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**V. Denise Saunders**  
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July 20, 2016

***Via Electronic Filing***

Oregon Public Utility Commission  
Attention: Filing Center  
201 High Street, Suite 100  
PO Box 1088  
Salem OR 97308-1088

**Re: UM 1773-** PGE Partial Waiver of Competitive Bidding Guidelines, Approval of RFP Schedule

Dear Filing Center:

Enclosed for filing is the Independent Evaluator (IE) Report regarding Portland General Electric Company's 2016 Renewable Resources Request for Proposals ("RFP").

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "V. Denise Saunders". The signature is written in a cursive style.

V. Denise Saunders  
Associate General Counsel

VDS:bop

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**IDENTIFICATION OF ISSUES BY THE  
INDEPENDENT EVALUATOR**

**UM 1773**

**EXECUTIVE SUMMARY**

This report is presented as an identification of issues provided by interested persons. Pursuant to the directive of the Public Utility Commission of Oregon (“Commission” or “OPUC”) the Independent Evaluator (“IE”) reached out to Stakeholders to conduct a “timely dialogue with respect to any issues or concerns regarding the proposed RFP...” Order 16-221 at 1. The IE reviewed the comments and suggestions for modifying the draft documents developed by Portland General Electric Company (“PGE”) for the proposed Request for Proposals (“RFP”). The comments were received in direct meetings, telephone conversations, anonymous comments submitted on the RFP website, and formal comments filed with the OPUC. <sup>1</sup>

The Interested Parties consulted by the IE included:

- Renewable Northwest (“RNW”)
- Northwest and Intermountain Power Producers Coalition (“NIPPC”)
- Citizens’ Utility Board of Oregon (“CUB”)
- Northwest Energy Coalition
- Small Business Utility Advocates (“SBUA”)
- Obsidian Renewables, LLC

There were five (5) sets of comments provided via the RFP website, with multiple suggestions provided in the individual submissions. Comments received on the website were anonymous, unless the presenter opted to include their identity. The IE is aware of only one representative of bidders requesting a direct discussion with GPC that was not to be monitored by the IE. PGE, in keeping with the RFP protocols, declined to have private discussions.

The IE found that a number of the identified concerns were the result of misunderstandings with the RFP documents and lack of familiarity with the evaluation process. In most instances these misunderstandings were resolved through clarifications provided by PGE. Other suggestions were valuable improvements to reflect current market conditions. There were some suggested changes that were not accepted for, in the view of the IE and PGE, they would ‘tilt the playing field’ to the advantage

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<sup>1</sup> The IE met with representatives of PGE and NIPPC twice for a total of six hours. The IE and NIPPC also spent over one hour in a conference call with the IE’s transmission and modeling experts. Because NIPPC’s attorney was on vacation, the meetings with PGE and NIPPC first occurred on June 22, 2016. NIPPC and other Stakeholders were invited to join the IE in filing a joint submission identifying all issues of concern and critiquing RFP revisions agreed to by PGE. NIPPC declined to participate in a joint filing.

of particular bidders. This report addresses actual suggestions for changes to the RFP documents and process, and does not respond to any ad hominem statements provided to the Commission.

With the exception of one party<sup>2</sup>, all parties consulted by the IE supported the goals of PGE’s RFP and wanted the RFP to proceed on the proposed schedule, preferring to have the market responses evaluated instead of pre-judging unknown responses.

The IE reviewed the changes PGE proposes to address concerns raised by Stakeholders and found that they accurately reflect commitments made by PGE during discussions with Stakeholders, and the impact on the RFP will be unbiased. The IE discusses the proposed changes below. Also discussed are the areas of concern identified by Stakeholders, and the proposed disposition of each.

With the changes proposed by PGE, the IE believes a fair and transparent solicitation can be conducted without bias towards or against any type of renewable resource or bidder. Further, the IE believes all bids, regardless of whether the bidder wants to be an operator and provide energy with a Purchase Power Agreement (“PPA”), or the bidder proposes to sell a facility to PGE, such as with an Asset Purchase Agreement (“APA”), all bids can be evaluated on a fair and equal basis.

## **DISCUSSION**

### **I. BACKGROUND**

This RFP is designed to provide an opportunity for the development community to capture the full value of the Production Tax Credits (“PTC”), and, presumably, reflect the value in bids. To that end, PGE committed to an expedited bidding and evaluation process that could provide commitments to developers in 2016.

The IE reviewed the RFP documents before they were first released for public comment, and worked with PGE to ensure the RFP would invite the market to be creative, and to design bids that were attractive to the bidding entity.<sup>3</sup> For example, a bidder could propose a PPA for a number of years, and then sell the asset to PGE, which is a model employed by some developers who do not want to be long-term facility operators. Similarly, bidders may propose a PPA with renewal terms. In order to provide that maximum flexibility to the market, the evaluation process was described for the expected type of bids, e.g., a PPA for 10 years, with the IE and PGE prepared to agree on hybrid bids once the bidding period closes.

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<sup>2</sup> The Industrial Customers of Northwest Utilities (“ICNU”) filed comments with the Commission on June 28, 2016, opposing the RFP, asserting that customers would be harmed if PGE were to acquire 175 MW of renewable resources.

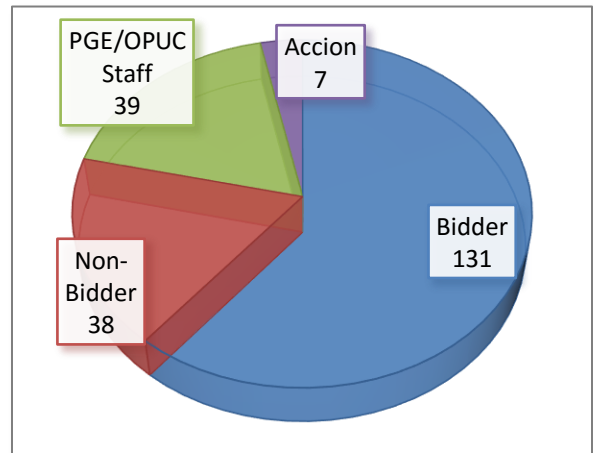
<sup>3</sup> To that end, minimal requirements were established, such as the definition of a qualifying renewable resource, and expected in-service date, and the minimum size of a project.

## A. PARTICIPATION

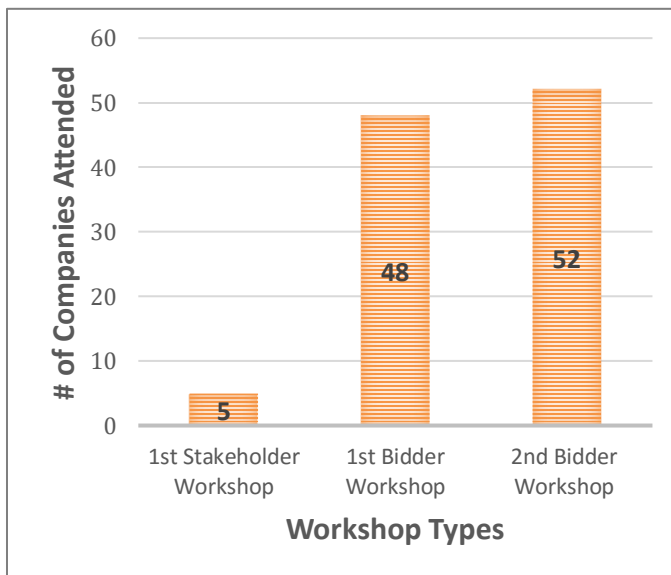
The notice of release of the RFP was sent to 2,820 persons, with the distribution list compiled from PGE's prior RFPs, parties to the last rate case participants in the last IRP, persons who notified PGE of an interest in being informed of opportunities, and a list maintained by the IE from renewable RFPs in other states. The interest in the RFP from the market place is evident from the registrations on the RFP website.

### Website Registrations

The fact that 131 potential bidders are registered on the RFP website strongly suggests the existence of the RFP is well known, and there is significant interest in the renewable development community.<sup>4</sup>



### Workshops



Three workshops were conducted to date, with potential bidders participating in person and via webinar.

As noted, these figures identify the number of companies with representatives at each session, while some firms had multiple persons in attendance. The IE believes the RFP is well known to the development community and there is strong interest in the potential it represents.

## B. AWARENESS OF COMMENTS OPPORTUNITY

Stakeholders were repeatedly invited to provide comments about the draft RFP documents, starting with the release of the RFP website on May 9, 2016, when one of the FAQs provided:

<sup>4</sup> The IE notes that only three of NIPPC's disclosed members are renewable developers and all are registered on the RFP website.

Will PGE accept comments on the draft RFP documents?

Yes. Interested persons are requested to review the draft RFP documents and then provide anonymous comments through this website using the “comment” feature found on the menu bar. In summary, interested persons are asked to copy any text that they believe should be revised, provide a “red-lined” revision of the text and provide a brief explanation of the reason for the change. Bidders are asked to assist in preparing the RFP documents by using this comment period to advise PGE of any text that **must be** changed in order for the Bidder to participate.

At each Stakeholder and bidder meeting participants were encouraged to provide comments, with the first set of meetings held on May 18, 2016, and the second workshop held on June 10, 2016. The request for comments was included on the presentation slides of the IE, each session was recorded with the recording available on the RFP website. As of this date the IE slides were viewed a total of 115 times and the audio recording of the workshops downloaded 21 times. Also, on June 8, 2016, PGE sent an announcement regarding the status of the RFP process to all persons registered on the RFP website, with the announcement again advising participants of the comment option. On June 24, 2016, PGE sent the following announcement to all persons registered on the RFP website:

*Bidders and interested parties are reminded that the OPUC set Tuesday, June 28, 2016, as the deadline for comments. In conjunction with the Commission, PGE and the Independent Evaluator (IE) request direct assistance in crafting the RFP documents so that bidders will participate in the RFP. You are encouraged to visit this website, download the RFP documents, extract any provisions you believe should be modified, edit to meet your needs, and then upload using the Comment tab on the website menu bar. Comments received via this method will be received anonymously. If a suggested change is adopted it will be incorporated into the next version of the RFP documents. If a suggested change is not adopted, the IE will provide an explanation to the proffering individual. Please note that comments posted on the website are not seen by other bidders or interested parties. Thank you to those bidders and parties that have provided comment thus far.*

As noted above, five sets of comments were provided on the RFP website, with suggested text changes “redlined” as requested in order to assist PGE in the drafting of the RFP documents, including the PPA and the Non-disclosure Agreement (“NDA”).

The IE believes interested persons had full notice of the opportunity to assist in drafting the RFP documents by providing specific edits to the draft documents. This first request for edits was made with the release of the RFP website on May 9, 2016, and repeated requests were made until June 24, 2016. This process has been successfully employed for over a decade in other states. It is proven to be superior to Stakeholders merely identifying what they find objectionable, for the simple reason complaints are often vague and subject to interpretation, while suggested text clearly identifies the effect of change. While the IE and PGE sought confirmation on proposed changes drafted to address expressed concerns, it is unfortunate the most active Stakeholders declined to fully participate in drafting the RFP documents, notwithstanding multiple invitations to do so.

The IE believes the goals of the OPUC of providing for a robust vetting of the RFP documents, and an opportunity for Stakeholders to provide comments on the RFP documents and the RFP design, were fully met by the Stakeholders. The comments and verbal observations identified a number of areas of misunderstanding. PGE address the misunderstandings by proposing revisions to the RFP documents. There also were matters where PGE agreed modifications were appropriate due to changes in

## II. COMMENTS

In this section the IE identifies the areas of concern expressed by Stakeholders and potential bidders. Also identified are PGE's changes, if known to the IE, and the IE's observations.

### A. TRANSMISSION COSTS & AVAILABILITY: AVOIDING FAVORING OWNERSHIP OPTIONS OVER PPAs

Concerns about the access to transmission services, and the cost to be charged, were expressed by a number of Stakeholders, with a variety of individual concerns. In summary, the overriding concern was to avoid any proposal to sell a project to PGE having an advantage over PPA bids, due the perceived ability of PGE to price transmission and related services.

- a. PGE should not be permitted to use "surplus" transmission for APA bids, thereby making an acquisition option more attractive than a PPA bid.

IE observation: PGE maintains all transmission rights across BPA are assigned to meet native load requirements and, thus, there is no surplus. During evaluation all bids, regardless of the ownership option, will be assigned the tariff rates of the transmission service provider, unless a bidder presents a bid with a firm, contractual, transmission path. Stated differently, in the event a bid understates the cost of transmission services, the tariff rates will be assigned, unless the bidder provides proof of a contractual transmission path.

Confusion existed as to whether bidders were required to provide cost information for facilities outside of the PGE system. To avoid confusion concerning transmission costs, bidders should be directed to remove the cost of transmission from their bid price. Further, the IE believes it would be beneficial to amend the RFP as follows:

8.1 Bidders shall provide a comprehensive list of all ancillary services they are planning to provide in delivering the power product to the point-of-delivery. To the extent that any of these required ancillary services are not being supplied by the Bidder, PGE will, for scoring purposes, adjust the price provided by the Bidder to reflect the cost of acquiring additional ancillary services required. We will use a cost estimate based on verifiable prices or regional standards whenever possible. **Bidders must identify the Balancing Authority ("BA") where the proposed project will interconnect. Evaluation of bids by PGE and the IE, regardless of ownership type, will apply the tariff rates of the transmission provider to the transmission path identified by the bidder for the bidding facility. If bids deliver energy to the designated POI having already provided for ancillary services then**

the PGE tariffs will not be added for those services already provided. Bidders should stipulate their intended provider of all such services.

- b. Stakeholders requested confirmation that PPA bids and APA bids would be evaluated using the same cost estimates for integration and the same cost estimates for transmission. Further, Stakeholders requested that PGE identify integration costs.

IE observation: During evaluation an integration cost of \$0.87/MWh will be used for variable energy resources. Off-system projects are required to deliver firm 15-minute or longer schedules using the tariff integration rate and transmission rates of the appropriate Balancing Authority (“BA”). The IE believes this will treat all bids fairly.

- c. A Stakeholder requested that bidders should be permitted to deliver intermittent resources via dynamic transfer and flexible options, such as pseudo ties.

IE observation: Bidders are required to provide a transmission plan, but not a firm transmission plan at the time of bidding. Dynamic transfer will not be assumed in evaluation or available to projects outside of the PGE service territory for reasons the IE believes are reasonable, such as the lack of SCADA control of the off-system resource.

- d. A Stakeholder requested that the RFP better explain how bidders are to identify the integration services to be identified in a bid.

IE observation: PGE provided the following proposed additional language as clarification to the RFP as guidance to bidders. Based on the vague request, the IE believes the explanatory prepared by PGE is adequate as guidance.

Page 25 of the 2016 R-RFP Draft Bid Form:

Describe the plan for the 3rd party integration services in order to provide 15-minute firm schedules required as part of the PPA submission. The description of the plan for integration should include, at minimum, a narrative describing the services being purchased and the service provider (if applicable), the operating characteristics of the resource(s) or system(s) that will be used for integration, and a description of the fueling and transmission plan for the integrating resource(s) or system(s). If offering an alternate firming schedule (i.e. hourly firm), please describe and provide aforementioned information. **For example, election of Bonneville Power Administration’s 30/15 VERBS integration service.**

- e. A Stakeholder requested that PGE identify the cost of any transmission upgrades that would be the responsibility of a bidder.

IE Observation: During the evaluation of bids, transmission experts for the IE will review and determine the reasonableness of any cost adders identified by PGE. The IE suggests it is infeasible to identify such costs before bids are received.

## B. PPA AND OWNERSHIP BIDS SHOULD ACCURATELY RECOGNIZE RISKS AND BENEFITS

IE Observation: Two Stakeholders sought understanding and assurances that the evaluation methodology for comparing the value of PPA vs utility-ownership projects accurately captured the costs, risks and benefits of each approach. The IE understands the concerns to be the perception that with a PPA the developer/operator is responsible for all risks, such as equipment failure, but a utility is permitted to pass all unexpected costs to ratepayers.

The concern fails to acknowledge the role of diligent regulators and the requirement for utilities to prove that all expenditures were prudent. At the same time, the IE understands the concern. During evaluation the differences between the life expectancy of projects and technology will be factors in normalizing bids for comparison purposes. With any ownership option the quality of a project, reliability of major components, etc., would be reviewed as part of the determination of value of a project. The evaluation process does not include a quantification of risk of failure of parts for either PPA or ownership options, once a determination is made concerning suitability of components.

## C. PGE SHOULD PAY FOR ALL POWER, INCLUDING TEST POWER

- a. A Stakeholder sought confirmation that PGE will pay for all power.

IE Observation: The PPA will be rewritten to clarify that PGE will purchase all power from a facility, including test power. Because the purchase of test power and output above contract amounts will not be included in the scoring of bids, the IE confirms that the PPA text changes proposed by PGE are clear, and that the evaluation does not value such purchases.

### 2.2 Test Energy.

Before the Commercial Operation Date, Seller shall sell and deliver to PGE all Test Energy generated by the Facility at the Delivery Point in accordance with this Agreement. PGE shall pay 50% of the ~~Contract Price~~ applicable price determined under the Market Price Index for each MWh of Test Energy scheduled to the Delivery Point in accordance with this Agreement.

PGE also proposed clarifications for the calculation of payments for excess power delivered from a project providing pursuant to a PPA. This change was requested by a Stakeholder to avoid the prospect for disagreement or misunderstanding.

### 2.3.3 Price Adjustment for Excess Output.

~~In any~~ Beginning with the fifth Contract Year ~~in which~~ and for each Contract Year thereafter, if (a) the Facility Output exceeds 110% of Expected Output; for the applicable Contract Year, and (b) the cumulative Facility Output for the immediately preceding four Contract Years (not including the applicable Contract Year) exceeds 110% of the Expected Output for the four Contract Year period, then the Contract Price for each MWh in excess of the Expected Output for the ~~balance of such~~ applicable Contract Year shall be [75%] of the price otherwise payable under Section 0.



b. SECTION 2.3.3 OF THE PPA SHOULD BE MODIFIED re DELIVERY PERIOD

IE Observation: PGE modified the section to clarify that the “delivery period” is the scheduling period elected by the bidder, and not some arbitrary period imposed by PGE.

Delivery Period. Starting on [\_\_\_\_\_ [Date]] [the Commercial Operation Date], Seller shall Schedule all of the Facility Output to PGE as Energy at the Delivery Point and shall continue such deliveries for the Term (the “Delivery Period”).Contract Price and Deviations for Schedule.

~~(a) During the Delivery Period, if the Facility Output is equal to or greater than the Energy Scheduled and delivered to PGE at the Delivery Point, PGE shall pay to Seller (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 and delivered as Energy at the Delivery Point.~~ Subject to Section Error! Reference source not found., for each Scheduling Period during the Delivery Period in which the energy Scheduled to PGE at the Delivery Point exceeds the Facility Output, PGE shall pay to Seller (i) the Contract Price for the Facility Output, plus (ii) the BAA Imbalance Price applicable to the quantity by which the energy Scheduled at the Delivery Point exceeds the Facility Output.

~~(b) For each Scheduling Period during the Delivery Period, if the Facility Output is less than in which the energy Scheduled and delivered to PGE at the Delivery Point is less than the Facility Output, PGE shall pay to Seller (i) the Contract Price for the quantity of MWh equal to the Facility Output, and minus (ii) a price per MWh equal to the relevant Transmission Provider’s real time imbalance energy price index for the quantity, stated in MWhs, by the Scheduled Energy exceeds Facility Output. If no such index exists, PGE shall designate a sub-hourly index that most closely represents the market price for real-time imbalance energy.~~ the BAA Imbalance Price applicable to the quantity by which the Facility Output exceeds the energy Scheduled at the Delivery Point.

To further confirm that the scheduling period will be selected by the bidder, section 2.3 of the PPA, PGE proposed adding the following definition to the PPA:

1.1.6 “BAA Imbalance Price” means the energy price per MWh used by the Facility’s native Balancing Authority Area to settle deviations between (i) the Energy scheduled to the Delivery Point during a Scheduling Period, and (ii) the Facility Output actually delivered to the Delivery Point during the same Scheduling Period, as reconciled monthly or otherwise in accordance with the Balancing Area Authority’s customary settlement and imbalance billing practices.

The IE believes this addresses the concern identified by a Stakeholder concerning an opportunity for confusion.

**D. PGE SHOULD GUARANTEE THE FINAL SHORT-LIST WILL HAVE DIVERSE OWNERSHIP BIDS**

IE Observation: A Stakeholder sought assurances that PGE would include PPA bids in the final short-list. The IE does not support a pre-established “carve out” or set aside for any category of ownership

structure. This RFP was designed to encourage developers to be creative in designing bids, including providing for flexibility in ownership structures and timing. <sup>5</sup> Beyond the challenge of defining what would be a PPA bid (e.g., must it be a PPA for the life of the unit?), restricting the ability of developers to offer creative bids limits what will be known about the market in Oregon, and possibly discourage the presentation of bids that, when combined into a portfolio, provides the least cost and most reliable supply options.

**E. PGE SHOULD NOT SPECIFY NEW NON-PRICE FACTORS AFTER BIDS ARE RECEIVED**

- a. A Stakeholder expressed concern that revised congestion pricing would be introduced after bids were received.

IE Observation: To eliminate this concern the IE suggests amending Section 8.2.2 of the RFP to include this statement:

The evaluation model will be “locked” by the IE prior to the receipt of bids. Any modifications after that date will be tested and documented by the IE and only permitted if extenuating circumstances justify the change, such as, needing to evaluate a bid with unique terms or conditions.

**F. THE EVALUATION PRICE/NON-PRICE WEIGHTING SHOULD BE 80/20 INSTEAD OF 60/40 AS PROPOSED IN THE DRAFT RFP**

IE Observation: The present scoring ratio and components was developed during the last renewable RFP to expressly meet the goals of the OPUC in addressing concerns expressed by Stakeholders. The IE will apply whatever ratio the Commission requires, while noting the existing one was previously approved by the OPUC, which is why it was published with the draft RFP materials. The IE notes that the ratio desired by a Stakeholder would likely tend to favor existing facilities over green field projects, which would complicate the evaluation process, but will be accommodated should the Commission require a change in the weighting of bids.

The IE believes the weighting identified by PGE is consistent with the standard established by the OPUC, as was used by the IE in the last RFP. Of course, should the OPUC adjust the weighting of evaluation components, the IE will evaluate bids using whatever standard the Commission identifies.

**G. THE NON-DISCLOSURE AGREEMENT (“NDA”) SHOULD BE CHANGED**

A number of Interested Parties requested that the liability cap of \$100,000 in the NDA be eliminated or reestablished as \$150 million. There was a request to remove the waiver of a jury trial in the event of disputes.

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<sup>5</sup> As noted above, some developers may want a PPA for an established number of years, with utility acquisition at the end of the period, and to achieve this goal offer attractive pricing options.

IE Observation: PGE eliminated the liability cap. The waiver of a jury trial remains in the NDA. The waiver provision is common to contracts and similar confidentialitys used in other jurisdictions. The comments from bidders did not express a need to eliminate the waiver.

PGE provided the following changes to the NDA.

Appendix K, Section 11.

~~IN NO EVENT SHALL EITHER PARTY'S LIABILITY UNDER THIS AGREEMENT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000), AND~~ NEITHER PARTY SHALL BE LIABLE FOR UNDER THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES

The IE believes the change is appropriate as it does not adversely impact any potential bidder, and may act to encourage participation.

#### **H. SECTION 8.2.2 OF THE RFP SHOULD BE REMOVED**

IE Observation: PGE removed the first two paragraphs of the section. The IE agrees this editing removes confusing text from the RFP, but does not introduce bias for or against any type of bid or potential bidder.

2016 Renewable RFP Section 8.2

~~Point-of-delivery (POD) is both a price and non-price factor. This category scores the risks associated with potential transmission constraints or curtailments in delivering the power from external PODs to PGE's load. When scoring for non-price factors, we will factor in the risks of transmission congestion.~~

~~The Pacific Northwest (PNW) transmission system currently has numerous constraints that can limit the firm delivery of power products for extended periods of time. The scoring process for this RFP assumes continuation of the status quo; however, PGE retains the right to adjust the delivery risk based upon the progress of any potential BPA Transmission System Expansion Project, other BPA transmission expansion process, long term power transmission distribution factors, and available long term transfer capacity evaluations.~~

#### **H. THE RIGHT OF FIRST REFUSAL WITH TERMINATION SHOULD BE REMOVED (SEC. 3.1.14)**

IE Observation: PGE is unwilling to remove this restriction, but will entertain suggested text changes when provided by a bidder at the time of bidding. The issue is whether the project will be completed when the counter-party is in default and termination is imminent, and whether PGE should have the right to approve a replacement developer or change in ownership. Because of all the risks associated with a builder in default, the IE believes PGE is correct in being cautious in establishing terms to ensure completion of a project.

## I. THE LIMITATION ON POST-TERMINATION PURPA STATUS (SEC. 5.8)

IE Observation: PGE is revising the PPA to permit reversion to PURPA, provided costs to ratepayers are not increased. The IE believes PGE is correct to expect the contractual rate to be met, or possibly lowered, while also meeting the goals of PURPA. Suppliers will not be permitted to increase costs to ratepayers by terminating a PPA and converting to Qualifying Facility (“QF”) status.

PGE’s proposed change to the pro-forma PPA are, in the opinion of the IE, appropriate.

### 5.8 Post-Termination PURPA Status.

If this Agreement is terminated because of a default by Seller, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Site, on whose behalf Seller acts herein as agent, may thereafter require or seek to require PGE to make any purchases from the Facility or any electric generation facility constructed on the Site under PURPA, or any other Law, at rates higher than those set forth in this Agreement for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PGE to do so. On or before the Effective Date, the Parties shall execute and record, in the appropriate real property records of the Counties in which the Facility or Site is situated, and any federal agency as applicable, a memorandum in form acceptable to PGE to provide constructive notice to third parties of Seller’s agreements under this Section 0.

## J. THE RFP SECTION 7.1.2 RE BID BOND REQUIREMENT SHOULD BE MODIFIED

IE Observations: This provision provides for bidders that are not investment grade to provide a bid bond at the time bids are submitted. The provision created confusion for a number of Stakeholders and potential bidders. After discussions, PGE agreed to modify the bid bond requirement by reducing the amount of a bid bond from ten percent of the value of the bid to \$25/kW.

### Minimum Bid Bond.

Upon bid submission, bidders that are of investment grade do not require a bid bond. Bidders who are not investment grade will need to show their ability to obtain a bid bond. A non-investment grade bidder can rely on a Qualified Institution to provide a Guaranty Commitment Letter, or, for PPAs, Letter of Credit Commitment Letter for ten percent of the project or PPA contract amount at the time of bid submission. Alternatively, Bidders may provide a bid bond or provide a cash deposit equal to **\$25/kW based on the project’s nameplate capacity.**

Upon notification of final short list selection bidders are required to submit a bid bond executed by an entity acceptable to PGE and authorized to issue such bond **for not less \$25/kW based on the project’s nameplate capacity.**

The IE believes the bid bond requirement is inconsistent with competitive solicitations conducted in other jurisdictions, and could discourage participation by entrepreneurial developers. In particular,

the IE believes the bid bond should not be required at the time of bidding. The IE recommends the following terms be employed:

1. Require the bond only for the period after a bid is short-listed and before a contract is executed.
2. At the time of bidding require evidence of the ability to obtain a bond; and,
3. Identify the conditions that would result in drawing from the bond, as well as the amount of any drawdown.

#### **K. THE CHANGE OF CONTROL RESTRICTIONS SHOULD BE MODIFIED (SEC. 15.2)**

ISSUE: Section 15.2 of the PPA provides:

No direct or indirect change in the control of Seller may occur without PGE's prior written consent, not to be unreasonably withheld, conditioned or delayed.

IE observation: PGE will entertain red-lined changes at the time of bidding, for no bidder provided revised text for this provision. In the experience of the IE, this sort of provision is typical as the utility will rightly want to confirm that any change in ownership would not adversely affect the ability of the facility to meet contract obligations. The IE believes it is appropriate for the individual financing arrangements of developers be accommodated, to the extent possible. At the same time, the IE believes it would be impractical to identify every possible financing arrangement of bidders. All proposed red-lined changes will be reviewed by the IE during the evaluation period.

#### **L. BIDDERS SHOULD BE PROVIDED THE SCORING FOR EACH OF THEIR BIDS**

IE Observation: One Stakeholder requested that the scoring of each bid be available to the respective bidder upon request so the Stakeholder could confirm "the accuracy of the scoring". It is appropriate for PGE to provide feedback after final selections are made so a bidder has some appreciation for why a bid was unsuccessful. It would be most unusually to provide detailed bid scoring data as that would be an invitation for the bidder to tailor a future bid to manipulate the scoring matrix to the bidder's advantage.

Accordingly, the IE believes PGE should prepare a template for the evaluation data to be provided upon request, so all bidders would be provided the same level of feedback, should they make the request.

#### **M. SUPPLIER DIVERSITY SHOULD BE ENCOURAGED**

IE Observation: A Stakeholder requested a number of text changes to the RFP encouraging state-certified minority or women-owned or emerging small businesses ("COBID") to participate in the RFP. In other jurisdictions the encouragement of certain classes of businesses is part of the RFP process and does not create a bias or treat other bidders unfairly.

The IE is unaware of any OPUC or statutory obligation to include the encouragement of COBID firms, but encourages PGE to begin the process of collecting information about the interest such firms would have in participating in electric generation industry. To that end, the IE suggests the following question be added to the on-line bid form as a means of documenting interest of COBID firms at this time.

Proposed addition to the bid form (with an explanation of terms provided in a 'help bubble' :  
"Is your firm qualified as COBID in Oregon?"

### **III. CONCLUSION**

Pursuant to the directive of the Commission, repeated attempts were made to have bidders and Stakeholders were encouraged to participate in the drafting of RFP documents. Interested parties were encouraged to provide "red-lined" revisions to RFP documents as a way to clearly identify how the documents could be modified to meet the goals of the party. Though written comments and lengthy in-person discussions concerns were identified. The IE believes the changes proposed by PGE are responsive to the comments provided by interested parties.

From the comments and direct discussions the IE had with interested parties, all but one expressed support for the RFP moving forward, with modifications. The changes provided by PGE, with the ones recommended herein, adequately address the concerns of those parties with an interest in seeing the RFP successfully completed. The IE believes the RFP documents, as proposed to be amended, accurately detail what is expected of bidders, and provide for wide flexibility by bidders in developing bids. The IE believes a fair and transparent RFP can be conducted using the RFP documents, once amended.