

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: July 29, 2016

REGULAR \_\_\_\_\_ CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_ Upon Commission Approval \_\_\_\_\_

DATE: July 26, 2016

TO: Public Utility Commission

FROM: John Crider 

THROUGH: Jason Eisdorfer and Michael Dougherty 

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UM 1773) Petition for Approval of Request for Proposals.

**STAFF RECOMMENDATION:**

The Commission should take no action on Portland General Electric Company's (PGE or Company) Petition for Approval of its Request for Proposals (Petition).

Alternatively, the Commission should take no action on PGE's Petition except for the following limited findings: (1) the Commission concludes that the RFP satisfies its Competitive Bidding Guidelines except for the first criterion in Guideline 7, which requires that the RFP align with the Company's most recently acknowledged IRP (and except for certain Guidelines which were previously waived by the Commission in its Order No. 16-221), and (2) concludes that PGE's RFP bidding process to date has been fair.

**DISCUSSION:**

Issue

Whether the Commission should approve the Company's proposed final draft RFP.

Applicable Law

The following statutes, rules and Commission Orders are all implicated in considering PGE's waiver request and approval of the final draft RFP.

Order No. 16-221

In its Order No. 16-221, the Commission adopted Staff's recommendation and took no action on PGE's request to approve its RFP. Instead, the Commission adopted a public

comment period that ended on June 28, 2016 to help inform PGE of the need for potential changes to the final draft RFP. The Commission also allowed the parties to recommend future proceedings following the filing of public comments and informal discussions. Subsequently, consistent with Order No. 16-221, parties filed formal comments on the RFP, PGE conducted informal discussions with the parties, and the Company filed its revised Petition on July 13, 2016.

### Competitive Bidding Guidelines

The Commission's Guidelines were first established in Docket UM 1182, Order No. 06-446. Subsequently, the Commission has amended the Guidelines four times, most recently in Order No. 14-149, and a complete set of the Guidelines is provided as Appendix A to that order. Generally, the Guidelines require issuance of a Request for Proposals for all Major Resource Acquisitions (defined as having duration greater than five years and quantities greater than 100 MW) and certain multiple small resource acquisitions that qualify for treatment as a Major Resource Acquisition. Under ORS 757.210, a utility always has the burden of proving that it acted prudently in acquiring its resources.

Since 2006, the Commission has required that utilities follow the Guidelines which apply to resource acquisition exceeding five years with capacity of 100 MW or larger. The Guidelines have been revised over the years but five fundamental goals remain:

- 1) to provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints;
- 2) to complement Oregon's integrated resource planning process;
- 3) to not unduly constrain utility management's prerogative to acquire new resources;
- 4) to provide flexibility, allowing the contracting parties to negotiate mutually beneficial exchange agreements; and
- 5) to maintain a process which is transparent, understandable and fair.

In 2014, the Competitive Bidding Guidelines docket (Docket UM 1182) was reopened to further examine the potential bias in the utility resource procurement process for utility ownership driven by the utilities' ability to earn a return on the capital investment. Commission Order No. 14-149 modified certain Guidelines and closed the docket.

In the present context of PGE's revised Petition, Guideline 7 is the most important of the Guidelines. Guideline 7 provides as follows: "...the Commission review 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. See Order 06-446 at Appendix A, page 2. In explaining Guideline 7, the Commission stated that "approval of an RFP": "...is simply a determination on the three criteria set in the guideline – that is, whether the utility's RFP is consistent with its acknowledged IRP, whether the RFP satisfies these guidelines, and whether the utility's proposed bidding process is fair. The approval is simply that: the RFP meets these criteria, or would meet the criteria with certain conditions and modifications."<sup>1</sup>

In its Order 16-188, the Commission opened an investigation to update the Guidelines.

#### Senate Bill 1547

In the 2016 legislative session, SB 1547 was enacted, effective March 8, 2016. Section 6 of the bill amends ORS 469A.075(4) to add a requirement (d) that the Commission adopt rules "providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity."<sup>2</sup> Section 6 of the bill also amends ORS 469A.075(4)(c) to require that the Commission adopt rules "providing for the integration of an [renewable portfolio standard] implementation plan with the integrated resource planning guidelines established by the Commission for the purpose of planning for the least-cost, least-risk acquisition of resources." Among the numerous other provisions of SB 1547, the legislature enacted amendments to the renewable portfolio standards (RPS) and to the provisions for how renewable energy certificates (RECs) are banked and used. In its Order No. 16-188 (Docket No. UM 1771), the Commission opened a rulemaking proceeding to implement Section 6 of SB 1547.

SB 1547 increases the required amount of electricity to be delivered to retail loads that is produced from renewable resources by setting targets in five-year increments from 2025 to 2040. By 2040, utilities are required to serve 50 percent of its retail load with energy from renewable resources.

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<sup>1</sup> Order 06-446 at 9-10.

<sup>2</sup> Also in its Order 16-188, the Commission opened a rulemaking proceeding to implement the "diverse ownership of renewable resources" provision found in SB 1547, Section (8).

### Renewable Portfolio Implementation Plans (RPIPs)

Pursuant to OAR 469A.075 and OAR 860-860-0400, every two years utilities are required to submit five-year plans for how they anticipate meeting requirements of the Renewable Portfolio Standard (RPS). PGE filed its original 2017-2021 "Renewable Portfolio Implementation Plan" (RPIP) in December 2015, prior to passage of SB 1547, which amends ORS chapter 469A in several significant ways. PGE's original RPIP was docketed as UM 1755. PGE later filed a supplement to its RPIP on February 16, 2016, which included a scenario based on changes to the RPS by SB 1547; however, the supplement only minimally addressed the new REC provisions of SB 1547 and the extension of federal tax credits.

In Order No. 16-157 (issued in UM 1755), the Commission acknowledged the RPIP with conditions that the Company rework and refile the RPIP by July 15, 2016, including a complete analysis of how SB 1547 impacts the Company's strategy for determining the optimal compliance approach through 2040.

PGE filed its new RPIP on July 15, 2016, as required by the Commission. PGE's new RPIP has been docketed as UM 1790.

### Analysis

PGE requests that the Commission approve the proposed final draft of its Request for Proposals (RFP) for renewable resources through a petition filed with the Commission July 13, 2016. This request follows modifications made to the RFP by PGE in response to Order No. 16-221 where the Commission decided to take no action towards approval of a prior version of the RFP, but instead adopted a public comment period through June 28, 2016 and encouraged PGE and other stakeholders to resolve open issues. Also through Order No 16-221, the Commission allowed the parties to recommend future proceedings following the public comments and discussions but did not prescribe future actions.

Several stakeholders have offered comments on the final draft RFP, both formally and informally through the Independent Evaluator's website. These are summarized below:

### Stakeholder Comments & Issues

Small Business Utility Advocates (SBUA), Industrial Customers of Northwest Utilities (ICNU), Northwest and Intermountain Power Producers Coalition (NIPPC), Obsidian and one unnamed party offered formal comments.

*ICNU*

ICNU fundamentally disagrees with the Company's pursuit of renewable resources through this RFP process. ICNU's analysis demonstrates that acquisition of new RPS physical resources is not the least-cost, least-risk approach to RPS compliance.

ICNU raises two fundamental issues with PGE's proposed RFP and subsequent potential resource acquisition. First, ICNU demonstrates that the Company has in the past not generated enough taxable income to fully utilize its current production tax credits, but instead must carry some of these credits in a deferred account that earns a return. ICNU's analysis shows that if PGE were to add more wind plants to its fleet, the unutilized PTC bank could grow to several hundred million dollars after 2020. At that point, it is conceivable that the annual carrying costs equal or exceed the annual PTCs earned.

Second, ICNU shows that the Company could pursue RPS compliance through maximizing its purchase of unbundled RECs and thereby extending its resource deficit year to 2030. Further, ICNU shows that this approach produces a PVRR of approximately \$538 million less than the Company's proposal for acquiring a 500MW in 2018.

*NIPPC*

NIPPC identifies several areas of concern with the RFP language and terms. NIPPC states that PGE's RFP is biased in favor of utility ownership options<sup>3</sup> because it imposes burdens on PPA bids while also ignoring costs borne by ratepayers. For example, NIPPC states that the Company appears to rely on its gas plants for low cost integration services, a benefit not shared by other bidders.

NIPPC specifically suggests several revisions to the draft RFP:

*"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."*

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<sup>3</sup> NIPPC Comments dated June 6, 2016 at 2.

NIPPC has continued to work closely with the Company to resolve these issues, but the two have yet to reconcile all of their differences.

#### *SBUA*

SBUA claims that the RFP does not provide for enough diversity of ownership, and may be prejudicial against small commercial operators. SBUA points out that PGE publicly states a commitment to diversity and economic development by "ensuring equal opportunity in all competitive bid events for qualified minority-owned, women-owned, disabled veteran-owned and emerging small business enterprises (MWESB) suppliers." SBUA notes that the RFP does not explicitly promote these values and offers some suggestions for language that would provide remedies.

A major obstacle for SBUA is the inclusion of a minimum bid bond for all bidders. Upon objections from several parties, the Company has removed this requirement from its latest RFP revision.

#### *Obsidian*

Obsidian raises several issues which it believes provides a disadvantage to PPA bidders and offers remedies for these with changes to the RFP and scoring process. Obsidian would like to see several components treated in a way to remove bias towards Company-owned resources, chiefly among these being: accounting for transmission upgrade cost; accounting for integration cost; accounting for scheduling expenses; proper compensation for all energy and RECs delivered; clarification of PGE's right of first refusal; accounting for cost and schedule overruns; equalizing risk; accounting for inflation and decommission cost; and accounting for salvage value.

Like SBUA, Obsidian opposes the minimum bid bond requirement, and, as stated earlier, PGE has removed it from the RFP.

#### *Unnamed Bidder*

The unnamed bidder claims the minimum bid bond provisions are arbitrary, excessive and discriminatory. As noted above, the Company has subsequently removed this requirement.

#### *Independent Evaluator (IE) Report*

The IE believes the RFP to be fair (after stakeholder input and changes) and that all bids can be evaluated on a fair and equal basis.<sup>4</sup> The IE identifies several key issues addressed by the Company:

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<sup>4</sup> IE Report to the OPUC RE PGE Comment Process dated July 8, 2016.

- a) Transmission costs and availability – bidders raised concern that costs for transmission, integration, scheduling and ancillary services should be accounted for in an unbiased way;
- b) Risks related to equipment failures and forced outages – these should be borne equally by both PPA and ownership bids;
- c) Generators should be compensated for all power delivered, including test power;
- d) Shortlist should guarantee diverse ownership through use of quotas;
- e) No new non-price scoring factors should be introduced after bids are received;
- f) Scoring should be weighted 80/20 with 80 percent of the score based on price and 20 percent based on non-price risk factors;
- g) The non-disclosure agreement (NDA) should be modified to remove the liability cap and waiver of jury trial;
- h) PGE's right of first refusal with termination should be removed;
- i) Reversion to PURPA after termination; and
- j) Minimum bid bond should be removed.

In addition, stakeholders suggested various red-line edits to the text, most of which were adopted by the Company.

All of the major issues identified by the IE were discussed with the stakeholders and led to revisions except for (d), (f) and (g). PGE argues that carve-outs of any kind in the shortlist (issue (d)) represent inherently unfair treatment since it has a built in bias toward certain bids. PGE argues that 60/40 scoring (issue (f)) has been the norm in previous RFPs and this approach has been vetted and approved by the Commission. The Company is willing to change to 80/20 if directed to do so, but believes the 60/40 scoring accounts for risk better than an 80/20 split. Finally, for issue (g), PGE agrees to remove the liability cap but opts to retain the waiver of jury trial in the NDA.

#### Analysis of Criteria for RFP Approval

Guideline 7 states that approval of the RFP is a reflection that the Company has met three criteria – that the RFP is in alignment with its current acknowledged IRP, that the RFP and RFP process conformed to Commission Guidelines, and that the process was fair to participants.<sup>5</sup>

As the Company has requested Commission approval for the RFP, it follows that the Company must show how the RFP meets the three criteria for approval.

#### Criterion 1 – Consistency with Acknowledged IRP

Staff interprets the requirement for an acknowledged IRP to be tantamount to requiring that the Company demonstrate two things: 1) *a need for resources*; and 2) *a least-cost*,

<sup>5</sup> Order 06-446 (Guideline 7) at 9-10.

*least-risk (LC/LR) strategy to address this need.* Predominately, the need is typically driven by a load-resource imbalance which can be corrected with additional generation. However, there are legal and regulatory requirements placed on the Company which may also drive a need for resources. In this case, PGE's last acknowledged IRP, filed in 2013 (Docket LC 56), called for no major resource acquisitions in the five year action plan. Indeed, PGE's most recent IRP Update (filed December 2, 2015 in Docket LC 56) showed that the Company does not need a new RPS resource until 2024. The Commission partially acknowledged the 2013 IRP in its Order No. 14-415.

With strict application of the criteria identified by the Commission in Guideline 7, the Company cannot meet the first part of Guideline 7; namely, that the RFP align with its acknowledged IRP. This criterion is clearly not met because, as stated, the Company's most recently acknowledged IRP does not identify a need for resources in the Action Plan time frame. This same point is also made in the comments submitted by the Industrial Customers of Northwest Utilities (ICNU).<sup>6</sup> In the absence of a post-SB 1547 acknowledged Action Plan, the burden remains on the Company to both demonstrate a need for the resource and show that its resource acquisition plan is least-cost, least-risk. As explained immediately below, Staff concludes the Company has not done so.

The Company's proposal to issue the RFP is not driven by a load-resource imbalance. Rather, the only need identified by the Company is to comply with post-SB 1547 RPS requirements. Staff recognizes that this is indeed a real need; however, Staff notes that there are multiple portfolio options which could achieve RPS compliance using different proportions of bundled and unbundled RECs, and combinations of PPA's and Company-owned resources with various magnitudes and acquisition dates.

The Company has presented analysis on only two potential compliance paths across a range of acquisition dates (see the Lindsay Affidavit), both of which anticipate physical compliance only. This very limited analysis<sup>7</sup> is not a substitute for an IRP process. IRP analysis tests multiple resource portfolio options with production cost dispatch and stochastic modeling in order to capture operational impacts of various resource plans across a range of futures. The outcome of the IRP process is the choice of a portfolio that is least cost, least risk. In Staff's opinion the Company has not demonstrated an RPS compliance plan that is LC/LR and such a plan may not be proposed and vetted until the next IRP is complete.

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<sup>6</sup> ICNU Comments at 5.

<sup>7</sup> The fact that the resource comparisons do not include operational cost impacts is also a concern. Although adding 253 MWa to its system, PGE's analysis doesn't show dispatch impacts, just a simplified reduction in market purchases, so implicit is a questionable assumption that there is no difference in system operations between all the cases they test.

Staff recognizes that the Company has a need to comply with the Oregon RPS and that this need requires some action on the part of the Company that was unknowable when its last IRP Action Plan was acknowledged. The Company recently filed a Renewable Portfolio Implementation Plan (Docket UM 1788); however, this filing has not yet been reviewed or vetted by stakeholders and it does not appear to completely address the extended RPS requirements of SB 1547. As the Company states,

“While not included here, the economic impacts of accelerating RPS procurement to capture the PTC are being evaluated in the 2016 IRP in the context of identifying a least-cost least-risk portfolio. This filing does not replicate that process...”

The same uncertainty about the range and breadth of potential proposals which allows for multiple compliance scenarios also introduces risk to ratepayers if resources are to be acquired through the process without further review. Staff recommends that, in the absence of a well-vetted post-SB 1547 IRP, any approval the Commission chooses to grant the Company should not extend to the actual justification for pursuing resource acquisition.

Staff is concerned that the Company has not analyzed alternative compliance strategies that rely on purchase of unbundled RECs, or bundling existing energy-only contracts to include RECs where possible.

According to the US Department of Energy, the voluntary REC market price has steadily fallen over the last several years to the point where RECs are priced around \$1 per MWh.<sup>8</sup> With the expansion of RPS requirements in the West, it is reasonable to expect that new renewable resources will continue to be built and RECs may be available at low prices into the future. Staff believes this data supports a compliance strategy that begins with maximizing unbundled RECs.

Staff also agrees with ICNU that the Company has not presented persuasive evidence that there is a time-pressing need for the Company to acquire new resources. ICNU has presented analysis in their comments demonstrating two significant facts:

- 1) The Company could pursue RPS compliance to the year 2030 with current assets augmented only with unbundled RECs. The Company claims that the REC market is too illiquid to rely upon, but evidence exists to the contrary. In fact, the Company has maximized its allowed purchase of unbundled RECs to date (being limited to 20 percent of RPS requirement). With increasing RPS goals in

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<sup>8</sup> <http://apps3.eere.energy.gov/greenpower/markets/certificates.shtml?page=5>

several WECC states, it is not unreasonable to assume the same or greater level of market liquidity going forward.

Staff is not convinced by the Company's argument and agrees with ICNU that the Company should pursue such a strategy, and if it does so, will not be deficient in RECs until 2030;

- 2) The Company has limited tax liability against which to use the production tax credits. At present, the Company is unable to utilize 100 percent of the PTCs it currently earns and must defer these, costing ratepayers the carrying charge on the deferral. ICNU has shown that the deferral may well grow to hundreds of millions of dollars as the Company adds more renewable generation.

These two points are very concerning to Staff and underscore the potential risk to ratepayers that premature physical compliance strategies may hold.

The Company's stated motivation for acting quickly to issue this RFP is to capture the full value of wind PTC's before they are decremented by recent federal policy implementations. This argument does not appear reasonable in light of the Company's inability to fully utilize PTCs at present, and may in fact become a liability to ratepayers as time goes by due to the increasing carrying charge on the PTC deferral. The Company also claims that early action will save ratepayers over later action. This may be true in select cases, but, as ICNU argues, there is a significant risk that early action may in fact be more costly than later action, and that a compliance strategy that fully utilizes unbundled RECs is likely to be lower cost and lower risk than any physical compliance strategy.

Staff further notes that the renewable RFP is not limited to wind plants. At current market prices, solar generation is competitive with wind and it is reasonable to assume that a significant number of bid proposals will come from solar plants. The tax credits for solar generation are not being decremented in the same fashion as wind PTCs, and the urgency to act is not present.

### **Criterion 2 – Compliance with Competitive Bidding Guidelines**

The Company has made a strong effort to comply with the Guidelines and explicitly requested waivers of those Guidelines which presented difficult or impossible timelines to include in the RFP process. Specifically, the Company requested and was granted Commission waiver of guidelines related to the choice of the independent evaluator and a shortened public comment period on the RFP. See Order 16-221.

Staff believes the Company has generally complied with the remainder of those Guidelines which were not specifically waived.

In Staff's opinion, except for Guideline 7 as discussed above, the Company has demonstrated that the RFP satisfies the Guidelines.

**Criterion 3 – Overall Fairness of PGE's Bidding Process**

After NIPPC and other parties identified perceived infirmities in the RFP through comments, the Company made a good effort to negotiate with the stakeholders and in most cases have made salient changes to the RFP to reflect parties' concerns.

The Company's use of an IE, the transparency of the process, and the inclusion of stakeholders in the revision of the draft RFP all indicate the Company's commitment to a fair process.

Following direction from the Commission to extend the stakeholder input period, the Company made a good effort to address all issues brought forth both in formal and informal comments. The Company made numerous changes and edits to the draft RFP and appeared to be responsive to all issues.

It should be noted that Staff was not included in PGE's conversations with stakeholders. Without additional stakeholder concerns filed in this docket, Staff is relying on PGE's representation of discussions in their updated filing, the IE report and other previously known points of disagreement for this analysis. As a result, there may be additional disagreements or deeper divisions in positions than Staff can be aware of at this time.

For example, Staff is also aware of concerns related to the promotion of diverse ownership. Staff is taking this issue up in a separate docket which is exploring updates to the Commission's bidding guidelines. However, Staff is not prepared to recommend changes to the RFP this late in the process without additional stakeholder input.

Of the few remaining unresolved issues Staff is most concerned with comments regarding the fairness of the scoring weight – whether price should comprise 60 percent or 80 percent of the score. In particular, Staff understands the concern that assigning 40 percent of the scoring points to non-price elements could potentially reflect too much influence on the overall ranking if the 400 points were allowed to be awarded somewhat indiscriminately. Both the IE report and PGE's filing express confidence that the ratio of 60/40 is fair and was previously approved by the OPUC for use in past RFPs but both are open to changing the ratio to 80/20 if asked to do so. NIPPC has presented arguments strongly favoring an 80/20 ratio.

Staff performed analysis on the sensitivity of the bid ranking to scoring ratio. Using data from a prior PGE RFP, the analysis showed that the changes in bid ranking between a 60/40 scoring split and an 80/20 split resulted in some shift to ranking order, with two bids switching rank (see attached Exhibit A). Staff also posed the question to the IE who returned a similar answer. Based on this analysis of available past information, Staff does not view the 60/40 scoring as inherently unfair, however Staff could support adjusting to the 80/20 scoring weight upon Commission request.

### Conclusion

To summarize, for the Commission to approve the RFP, per Guideline 7, three criteria must be met: 1) the RFP must align with its last acknowledged IRP; 2) the RFP must satisfy the competitive bidding guidelines; and 3) the overall process must be fair.

Staff notes that the Company may in fact have a need to take some action to comply with the additional RPS requirements put in place by the passage of SB 1547. This need is real even though it is not reflected in the Company's last acknowledged IRP since the need arose after the acknowledgment was issued.

However, the Company has failed to provide sufficient analysis to explore the size of that need over time and the type and timing of resource acquisition to meet that need. In short, there is no vetted strategy for meeting the need in a least cost, least risk manner.

In conclusion, although the Company has produced an RFP and process that appears fair and conforms to the Guidelines, except for Guideline 7 and except where waived, Staff cannot support Commission approval of the RFP due to PGE's failure to demonstrate that the RFP is part of a least cost, least risk strategy towards RPS compliance.

Therefore, Staff recommends the Commission take no action on the RFP and instead direct the Company to demonstrate that any proposed resource acquisitions resulting from the RFP are part of a least cost, least risk strategy.

Alternatively, Staff recommends the Commission take no action on PGE's Petition except for the following limited findings: (1) conclude that the RFP satisfies the Commission's Competitive Bidding Guidelines except for the first criterion of Guideline 7 (and except for certain Guidelines which were previously waived by the Commission in its Order No. 16-221) and (2) conclude that PGE's RFP bidding process to date has been fair.

**PROPOSED COMMISSION MOTION:**

1) Take no action on PGE's Petition for Approval of its RFP.

Alternatively,

2) Take no action on PGE's Petition except for the following limited findings: (1) the Commission concludes that the RFP satisfies its Competitive Bidding Guidelines except for the first criterion in Guideline 7 (and except for certain Guidelines which were previously waived by the Commission in its Order No. 16-221) and (2) concludes that PGE's RFP bidding process to date has been fair.