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September 10, 2013

Via E-mail and Federal Express

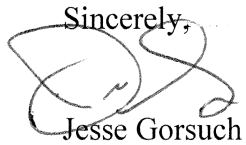
Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PORTLAND GENERAL ELECTRIC
Request for Proposals for Capacity and Baseload Energy Resources
Docket No. UM 1535

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the original and one (1) copy of the Objection of Grays Harbor Energy LLC to Designation of Information as Confidential by Portland General Electric Company.

Thank you for your assistance, and please don't hesitate to contact our office with any questions.

Sincerely,

Jesse Gorsuch

Enclosures

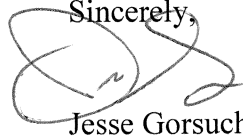
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the attached OBJECTION OF GRAYS HARBOR ENERGY LLC TO DESIGNATION OF INFORMATION AS CONFIDENTIAL BY PORTLAND GENERAL ELECTRIC COMPANY upon all parties of record in this proceeding by causing a copy thereof to be sent via electronic mail to each party's last-known email address, as shown below.

Dated at Portland, Oregon, this 10th day of September, 2013.

Sincerely,



Jesse Gorsuch

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1535

In the Matter of)	EXPEDITED TREATMENT
)	REQUESTED
PORTLAND GENERAL ELECTRIC)	
COMPANY)	OBJECTION OF GRAYS HARBOR
)	ENERGY LLC TO DESIGNATION OF
Request for Proposals for Capacity and)	INFORMATION AS CONFIDENTIAL
Baseload Energy Resources.)	BY PORTLAND GENERAL ELECTRIC
		COMPANY

I. INTRODUCTION

Pursuant to OAR § 860-001-0080, Grays Harbor Energy LLC (“Grays Harbor”) submits this Objection to Confidential Designation, requesting that the Oregon Public Utilities Commission (the “Commission” or “OPUC”) require Portland General Electric Company (the “Company” or “PGE”) to disclose certain information that no longer falls within the scope of the protective agreement issued in this case by Administrative Law Judge Lisa Hardie on March 25, 2011. Grays Harbor has conferred with PGE, and PGE has indicated that it is willing to provide some of the requested information related to transmission issues in unredacted form, but does not believe that it can release information related to the scoring process, or Grays Harbor’s bid. The parties have been unable to reach an agreement as to this information. Because of the limited time available under the procedural schedule, Grays Harbor respectfully requests that PGE file any response to this objection by Friday, September 13, 2013, and that the Commission rule on the objection by Wednesday, September 18, 2013, a day before the public meeting to consider Grays Harbor’s Request for Investigation.

PAGE 1 – OBJECTION OF GRAYS HARBOR

II. BACKGROUND

As a bidding participant in this proceeding, Grays Harbor has not had access to confidential information regarding competitive bids, including information surrounding PGE's preferred own and operate bid, which was selected by the Company on June 3, 2013. On August 5, 2013, Grays Harbor filed its Request for Investigation (the "Request"), asking the Commission to initiate an investigation to determine whether PGE failed to adhere to the Commission's request for proposals ("RFP") guidelines. Grays Harbor presented evidence that an investigation is warranted into PGE's transmission assumptions and pricing factors resulting in the selection of the Carty Plant.

On August 23, 2013, PGE filed its Response to the Request, but overwhelmingly based its argument on information that has been designated as confidential. PGE redacted the information that it deemed confidential, leaving the version of the document that has been provided to Grays Harbor and other bidding parties very difficult to decipher. Because the RFP has been completed, and the recipient of the award identified, much of the redacted information no longer qualifies as confidential and should now be disclosed.^{1/} In addition, any information specifically relating to Grays Harbor's own bids should be disclosed to Grays Harbor solely.^{2/} Finally, in order for Grays Harbor and the public to be able to understand the assertions that PGE

^{1/} As discussed below, Grays Harbor is not suggesting that information related to unsuccessful bids be released. Grays Harbor's request for public release pertains solely to information specific to PGE's preferred Carty bid, which PGE has already selected in the completed RFP process.

^{2/} PGE maintains that it is willing to release to Grays Harbor its bidding information referenced in its response; however, PGE is unsure how to do this under the current Protective Order

makes in its Response, at a minimum, the Company should be required to provide a log describing the nature of any information that it continues to redact, and the basis for the confidential designation.

III. DISCUSSION

A. Legal Standard

Under the Commission’s rules, if a party objects to the confidential designation of information, the designating party bears the burden of demonstrating why the information is protected under Oregon Rules of Civil Procedure (“ORCP”) § 36(c)(7).^{3/} In order to qualify as confidential under ORCP § 36(c)(7), information must be “a trade secret or other confidential research, development, or commercial information.”^{4/} In this specific case, PGE was granted a protective order on the basis that the RFP would consider proprietary information, and “release of confidential and proprietary bidder and benchmark information would have adverse consequences for the integrity of the RFP-Capacity and future PGE RFPs.”^{5/} Within 7 days of an objection to confidential designation, “the designating party must either remove the confidential designation or file a written response identifying the legal basis for the claim of confidentiality.”^{6/} Given the timing of the public meeting, Grays Harbor requests that its timeframe be shortened. Therefore, if PGE wishes to maintain the confidentiality of this information, it must demonstrate that it is still proprietary and would continue to have an adverse effect upon the RFP process.

^{3/} Re PGE, Docket No. UE 228, Order No. 11-432 at 2 (Nov. 2, 2011) (Although Order No. 11-432 refers to section 37 of the ORCP, the correct reference is ORCP § 36(c)(7)).

^{4/} ORCP § 36(c)(7); and see OAR § 860-001-0080(2)(b) (adopting the civil rules’ standard).

^{5/} Re PGE, Docket No. UM 1535, Order No. 11-097 at 1 (March 25, 2011).

^{6/} OAR § 860-001-0080(2)(e).

B. Argument

1. Information Regarding the Successful Carty Bid

The RFP has been awarded, thus, there is no longer a compelling reason to discriminate between bidders and non-bidders regarding the specific transportation and pricing related assumptions involved in the Carty bid. Therefore, Grays Harbor requests that the Commission require PGE to remove the confidential designation from materials that no longer need protection, in order to permit parties to understand PGE's response, and in order to ensure the most open, transparent proceedings as possible. Because of the extensive nature of PGE's redactions, it is nearly impossible for Grays Harbor to identify which portions of the response document should be legitimately designated as confidential.

During the RFP process, Grays Harbor and other bidding participants did not sign the protective order and were not permitted to see documents that PGE and non-bidding participants had access to. This procedure was followed because the bidding participants were competing with one another and disclosure of commercially sensitive information about their bids could have negatively impacted the RFP bidding process,^{2/} and disclosure of commercially sensitive information to a direct competitor could have caused each party irreparable harm. Because the bidding parties continue to market the output of their facilities, or continue with the development of facilities under construction, it is appropriate that information concerning their

^{2/} Re Petition of Troutdale Energy Ctr., Docket No. DR 46, Comments of PGE at 9 (June 19, 2013).

bids continue to be protected. To be clear, Grays Harbor is not seeking to see any confidential information submitted by any bidding party other than the winning bid. On the other hand, a great deal of information about the winning bid, the own-operate Carty plant preferred by PGE, no longer must be protected from former competitors, as it has already been selected. This means that not all of the information about the Carty bid that was formerly confidential still qualifies as confidential, and such disclosure cannot distort or harm the integrity of a bidding process that has already been completed.

PGE itself makes this point clear. In its response to the Request for a Declaratory Order of Troutdale Energy Center, PGE explained that a component of the Carty site bids was a Transmission Service Agreement that was kept secret from other bidders, who might have used that information to skew the bidding process. Now, however, PGE states that “[b]ecause the RFP has concluded, PGE can now make the existence of these arrangements public.”^{8/}

In its Response to Grays Harbor, PGE claims that it submitted confidential information that “conclusively debunks” Grays Harbor’s claims about PGE’s transmission assumptions, but the table that putatively supports this statement is redacted from pages 8 and 9 of PGE’s response, and PGE has not even included titles. It is virtually impossible to know what this so-called conclusive evidence is comprised of. As PGE stated in the DR 46 proceeding, now that the RFP is concluded, PGE can, and should, make this information available to the public. In addition, the context indicates that redactions on pages 9, 13, and 14-15 of PGE’s response contain information about the Carty site, and therefore, these should also be shared with bidding

^{8/} Id. at 4.

parties, now that the award has been made and there is no threat to the integrity of the RFP process.

Additionally, while the facts and circumstances supporting Grays Harbor's request are specific to the Carty plant, to the extent that information regarding the transmission arrangements for the Port Westward II award no longer justify confidential treatment, the redactions found on page 10 of PGE's response, under the heading "Port Westward II," should likewise be removed or reduced. Such extensive redaction is an abuse of the process.

Grays Harbor understands that PGE is willing to release some information related to the Carty site transmission arrangements and the winning bid, and is currently working with PGE to resolve this issue as to that limited information. To the extent that PGE is not willing release information related to the winning bid in the completed RFP process, Grays Harbor objects to the confidential designation of this information. At a minimum, the Company should be required to provide a log describing the nature of any information that it continues to redact, and the basis for the confidential designation.

2. Information Specific to Grays Harbor

Certain of PGE's redactions appear to refer to the specific facts and circumstances of Grays Harbor's bid. Information regarding unsuccessful bids should properly be withheld from other bidding parties, as these facilities or proposed facilities may continue to be market competitors. Nonetheless, there is no reason for PGE to withhold from Grays Harbor information that is specific to Grays Harbor's own bid, particularly now that PGE's preferred project has been given the award. The context suggests that information redacted from pages 16

and 18 of PGE's Response likely relates to the Grays Harbor bid, and therefore, should be released only to Grays Harbor.

PGE has indicated that it would be willing to release some information regarding Grays Harbor's own bid to Grays Harbor, but it is not certain that it can do so under the Commission's protective order, which Grays Harbor has not signed. Because this information was delivered to PGE as part of Grays Harbor's bid, the parties are working toward a resolution on this issue. On the other hand, PGE has indicated that other redacted information concerning the scoring of Grays Harbor's bid cannot be released to Grays Harbor. Grays Harbor believes that this scoring information is key to understanding and investigating the integrity of the bidding process. Since PGE has already made its award, disclosure of Grays Harbor scoring information to Grays Harbor cannot threaten the integrity of a completed RFP.

At the very least, Grays Harbor requests that PGE be required to provide a narrative description of the redacted material, consistent with Oregon civil practice, that will make it possible for Grays Harbor to understand PGE's arguments.

III. CONCLUSION

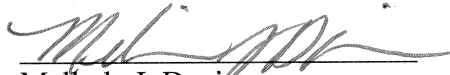
PGE's Response to the Request of Grays Harbor relies so heavily upon redacted material that Grays Harbor cannot meaningfully respond to PGE's arguments. Since the RFP has been awarded to PGE's preferred Carty site, the need to preserve the confidentiality of the transmission components of that bid are no longer necessary. PGE has admitted in a related proceeding that it may now disclose information related to the winning site, so it should be required to make such information public. Grays Harbor, as the bidding party, should also be

given access to information related to the pricing and scoring components of its own bid, though no unsuccessful bidding parties should be given access to the information of other unsuccessful bids. Grays Harbor continues to work with PGE with regards to those categories of information about which the parties appear to have found agreement, but believes that PGE is continuing to withhold crucial information that no longer merits confidential treatment. Finally, PGE carries the burden to demonstrate that all of its redacted information should remain confidential. Allowing PGE to pick and choose what information to release further taints this competitive bidding process.

DATED this 10th day of September, 2013.

Respectfully submitted,

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