

November 24, 2021

Oregon Public Utility Commission (OPUC)  
Chair Megan Decker;  
Commissioner Mark Thompson;  
Commissioner Letha Tawney;  
Staff

201 High Street SE, Suite 100  
Salem, Oregon 97301

Attention: Filing Center  
201 High Street, Suite 100  
Post Office Box 1088  
Salem, OR 97308-1088

**Re: UM 2166 Comments on PGE's RFP Process and Criteria**

Dear Commissioners:

NewSun Energy (NewSun) 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.

These comments are in particular to focus on two major deficiencies with the RFP and its structure, as further discussed below.

1) HB 2021 compliance and the RFP's failure whatsoever to address it at this critical juncture, this being the first major RFP after HB 2021's passage, which imposes its new state policy effective already (now, not in 2030). This must be remedied and must, effectively, favor in-state facilities' procurement "to the maximum extent practicable" to have any chance of complying with the new law. Methodologies, preferences, scoring and other mechanisms are needed.

2) PGE's commercial terms compliance obligations are categorically inappropriate, forcing competitors to bear terms affecting their prices, terms which PGE wrote for its competitors, but which PGE can remove or fail to enforce later, rendering those burdens meaningless for the PGE affiliate bidders, allowing multiple aspects of competitive advantages.

(NewSun generally agrees with OSSIA's and NIPPC's comments on other procurement competitiveness issues, commercial terms, and the need for revisions to the scoring, however with additional major related issues added below.)

**1) New Oregon State Policy for Procurement under HB 2021's Section 2 requires methodologies, scoring criteria, and preferences in this and future IOU RFPs:**

First, the complete failure to address the Oregon state policy obligations newly added by HB 2021 is striking and inappropriate. CREA is surprised Staff has not acted more strongly on this point. This is the first RFP initiated by OPUC jurisdictional utilities since HB 2021 passed earlier this year. It is timely, appropriate, and required that the new policy be addressed now in this RFP—in addition to further

process that may occur in the future—and this RFP must address those standards, and develop methodologies and preferences to ensure both a broad range of bids from facilities achieving these policies, and ultimately that procurement results from this and future RFPs.

Section 2, paragraph (2) of HB 2021 states:

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

This docket—and all procurement subsequent to HB 2021’s passage—can, should, and must encourage, require, examine how in-state siting can be promoted and achieved, as the most direct and obvious way to “provide additional *direct* benefits to communities *in this state* in the forms of *creating and sustaining meaningful living wage jobs*”<sup>1</sup>. In-state siting is also the most obvious and direct way for “*increasing energy security and resiliency*”, which with current wildfire risk disfavors increasingly remote generation, as well as favors higher diversity of locations and resource types. We also note that this is a *currently effective* legal standard, not one that waits until 2030 to apply: “zero greenhouse gas emissions” energy will be being procured and generated in advance of the 2030 milestone; this policy applies now—to this and every RFP hereafter.

In effect, it would be *impossible* for the state to comply with this in-state policy requirement without at least *some* scoring criteria related to it.

But in reality “to the *maximum* extent practicable” is a very high legal bar. It is a high bar that points to not only to scoring preferences and methodologies, but even utilities and ratepayers incurring additional costs to attempt to achieve it.

For example, one would not intuitively (nor legally) understand “to the maximum extent practicable” to mean either to “try none at all” nor to “spend zero extra dollars in trying” nor to “not reduce barriers for qualifying projects that might achieve the policy”, nor to mean that procurement should not recognize the high volume of options that exist in Oregon and very close to its borders and take measures to include them in outcomes.

By contrast, it is obviously practicable to spend some additional amounts, apply additional scrutiny, develop preferences and metrics, reduce barriers for qualifying projects, and make special efforts to achieve “the maximum extent practicable”—for each of these policy objectives. This is what must occur.

OSSIA previously made recommendations that the scoring and modeling methodology reflect would comply with the HB 2021 requirements. But Staff did *not* recommend changes to account for OSSIA’s

---

<sup>1</sup> Emphases added to HB 2021 language.

concern. Staff recommended that PGE run alternative scenarios. But ultimately running scenarios is insufficient for RFP criteria to implement the state policy.

This—and future—procurement must incorporate scoring, preferences, and other measures to achieve the policy “to the maximum extent practicable”, otherwise the procurement is inconsistent with state policy at this point—which ultimately the Commission is responsible for ensuring is implemented and enforced. We recommend serious changes to this RFP to address these deficiencies, as well as a broader discussion as soon as possible to inform procurement by all Oregon IOUs going forward.

As OSSIA noted:

“Notably, that 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.”<sup>2</sup> 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.”

At a minimum, some amount of the procurement in this PGE RFP effectively must be in-state, as the only reasonable safe harbor to complying with the policy. Thus, at minimum there must be some minimum procurement standard in this RFP (such as 30-50%) as in interim measure. But preferably fuller standards could be developed.

Finally, we note that it is incredibly important for the RFP to result in broad participation—a high number of qualified bids that have price scoring—so that the Commission begins to gather real data on what the price features and other attributes (location, transmission approaches, scales, etc) might exist to achieve these policies—as well as to signal to the market to engage in creating these options. This information is critical to further inform related policy development and future procurement criteria and methodologies to achieve these means.

Ultimately, the HB 2021 section policy is in effect now, today, during this RFP—not later in 2030—as relates all the procurement occurring in for Oregon regulated utilities henceforth. This must be remedied for this and all future procurement. CREA is happy to participate in further discussions to implement this policy.

## **2) Requirements for Bidders to Conform to PGE’s Commercial Terms and Conditions**

In short, it is categorically inappropriate to have major scoring criteria based on, effectively, obligations to wholesale agree in entirety with the contractual commercial terms that PGE itself wrote when PGE is bidding alongside the competitors it is effectively forcing to comply with those terms—even though PGE

---

<sup>2</sup> House Committee on Revenue at 15:46 (May 13, 2021)  
<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2021051192&startStreamAt=946&stopStreamAt=970>.

itself, after it won RFP selection, could re-write, amend, and/or selectively fail to enforce provisions against [itself] when so desired *after* the procurement and regulated process is over.

This is absurd—and only further highlights the issues with IOUs participating at all in the processes they run. Further, it will artificially suppress and constrain RFP bidders abilities to present myriad options, including potential less expensive options which might be reasonable if PGE had not forced specific commercial terms on its competitors. We further note that NIPPC’s comments about, even if such criteria were applied, the complete lack of guidance on scoring within this hugely consequential score provision, which we believe is both inappropriate and (again) highlights the self-dealing issues here.

As OSSIA notes in its comments, “The significant weight placed on adherence to the PPA terms presents essentially a “take it or leave it” PPA.” While this might expedite PGE’s review, and certainly PGE’s affiliates abilities to comply with meaningless agreements to itself, it ultimately reduces the abilities of bidders to bring creative, competitive, market solutions—and constrains the Commission’s abilities (and PGE’s) to ever really know what options exist. That suppresses competition, suppresses participation, and ultimately makes it easier for PGE to award higher priced contracts to itself, against the backdrop of the invisible absence of parties it prevented from bidding and/or forced to bear unfavorable (or even just sub-optimal) terms to what parties might have brought to the market for the benefit of ratepayers.

In this case, PGE’s is doubling down, literally, on the self-dealing advantages, because PGE intends to submit both a benchmark bid and an affiliate bid into the RFP. Thus the self-dealing advantages will be magnified beyond a single form of unacceptable, to multiple incarnations of unacceptable.

The Commission should not only reject this approach, but also reject PGE’s related efforts in UI 461 to have an affiliate bid—both on the merits there (which include radically insufficient time to evaluate all the issues, including the contractual permissivity of their master services agreement structure, which may allow other consequences unforeseen now—and as a signal to the utilities to cease the brazen-ness embodied in this inappropriate self-advantaging PGE proposal to write a contract with itself and force competitors to accept those terms as part of the competition.

## **Conclusion**

The Commission, and the ratepayers of Oregon, have a vested interest in seeing as many bids as possible. The RFP structure should facilitate this. Including providing flexibility for bidders to be creative in their bid terms. If the OPUC allows RFP structures that remove such bids from the market, it can never even come close to knowing how much extra cost its utilities are forcing upon ratepayers, because it is effectively agreeing to blind itself and the market—as well as sending signals to the market of OPUC condoned IOU power that cannot be contested.

Please bear this in mind as you consider this and future RFPs. To the extent RFP structures preclude, diminish, and/or bias against prospective bidders (and generally volume of bidders)—or, worse, in the process support utilities’ telegraphing power to the market that all parties must acquiesce to their positions (no negotiation permitted)—the Commission *must reject and discourage these behaviors*. Until the Commission begins rejecting filings and calling these behaviors out, it is de-fanging itself is a regulatory authority.

Finally, HB 2021's decarbonization demands are immense. NewSun Energy notes again, as it has in various proceedings, that the steep procurement obligations and steep challenges demand *earlier and faster action—and approaches which identify failures and limitations earlier than later, so that remedial actions can be taken to ensure compliance and success with HB 2021's milestones*. This includes the direct benefits to Oregon communities and labor in Section 2 of HB 2021 which are obligations in advance of 2030. **With almost a decade to go before the 2030 milestone, there should be no excuse for failure, as there is a lot of time both to act and to measure and adjust before then. The Commission's policies should both ensure and facilitate that.** This includes procurement volume, gathering real market data (casting wide nets), and clearly telegraphing to the utilities who is in charge and that these obligations are real and consequential—and not opportunities for self-dealing and diminishment of competition.

We look forward to working with the Commission and other stakeholders to achieve that success—including bolstering resiliency, reliability, and economic opportunity for Oregon's citizens, businesses, and counties, particularly in rural Oregon where much of the benefits will occur.

Sincerely,

Jake Stephens  
CEO, NewSun Energy

P.S. In the long discussion in markets about divestiture of generation assets from investor owned utilities, to avoid and diminish the power and cost conflicts associated universally with IOU monopsony and generation ownership – the same biases and issues we see in this very RFP's self dealing mechanisms – we would note that HB 2021 and decarbonization offer the Commission a profound and unique opportunity to effectuate the effective divestiture of generation by IOUs: Decarbonization and HB 2021 will require the utilities to procure in *excess* of their entire current nameplate of IOU-owned generation. They will basically *have to replace*, in MWH of generation, and in emission free dispatchable capacity both, *their entire generation stack*. If the OPUC were to have all future generation procurement be *non-utility* owned, by the end of decarbonization, and largely by 2030, the utilities would own very little to none of the generation, just wires and customers, and probably some low-run rate (i.e. carbon restricted) capacity units leftover to assure reliability. *In short, this could be a powerful opportunity to restructure Oregon's degree of IOU generation ownership without actually forcing a direct divestiture*, and all the messiness that would require. The OPUC could accomplish it merely through future procurement policies.