

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2274

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

2023 All-Source Request for Proposals,
Request for Partial Waiver of
Competitive Bidding Rules.

NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS
COALITION’S COMMENTS ON
PORTLAND GENERAL ELECTRIC
COMPANY’S REQUEST FOR
WAIVER OF COMPETITIVE
BIDDING GUIDELINES

I. INTRODUCTION AND SUMMARY

The Northwest & Intermountain Power Producers Coalition (“NIPPC”) respectfully submits these Comments on Portland General Electric Company’s (“PGE”) Request for Partial Waiver of the Competitive Bidding Rules (“PGE’s Request for Waiver”) to the Oregon Public Utility Commission (the “Commission”).

NIPPC is a trade association whose members and associate members include independent power producers active in the Pacific Northwest and Western energy markets.¹ The purpose of NIPPC is to represent the interests of its members in developing rules and policies that help achieve a competitive electric power supply market in the Pacific Northwest. NIPPC has actively engaged in the workshop and

¹ NIPPC’s members include but are not limited to: Calpine Corp, Constellation Exelon, Cycle, DG Energy Partners, Direct Energy, EDF Renewable Energy, EDP Renewables, Invenergy LLC, Morgan Stanley, NextEra Energy, Obsidian Renewables, Perennial Power Holdings, Rye Development, Shell Energy North America, TransAlta Energy Marketing, and Tyr Energy.

related procedures regarding PGE's Request for Waiver, and NIPPC looks forward to working with PGE, the Commission, and other stakeholders in development and review of PGE's eventual Request for Proposals ("RFP") that has given rise to the Request for Waiver.

PGE's Request for Waiver seeks waiver of three requirements of the Commission's RFP rules. First, PGE requests a waiver of the requirement that the RFP be issued only after acknowledgement of an Integrated Resource Plan ("IRP") identifying the resource need, and instead seeks to conduct the RFP in parallel with the IRP. Second, PGE requests a waiver of the ordinary process for soliciting an independent evaluator ("IE") in favor of retaining the IE employed in its immediate past RFP, Bates White. Third, PGE requests a waiver the requirement, under OAR 860-089-0250(2)(a), that the scoring and modeling methodology be approved prior to approval of the draft RFP and that, instead, the scoring and modeling methodology be approved simultaneously with the draft RFP.

As explained below, the issue of greatest concern to NIPPC is PGE's proposal to retain Bates White as the IE without inviting other potential IEs to bid for that position. NIPPC is concerned that, without further guidance from the Commission, Bates White may miss the opportunity to improve its engagement here, using what has been learned from previous experiences. Simply using Bates White again because of their experience, without capitalizing on that experience to make the process yield better outcomes, is not sufficient reason to waive Commission rules. In agreeing to waive the regular process for retaining Bates White as IE for this RFP, the Commission should direct Bates White to

engage earlier and more on the initial RFP design phase, the RFP's form contracts, and other areas described below.

Finally, NIPPC takes no position on PGE's first proposal to conduct the RFP in parallel to the IRP, and NIPPC supports PGE's third proposal to approve the scoring and modeling methodology at the same time as the rest of the draft RFP.

II. COMMENTS

A. PGE's Request to Appoint Bates White: NIPPC Conditionally Supports PGE's Request to Appoint Bates White.

If the Commission Approves Bates White as the IE, the Commission should provide guidance to Bates White to improve the competitiveness of the solicitation.

NIPPC appreciated the opportunity to ask questions of Bates White regarding its experience at Staff's workshop in this docket, and NIPPC's comments and recommendation herein are informed by the constructive discussion at the workshop.

The premise of PGE's request to appoint Bates White is that Bates White already has experience in serving as the IE for PGE's RFPs, having served as the IE in PGE's 2018 RFP in Docket No. UM 1934 and in PGE's 2021 All-Source RFP in Docket No. UM 2166. However, simply having served as the IE in a PGE RFP in the recent past does not justify selecting an IE unless it is demonstrated that the IE will apply its experience to improve the competitiveness of the next RFP.

NIPPC agrees that Bates White is qualified to be the IE in Oregon RFPs, but NIPPC believes that in past RFPs Bates White has tended to provide its most insightful critiques of the RFP in the shortlist report but not always at the front-end of the process when the draft RFP is being revised and submitted for Commission consideration and

approval. In the 2021 RFP, for example, NIPPC was very concerned with certain commercial terms PGE proposed for bidders and the related 21% non-price scoring penalty for bidders unwilling to agree to such terms, but Bates White did not take a strong position on this issue and did not even directly opine on some of the concerning commercial terms.² Ultimately, the Commission itself reduced the non-price scoring allocation in response to NIPPC's concerns.³ Bates White indicated at the workshop in this docket that it could be more proactive in building upon its experience with PGE's contract forms and the provisions that bidders previously found to be unreasonable based on bid responses. In NIPPC's view, addressing this issue during the initial RFP design phase is very important.

Another example where Bates White could proactively build on its experience with PGE's past RFPs relates to the requirements for interconnection and transmission for project bids. The interconnection and transmission restrictions in Oregon RFPs have been a longstanding problem that Bates White has highlighted. In PGE's 2018 RFP (UM 1934), Bates White was the IE and correctly noted in its closing report that the RFP's strict interconnection and transmission requirements (to which NIPPC had objected) resulted in a very limited shortlist and "disqualified several offers, including some with very attractive prices."⁴ Specifically, in the 2018 RFP, Bates White initially proposed

² See Docket No. UM 2166, Order No. 21-460 at 4-6 (Dec. 10, 2021).

³ Docket No. UM 2166, Order No. 21-460 at 6.

⁴ PGE's Request for Acknowledgement of Final Shortlist, Attachment: The Independent Evaluator's Final Report on Portland General Electric's 2018 Renewable Request for Proposals, Docket No. UM 1934, 4-5 (Oct. 2, 2018) (stating "This RFP saw a number of disqualifications, mainly due to the requirements surrounding transmission service. . . . PGE essentially required firm transmission service which lined up with this

significantly relaxing PGE’s requirement for “firm” point-to-point transmission rights for off-system bidders but then supported a relatively minor relaxation to allowance of “bridge conditional firm” transmission for two years.⁵ The majority of the Commission ultimately approved use of a three years of conditional firm bridge service, but Commissioner Decker stated she would have allowed for use of up to five years of conditional bridge service.⁶ The result of the limited relaxation of PGE’s firm transmission requirement was that only five projects complied with this requirement and qualified to proceed for further consideration.⁷ The Commission expressed concern and intent to obtain improvements with the IE’s assistance: “We will be asking the utilities to more fully explain the potential issues when they propose a RFP, and we will be asking the IE to more fully and specifically explain transmission issues.”⁸

Yet this subject remains a major concern of NIPPC in Oregon RFPs and requires

commercial operations date (COD), meaning that offers had to have firm transmission commitments by the end of the year.”).

⁵ Compare Bates White, Independent Evaluator’s Assessment of Portland General Electric’s Final Draft 2018 Request for Proposals for Renewable Resources, Docket No. UM 1934, 3-4 (April 6, 2018) (agreeing that “a plan for achieving firm service is reasonable” but opposing requirement of advancement to final study phase and recommending relaxation to require “that bidders had to have requested long-term firm transmission service”); *to* Bates White, Memorandum Re Draft RFP, Docket No. UM 1934, 1-2 (May 15, 2018) (approving of PGE’s concession to allow for two years of conditional firm bridge service).

⁶ Docket No. UM 1934, Order No. 18-171, 3-4 (May 21, 2018).

⁷ Docket No. UM 1934, Order No. 18-483, 3 (Dec. 19, 2018) (“we now reiterate that the lack of transmission flexibility is a problem insofar as it has limited the projects eligible for the final shortlist in two successive RFPs”); *see also* NIPPC’s Comments on PGE’s Request for Final Shortlist Acknowledgement, Docket No. UM 1934, 5-11 (Oct. 25, 2018) (summarizing how the interconnection and transmission requirements of the RFP severely limited the competitiveness of the RFP).

⁸ Docket No. UM 1934, Order No. 18-483, 3 (Dec. 19, 2018).

ongoing proactive direction from the Commission and the IE as the region's interconnection and transmission limitations persist. In Bates Whites' report on the shortlist in the 2021 RFP (UM 2166), Bates White indicated that the RFP should have allowed bidders to combine generation resources to maximize the use of scarce transmission capacity, stating as follows:

Second, as transmission is a scarce resource, both here and in other RFPs we are seeing many proposals that wish to utilize existing transmission service reservations for the output of a renewable facility with a countervailing generation schedule on an as-available basis. In other words, a proposal for a new solar facility that would output power into the reservation of an existing wind facility (and vice versa). This sort of resource was generally not consistent with the RFP design. We would encourage PGE to accommodate these sorts of proposals in future RFPs for their own resources and from third-party offers as they better utilize a scarce resource.⁹

In sum, Bates Whites' closing reports that document the flaws in the RFP design are helpful, but unless the IE and the Commission act on such observations before the next RFP is issued to the market, then the problems will persist. Thus, further guidance is needed to ensure these issues are corrected at the front-end of the RFP design phase—not just as a comment in a closing report after the unfair limitation in the RFP has already biased the process.

Based on Bates Whites' responses to NIPPC's questions at the workshop, NIPPC recommends that if the Commission appoints Bates White, the Commission should

⁹ PGE's Redacted Request for Acknowledgement of Final Shortlist, Attachment: Bates White, The Independent Evaluator's Final Report on Portland General Electric's 2021 All Source Request for Proposals, Docket No. UM 2166, at 4 (May 5, 2022).

provide three general guidance points in its order approving selection of Bates White. Specifically, to build on Bates White’s prior RFP experience with PGE RFPs and based on information discussed at the workshop, NIPPC recommends that the Commission provide the following direction for Bates White and the upcoming RFP process:

1. Incorporate Recommendations from Past Shortlist Reports.

Bates White should be proactive in incorporating recommendations from its past RFP closing reports into changes to the future draft RFP at the RFP design phase. Simply identifying issues that could have been administered better in the closing report is unhelpful if not incorporated into the design of the subsequent RFP.

2. Authorize Scheduling Changes to Enable IE to Incorporate Stakeholder Recommendations.

The Commission should ensure that scheduling changes are implemented that give Bates White more time to consider stakeholder recommendations on the RFP design, and to the extent appropriate, incorporate stakeholder recommendations into its own recommendations on RFP design. NIPPC makes this recommendation based on Bates Whites’ explanation at the workshop that the RFP schedule typically provides insufficient time for the IE to meaningfully consider and adopt stakeholder recommendations.

3. More Proactively Review and Improve the RFP’s Form Contracts.

Bates White should be more proactive in reviewing and opining on the RFP’s form contracts for the best practices and provisions which could bias the RFP against power purchase agreement (“PPA”) and tolling agreement structures. This was a major area of concern in the PGE’s 2021 RFP, and NIPPC understands that it was a primary reason for the Commission’s change to the price/non-price scoring factors.

It is not sufficient for the IE to merely state that the RFP's contract forms contain provisions that are at the far end of what has been required in other RFPs, but that parties can negotiate, especially when the RFP penalizes the independent power producer ("IPP") bidders for such attempt to negotiate. Instead, Bates White should build on its experience in PGE's past RFPs to proactively identify and achieve removal of PPA and tolling agreement provisions that were clearly controversial and unacceptable to IPPs.

Additionally, Bates White should specifically opine on the key performance and credit/security provisions in the final draft RFP as to whether these provisions are commercially reasonable and whether they may bias the RFP by going beyond what is going to be contractually committed for to the life of the bid for a utility ownership facility. Even if Bates White does not object to specific provisions, the IE report on the draft RFP should at least identify the provisions that are one sided, potentially concerning to bidders, or explain how they can harm certain types of IPPs. For example, the IE may not object to high security requirements, but the IE should opine and let the Commission know that such requirements will exclude or make it more difficult for certain types of developers. The Commission can then make an informed decision as to what it wants to allow or require in the RFP. In other words, the IE does not necessarily have to referee and decide in favor of one side or the other on every discrete point, but the IE should opine on key issues raised regarding the forms.

B. PGE'S Other Waiver Requests

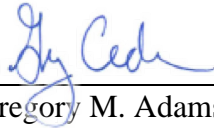
As noted above, NIPPC takes no position on PGE's proposal to conduct the RFP in parallel to the IRP, and NIPPC supports PGE's third proposal to approve the scoring

and modeling methodology at the same time as the rest of the draft RFP.

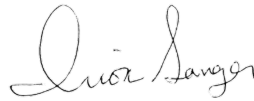
III. CONCLUSION

For the reasons expressed above, if the Commission approves retention of Bates White without following the normal processes, the Commission should provide guidance to Bates White consistent with NIPPC's recommendations.

RESPECTFULLY SUBMITTED this 13th day of April 2023.



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