

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 18, 2019**

REGULAR X **CONSENT** **EFFECTIVE DATE** Upon Approval

DATE: June 4, 2019

TO: Public Utility Commission

FROM: Scott Gibbens

THROUGH: Jason Eisdorfer and John Crider **SIGNED**

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UM 1953) Notice of Exception/ Request for Waiver of Commission's Competitive Bidding Rules.

STAFF RECOMMENDATION:

Grant PGE's request to waive all Competitive Bidding Rules for Phase One of the Green Energy Affinity Rider (GEAR) as presented in this docket, which PGE has pursued in response to Commission Order No. 19-075.

Waive OAR 860-089-0010(2)(a)'s requirement to serve a request for waiver to all parties to the electric company's most recent general rate case, request for proposal filing, and IRP docket.

Direct PGE to amend the requirement that resources applicable for the GEAR program be "new" for the CSO of Phase I and allow parties to continue to contemplate the issues in Phase II of the docket.

DISCUSSION:

Issue

Whether the Commission should find the Competitive Bidding Rules (CBR) apply to PGE's green tariff procurement or should grant PGE's request to waive the CBR for the Company's Schedule 55: GEAR, as presented in this docket.

Applicable Law

The Commission's Competitive Bidding Guidelines were first established in Docket No. UM 1182, Order No. 06-446, and have since been amended several times. In Order No. 18-324, the Commission adopted permanent Competitive Bidding Rules (CBR), falling under OAR Chapter 860 Division 89. Generally, the Rules require a utility to issue a Request for Proposal (RFP) for all Major Resource Acquisitions (defined as having a duration of greater than five years and quantities greater than 80 MW) and certain multiple small resource acquisitions, that when taken together, qualify for treatment as an acquisition subject to the CBR.¹ The rule provides that, in certain circumstances, an electric company may request that the Commission either find that a resource presumed to be subject to the competitive bidding rules should not be considered in the aggregate,² or that the resource meets one of four exceptions.³ These exceptions relate to emergencies, time-limited opportunities, alternative treatment in an IRP acknowledgment order, or acquiring exclusive transmission assets or rights. Finally, given that certain circumstances could arise that present compelling reasons to waive the RFP process required by the CBR, OAR 860-089-0010(2) allows a utility to file an application requesting waiver of some, or of all, of the CBR upon a showing of good cause.

OAR 860-089-0010(2)(a) requires that a utility filing a request for waiver under the Commission's competitive bidding rules must serve the request on all parties to the electric company's most recent general rate case, request for proposal filing, and IRP docket.

ORS 756.450 provides the Commission with authority, upon petition of any interested person, to issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Commission. OAR 860-001-0430 sets for the petition requirements for a declaratory ruling.

Analysis

Background

Following HB 4126, the Commission opened UM 1690 on April 22, 2014 to investigate the potentiality of voluntary renewable energy tariffs (VRET) for nonresidential customers seeking to increase their renewable energy usage beyond a utilities portfolio. Through the investigation, the Commission found that with a proper framework, a VRET program could be offered to customers which would result in fair, just, and reasonable rates for all ratepayers. UM 1690 was closed on July 5, 2016 following Commission Order No. 16-251. At the time, PGE declined to file a VRET proposal but stated it may

¹ OAR 860-089-0100(1).

² OAR 860-089-0100(2).

³ OAR 860-089-0100(3).

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do so in the future should conditions change. On April 13, 2018, the Company filed a proposal for a VRET program and the Commission subsequently docketed the contested case as UM 1953. Through Order 19-075 the Commission ultimately approved PGE's request to implement a VRET program subject to certain conditions.

As part of those conditions, PGE is to implement a phase 1 with a limited scope, and parties are to take part in a second phase which investigates further concerns. The approved tariff is a voluntary supplemental rider. Risks and costs of the program are paid for by subscribers, who also continue to pay all other applicable rates and supplemental schedules. Subscribers receive a credit for the value of incremental energy and capacity provided to PGE's system by the PPA from other COS customers. Any PPA cost above the energy and capacity value credited to the subscribers is to be borne by the subscribers. Phase 1 includes 100 MW cap for a Company procured resource available to any non-residential customer whose aggregate demand across all retail schedules exceeds 30kW. It also includes a 200 MW cap for a customer supplied option (CSO) for customers with demand in excess of 10 aMW. For the CSO, customers would approach PGE with a potential PPA and PGE, the customer, and the project owner would work to come to terms on a contract. As part of Phase 2, the Commission directed parties to examine the following issues: credit calculation, reassessment of previously adopted conditions, the participation limits, VRET interactions with Oregon's Direct Access Program, and other policy issues.

On March 29, 2019 PGE filed a notice of exception of OAR Chapter 860, Division 89 and in the alternative a request for waiver under OAR 860-089-0010(2) for procurement of Phase I of the approved Green Tariff. The Company states, "PGE's interpretation is that the Rules do not apply to the implementation of the Commission's specific direction to procure up to 300 MW of qualifying resources under a Commission approved program at a prescribed credit rate." In the alternative, PGE requests a waiver of the CBR for "good cause shown and because this acquisition is time sensitive, will provide unique value to both subscribing and non-subscribing customers, offers procurement from the competitive market, and shields non-subscribing cost of service customers from risk."

On May 12, 2019, the Northwest and Intermountain Power Producers Coalition (NIPPC) filed comments in response to PGE's notice of exception and waiver request. The comments summarily assert that NIPPC believes that the CBR apply. Further, it states that a waiver may be warranted if the Commission were to correct two outstanding issues regarding the Customer Supply Option of the GEAR. The first being that the product be a "new" facility/expansion built for the Green Energy Affinity Rider. The second is a requirement for the PPA to include its own long-term firm service transmission. Regardless of the merits of these arguments, Staff does not believe that the waiver request can be made contingent upon resolution of the issues. The issues raised by NIPPC are concerned with the program itself, not with the Competitive Bidding

Rules and the merits of a waiver. As such, Staff will first discuss PGE's notice and waiver request and then discusses parties' resolution to NIPPC's concerns.

Overview of Competitive Bidding Rules

PGE's primary position is the rules do not apply in this circumstance, but in order to ensure resolution of this issue, made the alternative request a waiver of all of the requirements. Summarily, the CBR require:

- Engaging and Independent Evaluator
- Designing an RFP
- Consideration of Resource Ownership
- Benchmark Resource Scoring Submission
- Bid Scoring and Evaluation by Electric Company
- Independent Evaluator oversight
- Final Short List Acknowledgement and Result Publication

Staff's Review Framework

Staff's first concern was to determine whether the Commission may find that the CBR apply to the procurement of PPAs for PGE's GEAR, if the issue were properly before it through a petition for a declaratory ruling. As discussed more fully below, Staff concludes that it is likely that the CBR apply. Staff notes that there is no process in the CBR for a "notice of exception," and further does not find that any of the exceptions listed in OAR 860-089-0100(4) are implicated. Staff notes, however, that the appropriate procedural mechanism to determine the application of a set of facts to either a rule or statute is a declaratory ruling. PGE has not filed a petition for declaratory ruling in this case as the whether the CBR apply or an exception is appropriate.

Following Staff's determination that the Commission may find the rules apply as defined in OAR 860-089-0100 in the event of a petition for declaratory ruling, Staff then reviewed the circumstances in order to determine whether it would recommend that the Commission waive certain provisions of the CBR for good cause shown.⁴

Determination that the CBR apply

OAR 860-089-0100 states:

(1) An electric company must comply with the rules in this division when it seeks to acquire generating or storage resources or to contract for energy or capacity if any of the following apply:

(a) The acquisition is of a resource or a contract for more than an aggregate of 80 megawatts and five years in length;

⁴ OAR 860-089-0010(2) defines the applicable standard for granting a waiver of the CBR as "for good cause shown."

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(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection (1)(a) or (1)(c) of this rule;

(c) The acquisition is of multiple resources more than five years in length that in aggregate provide the electric company with more than an aggregate of 80 megawatts, and these resources:

(A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent; and

(B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other; or

(d) As directed by the Commission.

PGE is set to procure up to an aggregate of 300 MW. The projects may be split between the PGE procured and CSO, but both PPAs eclipse the 80 MW threshold. PGE has provided no indication that the 100 MW Company procured or 200 MW CSO will qualify for the exception noted in OAR 860-089-0100(1)(c). OAR 860-089-0100(3) provides that the rules may not apply when:

(a) There is an emergency; meaning a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant failure, that requires an electric company to take immediate action;

(b) There is a time-limited opportunity to acquire a resource of unique value to the electric company's customers;

(c) An alternative acquisition method was proposed by the electric company in the IRP and explicitly acknowledged by the Commission; or

(d) Seeking to exclusively acquire transmission assets or rights.

Staff believes that Subsections (2)(a), (b) and (d) do not apply. PGE appears to argue that subsection (2)(b) applies, noting in its filing that "the proposed procurement will be limited to PPA that offer a time-limited opportunity for participating customers at

comparable costs to resources evaluated in the 2018 Renewable Request for Proposals (RFP).”⁵ However, Staff concludes that simply because a resource may be time-limited from the perspective of the customers, this is not the same as a time-limited opportunity from PGE’s perspective, which is the perspective contemplated in the rule. Further, although PGE’s recent RFP provides the Company with potential insight into market price, the PPA would not provide ‘unique value’ beyond what PGE would be able to find by performing another RFP. Because both PGE and CSO procurement are above the 80 MW threshold and neither fall under the exceptions listed in OAR 860-089-0100, Staff finds that the CBR apply. Accordingly, Staff also notes that PGE did not file its request for a waiver in accordance with OAR 860-089-0010(2)(a). As such, PGE’s request for a waiver of applicable CBR rules necessitates that a waiver of OAR 860-089-0010(2)(a) be granted as well.

Determination of Waiver Request

Staff framed its review of whether to recommend waiver of the CBR for good cause shown by examining the PGE-procured and CSO project separately. Staff finds that in both cases, a waiver of the requirements is commensurate with the Commission’s understanding in this proceeding and in customer’s best interest.

1) Customer Supply Option

Staff begins with the CSO because it better illustrates why the CBR apply as defined in OAR 860-089-0100, but warrant a good cause waiver. The program approved by the Commission allows for a customer to identify a potential resource and to approach PGE in an attempt to qualify it for the program. Should the Commission not grant a waiver of the CBR in this circumstance, the entire premise of the CSO would need to be altered. The customer would not have a choice as to the resource it ultimately enrolls into the GEAR, but instead a single option included in an RFP which would be scored and evaluated among other options. This changes the flexibility and freedom the Commission gave customers as part of the program design. OAR 860-089-0100(3)(c) states that the CBR do not apply when the Commission approves an alternative acquisition method acknowledged by the Commission in an IRP. Although this was not in an IRP, the Commission did approve an alternative acquisition method in a filing. Moreover, in its approval of PGE’s VRET program, the Commission limited the magnitude of the first phase and directed parties to take part in a second phase in part to “review and discuss how the VRET program is addressed and incorporated within the IRP process. IRPs should consider any system impacts of adding significant new resources not incorporated in planning processes and also address impacts on future optionality for cost of service customers.”⁶ The Commission was aware of the fact that

⁵ UM 1953 – PGE’s Notice of Exception Under OAR 860-089-0100 at 2.

⁶ Order No. 19-075 at 6.

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the first phase of the program would result in procurement outside of normal planning processes put in place to ensure least cost/least risk procurement. In lieu of that, customers are provided with freedom of choice, on a limited scope while parties work to better understand the interaction between the VRET and IRP.

Staff notes that although the procurement in the CSO does not guarantee least cost/least risk planning, it does safeguard all ratepayers from risk, outside of the customer who is given the freedom to choose. The program is designed to have ratepayers credit the subscriber only for the value of the power they receive, and relies on the subscriber to act in its own self-interest to procure a PPA it desires. The CSO is limited in Phase I specifically to very large customers because it is assumed they have the sophistication to make a determination that optimizes their choice of green attributes and price to meet their power supply needs.

2) *PGE Procured Green Energy Rider*

Unlike the CSO, the PGE procured portion of the GEAR may be able to fit into the CBR framework. An RFP could be performed and the process could be used to help ensure the least cost option was selected. However, all non-participant ratepayer protections still apply, the Commissions limiting conditions still apply, qualifying customers maintain the freedom to choose to participate or not.

PGE notes in its filing that the program as designed, and approved by the Commission, places on subscribers all the costs of the PPA supporting the program and risks associated with subscriber contract obligations.

The way that the program is set up, the ultimate price and project selected will not change the amount non-subscribers pay. The credit will be a valuation based on IRP energy and capacity values, and as such is unrelated to the actual price of the PPA. So long as PGE is able to procure a resource that complies with the Company's directive to provide safe and reliable power, the resource choice has no difference to non-participating customers. Staff also notes that under the program, the Commission retains the ability to review and approve the specific contract entered into, so that should it not comply with the rules as set forth by the Commission, Customers are still protected.

When the Commission discussed the desire for parties to investigate the interaction between the IRP and VRET, Staff did not interpret that to mean it was speaking exclusively about the CSO. The Commission was at least in part aware of the fact that the Company might not use a full RFP in its procurement process, but that the Company would perform a similar process. At the UM 1953 hearing, Company witness Mr. Simms stated in response to a question about the procurement process:

For the purposes of green tariff, while we weren't specific in our testimony, I recognize we would -- PGE would employ procurement process --processes that provide the same sort of rigor and analysis that we would apply in any large resource procurement.

Now depending upon the size of the program, a solicitation to meet the supply needs for a green tariff may or may not hit that size threshold, but just as a matter of best practice, PGE would employ the systems that we employ for large resource IRPs because we just think that that would allow us to get the best answer.⁷

As such, the Commission was aware that PGE may or may not utilize a solicitation to meet the supply needs but the Company would go through a similar process to ensure they found the best possible resource for its customers. Following the hearing, the Commission approved the tariff on a limited basis.

As Staff has noted, this is a voluntary product, for customers interested in increasing the amount of power they consume from renewable sources. There is no obligation to enroll, but it is being offered by the Company as a way to provide customers with a greater amount of freedom in determining where they get their power.

As noted in the PGE's application:

Given the imminent decrease in the value of the federal tax credits for renewable energy, PGE and subscribers risk losing those values if PGE were to conduct an RFP under the Rules and in the time required by the Rules.⁸

This coupled with the fact that PGE recently completed an RFP process indicates that the Company is likely in a position to identify a resource on an expedited basis that would provide customers with green power access at a competitive price. Staff also notes that the program only allows PGE to procure power from third-party sources, so that the Commission can in its review of the contract, ensure the presence of an arms-length transaction. However, this program remains voluntary and is not considered to implicate the procurement of either energy or capacity, based on need identified in the IRP or otherwise, for COS customers. Therefore, the timing of the procurement is not time-limited from the COS customer perspective.

⁷ UM 1953 – Hearing Transcript at 33-34.

⁸ UM 1953 – PGE's Notice of Exception Under OAR 860-089-0100 at 5.

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Waiver Conclusion

For the preceding reasons, Staff finds good cause for the Commission to approve a Waiver of the CBR for all 300 MW of the GEAR program, including waiver of the filing requirements for waiver requests.

NIPPC Comments

Following the Comments filed by NIPPC, Staff convened a phone conference on May 31, 2019, with all available parties of UM 1953 to discuss ways in which we might move forward. As a result of the conference, Staff presents the agreed upon recommendation made by all parties present in order to provide customers with a viable VRET program in the near term and address concerns raised by parties in Phase II of the program. Staff notes that this proposal does not infer any agreement by any party as to the merits of the issues, but is only a recommendation based on the goal of getting Phase I off the ground for customers.

In response to NIPPC's comment, PGE proposes to:

- Remove the 'new' requirement for Phase I of the GEAR from the Customer Supply Option as listed on PGE's informational website.
- Maintain the transmission requirements for both CSO and PGE procured version of the GEAR.

Parties would then continue to discuss and build a record on all restrictions and contract requirements in Phase II of the docket.

Staff believes that it is in customers' best interest for the Commission to approve this proposal because it utilizes Phase II to continue the discussion while also solving the concerns raised by NIPPC in the short-term. The alternative to which is to investigate the issues, at the potential cost of starting the program on July 1, 2019 as intended by PGE. This change does not materially alter the Commission's direction, or the requirement in VRET Guideline 3 that only resources that became operational in 2015 or later are eligible,⁹ but provides a solution for Phase I.

Recommendations

Staff recommends the Commission take the following actions:

Grant PGE's request to waive all Competitive Bidding Rules for Phase One of the Green Energy Affinity Rider (GEAR) as presented in this docket, which PGE has pursued in response to Commission Order No. 19-075.

⁹ Order 15-405 at 1.

Waive OAR 860-089-0010(2)(a)'s requirement to serve a request for waiver to all parties to the electric company's most recent general rate case, request for proposal filing, and IRP docket.

Direct PGE to amend the requirement that resources applicable for the GEAR program be "new" for the CSO of Phase I and allow parties to continue to contemplate the issues in Phase II of the docket.

Conclusion

Phase I of the GEAR was approved by the Commission to allow customers to make a choice on the amount of renewable energy they receive. Staff finds that a waiver of the Competitive Bidding Rules is in the best interest of the public, and therefore good causes exists. Parties have reached an agreement to allow the initial phase to move forward while we continue to investigate difficult issues in Phase II.

PROPOSED COMMISSION MOTION:

Grant PGE's request to waive all Competitive Bidding Rules for Phase One of the Green Energy Affinity Rider (GEAR) as presented in this docket, which PGE has pursued in response to Commission Order No. 19-075.

Waive OAR 860-089-0010(2)(a)'s requirement to serve a request for waiver to all parties to the electric company's most recent general rate case, request for proposal filing, and IRP docket.

Direct PGE to amend the requirement that resources applicable for the GEAR program be "new" for the CSO of Phase I and allow parties to continue to contemplate the issues in Phase II of the docket.