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July 19, 2016

## *Via Electronic Filing*

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High St. SE, Suite 100  
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC CO.  
Petition for Partial Waiver of Competitive  
Bidding Guidelines and Approval of Request for Proposals (RFP) Schedule  
**Docket No. UM 1773**

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the Response of the Industrial Customers of Northwest Utilities to PGE's Petition for Approval of Request for Proposals.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch  
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1773**

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	RESPONSE OF THE INDUSTRIAL
COMPANY,	)	CUSTOMERS OF NORTHWEST
	)	UTILITIES TO PGE’S PETITION FOR
Petition for Partial Waiver of Competitive	)	APPROVAL OF REQUEST FOR
Bidding Guidelines and Approval of Request for	)	PROPOSALS
<u>Proposals (RFP) Schedule.</u>	)	

**I. INTRODUCTION**

Pursuant to OAR 860-001-0400(4), the Industrial Customers of Northwest Utilities (“ICNU”) files this Response to Portland General Electric Company’s (“PGE” or the “Company”) Petition for Approval of Request for Proposals (“Petition”), filed with the Oregon Public Utility Commission (“Commission”) in the above-referenced docket on July 13, 2016.

ICNU strongly opposes the Company’s Petition. In doing so, however, ICNU’s position is not that the Commission necessarily should prevent PGE from going forward with its request for proposals (“RFP”). Rather, ICNU objects to the Company’s efforts to get the Commission to sanction a resource procurement strategy it has not had the opportunity to evaluate fully.

PGE does not need Commission approval of the RFP in order to pursue it. Approval merely signals that the RFP is consistent with a fully vetted and acknowledged resource plan. The Company’s proposal to acquire new RPS resources nearly a decade before its own integrated resource plan (“IRP”) says are needed, whether reasonable or not, plainly has not been fully vetted and acknowledged. The reasonable response to the Company’s Petition is for

the Commission to take no action – to decline to approve or disapprove the RFP. If PGE then chooses to pursue the RFP, it will have the opportunity to justify the prudence of its decision when it seeks to put any resources it acquires into customer rates. This is the standard regulatory process and PGE offers no reason why it should change.

## II. BACKGROUND

This is the second time PGE has requested approval of its RFP. ICNU has consistently opposed this request as inconsistent with the Commission’s Competitive Bidding Guidelines. The Guidelines exist in order to promote certain goals. These include complementing Oregon’s IRP process, and not unduly constraining utility management’s prerogative to acquire new resources.<sup>1/</sup> To further these goals, the Guidelines contemplate that rigid adherence to their provisions and the IRP action plan is not always in customers’ best interest.<sup>2/</sup> Circumstances can change that impact a utility’s resource needs. Under these circumstances, the Guidelines fulfill the goals they are intended to promote by allowing utilities to request a waiver of their provisions.<sup>3/</sup> The idea is that, if circumstances prevent the utility from complying with a provision of the Guidelines, it is supposed to seek a waiver, not ask that the Commission apply that provision anyway. Nevertheless, that is precisely what PGE has requested here.

In its original petition in this docket, PGE sought, among other things, a partial waiver of Guideline 7, which provides:

The Commission will solicit public comment on the utility’s final draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment and Commission review

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<sup>1/</sup> Docket No. UM 1182, Order No. 06-446 at 2 (Aug. 10, 2006).

<sup>2/</sup> *Id.*

<sup>3/</sup> *Id.* at 4.

should focus on: (1) the alignment of the utility’s RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission’s competitive bidding guidelines; and (3) the overall fairness of the utility’s proposed bidding process. After reviewing the RFP and the public comments, the Commission may approve the RFP with any conditions and modifications deemed necessary .... The Commission will target a decision within 60 days after the filing of the final draft RFP ....”<sup>4/</sup>

The Company sought a waiver of the 60-day comment period under Guideline 7, but continued to request RFP approval despite the fact that, as ICNU pointed out in its initial comments in this docket, the RFP is not consistent with the Company’s acknowledged IRP.<sup>5/</sup> The Company’s 2013 IRP shows that it does not need a new RPS resource until 2024.<sup>6/</sup> ICNU has shown that PGE can extend this date to 2030 by purchasing unbundled renewable energy certificates (“RECs”) to meet 20% of its RPS compliance, the maximum amount allowed by law.<sup>7/</sup>

The Commission considered the Company’s original petition at the June 7, 2016 open meeting. The Staff report for that open meeting also noted that approval of the RFP would be inconsistent with Guideline 7.<sup>8/</sup> The report further stated that Staff was “not convinced that the Commission should approve the RFP without benefit of stakeholder input,” and recommended that “the Commission [] take no action regarding the approval of the RFP ....”<sup>9/</sup>

At the open meeting, PGE indicated why it sought RFP approval: “Ultimately, for practical purposes to PGE, it indicates that the Commission approves us moving forward with this process.”<sup>10/</sup> The Commission, however, declined to take any action with respect to PGE’s

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<sup>4/</sup> *Id.*, Appen. A at 2.

<sup>5/</sup> Docket No. UM 1773, ICNU Comments at 5 (May 12, 2016).

<sup>6/</sup> Docket No. LC 56, PGE 2013 IRP Update at 47 (Dec. 2, 2015).

<sup>7/</sup> Docket No. UM 1783, ICNU Supplemental Comments, Affidavit of Bradley Mullins ¶ 8 (June 27, 2016); ORS 469A.145(1).

<sup>8/</sup> Staff Report for June 7, 2016 Open Meeting (“Staff Report”) at 13 (May 31, 2016).

<sup>9/</sup> *Id.*

<sup>10/</sup> Open Meeting at 1:05:13.

request for RFP approval. Recognizing the issues parties, including ICNU, had raised, Commissioner Savage stated: “I’m having trouble supporting that we act *ever* on approving or disapproving this final RFP.”<sup>11/</sup> Commissioner Bloom stated: “I can see today we could approve it, we could take no action, or we could disapprove it, but we’ve been rushed into this so I don’t think we can approve it or disapprove it, so I’m going to agree with [Commissioner Savage] that we take no action. I’m also concerned how we get around the fact that the RFP is not consistent with the last acknowledged IRP.”<sup>12/</sup> Finally, Chair Hardie stated: “My concern is that, what is the purpose of an RFP? It really gives the utility a leg up on cost recovery, but it sort of presumes that an RFP was well vetted, which is what I think Commission rules ordinarily contemplate in order to give them that leg up, and I’m not confident of our ability to give it the stamp of approval at this point in order to shift those risks to customers .... So I’m not comfortable at this time approving the draft RFP.”<sup>13/</sup> The Commission’s order following the open meeting “adopt[ed] Staff’s recommendation to take no action at this time on whether to approve PGE’s final draft RFP.”<sup>14/</sup>

### III. COMMENTS

ICNU believes the Commission got it right in the June 7th open meeting and changing its decision now would not be in the public interest. Guideline 7 of the Commission’s Competitive Bidding Guidelines provides that the Commission may approve a final draft RFP if, among other things, it finds that the RFP is aligned with the utility’s acknowledged IRP.<sup>15/</sup>

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<sup>11/</sup> *Id.* at 1:11:19.

<sup>12/</sup> *Id.* at 1:14:35.

<sup>13/</sup> *Id.* at 1:16:10.

<sup>14/</sup> Order No. 16-221 at 2 (June 8, 2016).

<sup>15/</sup> Order No. 06-446, Appen. A at 2.

PGE's Petition states in no uncertain terms, "the proposed RFP is not consistent with the 2013 IRP," the Company's most recently acknowledged IRP.<sup>16/</sup> Thus, there continues to be no dispute that the RFP does not, and cannot, align with PGE's acknowledged IRP. Approval of the RFP plainly would be inconsistent with Guideline 7.

The Company proposes that the Commission ignore this provision of the Guidelines because new circumstances – namely reauthorization of the Federal production tax credit ("PTC") and passage of SB 1547 – have made its acknowledged action plan in the 2013 IRP stale.<sup>17/</sup> The Company's position conflates two different issues. One issue – the issue PGE focuses on – is whether rigid adherence to an action plan should be required. The Company notes that material intervening circumstances can affect the reasonableness of continuing to adhere to an action plan and cites the Commission's statement that "it is not in the customer's best interest for any utility to march lockstep without any deviation from the plan."<sup>18/</sup> To be clear, ICNU agrees with this. ICNU does not necessarily agree that reauthorization of the PTC or passage of SB 1547 represent material intervening circumstances that justify issuance of the RFP, and the Company itself does not exactly commit to this either, noting that these are "arguably 'dramatic' occurrences."<sup>19/</sup> However, were PGE to request a waiver of Commission approval of the RFP under Guideline 7 based on these circumstances, ICNU would not object. Indeed, the Company has made a similar request in the past,<sup>20/</sup> and that is how it is supposed to be done under the Guidelines.

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<sup>16/</sup> PGE Petition at 11 (emphasis added).

<sup>17/</sup> *Id.* at 11-12.

<sup>18/</sup> *Id.* at 12 (citing Order No. 06-446 at 2).

<sup>19/</sup> *Id.* at 12 (emphasis added).

<sup>20/</sup> *Re PGE Petition for Waiver of Competitive Bidding Guidelines*, Docket No. UM 1499, PGE Petition (Sept. 2, 2010) (requesting full waiver of Competitive Bidding Guidelines).

The other issue – the issue that is pertinent to the Company’s Petition – is whether the Commission should approve an RFP that deviates from the IRP action plan when intervening circumstances occur that may impact the reasonableness of that action plan. In other words, the issue PGE’s Petition presents is not whether it should go forward with the RFP; it is whether the Commission should sanction the Company’s resource procurement strategy represented by the RFP. ICNU does not agree that Commission approval of an RFP under these circumstances is appropriate unless the Commission has had an opportunity to fully evaluate the utility’s resource strategy in response to such changed circumstances.

It is not an empty requirement for the RFP to align with the acknowledged IRP. In Docket No. UM 1208, the Commission refused to approve a PacifiCorp RFP for approximately 1,100 MW of base load resources because it was inconsistent with the utility’s acknowledged IRP.<sup>21/</sup> In its order, the Commission stated that the reason for this requirement is to ensure that “our review is based on a fully vetted and acknowledged resource plan.”<sup>22/</sup> The Commission also rejected PacifiCorp’s argument that the portfolio modeling and decision criteria it used for its RFP would be consistent with its next IRP. The Commission noted that this assertion was “of little assistance to our review ... [as] parties have not had the opportunity to review those criteria because PacifiCorp has not yet submitted its 2006 IRP.”<sup>23/</sup> Thus, consistency with a utility’s acknowledged IRP is crucial to Commission approval of an RFP because it ensures that the Commission has evaluated, understands, and agrees with the utility’s resource procurement strategy.

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<sup>21/</sup> *Re PacifiCorp Draft 2012 Request for Proposals*, Docket No. UM 1208, Order No. 07-018 (Jan. 16, 2007).

<sup>22/</sup> *Id.* at 3 (emphasis added).

<sup>23/</sup> *Id.* at 4.

Like PacifiCorp in UM 1208, that has not occurred with respect to the resources PGE proposes to acquire pursuant to its RFP. The Company’s Petition notes that “Staff indicates the current acknowledged IRP Action Plan no longer accurately reflects the resource needs of the Company.”<sup>24/</sup> It is true that Staff “posit[ed]” that this might be the case, but it did so because it does not actually know.<sup>25/</sup> Staff stated that SB 1547’s “ultimate effect on the Company’s acknowledged IRP Action Plan and overall resource acquisition plan remain to be seen. These impacts will be unknown until the filing of the next IRP . . .”<sup>26/</sup> While Staff “expect[ed] to see a marked increase in renewable resource acquisition as a result of SB 1547,”<sup>27/</sup> there is no reason to conclude that this should be a near-term consequence or, indeed, that SB 1547 should have any impact on the Company’s 2013 IRP action plan with respect to renewable resource acquisition. SB 1547 did not change the 15% RPS requirement that currently exists.<sup>28/</sup> Nor did it change the 20% RPS requirement in 2020 that was present under the old law.<sup>29/</sup> In 2025, PGE will see a slight increase to its RPS obligations under SB 1547, from 25% to 27%, but it is not until 2030 – the outer years of the IRP planning horizon – that SB 1547 has any material impact on the Company’s RPS requirements.<sup>30/</sup>

PGE is correct that the Commission has the discretion to approve an RFP even if it does not meet the terms of Guideline 7.<sup>31/</sup> ICNU’s research, however, has not revealed a single instance in which the Commission has approved an RFP under circumstances remotely

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<sup>24/</sup> PGE Petition at 11.

<sup>25/</sup> Staff Report at 13.

<sup>26/</sup> *Id.* (emphasis added).

<sup>27/</sup> *Id.*

<sup>28/</sup> SB 1547 § 5(1)(b).

<sup>29/</sup> *Id.* § 5(1)(c).

<sup>30/</sup> *Id.* § 5(1)(e)-(f).

<sup>31/</sup> PGE Petition at 11-12; Order No. 07-018 at 3 n. 4.

comparable to those that exist here. In prior RFP dockets, the Commission has either refused to approve the RFP because it was inconsistent with the IRP, approved the RFP because it was consistent with the IRP, approved the RFP with conditions in order to align it with the IRP, or did not make a finding on this issue.<sup>32/</sup> In fact, ICNU has uncovered only one instance in which the Commission even arguably approved an RFP that was inconsistent with the most recently acknowledged IRP.<sup>33/</sup> In that docket, however, PGE issued an RFP for new renewable resources following passage of SB 838, the prior RPS law.<sup>34/</sup> The Commission approved this RFP only

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<sup>32/</sup> Order No. 07-018 at 3-7 (denying PacifiCorp's request for RFP approval because it was inconsistent with its most recently acknowledged IRP); *Re PacifiCorp Petition for Waiver of the Commission's Competitive Bidding Guidelines*, Docket No. UM 1374, Order No. 08-376 at 1 (July 17, 2008) (granting PacifiCorp a full waiver of the competitive bidding guidelines to acquire the Chehalis generating facility); *Re PacifiCorp Request for Approval of Draft 2008 Request for Proposals*, Docket No. UM 1360, Order No. 08-310 at 2, 5 (June 5, 2008) (approving RFP as consistent with IRP, subject to conditions to align the RFP with the IRP); *Re PacifiCorp Request for Approval of Draft 2008R-1 Request for Proposals for New Renewable Resources*, Docket No. UM 1368, Order No. 08-476 at 1-2 (Sept. 23, 2008) (approving RFP without analysis as to consistency with IRP); *Re PacifiCorp Request for Approval of Draft 2009R Request for Proposals for New Renewable Resources*, Docket No. UM 1429, Order No. 09-272 at 1, Appen. A at 9 (July 15, 2009) (approving RFP with conditions to align it with the acknowledged IRP); *Re PacifiCorp Request for Approval of Final Draft 2011 All Source Request for Proposals*, Docket No. UM 1540, Order No. 12-111 at 1, Appen. A at 4 (Mar. 27, 2012) (adopting Staff's recommendation to approve RFP, which was consistent with IRP); *Re PGE Petition for Waiver of Competitive Bidding Guidelines Pursuant to Order No. 06-446*, Docket No. UM 1499, PGE Petition at 2-4 (Sept. 2, 2010) (seeking full waiver of competitive bidding guidelines); *Re Idaho Power Co.' Request for a Partial Waiver of Competitive Bidding Guidelines – 2012 Wind Resource*, Docket No. UM 1433, Idaho Power Petition at 9 (June 2, 2009) (seeking waiver of Guideline 7, among others, including Commission approval of RFP); *Re Idaho Power Co.'s Request for a Partial Waiver of Competitive Bidding Guidelines*, Docket No. UM 1378, Idaho Power Petition at 11-12 (Apr. 17, 2008) (requesting waiver of Guideline 7, among others, including Commission approval of RFP); *Re PGE Request for Proposals for Capacity and Baseload Energy Resources*, Docket No. UM 1535, Order No. 12-215 at 5, Appen. A at 8 (June 7, 2012) (approving combined RFP as consistent with IRP); *Re PGE Request for Proposals for Renewable Resources*, Docket No. UM 1613, Order No. 12-376 at 1, Appen. A at 8 (Oct. 8, 2012) (approving RFP as consistent with IRP); *Re PGE Request for Waiver of Request for Proposal (RFP) Requirement*, Docket No. UM 1704, Order No. 14-300 at 1, Appen. A at 1-2 (Sept. 2, 2014) (granting full waiver of competitive bidding guidelines); *Re Idaho Power Co. General Rate Revision Application for Authority to Include the Langley Power Plant Investment in Rate Base*, Docket No. UE 248, Order No. 12-358 at 3-4 (Sept. 20, 2012) (recognizing that Idaho Power did not comply with competitive bidding guidelines); *Re Northwest and Intermountain Power Producers Coalition Petition for Temporary Rulemaking and Investigations into PacifiCorp's 2016 Requests for Proposal*, Docket Nos. AR 598, UM 1771, Order No. 16-188 at 2 (May 19, 2016) (recognizing that PacifiCorp did not comply with competitive bidding guidelines).

<sup>33/</sup> *Re PGE Request for Proposals for Energy Resources*, Docket No. UM 1345, Order No. 08-234 (Apr. 24, 2008).

<sup>34/</sup> *Id.*, Appen. A at 2.

two weeks before it acknowledged the renewable resource component of PGE's next IRP action plan,<sup>35/</sup> and one month after the Staff report was issued recommending acknowledgement of this renewable resource action plan in the IRP.<sup>36/</sup> In other words, the Commission and stakeholders had the opportunity to fully evaluate and understand the Company's resource procurement plan before the Commission approved that RFP. Furthermore, SB 838 imposed on the Company a near-term RPS obligation.<sup>37/</sup> As discussed above, SB 1547 imposes no comparable incremental near-term requirements.

ICNU has raised a number of significant legal and policy issues in this docket that deserve to be fully evaluated before the Commission sanctions an RPS procurement strategy that deviates as substantially from the IRP as PGE's does in this docket. As ICNU's Supplemental Comments in this docket demonstrate, early action to capture the PTC is not the least-cost, least-risk RPS compliance strategy. Instead, maximizing the use of unbundled RECs is the prudent strategy.<sup>38/</sup> Mr. Mullins' affidavit attached to ICNU's Supplemental Comments shows that this strategy can save customers approximately \$540 million on a present value revenue requirement ("PVR") basis relative to the Company's proposed early action strategy and can delay physical compliance with the RPS until 2030.<sup>39/</sup> Crucially, PGE does not dispute these conclusions. Instead, it relies on vague statements about its "experience" in the unbundled wholesale REC market to question ICNU's assumption that it can purchase the amount of unbundled RECs

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<sup>35/</sup> Compare *id.* with *Re PGE 2007 Integrated Resource Plan*, Docket No. LC 43, Order No. 08-246 (May 6, 2008).

<sup>36/</sup> Docket No. LC 43, Staff Report (March 25, 2008).

<sup>37/</sup> As of the date of approval of the RFP, PGE had less than three years to meet a 5% RPS obligation. ORS 469A.052(1)(a).

<sup>38/</sup> ICNU Supplemental Comments at 5.

<sup>39/</sup> *Id.*, Mullins Affidavit ¶¶ 11-12.

necessary to satisfy 20% of its RPS obligation going forward.<sup>40/</sup> Yet, in 2015, the Company purchased over 500,000 unbundled RECs at an average price of \$0.33 per REC.<sup>41/</sup> In fact, PGE has met 20% of its compliance obligation with unbundled RECs every year since the RPS was implemented.<sup>42/</sup> ICNU's view of the Company's "experience" in the market, then, is that unbundled RECs are cheap and abundant.

Furthermore, while PGE states that there are no "rational grounds" for ICNU's assumption that the amount of unbundled RECs will be available to satisfy PGE's RPS compliance in later years from "current inventory of eligible renewable resources," why the Company thinks that "current inventory" is what will be available in 2030 and beyond is unexplained.<sup>43/</sup> Unbundled RECs may be purchased from anywhere in the Western Electricity Coordinating Council ("WECC") to satisfy Oregon's RPS compliance,<sup>44/</sup> and the Energy Information Administration projects that renewable energy generation will increase in this region by 237.5 million MWh between 2015 and 2040.<sup>45/</sup> Indeed, California will be at a 50% RPS in 2030.<sup>46/</sup> As that state moves closer to this 50% RPS requirement, its utilities' ability to utilize unbundled RECs will diminish, leaving more available for other utilities in the WECC, including PGE.<sup>47/</sup> Meanwhile, although the Company questions whether unbundled RECs will continue to

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<sup>40/</sup> PGE Petition at 5.

<sup>41/</sup> Docket No. UM 1783, PGE 2015 RPS Compliance Report at 2 (June 1, 2016) (showing a total of 521,950 unbundled RECs purchased at a total cost of \$173,029).

<sup>42/</sup> *Re PGE 2014 RPS Compliance Report*, Docket No. UM 1740, Order No. 15-344, Appen. A at 3 (Oct. 20, 2015); *Re PGE 2013 RPS Compliance Report*, Docket No. UM 1699, Order No. 14-370, Appen. A at 2 (Oct. 28, 2014); *Re PGE 2012 RPS Compliance Report*, Docket No. UM 1658, Order No. 13-422, Appen. A at 2 (Nov. 12, 2013); *Re PGE 2011 RPS Compliance Report*, Docket No. 1605, PGE RPS Compliance Report at 2 (June 1, 2012) (showing 183,063 unbundled RECs used for compliance).

<sup>43/</sup> PGE Petition at 5.

<sup>44/</sup> ORS 469A.135(2).

<sup>45/</sup> Data sourced from EIA 2016 Annual Energy Outlook, available at: <http://www.eia.gov/forecasts/aeo/>.

<sup>46/</sup> Cal. Pub. Utils. Code § 399.15(b)(2)(B).

<sup>47/</sup> *Id.* § 399.16(c)(2).

be available at “current market rates,”<sup>48/</sup> it is worth emphasizing that Mr. Mullins’ calculation of a \$540 million PVRR benefit to customers assumed a price of \$10 per REC,<sup>49/</sup> over thirty times higher than the \$0.33 per REC PGE paid in 2015. Thus, the Company could absorb significant market price risk and its customers would still be better off relative to the Company’s proposed early action strategy.

Similarly unresponsive is the Company’s answer to ICNU’s observation that the costs of carrying forward the PTCs PGE cannot use will eliminate the supposed benefits of early action to capture the PTC.<sup>50/</sup> The Company says that its analysis “does not assume PGE ownership” and “represents generic savings available.”<sup>51/</sup> An analysis that does not account for potential actual circumstances that could result from the RFP, however, is not particularly useful. If, by this response, PGE is saying that it is restricting its RFP only to power purchase agreements with third parties that themselves have the ability to use all of the associated PTCs, then it may be appropriate to assume the full value of the PTC. ICNU does not, however, understand the RFP to be so limited.<sup>52/</sup> The Company also accuses ICNU of “oversimplif[ying]” the analysis on this issue because “Mr. Mullins fails to include growth in PGE’s taxable income over the analysis period.”<sup>53/</sup> The Company notes that “[t]axable income can be greatly influenced by company performance, the macro tax environment and future legislative changes ....”<sup>54/</sup> That is indeed the case. Such circumstances could also result in the Company’s tax

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<sup>48/</sup> PGE Petition at 5.

<sup>49/</sup> ICNU Supplemental Comments, Mullins Affidavit ¶ 11.

<sup>50/</sup> *Id.* ¶ 19.

<sup>51/</sup> PGE Petition at 6.

<sup>52/</sup> PGE Draft RFP ¶ 1.1 (“Acceptable bids for renewable resources include power purchase agreement (PPA), as well as a range of ownership structures, including sales of existing assets, acquisition of project development or natural resource rights and options, and build-own-transfer agreements”).

<sup>53/</sup> PGE Petition at 6.

<sup>54/</sup> *Id.*

liability decreasing in the future. The accelerated depreciation tax benefits the Company potentially would realize from a \$1 billion capital investment through the RFP, for instance, is likely to place substantial downward pressure on the Company's tax liability. This is because, even without considering the availability of bonus depreciation, the Company will be allowed, under the Modified Accelerated Cost Recovery System ("MACRS"), to depreciate a new RPS facility over a five-year period.<sup>55/</sup> This could result in even more PTC carry-forwards and even greater cost impacts to customers due to carrying charges associated with these carry-forwards than Mr. Mullins estimated.

The fact is that PGE does not dispute it cannot use the PTCs it generates today.<sup>56/</sup> This requires the Company to carry them forward to future years, which currently results in customers paying a return on this deferred tax asset.<sup>57/</sup> Based on actual existing circumstances, if the Company ultimately owns the resources selected under the RFP, it is highly unlikely that it will be able to use the PTCs generated by these resources, and that will materially impact the value customers would allegedly realize from the Company's actions.

ICNU's fundamental position on the Company's resource procurement strategy is that the least-cost, least-risk strategy is for the Company to wait until it has a resource need, rather than purchasing RPS resources a decade or more early in order to capture the PTC. Doing so avoids imposing on customers the costs and risks of unknown future circumstances. PGE's response to this is that its "proposed procurement takes advantage of known savings available today but expiring on a predefined schedule."<sup>58/</sup> That is simply false. ICNU does not dispute

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<sup>55/</sup> 26 U.S.C. § 168(e)(3)(B)(iv).

<sup>56/</sup> PGE Petition at 5-6.

<sup>57/</sup> ICNU Supplemental Comments, Mullins Affidavit ¶ 16.

<sup>58/</sup> PGE Petition at 35.

that the PTC is valuable, and a wind plant that generates PTCs certainly provides savings to customers relative to a wind plant that does not. But that is not the relevant analogy. PGE does not need to acquire any new RPS resources. A wind plant that generates PTCs does not provide “known savings” to customers relative to no wind plant all. It does precisely the opposite by requiring customers to pay for generation they do not need in exchange for receiving speculative long-term benefits.

Finally, ICNU has also raised concerns that acquisition of new RPS resources will cause the Company to exceed the four percent cost cap in the RPS law.<sup>59/</sup> In comments on the Company’s 2015 RPS Compliance Report, ICNU has noted that, while the report shows a 2.2% cost of RPS compliance in 2015, the Company is not accurately reporting that cost because it is not including all costs in customer rates.<sup>60/</sup> Most notably, PGE’s Tucannon River Wind Farm is entirely excluded from the incremental cost of compliance.<sup>61/</sup>

These are all issues that are supposed to be fully developed in the IRP and Renewable Portfolio Implementation Plan dockets where a number of parties can present their positions on these and other issues and the Commission can make a determination based on a fully developed record. Under those circumstances, sanctioning the Company’s resource procurement strategy by approving an RFP potentially makes sense. This RFP, however, is not part of a fully vetted and acknowledged resource procurement strategy. There is no reason to sign off on it.

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<sup>59/</sup> ORS 469A.100; *Re PGE 2015 RPS Compliance Report*, Docket No. UM 1783, ICNU Comments at 5-6 (July 15, 2016).

<sup>60/</sup> Docket No. UM 1783, ICNU Comments at 4-8.

<sup>61/</sup> *Id.* at 5-6.

#### IV. CONCLUSION

PGE's insistence on obtaining Commission approval of the RFP essentially acknowledges the uncertainty it has with the prudence of its own strategy. That is all the more reason why the Commission should not approve it. Again, simply because the Commission does not approve the RFP does not mean PGE is prevented from going forward with it. Ultimately, it is the Company's, not the Commission's, job to plan and execute a prudent resource procurement strategy. In approving the RFP, the Commission will be signaling that the Company's strategy makes sense without actually knowing whether this is the case. That is not in the public interest. The reasonable path forward in this docket is for the Commission to reaffirm the decision it has already made on this issue. That is, to decline to approve or disapprove the RFP and to express no opinion as to whether the Company's strategy is sensible. If PGE then decides to pursue the RFP, it can make its case when it seeks to place the resources it acquires in customer rates.

Dated this 19th day of July, 2016.

Respectfully submitted,

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