non-Disclosure Agreement ("NDA") that inappropriately limits the damages that a bidder can recover from PGE's illegal actions, including the theft of trade secrets. PGE's damages cap will result in bidders being more reluctant to provide detailed information, especially regarding new and cutting edge technologies or designs which could provide significant savings for ratepayers. Thus, the Commission should require PGE to either eliminate or significantly increase the damages cap to $150 million.

PGE maintains that it is not able to accept any changes to its NDA due to the "need to establish uniform procedures that safeguard all confidential information. . . ."[19] PGE notes that it too is bound by the NDA to protect any proprietary and confidential information within the bids, if bidders clearly identify materials it deems to be proprietary or confidential.[20] However, one particular portion of PGE's NDA seems to safeguard PGE rather than the parties' confidential information. The only bolded, all-caps section in PGE's NDA, limits liability under the agreement to $100,000 and excludes special, incidental, indirect, or consequential damages.[21]

This cap is far too low considering the type of information PGE is soliciting. The Supreme Court of Utah recently affirmed a jury award of more than $133 million to compensate a developer for the loss of this exact type of information.[22] In May 2012, a Utah jury found that PacifiCorp "willfully and maliciously misappropriated a trade secret

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19 PGE 2016 RFP at § 3.5.

20 Id.

21 Id. § 21 at 80.

22 USA Power, LLC v. PacifiCorp, No. 20130442, 2016 WL 2866139, at *7 (Utah May 16, 2016).

from USA Power . . . ."[23] PacifiCorp was found to effectively mirror a developer's bid in its RFP process, which resulted in PacifiCorp awarding itself the winning bid and building the power plant without the participation of the developer that originally proposed the project.[24]

PGE's last Renewable RFP was issued shortly after that verdict against PacifiCorp.[25] PGE's original NDA in the 2012 Renewable RFP did not include a cap on damages, but PGE filed a revised RFP adding a new $100,000 cap on liability shortly after the initial filing.[26] PGE quickly withdrew the cap, acknowledging that parties had not had an opportunity to develop the record regarding that change.[27] This current 2016 RFP is being processed on an expedited basis, and there is still insuffient time to review or for PGE to justify such an oppressive requirement. The Commission need only look to PacifiCorp's Utah verdict to determine that PGE's liability cap is unconscionable.

PGE's proposed damages cap will deter bidders from proposing any cutting-edge technologies or novel approaches that could provide ratepayers with substantial savings. Aside from the obvious effect on ratepayers of this type of requirement, it is beyond unreasonable for a monopsony buyer like PGE to require counter parties to waive basic legal protections for the privilege of proposing a power sale to the Company. PGE

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23 Id.

24 Id.

25 Re PGE Request For Proposals for Renewable Resources, Docket No. UM 1613, PGE RFP for Renewable Energy Resources (July 25, 2012).

26 Re PGE Request For Proposals for Renewable Resources, Docket No. UM 1613, PGE Revised RFP For Renewable Energy Resources, (Sep. 10, 2012).

27 Re PGE Request For Proposals for Renewable Resources, Docket No. UM 1613, PGE Revised Appendix K, (Sep. 19, 2012).

should be required to comply with the law, not to require those who deal with it waive their legal rights.

6. The Scoring of Ownership Bids Should Fully Account for Operational Costs and Risks

PGE's RFP is unclear about how or even whether the operational cost and risks will be scored. Any IPP bidding in a PPA will need to estimate and account for operational costs and risks in order to obtain financing because the IPP will take all the risks and pay all the costs that exceed estimates. The RFP should clearly identify and explain how the operational costs and risks will be scored so that ownership and non-ownership bids can be fairly scored and the Commission will be able to disallow as imprudent any costs that exceed what PGE estimated in this RFP.

An IPP proposing to sell energy through a PPA will incorporate the costs and risks into its bid. For example, the IPP will need to estimate the costs associated with mobilizing an operations staff and infrastructure, as well as an extensive inventory of spare parts. These costs will be incorporated in the PPA bid price, and not broken out separately. Similarly, an IPP will need to begin the staffing and building of an operations infrastructure at least a year before the project goes commercial. These costs are significant and are typically capitalized into the project cost. If the project is late, the IPP is already incurring operating costs and investment.

NIPPC was unable to locate any aspect of the RFP that details how these costs and risk are addressed or will be scored for an ownership bid. PGE and IE should be required to incorporate these costs and risks into the bid evaluation, and fully explain them when they seek Commission acknowledgment of any short-list or prudence review.

7. The Final Short-List Should Have Diverse Ownership Options

PGE's final short-list should not include only utility ownership options, but should include a measurable percentage PPAs in which the IPPs are allowed to retain ownership of the project. The Commission now has the statutory responsibility to ensure that its competitive bidding processes "allow for diverse ownership",[28] and the Commission should provide PGE with clear notice that it will not acknowledge any final short-list that lacks ownership diversity.

NIPPC's preference is that PGE would not be allowed to conduct an RFP designed to enhance the likelihood that the Company would own a significant amount of new generation before the adoption of permanent competitive bidding rules. NIPPC recognizes that the Commission is not going to impose a binding ownership limitation in PGE's RFP.[29] The Commission, however, retains significant discretion to warn PGE that it will carefully scrutinize and likely find certain results imprudent. For example, in PGE's last thermal RFP the Commission declined to order PGE to allow bidders to use its site; however, the Commission provided such a strong warning about potential prudence disallowances that PGE modified its RFP to allow third parties to use PGE's property.[30]

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28 ORS § 469A.075(4)(d).

29 See Re NIPPC Petition for Temporary Rulemaking and Investigations into PacifiCorp's 2016 Requests for Proposal, Docket Nos. AR 598, UM 1771, Order No. 16-188 at 1-2 (May 19, 2016).

30 Re PGE Request for Proposals for Capacity Resources, Docket No. UM 1535, Order No. 11-371 at 6 (Sept. 27, 2011)(warning PGE about a prudence disallowance for not allowing bidders to use its site).

PGE is planning to seek Commission acknowledgement of its final short list of winning bids.[31] The Commission should not acknowledge any short list that fails to fulfill its new statutory responsibility to "allow for diverse ownership of renewable energy sources that generate qualifying electricity."[32] NIPPC is not asking the Commission to specifically require any percentage of non-ownership options, but to inform PGE that a reasonable short list will include diverse resource ownership. Such a requirement would also be consistent with the Commission's statutory obligations to promote the development of competitive markets by taking steps "to mitigate the vertical and horizontal market power" of utilities and "eliminate barriers to the development of a competitive retail market structure."[33] The Commission need not impose a specific requirement at this time, but instead warn PGE that it expects the Company not to bias the RFP against non-ownership options and that ownership diversity will be an important factor in any short-list acknowledgment.

8. PGE's Resource Acquisitions Should Not Be Presumed Reasonable

The Commission has unambiguously confirmed that a utility always has the burden to demonstrate that its resource acquisition was reasonable, meaning that it was the least cost and least risk option to ratepayers.[34] The Commission established competitive guidelines in 2006 to assist utilities in this endeavor.[35] The Commission

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31 PGE 2016 RFP § 2.

32 ORS § 469A.075(4)(d).

33 ORS § 757.646.

34 Re PacifiCorp, dba Pacific Power, 2009 Renewable Adjustment Clause Schedule 202, Docket No. UE 200, Order No. 08-548 at 19 (Nov. 14, 2008) (citing ORS 757.210).

35 Re OPUC Investigation into Competitive Bidding Process, Docket No. UM 1182, Order No. 06-446 at 1-15 (Aug. 10, 2006).

clarified that, if a utility chooses to comply with its competitive guidelines, then it makes it easier for the utility to provide evidence demonstrating that any acquisitions are reasonable and prudent.[36] Following the Commission's guidelines, however, does not relieve a utility of its burden to demonstrate that its resource acquisition is reasonable, and any presumption of reasonableness does not apply when the utility does not comply with or seeks a waiver of the guidelines.[37]

A utility has the burden of proof to establish that its rates are just and reasonable.[38] The burden of proof is "borne by the utility throughout the proceeding and does not shift to any other party."[39] A utility also bears the initial burden of producing evidence to support any reasonableness, and a utility can meet this initial burden by showing evidence of reasonableness by demonstrating that it followed the Commission's competitive bidding guidelines.[40] Should a utility choose not to follow the Commission's

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36 Re PacifiCorp, dba Pacific Power, 2009 Renewable Adjustment Clause Schedule 202, Docket No. UE 200, Order No. 08-548 at 19 (Nov. 14, 2008).

37 See id.; Re PacifiCorp, dba Pacific Power, Petition for Waiver of Commission's Competitive Bidding Guidelines, Docket No. UM 1374, Order No. 08-376 at Appendix A at 3 (July 17, 2008).

38 ORS § 757.210(1); ORS § 469A.120(3); Pac. Nw. Bell Tel. Co. v. Sabin, 21 Or. App. 200, 213-14 (1975). The Commission also has the independent responsibility to ensure that a utility's customers are only charged just and reasonable rates. ORS § 756.040(1); Pac. Nw. Bell Tel. Co., 21 Or. App. at 213.

39 Re PacifiCorp's Proposal to Restructure and Reprice its Services in Accordance with the Provisions of SB 1149, Docket No. UE 116, Order No. 01-787 at 6 (Sept. 7, 2001).

40 Re PacifiCorp, dba Pacific Power, 2009 Renewable Adjustment Clause Schedule 202, Docket No. UE 200, Order No. 08-548 at 19 (Nov. 14, 2008).

competitive guidelines, it naturally follows that any resulting resource acquisition would not be presumed reasonable.[41]

The same is true, where there is a waiver or partial waiver of the Commission's competitive bidding guidelines. That is, a utility cannot meet its initial burden of producing evidence of reasonableness by moving forward with an RFP in which it has obtained waiver of key aspects of the competitive bidding guidelines.[42] The Commission has confirmed that, "in granting a waiver, the Commission is not determining the prudence of the acquisition or conveying any type of resource preapproval."[43]

Thus, by seeking a partial waiver from the Commission of its competitive guidelines, PGE is also waiving its opportunity to receive any form of a reasonableness presumption on any resources acquired from this RFP. PGE maintains its burden of producing evidence that any resource acquired as a result of this RFP is the least cost and least risk to ratepayers.

NIPPC cautions the Commission, however, that a future decision against the reasonableness of a resource procured in the RFP may not be sufficient to remedy all of the damage to ratepayer interests. The Commission has been charged by the Oregon legislature to ensure that there is a robust competitive electric generation market.[44] The Commission's primary interest in promoting market competition is not esoteric, but to

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41 See id. at 19-20 (Nov. 14, 2008); see also Re PacifiCorp, dba Pacific Power & Light Co., Draft 2012 RFP, Docket No. UM 1208, Order 07-018 at 7-10 (Jan. 16, 2007) (declining to acknowledge RFP that did not follow competitive guidelines).

42 See Re PacifiCorp, dba Pacific Power & Light Co., Draft 2012 RFP, Docket No. UM 1208, Order 07-018 (Jan. 16, 2007).

43 Re PacifiCorp, dba Pacific Power, Petition for Waiver of Commission's Competitive Bidding Guidelines, Docket No. UM 1374, Order No. 08-376 at Appendix A at 3 (July 17, 2008).

44 ORS §§ 469A.075(4)(d), 757.646.

ensure that customer rates are kept low through the acquisition of generation resources with the least cost and risk.[45] Even when resources are owned by the utilities, the very existence of this market drives down generation costs and benefits ratepayers. While PGE might be precluded from recovering a portion of its investment in rates, that remedy does nothing to repair the long-term damage to the development of a truly competitive wholesale market for generation resources.

IV. CONCLUSION

NIPPC recognizes PGE's assertion that it should begin meeting its new RPS requirements now, and is not opposed to PGE proceeding with this specific RFP, assuming it is revised to remove some of the obvious bias against non-utility ownership options. NIPPC is confident that neither itself, the IE, nor Commission Staff have had the proper time to fully vet PGE's RFP. In addition, even if there was sufficient time, there are limitations on the ability to identify flaws in any RFP prior to its issuance. Therefore, the Commission should use all of its regulatory tools to ensure that the final resources selected are diverse, which will result in lower cost and risk options for ratepayers and protect the competitive markets.

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[45] E.g., Re OPUC Investigation into Competitive Bidding Process, Docket No. UM 1182, Order No. 06-446 at 2 (Aug. 10, 2006) (the Commission adopted competitive bidding guidelines "to minimize long-term energy costs").

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Respectfully submitted,

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