

November 24, 2021

Oregon Public Utility Commission (OPUC)
Attention: Filing Center
201 High Street, Suite 100
Post Office Box 1088
Salem, OR 97308-1088

Re: UM 2166 OSSIA Comments on PGE's Draft RFP

Dear Commissioners:

The Oregon Solar + Storage Industries Association (OSSIA) respectfully submits these comments on Portland General Electric's (PGE) draft request for proposal (RFP) and in response to the November 19, 2021 Staff Report. OSSIA previously submitted comments on August 23, 2021 regarding the RFP scoring and modeling methodology. In these comments, OSSIA highlights one concern remaining from those prior comments and notes one additional area where OSSIA agrees with other commenters in this phase of the docket. As such, OSSIA's silence on any issue should not be interpreted to mean that OSSIA agrees with PGE's draft or with Staff's recommendation on that point.

HB 2021 Compliance:

In OSSIA's prior comments, OSSIA asked how this RFP can help move PGE towards compliance with the newly enacted HB 2021 clean energy compliance targets both in terms of acquiring resources to meet the clean energy targets, and in terms of how PGE can comply with HB 2021's policy statement to acquire resources that provide additional direct benefits to communities in this state.¹ As to the former, OSSIA appreciates Staff and other stakeholders' expressions to also consider the impact of HB 2021 and PGE's willingness to explore early compliance here.

However, as to the latter, OSSIA continues to support its comments made earlier in this docket and encourages the Commission to consider how this docket can comply with the State's goal to provide direct benefits in this state "to the maximum extent possible."² Section 2(2) of the bill in its entirety reads as follows:

Policy. It is the policy of the State of Oregon:

...

(2) That electricity generated in a manner that produces zero greenhouse gas emissions also be generated, to the maximum extent practicable, in a manner that provides additional direct benefits to communities in this state in the forms of

¹ OSSIA Comments (August 23, 2021).

² 2021, 81st Or Legislative Assembly, Enrolled House Bill 2021 at § 2. Policy.

creating and sustaining meaningful living wage jobs, promoting workforce equity and increasing energy security and resiliency;

Notably, the in-state policy statement is not aimed at how clean energy generally can provide benefits to the state in terms of reduced carbon emissions, a cleaner environment, and ratepayer savings, but it is, by its own wording, aimed at how clean energy can be harnessed to provide *meaningful living wage jobs, promoting workforce equity and increasing energy security and resiliency*. As Representative Helm noted “I understand this language to mean that the renewable energy generation will be built where Oregon workers would get the jobs associated with the construction and the operation of those facilities.”³ Direct benefits such as these simply cannot accrue if all or a majority of the resources in this RFP are acquired from outside the state.

This docket can and should encourage and examine how in-state siting can be promoted. OSSIA previously recommended that the scoring and modeling methodology reflect how the procurement will result in projects built and operated in Oregon and continues to encourage that as the best path forward. In effect, there would be no measurable way for the state to comply with this in-state policy requirement without some scoring criteria related to it. In Staff’s Report on PGE’s scoring and modeling methodology, Staff did not recommend changes to account for OSSIA’s concern, but Staff expressed concern regarding PGE’s ability to meet that 2030 compliance target.⁴ Therefore, Staff recommended that PGE run an alternative procurement scenario that would have PGE procure more renewables than it had originally planned and that PGE work with Staff to determine what further analysis could inform how the current RFP might be maximized for HB 2021 compliance.⁵ OSSIA recommends that at a minimum, similar analyses be performed in this RFP to analyze an alternative procurement scenario that would have PGE acquire more renewables built and operated in Oregon (for example, a scenario where 50% of the RFP resources are in-state), and OSSIA would be happy to confer with Staff and PGE as to what other analyses might be useful in meeting this important state policy goal.

Weighting of Adherence to PGE’s Pro Forma PPA:

OSSIA supports the Northwest & Intermountain Power Producers Coalition’s (NIPPC) concerns regarding PGE’s pro forma power purchase agreement (PPA) and the weight given to adherence to it in this RFP.⁶ The RFP scoring allocates 21.2% of the total score to adherence to PGE’s PPA terms, and a reduction in scoring based on a bidder proposing substantive changes to that PPA. In contrast, it is OSSIA’s understanding that in PacifiCorp’s 2021 RFP, only 5% of the

³ House Committee on Revenue at 15:46 (May 13, 2021) <https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2021051192 &startStreamAt=946&stopStreamAt=970>.

⁴ Staff Report at 11 (Sept. 29, 2021).

⁵ *Id.* at 12.

⁶ NIPPC’s Comments at 13 (Nov. 1, 2021).

overall score was allocated to adherence to the PPA and the score was only reduced based on the objective criteria of whether a redline was provided at all.⁷

Given that reasonable minds may differ on what contract terms are the most appropriate for any given context, OSSIA agrees that it is inappropriate for substantive redlines to a contract to bear such a significant portion of the overall score.⁸ The significant weight placed on adherence to the PPA terms presents essentially a “take it or leave it” PPA. However, in reality, negotiation over PPA terms—including commercial and financial terms and the degree of flexibility in the contract—is directly related to the prices and offers potential bidders can bid into a competitive solicitation, i.e. a bidder may need to bid a higher price to conform to certain contract terms. Further, some bidders may have commercial restrictions (including achievable price) or corporate restrictions regarding what terms they can accept, and financiers have their own restrictions layered on top of that. PGE’s approach, therefore, is likely to artificially limit both the number of bidders and the creativity of bidders in terms of prices and contract terms because it will favor only bidders and projects that fit into a small box, all to the disadvantage of ratepayers. Rather, the purpose of RFPs and competitive bidding is to think outside the box and to look for options that PGE, itself, may not have previously considered.

History has shown us that a lack of competitiveness is and can be a significant problem with PGE’s RFPs. For example, the Commission noted that in PGE’s 2018 RFP, “transmission deliverability requirements . . . did, in fact, limit the shortlist.”⁹ In the end, only three projects made it to the final shortlist.¹⁰ The specific issue resulting in a less competitive process in that RFP was tied to the interaction between the production tax credit phase out and transmission requirements. However, it should not go unnoticed that other factors can also lead to anti-competitive outcomes. OSSIA recommends the Commission review these issues carefully and continue to strive for improving the competitiveness of RFPs.

The concern over adherence to PGE’s pro forma PPA is especially pertinent in this RFP because PGE has indicated an intent to submit both a benchmark bid and an affiliate bid into the RFP. PGE indicates that its benchmark and affiliate bids will be prepared by PGE employees.¹¹ In the competitive context, this means that the benchmark and affiliate bids will not be “thinking outside of the box” so to speak as other bidders might be, and so PGE’s proposed PPA terms may only be narrowly tailored to the arrangement that PGE itself envisions. Further, it may be

⁷ *PacifiCorp Application for Approval of 2020 All-Source Request for Proposal*, Docket No. UM 2059, PacifiCorp Reply Comments 2020 All-Source Request For Proposal at 29 (June 1, 2020) (attached to PacifiCorp’s Reply Comments).

⁸ OSSIA also agrees generally that the PPA terms themselves need to have a reasonable amount of flexibility in the context of the current policy environment where additional costs may be added due to the passage of certain legislation, namely the Build Back Better bill currently before Congress, as such passage may result in, for example, changed costs related to taxes, import/export tariffs, or union labor.

⁹ *In re Portland General Electric Company, 2018 Request for Proposals for Renewable Resources*, Docket No. UM 1934, Order No. 18-483 at 3 (Dec. 19, 2018).

¹⁰ *Id.* at 1.

¹¹ PGE 2021 All-Source RFP – Final Draft at 7 (Oct. 15, 2021).

easier for an affiliate bid to accept certain terms and conditions of the PPA when it knows that its parent company is the counterparty to the contract. This occurs because negotiations continue after the shortlists and other bidders are eliminated, and unrelated third parties may not as readily agree to amendments or modifications after the fact. Therefore, it is inappropriate to place a significant weight on substantive agreement to PPA terms when affiliates are bidding, as it creates a significant competitive disadvantage for unrelated third-party bidders.

In conclusion, OSSIA agrees with the significant concerns raised by NIPPC on this topic and recommends that the Commission (1) decrease the weighting attributed to adherence with the pro forma PPA and (2) score the bids based simply on whether a redline was provided rather than substantive adherence to the contract terms.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Crowley-Koch". The signature is written in a cursive, flowing style.

Angela Crowley-Koch
Executive Director