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July 7, 2022

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
201 High Street Southeast, Suite 100
Post Office Box 1088
Salem, Oregon 97308-1088

Re: UM 2166 – In the Matter of Portland General Electric Company 2021 All-Source Request for Proposals – Comments on Staff Report

Dear Filing Center:

Enclosed for filing today in the above-referenced docket are Portland General Electric Company's Comments on Staff Report.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Erin Apperson".

Erin Apperson
Assistant General Counsel II

EA:dm
Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2166

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Request for Acknowledgement of the 2021 All
Source Request for Proposals Final Shortlist.

**COMMENTS OF PORTLAND
GENERAL ELECTRIC COMPANY ON
STAFF REPORT**

I. INTRODUCTION

In accordance with the schedule in this docket, Portland General Electric Company (PGE or Company) submits these comments in response to the June 29, 2022 Staff Report. PGE appreciates the time, effort, and engagement by Staff and stakeholders throughout this process.

PGE appreciates Staff’s recommendation that the final shortlist resulting from the 2021 Request for Proposals (RFP) should be acknowledged, and also agrees with most of Staff’s findings regarding compliance with the competitive bidding rules.¹ Additionally, Staff has proposed five conditions that they believe are in the public interest and that Staff requests be reflected in the Commission acknowledgement as part of the Public Utility Commission of Oregon’s (OPUC or Commission) July 14, 2022 public meeting.²

¹ See Staff Report at 37-38. Staff also discussed concerns around “PGE’s approach to the portfolio analysis required by rule (and PGE’s approved scoring and modeling methodology).” *Id.* at 6. Staff referenced Staff and PGE’s divergent perspectives on this issue. However, Staff concluded that it “does not believe non-acknowledgement of PGE’s approach on these grounds would serve the right purpose here.” *Id.* at 8.

² *Id.* at 37-38.

PGE does not oppose Staff's proposed Condition One subject to a minor clarification; however, PGE requests clarification, amendment, or removal of the remaining four conditions that would seemingly premise the acknowledgement of the final shortlist on either a specific procurement volume, a firm deadline to enter a definitive agreement, or both. Outlined below is a summary of each condition along with PGE's recommendation to improve each.

Condition One: "PGE shall ensure Bates White will continue to serve as Independent Evaluator through final resource selection. The Independent Evaluator would monitor all contract negotiations and file a final resource selection closing report with the Commission no later than 30 days after final resource selection. The Independent Evaluator's report should summarize the substance and results of the contract negotiations; whether bidders were able to stick to their bids and why or why not; the order in which resources were pursued and selected; whether bidders were treated fairly in the negotiation process; whether there was any utility bias in the final resource selection; and any other information the IE deems useful to inform a prudency review."

PGE supports adoption of Condition One subject to a minor modification to more accurately reflect the need to confirm availability and interest from Bates White to continue performing its duties as the Independent Evaluator. PGE's proposed updated Condition One states: "Bates White will continue to serve as Independent Evaluator through final resource selection. The Independent Evaluator would monitor all contract negotiations and file a final resource selection closing report with the Commission no later than 30 days after final resource selection. The Independent Evaluator's report should summarize the substance and results of the contract negotiations; whether bidders were able to stick to their bids and why or why not; the order in which resources were pursued and selected; whether bidders were treated fairly in the

negotiation process; whether there was any utility bias in the final resource selection; and any other information the IE deems useful to inform a prudency review.”

Condition Two: “The final shortlist is acknowledged to the extent it is used to procure at the 250 MWa level.”

PGE proposes Condition Two be amended to reflect a procurement target of “up to approximately” 250 MWa of renewable resources and should not represent a specific volume that must be filled, nor should filling such a volume represent a condition of acknowledgement. PGE’s proposed updated Condition Two states: “The final shortlist is acknowledged to the extent it is used to procure up to approximately 250 MWa of renewable resources, with a total procurement volume (renewable resources and non-emitting dispatchable capacity) consistent with the identified 2025 system capacity need of 388 MW.”

Condition Three: “If not provided prior to the Commission’s acknowledgement decision, PGE must file, within one week of the acknowledgement decision, a designation of its preferred portfolio for the 250 MWa procurement level. This shall include the specific projects, the total MWa expected from those projects, how the portfolio analysis and sensitivities support the presented preferred portfolio, and any other relevant data to support the preferred portfolio.”

PGE seeks Commission clarification regarding Condition Three that PGE will report on top performing portfolios—and may use those top portfolios to inform the rank order of negotiation priority—but that acknowledgment is not conditioned on or limited to a specific procurement outcome that may or may not be commercially feasible. PGE proposes Condition Three be amended to include the following: “PGE is not limited to procure exclusively from the preferred portfolio and its associated projects.”

Condition Four: “PGE will use the 250 MWa efficient frontier portfolios results as the primary rank order for which to pursue resources under this procurement.”

While the 250 MWa efficient frontier portfolios results may serve to inform the “rank order” of how PGE may prioritize negotiations, the order may change due to commercial availability. The full final shortlist of projects provides optionality in case bidders cannot meet their price and/or terms as bid—PGE’s procurement goal is to find the least cost, least risk resources for the benefit of customers. Therefore, similar to Condition Three, PGE seeks the following clarification for Condition Four: “PGE is not limited to procure exclusively from the 250 MWa efficient frontier portfolio results and its associated projects as the primary rank order for negotiations.”

Condition Five: “PGE will complete final resource selection by the end of the calendar year 2022.”

PGE recommends that the Commission decline to adopt Condition Five as it is inconsistent with the acknowledgement of a final shortlist and could shift significant risk onto customers. Further, it provides shortlist bidders with negotiation leverage that is inappropriate and may lead to higher procurement costs and suboptimal customer outcomes. As an alternative to Condition Five, PGE could agree to provide a status update, if final negotiations are not completed, to the Commission by the end of 2022.

II. COMMISSION ACKNOWLEDGMENT OF FINAL SHORTLIST

While PGE shares the urgency outlined in the Staff Report regarding the need to move quickly with procurement from this RFP, if possible, premising acknowledgment of a final shortlist of resources upon a firm calendar deadline is inconsistent with the intent of Oregon’s competitive

bidding rules. OAR 860-089-0500(1) specifies that acknowledgement of the final shortlist is “a finding by the Commission that an electric company’s final shortlist of bid responses appears reasonable at the time of acknowledgment and was determined in a manner consistent with the rules in this division.” Further, the shortlist acknowledgment proceeding has the same legal force and effect as a Commission-acknowledged IRP in any future cost recovery proceeding.³

PGE recognizes that acknowledgment is not a guarantee of, nor requirement for, cost recovery.⁴ Cost recovery decisions are made in later ratemaking proceedings where the prudence of resource procurement is reviewed.⁵ However, Commission acknowledgment of the final shortlist is an important step in the solicitation process and would be used as evidence supporting the Company’s actions in a ratemaking proceeding.

Acknowledgement in the context of the competitive bidding rules relates to the final shortlist of projects as well as compliance with the rules by the utility throughout the solicitation process. While PGE appreciates Staff’s recommendation that the Company should procure additional renewable resources, specific procurement and portfolio decisions are responsibilities left to the utility and are reviewed for prudence in a future Commission cost recovery proceeding.

Here, PGE requested that the Commission acknowledge that the solicitation was performed in accordance with the rules and that the final shortlist of projects appears reasonable at the time of acknowledgement.⁶ Staff’s conditions two, three, four and five would introduce requirements and deadlines applying to PGE’s commercial negotiation process. These conditions would

³ OAR 860-089-0500(2).

⁴ See *In the Matter of Portland General Electric Company, 2019 Integrated Resource Plan, Docket No. LC 73, Order No. 20-152 (May 6, 2020)*. The Commission was discussing acknowledgment of the IRP, but this language is also helpful in the context of acknowledgment of an RFP final shortlist.

⁵ *Id* at 5.

⁶ PGE’s Request for Acknowledgment of the Final Shortlist of Bidders at 2.

inappropriately limit acknowledgment to specific commercial outcomes for which decisions remain within the purview of the utility and are reviewed for prudence in a future Commission cost recovery proceeding. PGE therefore recommends that the Commission clarify that Condition Two is instead an acknowledgement by the Commission that PGE may exceed the acknowledged IRP action plan to procure up to approximately 250 MWa of renewable resources in the 2021 RFP. PGE recommends the Commission find that Conditions Three and Four do not limit acknowledgment to a specific preferred portfolio or subset of projects, but rather serve as an indicative reporting tool on how PGE may prioritize commercial negotiations. PGE also recommends that the Commission decline to adopt Condition Five.

A. The Commission Should Clarify the Intent of Condition Two and Adopt it as a Statement of Policy, Not a Condition of Acknowledgment.

PGE welcomes the flexibility to procure beyond the 150 MWa volume acknowledged in the 2019 IRP Action Plan and is open to procuring up to Staff's recommended level of approximately 250 MWa. PGE supports Commission direction to pursue commercial agreements with renewable resources beyond the 180 MWa level, but PGE's ability to procure 250 MWa should not be a condition of acknowledgment. PGE recognizes that a higher level of procurement better aligns with the portfolio modeling results and can provide additional benefits to customers; PGE appreciates Staff's analysis in the Staff Report.

Given the uncertainties and macroeconomic challenges faced by bidders in the 2021 RFP, there are potentially significant barriers to successful execution of commercial agreements and PGE may be unable to procure up to approximately 250 MWa. For this reason, PGE seeks to clarify that Staff's intent in Condition Two is to modify the upper bound of the renewable procurement volume above what was previously acknowledged in the 2019 IRP, but not to condition acknowledgment on PGE's ability to execute contracts for the full 250 MWa.

As written, the condition points to a specific renewable procurement volume of 250 MWa. A combination of projects is extremely unlikely to add to exactly 250 MWa; therefore, PGE recommends that the acknowledged procurement volume be “up to approximately” 250 MWa, which would allow for some deviation and would recognize potential difficulties in meeting the full procurement volume.

B. PGE Seeks Clarification that Conditions Three and Four Do Not Limit Acknowledgment to a Specific Preferred Portfolio.

PGE is willing and able to provide the top performing portfolio for the 250 MWa procurement level and supporting relevant data. However, PGE seeks clarification that while the top performing portfolio may inform negotiation priority, acknowledgment is not limited to a specific preferred portfolio. PGE is seeking the Commission’s acknowledgement of the final shortlist and not a specific subset of that list. The selection and contracting with projects on the final shortlist are within PGE’s purview, and the decisions will be a part of a future prudency review.

PGE’s procurement strategy is to find the least cost, least risk resources for the benefit of customers and this will be informed by the analysis performed within the RFP, which includes portfolio modeling. PGE will make every effort to contract with top performing projects but cannot limit itself to a single portfolio of projects as this would add an unnecessary constraint and risk to negotiations. PGE proposes Condition Three be amended to include the following: “PGE is not limited to procure exclusively from the preferred portfolio and its associated projects.” PGE proposes Condition Four be amended to include the following: “PGE is not limited to procure exclusively from the 250 MWa efficient frontier portfolio results and its associated projects as the primary rank order for negotiations.”

As suggested within Condition One of Staff's memo, PGE welcomes the Independent Evaluator's added insight into the negotiations process and agrees that it will better serve and inform any future prudency review.

C. The Commission Should Acknowledge PGE's Final Shortlist Without Adopting Condition Five.

The Commission should not adopt Condition Five as it is outside of the scope of acknowledgement. Additionally, adoption of this condition could significantly shift risk onto customers by adding a deadline that would publicly constrain commercial negotiations beyond the timelines in Order No. 21-460 (which approve the RFP with specific commercial online dates (COD) based on PGE's system need). The 2021 RFP specified a COD of no later than December 31, 2024, except for long-lead time technologies. This is intended to meet 2025 system capacity needs, take advantage of expiring federal tax credits, provide meaningful progress toward HB 2021's decarbonization targets, and to make clear that projects must proceed in a timely fashion to meet customer needs.

The timing specified in the 2021 RFP provides a natural endpoint to the contracting process and ensures that that PGE has sufficient time to identify the best value for customers while ensuring that projects cannot linger on the final shortlist indefinitely. Specifically, there are some projects with a COD by end of 2023 that require accelerated completion of definitive agreements, but there are also some projects with a COD by end of 2024 or later that do not necessitate completion of agreements by end of year. Nonetheless, PGE still intends to complete all negotiation activities by end of 2022 to the extent possible.

The inclusion of an additional deadline that resource selection must be completed by December 31, 2022, provides a material advantage to bidders, who know that PGE's 2025 capacity

need and 2024 COD requirements continue to exist, but that regulatory acknowledgement would run out at midnight on December 31, 2022. This regulatory deadline could therefore serve as a milestone at which bidders could exert significant leverage to force PGE into either granting concessions to reach a definitive agreement or risk needing to take some action such as potentially re-run the RFP to obtain a new acknowledgement, seek a waiver of the competitive bidding rules, or some other action. These outcomes would be very inefficient for both the Commission and PGE, particularly when PGE already intends to move quickly with negotiations to capture expiring federal tax credits.

PGE welcomes the Commission's encouragement to enter definitive agreements by the end of the year, and indeed PGE continues to prefer completing commercial negotiations by the end of calendar year 2022.⁷ However, adopting an artificial, firm deadline as a condition of acknowledgment creates unnecessary risk to customers and may serve as a constraint to completing negotiations if additional regulatory process is needed after December 31, 2022. If the Commission is unwilling to decline the proposed condition in its entirety, PGE instead offers that the Company could provide an update on the commercial negotiation process to the Commission in December 2022 and would identify any barriers to procurement that may impact the timeline to definitive agreements at that time.

Per Condition One of the Staff Report, PGE agrees that it is appropriate for the Independent Evaluator to continue to be retained during the negotiation period as PGE and bidders progress through commercial negotiations. PGE recommends that to the extent that negotiations continue beyond December 31, 2022, that the Independent Evaluator continue to provide oversight and

⁷ *Id.* at 3.

reporting to the Commission as to the progression of negotiations and any appropriate next steps to be taken by the Commission.

III. CONCLUSION

PGE received robust participation in response to the 2021 RFP, with all projects on the final shortlist representing significant customer benefit and capacity and energy products consistent with the system need identified in the 2019 IRP and IRP update. PGE requests acknowledgement that the projects selected for inclusion on the final shortlist are reasonable, and that the 2021 RFP was conducted fairly, transparently, and in accordance with Oregon's competitive bidding rules. PGE agrees with Staff's recommended acknowledgement subject to either modification or rejection of each condition as outlined in these comments.

DATED this 7th day of July, 2022.



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