

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 2166

4 In the Matter of
5 PORTLAND GENERAL ELECTRIC
6 COMPANY,
7 2021 All-Source Request for Proposals.
8

STAFF RESPONSE TO NORTHWEST &
INTERMOUNTAIN POWER PRODUCERS
COALITION'S MOTION FOR
CLARIFICATION, OR, IN THE
ALTERNATIVE, APPLICATION
FOR RECONSIDERATION OF ORDER
NO. 21-460

9 In its Motion filed January 21, 2022, the Northwest & Intermountain Power Producers
10 Coalition (NIPPC) requests either clarification of Commission Order No. 21-460 that Portland
11 General Electric Company's (PGE's) proposed use of its affiliate bid in the 2021 All-Source
12 Request for Proposals (RFP) is not approved or reconsideration of the order to reject the use of
13 the PGE's affiliate in the RFP.

14 As discussed below, Staff does not find there is a need for the Commission to clarify its
15 order, and the Commission should deny the request for reconsideration.

16 **BACKGROUND**

17 In Order No. 21-460, the Commission approved PGE's Final Draft 2021 All-Source RFP
18 with specific changes described in the order. At the time the order issued, PGE's application for
19 approval of an affiliated interest transaction was pending in Commission Docket UI 461.
20 Concerning affiliate bids, the Commission adopted Staff's recommendations that (1) PGE should
21 mark the affiliate bid as tentative in nature in the RFP and (2) PGE be directed to notify the
22 Commission on December 17, 2021, if PGE is going forward with an affiliate bid.¹
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26 ¹ *In the Matter of Portland General Electric Company 2021 All-Source Request for Proposals*, Docket
UM 2166, Order No. 21-460 at page 4.

1 On December 14, 2021, in Docket UI 461, the Commission adopted Staff’s
2 recommendation to reject the affiliate transaction.² Subsequently, on December 17, 2021, PGE
3 filed a notice in this docket that it would “develop an affiliate bid which PGE intends to submit
4 into the 2021 All-Source Request for Proposals (RFP) by the deadline for affiliate and
5 benchmark bids of January 4, 2022.”³ PGE stated it intends to re-file for approval of the
6 affiliated interest, noting that the affiliate bid will be withdrawn if the Commission does not
7 approve the re-filed application. The company’s notice further states that PGE will separately
8 track its employee time and development costs associated with the affiliate bid to be recorded to
9 non-utility expense accounts and borne by PGE shareholders. As of the time of this filing, the
10 affiliate interest application had not been re-filed.

11 DISCUSSION

12 *I. Clarification of Order No. 21-460 is Unnecessary.*

13 Staff acknowledges that a decision to clarify its order is within the discretion of the
14 Commission. The Commission “may at any time, upon notice to the public utility or
15 telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to
16 756.610, rescind, suspend or amend any order made by the commission.”⁴ In this proceeding,
17 Staff does not find it necessary to amend the order for clarification.

18 NIPPC requests that the Commission clarify that its rejection of the affiliated interest
19 transaction in Docket UI 461 meant that PGE could not submit an affiliate bid in this RFP.⁵
20 NIPPC asserts that any process other than the utility securing approval with conditions on the
21 affiliate before an affiliate is bid into the RFP taints this RFP as unfair.⁶ NIPPC also questions

22 ² *In the Matter of Portland General Electric Company, Application for Approval of an Affiliated Interest*
23 *Transaction with Portland Renewable Resource Company*, Order No. 21-482, Docket UI 461 (December
24 22, 2021).

25 ³ PGE Notice of Intent to Submit Affiliate Bid, Docket UM 2166, December 17, 2021, at 1.

26 ⁴ ORS 756.568.

⁵ NIPPC Motion at 8.

⁶ NIPPC Motion at 9.

1 how PGE’s affiliate could meet minimum bidding requirements when the affiliated interest
2 transaction was rejected.⁷

3 As provided in Order No. 21-460, the affiliate bid was to be marked as tentative in nature
4 in the RFP. PGE’s bid remains tentative and PGE’s decision to submit an affiliate bid in the
5 RFP without approval of the affiliate transaction under ORS 757.495 does not, as NIPPC
6 implies, mean the affiliate bid is not subject to any conditions of approval. When any affiliated
7 transaction has been rejected by the Commission, it becomes unlawful to recognize the contract.⁸
8 No expenses or capital expenditures incurred by PGE under the affiliate contract “may be
9 recognized in any rate valuation *or other hearing or proceeding.*”⁹ Thus, PGE may not include
10 an affiliate bid for an affiliate the Commission has rejected in a request for acknowledgment of
11 the final short list under OAR 860-089-0500(2) as it will not be recognized.

12 Nor does the RFP process become unfair simply by virtue of PGE putting forward an
13 affiliate bid that is tentative unless and until the Commission approves the associated affiliated
14 interest transaction. As noted by PGE in its December 17, 2021, Notice, the Company will
15 separately track its employee time and development costs associated with the affiliate bid to be
16 recorded to non-utility expense accounts and borne by PGE shareholders. This RFP is overseen
17 by an Independent Evaluator (IE), to ensure it is conducted fairly, transparently, and properly.¹⁰
18 Staff has requested that the IE track any of its time spent on evaluation of an affiliate bid. In
19 addition, Staff expects the Company and the IE will be reviewing and applying minimum
20 bidding requirements consistently to all bids, including an affiliate, albeit during separately
21 tracked time.

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24 ⁷ NIPPC Motion at 9-10.

25 ⁸ ORS 757.495(3).

26 ⁹⁹ ORS 757.495(3) (Emphasis added).

¹⁰ See OAR 860-089-0450(1).

1 Staff, for its part, will not consider any PGE affiliate bid that remains tentative without
 2 Commission approval of the underlying transaction. Given the Commission’s conditions in
 3 Order No. 21-460 and the applicable limitations of ORS 757.495, Staff does not see a need for
 4 additional clarity from the Commission. It should be noted, however, that PGE has yet to re-file
 5 a request for approval of the affiliate interest transaction. If the Company does re-file, the
 6 Commission will have 90 days to consider the application.¹¹ Under the schedule for this docket,
 7 the next anticipated filings are the following:¹²

EVENT	DATE
PGE to provide the IE and Staff with a draft final shortlist and supporting workpapers before filing request for acknowledgement	March 22, 2022
IE files Sensitivity Analysis	April 4, 2022
PGE target date to file request for acknowledgement of final shortlist with IE closing report	April 5, 2022

13 Approval of the affiliated interest is required if an associated affiliate bid is to be
 14 included in any of the above events and each of the above dates is less than 90 days from today’s
 15 date. Staff filed this schedule after conferring with PGE and stakeholders to ensure a timely
 16 review of any request for acknowledgment.¹³ This schedule included expedited review of the
 17 Final Draft RFP to accommodate PGE’s timeline.¹⁴ Staff will carefully review any schedule
 18 changes that may be proposed to ensure continued fairness of the RFP.

19 In conclusion, Staff finds consideration of Order No. 21-460 to be unnecessary because
 20 PGE’s bid remains tentative as specified in the Commission’s order and because PGE’s affiliate
 21 bid still requires approval of the affiliate transaction under ORS 757.495 for it to be recognized
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24 ¹¹ ORS 757.495(6).

25 ¹² Staff Scheduling Letter, Docket UM 2166, August 3, 2021, at 2.

26 ¹³ Staff Scheduling Letter, Docket UM 2166, August 3, 2021, at 1.

¹⁴ Staff Report for December 2, 2021 Special Public Meeting, November 19, 2021, at 44.

1 in further proceedings in the RFP docket. Staff will review and respond to any proposed
2 schedule changes to ensure the continued fairness of the RFP.

3 ***II. NIPPC Fails to Establish Grounds for Reconsideration.***

4 Under ORS 757.561(1) any party to a proceeding may apply for rehearing or
5 reconsideration of a commission order. As further specified in OAR 860-001-0720(3), the
6 Commission may grant an application for reconsideration upon a showing that:

- 7 (a) New evidence that is essential to the decision and that was unavailable and not
8 reasonably discoverable before issuance of the order;
9 (b) A change in the law or policy since the date the order was issued relating to an
10 issue essential to the decision;
11 (c) An error of law or fact in the order that is essential to the decision; or
12 (d) Good cause for further examination of an issue essential to the decision.

13 NIPPC requests reconsideration of the Commission’s order under OAR 860-001-
14 0720(3)(a) (new evidence) or, based on good cause for further examination under OAR 860-001-
15 0720(3)(d). If this statute applies to an order such as Order No. 21-460 and NIPPC may be
16 deemed a “party” for purposes of submitting its motion, NIPPC fails to state sufficient grounds
17 for reconsideration.

18 NIPPC alleges the Commission’s rejection of the affiliated interest transaction in Docket
19 UI 461 on December 14, 2021 is new evidence essential to the decision on the draft RFP.¹⁵ Staff
20 disagrees that the Commission’s order in the UI docket is evidence that is essential to the
21 decision in this case. At the time the Commission entered its order in this docket, it was well
22 aware of its scheduled decision meeting in the UI 461 docket. Accordingly, the Commission’s
23 Order No. 21-460 directs PGE to mark the affiliate bid as tentative and to notify the Commission
24 subsequent to the scheduled decision meeting in the UI 461 docket regarding pursuit of an
25 affiliate bid. The outcome of that decision meeting is not “evidence” essential to a decision on
26 the final draft RFP. By operation of ORS 757.495(3), the affiliate bid will not be recognized in
this proceeding unless and until the affiliated transaction is approved.

¹⁵ NIPPC Motion at 11.

1 For the same reasons that Staff finds clarification of Order No. 21-460 unnecessary, as set
2 forth above, Staff finds that NIPPC has not stated good cause for further examination of this
3 order. In addition, NIPPC alleges the Commission's statements in Docket UI 461 establish clear
4 expectations for conditions of approval of the affiliated interest transaction and those
5 expectations should be reflected in this docket.¹⁶ Staff disagrees. Any conditions of approval to
6 be set for an affiliated interest transaction should be reviewed and addressed in the docket for
7 approval of that transaction, and such considerations provide no basis for reconsideration of
8 Order No. 21-460.

9 The Commission should not grant reconsideration of its Order No. 21-460 as NIPPC fails
10 to state sufficient grounds for reconsideration.

11 **CONCLUSION**

12 For the foregoing reasons, Staff respectfully requests that the Commission deny NIPPC's
13 Motion in its entirety.

14 DATED this 7th day of February 2022.

15
16 Respectfully submitted,
17 ELLEN F. ROSENBLUM
18 Attorney General
19 */s/ Johanna M. Riemenschneider*
20 _____
21 Johanna M. Riemenschneider, #990083
22 Senior Assistant Attorney General
23 Of Attorneys for Staff of the Public Utility
24 Commission of Oregon
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26 _____
¹⁶ NIPPC Motion at 11-12.