

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
FINAL COMMENTS

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I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition (“NIPPC”)¹ respectfully submits to the Oregon Public Utility Commission (the “OPUC” or “Commission”) these final comments in response to Portland General Electric Company’s (“PGE”) reply comments,² the Independent Evaluator’s (“IE”) Second Assessment on PGE’s 2023 Draft All Source Request for Proposals (“Draft RFP”),³ and the Staff Report on PGE’s Draft RFP.⁴ NIPPC supports PGE moving forward with its RFP and proposes improvements to increase the number and quality of bids, and to ensure greater transparency and fairness. Attached to these comments is an issue matrix of the issues NIPPC has raised, responses if any to those issues, and whether the issues have been resolved or not.⁵

Without NIPPC’s proposed changes to the RFP, the RFP will be unfair, lack sufficient objectivity and competitiveness, not be transparent, and be biased in favor of utility-owned resources against third-party bids. The current design and scoring of the RFP will ensure utility-owned resources are favored to “win” the RFP, likely increasing long-term energy costs and risks. There are several examples on how the RFP is

¹ NIPPC is a membership-based advocacy group representing electricity market participants in the Pacific Northwest. NIPPC members include independent power producers (“IPPs”), electricity service suppliers, and transmission companies. NIPPC’s current member list can be found at <http://nippc.org/about/members/>.

² PGE’s Reply Comments (June 28, 2023).

³ IE’s Second Assessment on PGE’s 2023 Draft All Source RFP (July 14, 2023).

⁴ Staff Report (Dec. 12, 2023).

⁵ See Attachment A. It remains unclear whether some issues are resolved because PGE is simultaneously filing its final comments, and NIPPC is not certain what PGE’s final position is.

designed to favor utility-owned resources over third-party independent power producer (“IPP”) bids.

To be clear, NIPPC does not want to prevent the RFP from being issued to the market, but there are several changes the Commission could direct PGE to make to improve the RFP, ensure it is fair and transparent, and increase the potential pool of bidders to ensure customers get the least cost, least risk resources. The Commission should adopt NIPPC’s recommendations referenced in the June 16, 2023 and November 17, 2023 comments and below.

There are three main ways in which PGE has made it extremely difficult for PGE to fail to win this RFP resulting in the more costly and far riskier utility-owned (like the affiliate) generation resource. First, PGE is driving up the cost of non-utility owned resources, including by imposing out of market and unreasonable contract terms and proposing a debt imputation penalty. Second, PGE is limiting the number of eligible bids and driving down its costs by using ratepayer funded assets to only benefit more expensive and/or riskier resources that are owned by PGE. If PGE wished to ensure that the best resource was acquired, then it would not limit the use of these utility-owned assets only to utility-owned generation resources. Third, the affiliate power purchase agreement (“PPA”) form (and potentially the conversion of the benchmark bid price to an affiliate PPA price) will shift risks to ratepayers, which can drive down the affiliate PPA price. NIPPC appreciates Staff’s thoughtful and comprehensive analysis in the Staff Report. Staff shares NIPPC’s concerns on nearly all aspects of the RFP and agrees with many of NIPPC’s recommendations, but often proposes different protections and

conditions.⁶ NIPPC recognizes that Staff’s recommendations benefit from its close participation with the IE and the lessons from PGE’s prior RFP, and NIPPC has revised some of its recommendations to be more in line with Staff’s approach. The Commission should be aware that without Staff’s recommendations from the Staff Report, the affiliate was virtually certain to win the RFP. However, even with Staff’s meaningful recommendations, the affiliate is still highly likely to win the RFP. NIPPC urges the Commission to take additional steps to better even the playing field and ensure a fairer and more transparent RFP.

A. The Proposed PPA Terms are Unreasonable, Not Aligned with Market, Will Increase PPA Prices, and Bias the RFP in Favor of Utility-Owned Resources

First, PGE’s proposed PPA terms are unreasonable, not aligned with market terms, will cause many bidders to increase their price, driving up the costs of PPA bids, and bias the RFP in favor of a PGE-owned resource. There are several PPA terms that are out of market such as the guaranteed commercial operation date (“COD”), delay damages, output guarantees, mechanical availability, test energy, curtailment, security, and more.⁷ The majority of these provisions are also provisions that the IE noted in its summary of the contract negotiations from PGE’s 2021 RFP.⁸ PGE has stated these are its preferred PPA terms.⁹ Thus, bidders will have to determine whether to accept PGE’s unreasonable PPA terms and increase the bid price to account for those terms or offer a

⁶ See generally Staff Report at 35-63.

⁷ See NIPPC’s Comments on Draft RFP at 30-39 (June 16, 2023).

⁸ IE’s Assessment of PGE’s Draft 2023 All Source RFP at 5-7 (May 31, 2023).

⁹ PGE’s Reply Comments at 12.

lower price in the hopes they can successfully negotiate a contract with PGE with more reasonable PPA terms.

NIPPC understands that the Commission does not want to adjudicate or resolve disputed PPA terms in RFPs in general, and especially when there is not a non-price scoring penalty for marking up the PPA. NIPPC strongly appreciates that the IE provided a detailed and very informative report in this proceeding regarding major non-market PPA terms in the prior RFP (which have been carried over into this RFP). Staff recognizes this was a significant problem in PGE's last RFP and is serious concern in this RFP, but Staff did not adopt all but one of NIPPC's recommendations on changes to the form PPA, and instead recommends the IE track negotiations and note problematic instances, which will be useful in evaluating NIPPC's concern about commercial terms inflating bid prices and having an anticompetitive effect.¹⁰

NIPPC appreciates Staff's serious consideration of this issue, but this approach was unsuccessfully used in prior PGE RFPs, and NIPPC will be surprised if it provides sufficient protections in this RFP against PGE imposing unreasonable contract terms during the negotiations. In other words, we have confirmation that NIPPC's and other developers' concerns regarding PPA terms were justified (i.e., we have identified the problem), but there is no proven way to police PGE (i.e., there is no solution to the problem). NIPPC expects that the best result under the Staff recommendation would be a report identifying flaws in the RFP, which could provide information for the next RFP (as has already happened with the last RFP).

¹⁰ Staff Report at 67.

The Commission should direct PGE to revise its PPA form to be more aligned with the market as explained in NIPPC’s previous comments and the IE’s report.^{11, 12} The Commission has directed utilities to modify their PPA form, including recently directing Idaho Power Company to modify its PPA to be more aligned with market terms.¹³ Without making these changes, the Commission will effectively be making a policy decision that it finds it acceptable, at least in some manner, for PPA prices to be higher than reasonable and market, and it prefers utility ownership.

B. All Bids Should Be Allowed to Use Utility-Owned Assets

Second, if PGE is using ratepayer funded assets for utility-owned bids or affiliate bids and will not make those assets available to all bidders, then that will drive up PPA costs and limit the number of eligible bids.¹⁴ Given the scarcity of available transmission and significant interconnection delays, NIPPC expects that there will be more bids if

¹¹ See NIPPC’s Comments on Draft RFP at 30-39 and IE’s Assessment of PGE’s Draft 2023 All Source RFP at 5-7.

¹² For future RFPs, the Commission could consider other options, including different responsibilities for the IE, but at this time the current IE has identified some flaws and concerns, but has not been supportive of PGE’s deviation from the roles and has not been directed to play a policing or adjudicatory role.

¹³ *In re Idaho Power Company Application for Approval of 2026 All-Source Request for Proposals to Meet 2026 Capacity Resource Need*, Docket No. UM 2255, Order No. 23-260 at 3-4, 6-7 (July 17, 2023); see also *In re PGE 2021 All-Source RFP*, Docket No. UM 2166, Staff Report at 20-21 (Nov. 19, 2021) (see recommendations 5-6 requiring PGE to modify liquidated damages, limits on liability, and Commission approval before purchasing provisions in the form contracts) and Order No. 21-460 at 3 (Dec. 10, 2021).

¹⁴ See Updated Appendix P at 1 (Oct. 24, 2023) (PGE describing what utility-owned assets its benchmark or affiliate may use in the RFP); see PGE’s Responses and Supplemental Responses to NIPPC Data Requests 23, 24, 48, 53, 56, 57, 62, and 64 (Attachment B) (PGE refusing to answer which utility-owned assets the affiliate will use and whether those assets are ratepayer funded).

PGE’s transmission and interconnection rights were available, and that a higher cost and riskier project will win the RFP because they are unable to use ratepayer funded transmission and interconnection assets. Other utilities are allowing bidders to use utility-owned assets in other RFPs.¹⁵ If the Commission will not require PGE to make its utility-owned assets available to all bidders, then the affiliate bid should not have access to utility-owned assets either.

NIPPC provides an example for illustrative purposes. For example, assume that there are two bids with exactly the same generation resource and each cost \$100, and the value of interconnection and transmission rights are \$10. The first bid is utility-owned and is able to take advantage of interconnection facilities or transmission rights PGE owns which saves that bid \$10, then the utility-owned bid will be \$100 compared to a non-utility bid that would cost \$110. This does not even account for the higher bid price

¹⁵ In Puget Sound Energy’s (“PSE”) 2018 RFP, PSE allowed bidders to use its transmission rights. *See In re Request for Approval of a Draft RFP for the Acquisition of Electric Resources from All Sources*, Washington Utilities and Transportation Committee (“WUTC”) Docket No. UE-180271, Final 2018 All Resource RFP, Attachment C at 8 and Attachment D at 20 (June 8, 2018). PSE also made its transmission assets available to third-party bidders in its 2021 RFP. See Exhibit H, available here: <https://www.pse.com/en/pages/energy-supply/acquiring-energy/2021-All-Source-RFP>. *See also* PSE’s 2023 Lower Snake River Expansion RFP, where PSE holds wind project development rights with land and interconnection rights and is allowing bidders to submit bids using those rights to expand the wind project. Available here: <https://www.pse.com/en/pages/energy-supply/acquiring-energy/2023-Lower-Snake-River-Expansion>. Additionally, Idaho Power Company is allowing bidders to use its transmission rights on the Boardman to Hemingway transmission line that will be built. *See* Docket No. UM 2255, Idaho Power’s Reply Comments, Attachment A at 7-8 (Mar. 24, 2023).

a non-utility PPA bid would need to offer to absorb PGE's out of market PPA provisions, which unnecessarily drive up the price of PPA bids.

Now assume slightly different facts, and the non-utility owned resource costs \$75 while the utility-owned resource costs \$80. In the above example, PGE's use of interconnection and transmission assets will result in the utility-owned resource costing \$80 and the non-utility owned resource costing \$85. Thus, under the rules of the RFP, the utility-owned resource is "lower" cost and wins even though the cost of the non-utility owned bid before interconnection and transmission costs was lower. Ratepayers will have paid for those interconnection and transmission assets, which has the practical impact of PGE using its ratepayer funded assets to ensure that customers pay for a higher cost utility generation resource.

Any bid should be able to take advantage of ratepayer funded assets to ensure customers are receiving the least cost, least risk resources. Otherwise, utility-owned resources will have an unfair advantage over third-party PPA bids and ratepayers will overpay for a riskier generation resource. If the Commission is not willing to impose this condition, then the Commission should at least require all PPA options (affiliate and independent power producer) to be treated the same, which is required by the competitive bidding rules.

C. Changes Are Needed to the Affiliate to Address Unique Risks Associated with the Affiliate Such as Performance and Default Risk

Third, the Commission should adopt more of NIPPC's recommendations related to the affiliate to address the unique risks associated with the affiliate such as performance and default risk. In many cases Staff shared NIPPC's concerns related to

the affiliate’s participation in the RFP and recommends some changes.¹⁶ If the Commission adopted more of NIPPC’s recommendations outlined below, then the unique risks would be further addressed, and the RFP would be fairer and more transparent.

II. COMMENTS

A. Affiliate

The Commission approved PGE’s affiliate in Docket No. UI 489 with several conditions, but the Commission did not determine whether the affiliate would be allowed to bid into this RFP.¹⁷ Specifically, the Commission stated “[g]iven the potential for [Portland Renewable Resource Company, LLC (‘PRR’)] projects to have risks associated with performance, default, and other factors that are not the same as those implicated in traditional PPAs, the RFP process must review and consider these unique risks and ensure that they are addressed.”¹⁸

In general, NIPPC does not oppose an affiliate bidding into the RFP as long as there are adequate protections in place to address the unique risks associated with performance, default, and other factors. PGE has not provided sufficient information, let alone met its burden to demonstrate the unique risks associated with an affiliate bidding into an RFP have been addressed.¹⁹ NIPPC has repeatedly sought to understand how an affiliate would participate in the RFP and requested that PGE make meaningful proposals

¹⁶ See generally Staff Report at 35-63.

¹⁷ *In re PGE Application or Affiliated Interest Transaction with Portland Renewable Resource Company, LLC*, Docket No. UI 489, Order No. 23-294 at 1-2 (Aug. 10, 2023).

¹⁸ Docket No. UI 489, Order No. 23-294 at 2.

¹⁹ See generally NIPPC’s Comments on PGE Supplemental Filings (Nov. 17, 2023); see also PGE’s Response to NIPPC Data Requests 17, 68, and 69 (Attachment B).

to resolve its remaining concerns. PGE has elected not to do so and instead of proposing meaningful affiliate protections, filed a Supplemental Filing that concludes nothing further is needed. Staff recognizes the affiliate “warrants close attention to ensure that it is not used in an anti-competitive fashion and that ratepayer protections are sufficient in any potential contract between PGE and the PRR.”²⁰ NIPPC made several recommended changes to the affiliate form PPA and Staff states it “generally agrees with NIPPC that additional protection should be included in a PPA between PRR and PGE to protect ratepayers and ensure equitable treatment between the affiliate and independent bidders.”²¹

Thus, the Commission should not allow the affiliate to participate or bid into this RFP because the unique risks associated with performance, default, and other factors that have not been addressed in this docket and there is insufficient time to do so before the RFP would be issued to the market. If the Commission will allow the affiliate to participate in this RFP, then the Commission should adopt NIPPC’s recommendations related to the affiliate to address the unique risks associated with the affiliate.²²

The Commission has taken several important initial steps to start to address the unique risks associated with an affiliate bid. First, the Commission required an affiliate bid to be treated as a benchmark bid for compliance with Oregon’s competitive bidding rules in *any* RFP instead of just this upcoming RFP.²³ Second, the Commission required

²⁰ Staff Report at 53.

²¹ Staff Report at 53 and Table 8 at 54-59.

²² See NIPPC’s Comments on PGE Supplemental Filings.

²³ Docket No. UI 489, Order No. 23-294 at 1.

that PRR be reviewed in a public process following the first RFP it participates in before it may participate in another RFP.²⁴

NIPPC still has several concerns with the affiliate participating in this RFP, and the only way to address NIPPC's concerns is for the Commission to bar the affiliate from participating in this RFP and direct PGE make a filing addressing these risks in advance of its next RFP. Only then will PGE take these issues seriously enough to fully engage. If the Commission does not deny the affiliate from participating in this RFP, then the Commission should direct PGE to adopt NIPPC's recommendations as outlined below.²⁵

1. The Affiliate Should Not Have Access to PGE-Owned Resources that Third-Party Bidders Do Not

A unique risk associated with the affiliate is related to the affiliate having unfair access to utility-owned resources while other bidders do not. PGE has noted its affiliate may take advantage of PGE-owned assets that will only be made available to utility-owned bids and not all bidders.²⁶ PGE has stated it intends to use land in Northeast Oregon and generation capacity on a generation-lead line (from Grasslands substation to BPA's Slatt substation) for this property, Biglow Canyon Wind Farm's Large-Generator Interconnection Agreement ("LGIA") and transmission rights with Point of Receipt ("POR") at BIGLOW and Point of Delivery ("POD") at BPAT.PGE under the condition it cannot be redirected away, and Wheatridge Wind Farm's LGIA and transmission rights with POR at UMATILLA and POD at BPAT.PGE.²⁷

²⁴ Docket No. UI 489, Order No. 23-294 at 1.

²⁵ *See also* NIPPC's Comments on PGE Supplemental Filings.

²⁶ PGE's Reply Comments at 24-25.

²⁷ *See* Updated Appendix P at 1 (Oct. 24, 2023).

If these PGE-owned assets have been funded by ratepayers, then that provides an unfair advantage to utility-owned bids and affiliate bids that is not provided to third-party bidders. If PGE is going to share PGE-owned assets with the affiliate, then the Commission should require PGE to share those same assets with third-party bidders. This will ensure customers are getting the least cost, least risk resource. An affiliate bid theoretically should be independent and separate from PGE like an IPP bid, so if the affiliate is allowed to use PGE-owned assets, then third-party bids should also be allowed. In the alternative, if the Commission is unwilling to require PGE to share its assets with all bidders, then the Commission should prohibit the affiliate from using PGE-owned assets.

Additionally, third-party bidders should also be able to use those assets as they see fit. Currently, PGE is only allowing bidders to use the assets if the resource will be utility-owned at a specific location. These assets should be available to any bidder regardless of ownership of the resource. Also, PGE has stated these resources cannot be redirected or must have specific PORs and POD. To the extent possible, a bidder should be allowed to redirect these assets.

These issues remain unresolved, and the Commission should direct PGE to make all utility-owned assets available to all bidders to use as they see fit. In the alternative, the Commission should not allow PGE's affiliate to use utility-owned assets if third-party bidders will also not be allowed to use those resources. See below under "Benchmark" in Section D for more discussion.

2. Changes to the Affiliate Form PPA Need to Be Adopted to Address the Unique Risks Associated with the Affiliate

With an affiliate PPA, it is difficult to imagine PGE strictly enforcing PPA provisions, much less bringing legal action to do so, against its affiliate. Any contract the affiliate would sign needs to be reviewed with these unique risks in mind. Several contract provisions should be revised for an affiliate contract and would need Commission consideration such as delay damages, performance guarantees and damages, legal disputes, security requirements, and more. The recommended changes are intended to address the unique risks such as performance and default related to PGE contracting with itself. The Commission should adopt NIPPC's proposed affiliate form PPA recommendations from its previous comments.²⁸ NIPPC emphasizes that these proposed changes are meant to address the unique risks of PGE contracting with itself. These proposed changes would be inappropriate to use in a PPA with an IPP.

The Commission should make the following changes to the affiliate form PPA. First, any affiliate form PPA should not leave blank provisions that would provide an unfair negotiation advantage to PGE and PRR. For example, in the draft form PPA, PGE appears to require a monthly performance guarantee, but the percentage for the performance guarantee is not clearly stated.²⁹ PGE could drive a hard bargain with a third-party developer and require a monthly performance guarantee or a high yearly

²⁸ NIPPC's Comments on PGE Supplemental Filings at 8-13.

²⁹ *See* Final Draft RFP, Appendix E at § 6.1 (May 19, 2023) (discussing Seller's failure to delivery energy and refers to damages on a monthly basis); *see also* Draft RFP, Appendix E at "Specified Amounts" definition ("the amount of Facility Output generated by the Facility that Seller is expected to deliver to PGE at the Delivery Point for each monthly period during the Delivery Period.").

performance guarantee (like 90 percent) but require a lesser yearly performance guarantee (like 85 percent) for the PPA with PRR. The performance assurance for the affiliate form PPA should be the highest number from bidders in the last RFP³⁰ or 90 percent annual output guarantee.

Staff agrees that these percentages should not be left blank but does not provide a recommended percentage.³¹ Staff also recommends the IE shall oversee and report on contract negotiations on this issue.³² If the Commission adopts Staff's recommendation to require the IE to oversee and report on contract negotiations, then this issue is resolved in order to reduce unresolved issues.

Second, the affiliate should be required to meet the security/performance assurance requirements with cash instead of a letter of credit from a Qualified Institution. Currently, PGE's renewable form PPA requires performance assurance of cash or a letter of credit as pre-COD security and delivery period security.³³ A letter of credit or parental guarantee should not be allowed for PRR because the parent, PGE, would unfairly use its ratepayer-backed credit while third-party developers are not given that same opportunity. Using PGE's credit will also put PGE credit at risk of downgrade if the affiliate fails (PGE's shareholders would be harmed), which would be exacerbated by owing damages to PGE, which would further harm customers. Thus, the Commission should require the

³⁰ NIPPC does not know what these numbers are as it is Highly Confidential Information.

³¹ Staff Report at 58, Table 8 and 59 (see PRR Participation Condition 13 that states "PGE shall eliminate blanks for PRR PPA performance guarantees.").

³² Staff Report at 58, Table 8.

³³ See Final Draft RFP, Appendix E at Definition of "Performance Assurance" and §§ 9.1, 9.2.

affiliate form PPA to require PRR to post cash performance assurance pre-COD security and delivery period security. The pre-COD security for the affiliate form PPA should be at least \$200/kW and the delivery period security for the affiliate form PPA should be \$100/kW, or at least \$25/kW higher than the security proposed by any PPA bidder in the last RFP due to the greater risk of harm to ratepayers than a traditional IPP PPA.

Staff agrees that these security values should align across PPA and APA bids but does not recommend that PRR's PPA performance assurance should be met with cash instead of a letter of credit.³⁴ Staff does not propose specific amounts of security.³⁵ This issue remains unresolved.

Third, the affiliate form PPA should delete the force majeure provision in Article 4 and delete references throughout the PPA to force majeure.³⁶ PGE is unlikely to hold PRR to the same force majeure standards as a third-party developer. PGE could be more lenient to PRR, which would be unfair and harm ratepayers. Thus, the Commission should remove the force majeure provision and any references to force majeure in the affiliate form PPA. Instead, PRR should simply owe PGE contract damages for any traditional force majeure events.

³⁴ Staff Report at 55, Table 8 and 59 (see PRR Participation Condition 8 that states "PGE shall align Pre-COD and Security Delivery amounts across PPA and EPC/APA contracts.").

³⁵ Staff Report at 55, Table 8.

³⁶ Final Draft RFP, Appendix E at Article 4.

Staff does not recommend removal of the force majeure provision because Staff reasons PGE bears the burden of proof in any rate proceeding on force majeure damages.³⁷ This issue remains unresolved.

Fourth, the affiliate form PPA should include a provision that allows regular (e.g., quarterly) audits by Commission Staff to ensure compliance with the affiliate PPA terms. This could provide at least a modicum of Commission oversight to oversee enforcement of any affiliate PPA. This issue remains unresolved.

Fifth, a provision should be added to the affiliate form PPA that when any default occurs, or the Commission initiates it in its oversight of the affiliate PPA, a Special Master should be appointed to the Commission to represent PGE customers.³⁸ The Special Master would be independent of PGE and PRR and be in charge of determining how to enforce any defaults or disputes. The Commission would need to approve the Special Master and PGE's shareholders would pay for the Special Master. A process with a Special Master would reduce the self-dealing PGE could provide to PRR. It would also help in any reasonable enforcement of the affiliate PPA. Thus, the Commission should add a provision and process for a Special Master to be appointed when there is default in the affiliate form PPA, or the Commission determines a Special Master is needed based on its auditing power of the affiliate PPA.

³⁷ Staff Report at 54, Table 8.

³⁸ A Special Master would have the same general duties as a trustee of a trust to manage the trust in a reasonable manner and avoid self-dealing (e.g., care, loyalty, and good faith).

Staff notes that disputes between PGE and PRR could benefit from a Special Master but recommends this be addressed in affiliated interest approval filings.³⁹ NIPPC understands that Staff intends for these concerns to be addressed when PGE files the affiliate PPA for final approval. Thus, this is acceptable to NIPPC, and the issue is resolved for now, if the Commission adopts Staff's recommendation.

Sixth, protections should be added to the affiliate form PPA to ensure the affiliate costs are not paid by PGE or PGE's customers. A provision should be added to the affiliate form PPA for accounting protection to ensure the affiliate's expenditures and any potential damages owed to PGE under the PPA are accurately tracked and paid by PRR. The affiliate form PPA also needs to clearly state that PRR cannot rely directly or indirectly on PGE to pay any damages owed under the PPA to PGE or to any third parties related to the proposed facility. These types of provisions could help protect PGE's customers.

Staff agrees that any damages would be paid by PGE shareholders, not ratepayers and that this clearly be stated in the affiliate form PPA.⁴⁰ Staff also believes these concerns are addressed in Condition 4 in Order No. 23-369 from Docket No. UI 489.⁴¹ If the Commission adopts Staff's recommendation and agrees that Condition 4 in Order No. 23-369 from Docket No. UI 489 addresses these concerns, then this issue is resolved.

Finally, the following changes should be made to the affiliate form PPA, or the Commission confirm that the specific concerns identified by NIPPC (and generally

³⁹ Staff Report at 56, Table 8.

⁴⁰ Staff Report at 53.

⁴¹ Staff Report at 58, Table 8.

shared by Staff) are adequately addressed by the conditions in Order No. 23-369 from Docket No. UI 489:

- Any sale of the project under Section 2.4 would first require Commission approval.
 - Staff believes this concern is addressed in Condition 5 in Order No. 23-369 from Docket No. UI 489.⁴² It is not clear to NIPPC that Condition 5 requires Commission approval before selling the project, but if it does, then this issue is resolved. NIPPC recommends this be clarified.
- The option to purchase or extend the term from Section 2.5 should not be allowed in the affiliate form PPA because either option should require PRR to bid the project into another RFP.
 - Staff agrees with NIPPC that this provision should be removed for the affiliate form PPA.⁴³ Thus, if the Commission adopts Staff's recommendation, then this issue is resolved.
- In Section 3.8.1 and 3.8.2 for Transmission and Scheduling of Energy, the Transmission Upgrade Cost Cap is blank.⁴⁴ This should not be left blank and should be the highest amount of any bid from PGE's 2021 RFP.
 - Staff recommends that the affiliate form PPA must include a value for the transmission upgrade cost cap and that the IE shall oversee and report on contract negotiations on this issue.⁴⁵ If the Commission adopts Staff's recommendation to require the IE to oversee and report on contract negotiations, then this issue is resolved in order to reduce unresolved issues.
- In Section 3.8.2 for Transmission and Scheduling of Energy, the number of days after the Effective Date that the Seller must deliver to PGE copies of the

⁴² Staff Report at 54, Table 8.

⁴³ Staff Report at 54, Table 8 and 59 (see PRR Participation Condition 6 that states "The PRR Form PPA should remove section 2.5 regarding the option to purchase or extend terms.").

⁴⁴ See Draft RFP, Appendix E at § 3.8.1.

⁴⁵ Staff Report at 57, Table 8 and 59 (see PRR Participation Condition 11 that states "PRR PPA must include a value for the transmission upgrade cost cap.").

transmission service agreements is blank.⁴⁶ This should not be left blank and should be the shortest time period of any bid from PGE's 2021 RFP.

- Staff recommends that the affiliate form PPA must include a value for the Transmission and Scheduling of Energy Effective Date and that the IE shall oversee and report on contract negotiations on this issue.⁴⁷ If the Commission adopts Staff's recommendation to require the IE to oversee and report on contract negotiations, then, in order to reduce unresolved issues, NIPPC agrees that this issue is resolved.
- Any assignment under Section 15 should not occur without Commission approval.
 - Staff believes this concern is addressed in Condition 3 in Order No. 23-369 from Docket No. UI 489, but Staff is not opposed to adding language identifying the process.⁴⁸ It is not clear to NIPPC that Condition 3 prevents assignment without Commission approval, but if it does, then this issue is resolved. Given the lack of clarity in Condition 3, NIPPC prefers that a provision be added to the affiliate form PPA that would require Commission approval before assigning the project, but the Commission could also clarify the meaning of Condition 3.
- The affiliate form PPA needs more specificity in regard to dispute resolution in Article 18. For example, who are the senior managers that matters would be referred to in Section 18.1? Who would file legal action and participate in mediation in Sections 18.2 and 18.3? There needs to be more explanation on how the dispute resolution would work if there were a disagreement between PGE and PRR. The Special Master should be appointed in these situations.
 - Staff agrees there needs to be more clarity on the dispute resolution process and that disputes might benefit from the engagement of a Special Master but believes these concerns can be addressed in affiliated interest approval filings.⁴⁹ NIPPC understands that Staff intends for these concerns to be addressed when PGE files the affiliate PPA for final approval. Thus, this is acceptable to NIPPC, and the issue is resolved for now if the Commission adopts Staff's recommendation.

⁴⁶ See Draft RFP, Appendix E at § 3.8.2.

⁴⁷ Staff Report at 57, Table 8 and 59 (see PRR Participation Condition 12 that states "PRR PPA must include a value for the Transmission Scheduling of Energy Effective Date.").

⁴⁸ Staff Report at 55, Table 8.

⁴⁹ Staff Report at 56, Table 8.

- Article 20 discussed confidentiality. This whole article should be deleted for an affiliate form PPA as everything should be public and be able to be reviewed.
 - Staff does not recommend removing the article about confidentiality and making the PRR PPA public due to concerns about potentially revealing commercially sensitive information of third parties, but Staff does recommend specifying that the PGE benchmark team employees are excluded from reviewing any confidential provisions of the PRR PPA.⁵⁰ If the Commission adopts Staff’s recommendation, then this issue is resolved.

- To achieve Commercial Operation there are several events that must occur as listed under the definition of Commercial Operation in the form PPA. There should be clarity under the affiliate form PPA on who is going to complete these events and who is going to review to determine if the project can become commercially operational. Either the Commission or a Special Master should be the entity that determines if they are met.
 - This issue remains unresolved.

- Section 8.4 on no consequential damages should be removed. If ratepayers are harmed, then they should be fully compensated for that harm. NIPPC is not arguing for a prudence disallowance, but there should not be a provision in the affiliate form PPA that prevents the recovery all damages to ratepayers.
 - Staff agrees with NIPPC and recommends removal of the no consequential damages provision.⁵¹ If the Commission adopts Staff’s recommendation, then this issue is resolved.

- Sections 11.1.1 and 11.1.2 on the *Mobile Sierra* standard of review and the waiver of Federal Energy Regulatory Rights should be deleted. The affiliate protections are designed to protect PGE from harmed caused by PRR; however, they are not designed to allow the Commission to require PGE or PRR to revise the affiliate PPA in the future. The *Mobile Sierra* doctrine mandates respect for private contracts and shields them from regulatory interference, except when necessary and in the public interest. NIPPC believes that this provision will allow PGE to argue that the Commission cannot alter the terms, conditions, and prices of the

⁵⁰ Staff Report at 56, Table 8 and 59 (see PRR Participation Condition 9 that states “The PRR Form PPA must specify that PGE Benchmark team employees are explicitly excluded from the list of Receiving Party Representatives.”).

⁵¹ Staff Report at 54, Table 8 and 59 (see PRR Participation Condition 7 that states “PGE must remove Section 8.4 from the PRR Form PPA.”).

affiliate PPA. Inclusion of this provision could remove an important tool for the Commission to ensure that the affiliate does not harm PGE and its ratepayers.

- Staff does not recommend removing these provisions, but expressed a willingness to support removal if it could be provided with a clear understanding of the benefit to PGE customers.⁵² This issue remains unresolved.
- In Section 18.5, PGE should not have to owe attorneys’ and legal fees to PRR.
 - Staff believes this concern is addressed in Condition 4 in Order No. 23-369 from Docket No. UI 489.⁵³ If Condition 4 would prohibit PGE from owing attorneys’ and legal fees to PRR, then this issue is resolved, but NIPPC recommends this be clarified.
- Any notices sent to PGE or PRR under Section 21.1 should also be sent to the Commission.
 - Staff believes this concern is addressed in Condition 5 in Order No. 23-369 from Docket No. UI 489.⁵⁴ If Condition 5 would require PGE or PRR to send any notices it sends to the other party also to the Commission, then this issue is resolved, but NIPPC recommends this be clarified.

3. Converting the BTA or APA Price to a PPA Price

PGE explains that it plans to have the PGE benchmark team convert any PGE-sponsored BTA or APA bid price into a PPA price, and the PGE RFP team convert any third-party BTA or APA bid price into a PPA price using “standard economic practices.”⁵⁵ The price conversion would also take place after a bid is selected on the final shortlist and the BTA or APA contract is executed.⁵⁶ PGE has not provided a

⁵² Staff Report at 57, Table 8.

⁵³ Staff Report at 56, Table 8.

⁵⁴ Staff Report at 58, Table 8.

⁵⁵ PGE’s RFP Affiliate Services Overview Memo at 3 (Oct. 30, 2023).

⁵⁶ PGE’s RFP Affiliate Services Overview Memo at 3.

formula or example calculation for this price conversion.⁵⁷ Further, PGE has not shared the price conversion methodology with the IE for the IE's review.⁵⁸

The affiliate should not be permitted to participate in the RFP without changes regarding price conversation. While NIPPC is concerned that they will not be sufficient, if the affiliate is not barred from this RFP, then the Commission should at a minimum adopt Staff's conditions, which are: 1) PGE publishing its methodology and/or formula for converting the BTA or APA price to a fixed PPA price; 2) the PGE RFP team convert all BTA or APA prices to fixed PPA prices; and 3) any BTA or APA bid that will utilize PRR should be allowed to include a forecasted fixed PPA price with their bid that the IE can compare with the forecasted fixed PPA price calculated by the RFP team and the final fixed PPA price resulting from executed BTA or APA contract terms.⁵⁹

i. PGE's Explanation on Price Conversion Is Too Vague

PGE states it will "use standard financial formulas to ensure that PRR's ownership costs, whether through an APA or BTA, are recovered through PPA contract prices."⁶⁰ PGE explains that "financial formulas would be applied so that the present value revenue requirement of all future forecasted PPA payments is less than or equal to the present value of the future forecasted revenue requirement of the APA or BTA as evaluated in the RFP." PGE did not provide any formulas for these conversions or an example calculation.⁶¹

⁵⁷ See PGE Response to NIPPC Data Request 82 (Attachment B).

⁵⁸ See PGE Response to NIPPC Data Request 82 (Attachment B).

⁵⁹ Staff Report at 48-51.

⁶⁰ See PGE Response to NIPPC Data Request 82 (Attachment B).

⁶¹ See PGE Response to NIPPC Data Request 82 (Attachment B).

NIPPC asked PGE to explain in detail how the prices would be converted, but PGE's responses are very high level and vague. PGE's conversion would be a black box that bidders and stakeholders would not be able to review. Currently, there is no transparency into how PGE will convert the prices. For example, the PPA price could be substantially affected by the discount rate used to come up the present value requirement or affected on whether the PPA price is levelized (i.e., front loaded in the early years of the PPA) or escalates to a higher price in later years.

PGE's explanation on how it will convert the prices is so vague that the Commission should not allow the affiliate to participate in this RFP. There is simply too much discretion for PGE to ensure that PRR wins the RFP based on this factor alone. If the affiliate will be allowed to participate in this RFP, then the Commission should require PGE to provide more explanation and details on how the prices will be converted from a BTA or APA price to a fixed PPA price, and to review its reasonableness now. The Commission noted the unique risks of an affiliate PPA and there is no way to address and understand those risks unless PGE clearly explains in detail how the prices will be converted. Thus, if the Commission will allow the affiliate to participate in this RFP, the Commission should require PGE to provide a more detailed explanation on how the prices will be converted. Staff shares NIPPC's concerns that PGE's explanations are insufficient on how the price will be converted from BTA or APA price to PPA price.⁶² Staff states the conversion "should be akin to self-scoring elements of the RFP, wherein

⁶² Staff Report at 48.

bidders are provided structure for determining what their scores would be.”⁶³ Staff recommends that PGE should be required to publish its methodology and/or formula for converting the BTA or APA price to a PPA price.⁶⁴ If the Commission adopts Staff’s recommendation, then this issue is resolved. The Commission should require PGE to provide a more detailed explanation on how the prices will be converted.

ii. PGE’s RFP Team Should Convert All BTA or APA Bid Prices to Fixed PPA Prices or Third-Party Bidders Should Be Allowed to Convert Third-Party BTA or APA Bid Prices to Fixed PPA Prices Similar to How PGE Proposes to Have the PGE Benchmark Team Convert PGE-Sponsored BTA or APA Bid Prices to Fixed PPA Prices

Currently, PGE plans to have the PGE benchmark team convert any PGE-sponsored BTA or APA bid price into a PPA price, and the PGE RFP team will convert any third-party BTA or APA bid price into a PPA price.⁶⁵ PGE explains the “PGE benchmark team is best positioned to convert executed PGE-sponsored benchmark BTA or APA bids to a PPA price due to their familiarity of those bids.”⁶⁶ The PGE benchmark team is supposed to submit bids while the PGE RFP team is supposed to design the RFP and score and evaluate bids.

If PGE insists on having the PGE benchmark team convert any PGE-sponsored BTA or APA bid prices to fixed PPA prices, then the third-party developers should also

⁶³ Staff Report at 48.

⁶⁴ Staff Report at 48-49 (see PRR Participation Condition 3 that states “PGE must publish in the RFP, its formula for forecasting PPA prices as part of the RFP evaluation for ISL / FSL selection as well as its methodology and/or formula for converting BTA / APA costs to PPA as a condition of PRRs inclusion in the RFP.”).

⁶⁵ PGE’s RFP Affiliate Services Overview Memo at 3.

⁶⁶ See PGE Response to NIPPC Data Request 81 (Attachment B).

be able to convert their BTA or APA bid prices to fixed PPA prices instead of the RFP team. Third-party developers would also be most familiar with those bids. However, NIPPC recommends the Commission require the PGE RFP team to convert all BTA or APA bid prices to fixed PPA prices for uniformity and fairness. Otherwise, it would provide PGE an unfair advantage for PGE's benchmark team to convert its BTA or APA-sponsored bid prices to fixed PPA prices while the PGE RFP team converts third-party BTA or APA bids. The PGE benchmark team would have an incentive to convert the price in an advantageous way while the RFP team would not have that same incentive for third-party BTA or APA bids.

Staff recommends the PGE RFP team convert all BTA or APA prices to fixed PPA prices.⁶⁷ If the Commission adopts Staff's recommendation, then this issue is resolved.

iii. The BTA and APA Bid Prices Should Be Converted to Fixed PPA Prices Before Selection on the Final Shortlist

Currently, PGE plans to convert BTA and APA bid prices to PPA prices after a bid is selected on the final shortlist and the BTA or APA contracts has been executed.⁶⁸ PGE states it will score the BTA or APA bids "based on the submitted BTA or APA price, with tax credit assumptions around normalization."⁶⁹ Thus, a bid that was scored and evaluated based on a BTA or APA price would be converted to a PPA bid and price after selection on the final shortlist.

⁶⁷ Staff Report at 49 (see PRR Participation Condition 5 that states "RFP Evaluation team is responsible for converting BTA/APA prices to PPA prices.").

⁶⁸ PGE's RFP Affiliate Services Overview Memo at 3.

⁶⁹ See PGE Response to NIPPC Data Request 84 (Attachment B).

These BTA and APA bids should be scored, evaluated, and selected to the final shortlist based on the fixed PPA price not a BTA or APA price. If PGE will score and evaluate the bid based on the submitted BTA or APA price, then there is no reason the PGE RFP team could not convert the prices to fixed PPA prices first before bids are scored and evaluated for consideration on the final shortlist. The competitive bidding rules require benchmark bids and affiliate bids to be treated in the same manner as other bids.⁷⁰ If other bids will be scored and evaluated for consideration on the final shortlist by their final bid price/structure, then BTA and APA bids should be scored and evaluated with the converted fixed PPA price before selection on the final shortlist. NIPPC originally recommended that the Commission should direct PGE's RFP team to convert all BTA and APA bid prices to fixed PPA prices *before* being scored and evaluated for the initial or final shortlist.

Staff recommends that any BTA or APA bid that will utilize PRR should be allowed to include a forecasted PPA price with their bid that the IE can compare with the forecasted PPA price calculated by the RFP team and the final PPA price resulting from executed BTA or APA contract terms.⁷¹ While NIPPC believes its recommendation would provide more protections, Staff's approach may be reasonable and NIPPC does not oppose Staff's recommendation. The Commission can consider this issue resolved if Staff's recommendation is adopted.

⁷⁰ OAR 860-089-0300(1)(a).

⁷¹ Staff Report at 49 (see PRR Participation Condition 4 that states "ITC-e bidders are allowed to include a forecasted PPA price in their bid that the IE can compare with the forecasted price calculated by the RFP team and the ultimate PPA price resulting from executed BTA/APA contract terms and conditions.").

4. Do Not Allow a Price Update After Final Shortlist Acknowledgment

In PGE’s 2021 RFP, PGE provided bidders with an opportunity to update their prices due to “disruptive and persisting macroeconomic factors (i.e., supply chain challenges, inflationary environment) and the passage of the Inflation Reduction Act of 2022.”⁷² NIPPC recommends the Commission not allow a price update for PRR until after final shortlist acknowledgment due to concerns related to PGE/PRR’s access to highly confidential bidder information. Members of the affiliate team have had previous access to highly confidential bidder information, such as pricing from PGE’s last RFP, and that information should not be allowed to be used to update a bid price that the affiliate will be involved with. Thus, the Commission should direct PGE that bidders will not be allowed to update prices after shortlist acknowledgment.

Staff generally shares NIPPC’s concern “about potential unfairness during this negotiation phase” and recommends that the IE oversee contract negotiations and the outcomes of any price updates.⁷³ NIPPC agrees that the IE should oversee contract negotiations, but this recommendation does not address NIPPC’s concern that PGE employees working for PRR that have seen highly confidential information could use that information to update PRR’s bid price. This issue remains unresolved.

⁷² *In re PGE 2021 All-Source Request for Proposals*, Docket No. UM 2166, PGE’s Independent Evaluator Analysis of All Source Price Update Informational Filing at 1 (Sept. 30, 2022).

⁷³ Staff Report at 50-51 (see RFP Condition 7 that states “PGE shall retain the IE to oversee Contract Negotiations and include evaluation of the role of performance guarantee in negotiations and drivers and outcomes of price updates.”).

5. Third-Party BTA or APA Bids that Will Use PRR Should be Treated like Benchmark Bids

Staff recommends that any BTA or APA bid that will utilize PRR, whether PGE sponsored or third-party sponsored, should be treated as a benchmark bid for compliance with the competitive bidding rules.⁷⁴ Staff states it was understanding any PRR bid would be treated as a benchmark bid, but that PGE’s Supplemental Filing was not clear for third-party BTA or APA bids.⁷⁵ NIPPC shares this concern and PGE clarified in a data response that all BTA or APA bids that will be utilized by PRR will be treated as benchmark bids for compliance with the competitive bidding rules.⁷⁶ The Commission should adopt Staff’s PRR Participation Condition 2 to clarify that any PRR bid will be required to be treated like a benchmark bid for compliance with the competitive bidding rules. If the Commission adopts Staff’s recommendation, then this issue is resolved.

6. Comparison of Initial Shortlist With and Without Affiliate Bids

Staff recommends that if the RFP includes affiliate bids, then PGE must provide a comparison of the initial shortlist with and without participation of affiliate bids and the IE will analyze and report on any impacts, findings, and recommendations.⁷⁷ This is a new recommendation that NIPPC has not opined on before, but NIPPC supports this

⁷⁴ Staff Report at 43-44 (see PRR Participation Condition 2 that states “PRR participation in this RFP is conditional upon Third-Party ITC-e bids being treated in a similar manner as benchmark bids.”).

⁷⁵ Staff Report at 43.

⁷⁶ See PGE’s Response to NIPPC Data Request 80 (Attachment B).

⁷⁷ Staff Report at 26 (see SMM Condition 12 that states “If the RFP includes PRR bids, PGE must provide a comparison of its ISL with and without the participation of PRR bids. Further, the IE will provide an analysis and report on any impacts, finding, and recommendations regarding impact of PRR bids on the ISL.”).

recommendation as it will provide more transparency into the affiliate’s participation in the RFP. The Commission should adopt Staff’s recommendation.

7. PGE Should Provide Updated List of PGE Employees Working on the RFP Team, Benchmark Team, and Providing Services to PRR Throughout the RFP

Staff recommends that PGE be required to provide the IE a list of all employees working on the RFP team, benchmark team, and any employees providing services to PRR at several stages of the RFP including when the benchmark bids are filed and scored, the final shortlist is filed, and contract negotiations are complete.⁷⁸ Staff gives this recommendation because it shares parties’ concerns about the benchmark team having access to highly confidential bidder information, but Staff states it is limited to addressing the present RFP.⁷⁹ Staff reasons that this will increase transparency and ensure PGE is complying with the Commission’s directive for separation of employees. This is a new recommendation that NIPPC has not opined on before. NIPPC supports this recommendation but clarifies that the employee lists should be available to any stakeholder that have signed the appropriate protective order as well. The Commission should adopt Staff’s recommendation but clarify that any stakeholder who has signed the appropriate protective order could also view the list of employees.

⁷⁸ Staff Report at 42 (see PRR Participation Condition 1 that states “PGE will provide the IE a list of all employees working as part of the RFP team, the Benchmark team, and any employees performing duties on behalf of PRR, including the roles, and associated dates of their work for the various teams at the time it files its benchmark score, at the time it files its FSL, and again after it has completed negotiations for all PRR bids.”).

⁷⁹ Staff Report at 42.

B. Minimum Bid Criteria

1. Commercial Operation Date

The Commission should direct PGE to extend the minimum bid criteria to a COD of on or before June 9, 2028. When PGE originally filed its draft RFP on May 19, 2023, PGE proposed having RFP bids due on October 6, 2023.⁸⁰ After the delay caused by PGE due to the affiliate, PGE is now having RFP bids due on March 15, 2024.⁸¹ This is a delay of 161 days due to the affiliate. The COD should be extended on a day-for-day basis, which would be June 9, 2028.⁸² If the process will be delayed due to PGE, then it is only fair that bidders have additional time to develop projects and the COD should be extended to accommodate that delay.

This is a new issue NIPPC is raising, the issue remains unresolved, and the Commission should direct PGE to accept any projects with a COD on or before June 9, 2028.

Staff also recommends that prior to issuance of the RFP, PGE must provide a description of how it would prioritize resources to fill its 2026 capacity need if there are insufficient projects with a COD on or before December 31, 2025 and PGE's execution

⁸⁰ PGE's 2023 All-Source RFP – Final Draft at 6 (May 19, 2023).

⁸¹ See PGE's RFP schedule under 2023 RFP at <https://portlandgeneral.com/about/who-we-are/resource-planning/procuring-clean-energy>.

⁸² See PGE's Reply Comments at 3. PGE clarified any projects with a COD on or before December 31, 2027 would be considered in this RFP. 161 days after December 31, 2027 is June 9, 2028.

of this prioritization would be reviewed by the IE.⁸³ This is a new recommendation that NIPPC has not opined on before, but NIPPC supports this recommendation and the Commission should require PGE to provide a description of how it will prioritize projects to meet its 2026 capacity need.

2. Transmission and Conditional Firm System Conditions

NIPPC recommended allowing a bidder to use conditional firm system conditions transmission service and to propose a capacity value for a project that uses conditional firm system conditions that is subject to negotiations with PGE and review by the IE.⁸⁴ PGE’s benchmark team also submitted comments recommending allowing a bidder to use conditional firm system conditions transmission service.⁸⁵ The Commission should require PGE to accept bids that use conditional firm transmission service with the System Conditions curtailment option to ensure as many bids are eligible for the RFP as possible, especially in light of a later COD, and to make the RFP eligibility as clear as possible from the start.

PGE responded that it proposes to keep the requirement to have long-term firm or conditional firm number of hours transmission services, but “if there is insufficient volume to construct a final shortlist, PGE may elect to consider projects who are impacted by flowgates upon which they were not given the option of [conditional firm

⁸³ Staff Report at 30-31 (see RFP Condition 2 that states “Prior to issuance, PGE must provide a description of how it would prioritize resources to fill its capacity needs. PGE must ensure that this description, and PGE’s execution of the prioritization, will be evaluated by the IE in its closing report.”).

⁸⁴ NIPPC’s Comments on Draft RFP at 3-6.

⁸⁵ PGE’s Comments at 1-2 (June 16, 2023).

service] Number of Hours.”⁸⁶ PGE reasons it does not have enough data from Bonneville Power Administration (“BPA”) to calculate the risks and capacity value for these projects.⁸⁷ The IE responded by recommending that PGE accept conditional firm system conditions transmission service bids in which PGE has enough data to model the specified conditions.⁸⁸

PGE’s prohibition on using conditional firm service into the Portland sub-grid on a System Conditions basis could exclude a significant number of bids in this RFP, and the reductions in the bidder pool will get worse over time. Additionally, bidders should not have to spend the money and resources to bid into an RFP with a transmission product that might only be accepted if there is insufficient volume for the final shortlist and PGE elects to consider those bids. Bidders should also not be disadvantaged if they decide not to submit a bid because their transmission product is non-conforming, but then PGE decides to accept bids with this non-conforming transmission product.

Staff recommends resources using conditional firm, system conditions be considered conforming, but that PGE is allowed to prioritize projects using long-term firm or conditional firm, number of hours transmission service for its immediate capacity need with COD of December 31, 2025.⁸⁹ For capacity value of projects using conditional firm system conditions, Staff recommends adopting NIPPC’s recommendation to allow

⁸⁶ PGE’s Reply Comments at 10-11.

⁸⁷ PGE’s Reply Comments at 9-10.

⁸⁸ IE’s Second Assessment of PGE’s Draft 2023 All Source RFP at 3.

⁸⁹ Staff Report at 14-15 (see SMM Condition 4 that states “PGE will consider projects using Conditional Firm, System Conditions transmission products as conforming to transmission requirements.”).

bidders to propose a capacity value for the project based on its estimated curtailment parameters that is subject to negotiations with PGE and review by the IE.⁹⁰

Staff also recommends reducing the transmission requirement from 80 percent to 70 percent of the resource's interconnection limit.⁹¹ This is a new recommendation that NIPPC has not opined on before, but NIPPC supports Staff's recommendation to reduce the transmission requirement to 70 percent. Staff additionally recommends that for resources with conditional firm, number of hours transmission service, PGE will value capacity of those projects with the assumption that those projects are curtailed at 50 percent of the curtailable hours during PGE's peak hours.⁹² This was the same as the 2021 RFP and a new recommendation that NIPPC has not opined on before, but NIPPC supports Staff's recommendation for this RFP. Finally, Staff recommends that any transmission requirements in the form contracts should match those adopted by the Commission.⁹³ NIPPC supports this recommendation.

⁹⁰ Staff Report at 24-25 (see SMM Condition 10 that states "For resources with [conditional firm, system conditions] transmission rights, PGE will allow bidders to propose their own curtailment parameters, subject to commercial negotiation with PGE and review by the IE.").

⁹¹ Staff Report at 16 (see SMM Condition 5 that states "PGE will reduce the transmission requirement for renewable resources included in Appendix N of the RFP from 80 percent of the resource's interconnection limit to 70 percent of the resource's interconnection limit.").

⁹² Staff Report at 24-25 (see SMM Condition 11 that states "For resources with [conditional firm, number of hours] transmission products, PGE will value their capacity on the assumption that those projects will be curtailed such that 50 percent of curtailable hours would occur within PGE's peak hours of need.").

⁹³ Staff Report 57, Table 8 and 59 (see PRR Participation Condition 10 that states "Transmission requirements in the form contracts shall match those specified in the RFP.").

If the Commission adopts Staff's recommendations, then these issues are resolved.

3. Interconnection Study Requirements

The IE recommended removing the requirement to have a completed facilities study to qualify for the final shortlist, which NIPPC supported.⁹⁴ PGE agreed to this recommendation and modified the requirement to specify bidders must only have a facilities study agreement to qualify for the final shortlist.⁹⁵ Thus, this issue is resolved.

4. Credit Requirements

In previous comments NIPPC sought clarification on the credit requirements to bid into the RFP and selection on the initial and final shortlist. NIPPC also recommended that the Commission should direct PGE to allow a bidder to provide a parental guarantee or post liquid security to meet credit requirements instead of both.⁹⁶ PGE clarified the credit requirements were outlined in Appendix N, and Appendix K only provided guidance to "provide further clarification to bidders on what would constitute credit eligibility thresholds and guidance regarding what acceptable 'good faith commitment' from a financial institutions or lenders would be."⁹⁷ From Appendix K, it appears PGE would prefer bidders submitting a PPA bid post \$200/kW pre-COD security along with a parental guarantee and also post \$100/kW of post-COD security.

⁹⁴ IE's Assessment of PGE's Draft 2023 All Source RFP at 20; NIPPC's Comments on Draft RFP at 6-7.

⁹⁵ PGE's Reply Comments at 11.

⁹⁶ NIPPC's Comments on Draft RFP at 7-8.

⁹⁷ PGE's Reply Comments at 14.

NIPPC continues to recommend that requiring both is excessive and it should be an either/or requirement. Staff makes no recommendation on this issue and states Staff believes the issue is resolved.⁹⁸ Thus, this issue remains unresolved, and the Commission should direct PGE to update its credit guidance so that a bidder is only required to provide a parental guarantee or post liquid security, not both, and reduce the amount required as PGE's preferred amounts are excessive.

5. Transferability

In previous comments NIPPC recommended the Commission direct PGE to reduce the transferability discount to 50 percent for utility-owned bids and model sensitivities on the ranking of projects with various percentages.⁹⁹ This was because of the uncertainty in the market, it would bias the RFP in favor of utility-owned bids, and PGE did not provide any substantive response or documentation to support its percentage.¹⁰⁰ In reply comments responding to Staff, PGE explained the Internal Revenue Service issues guidance on Elective Pay and Transferability for clean energy tax credits was released, PGE had conversations with several brokers to gain a better understanding of the transferability market, and initial sales have been in the 90 cents to 93 cents range per dollar.¹⁰¹ The IE noted it thought a 50 percent discount was too high, but that the market uncertainty should be considered and encouraged PGE to examine this in the bid evaluation.¹⁰²

⁹⁸ Staff Report at 27.

⁹⁹ NIPPC's Comments on Draft RFP at 8-9.

¹⁰⁰ NIPPC's Comments on Draft RFP at 8-9.

¹⁰¹ PGE's Reply Comments at 17.

¹⁰² IE's Second Assessment of PGE's Draft 2023 All Source RFP at 6-7.

Staff recommends PGE continue to apply the carrying cost model from the prior RFP to price scores for utility-ownership bids related to tax credits and develop a sensitivity with transferability discounts.¹⁰³ NIPPC is not opposed to the development of an additional sensitivity, but sensitivities can be ignored and often do not have a practical impact. Therefore, NIPPC continues to recommend a transferability discount. Based on more current information and the IE's position that 50% is too high, NIPPC now recommends a discount of 20-30%. This issue is unresolved.

6. Integration

NIPPC recommended the Commission direct PGE to assess a bid on the actual reserve rate a bid relies on from third-party balance authorities instead of assessing all bids on the BPA reserves rate.¹⁰⁴ The IE agreed with NIPPC's recommendation that actual reserve rates should be used when available and BPA's reserve rates should be used when detailed data is not available.¹⁰⁵ PGE did not respond to NIPPC's recommendation.

Staff agrees with NIPPC and recommends that bidders be required to provide their actual reserve rate costs and PGE must use those costs in bid scoring instead of applying BPA's rates to all bids.¹⁰⁶ NIPPC supports Staff's recommendation but recommends one clarification. Bidders submitting PPAs should only state which

¹⁰³ Staff Report at 17 (see SMM Condition 6 that states "PGE will apply the same tax credit carrying cost from its 2021 RFP for purposes of price scoring.").

¹⁰⁴ NIPPC's Comments on Draft RFP at 11-13.

¹⁰⁵ IE's Second Assessment of PGE's Draft 2023 All Source RFP at 8.

¹⁰⁶ Staff Report at 19 (see SMM Condition 8 that states "PGE must require all bidders to provide their actual reserve rate costs and use those costs in its price scoring rather than assess all bids using BPA reserve rates.").

balancing authority reserve rate they are basing their bid price on and not specify the rate. It is the developer's responsibility and risk to include those rates in their bid price. If the bid is utility-owned, then PGE should be required to disclose and include the actual balancing authority's reserve rates in its costs because that would provide more transparency as the customers bear risk if those costs are incorrect. If the Commission adopts Staff's recommendation with NIPPC's clarification, then this issue is resolved.

7. Long-Term Service Agreements

NIPPC recommended that the RFP specify minimum requirements for long-term service agreements ("LTSAs") and/or warranties for all utility ownership bids that will make those bids subject to the same type of contractual protections as the PPA and BSA bids.¹⁰⁷ To the extent the RFP does not require LTSAs and equipment warranties for the life of the project or include those costs for the life of the project, the IE should develop appropriate operating and maintenance costs and appropriate contingency price bid adders, or performance contingency risk adjustments, for the added risk of the utility ownership bids.

PGE and the IE did not respond to these recommendations. Staff recommends that PGE should include cost adders for utility-owned resources in the RFP prior to issuing the RFP to market and the IE should evaluate the cost adder.¹⁰⁸ This

¹⁰⁷ See NIPPC's Comments on Draft RFP at 9-11.

¹⁰⁸ Staff Report at 68-69 (see RFP Condition 11 that states "Prior to issuance, PGE will amend Appendix P of the RFP to include a proposed cost adder for the long-term service agreement costs associated with any utility-ownership bid. PGE will ensure that the IE will evaluate the appropriateness of this cost adder in its report on benchmark bids.").

recommendation is acceptable to NIPPC. If the Commission adopts Staff’s recommendation, then the issue is resolved.

C. Scoring

1. Contract Redlines

The Commission should direct PGE to require bidders to provide redlines to the contract forms and/or term sheets¹⁰⁹ that are aligned with the bidder’s price score. Providing contract/term sheet redlines aligned with the score can increase transparency during the contract negotiation process and allow the IE more insight into PGE’s decision-making process. PGE responded that it welcomes bidders to provide contract redlines, but it will not review those to determine if a project is conforming, for bid rank, or selection onto the initial and final shortlists.¹¹⁰ PGE also declined to adopt its benchmark team’s recommendation to “ask bidders to adhere to PGE’s posted form contracts or to note that their price assumes a divergence from PGE’s form contracts.”¹¹¹ The IE supported PGE’s recommendation but encouraged bidders to provide redlines if they were concerned their required contract provisions for a bid price would not be accepted and for PGE to give the bidder an opportunity to update its bid if those contract provisions were “completely unacceptable.”¹¹²

¹⁰⁹ NIPPC continues to recommend that the Commission require PGE to provide term sheets for all bid types.

¹¹⁰ PGE’s Reply Comments at 13.

¹¹¹ PGE’s Reply Comments at 13.

¹¹² IE’s Second Assessment of PGE’s Draft 2023 All-Source RFP at 6.

Staff recommends adopting the suggestion that bidders be required to include contract redlines with their bids that are aligned with the bid's price score.¹¹³ If the Commission adopts Staff's recommendation, then this issue is resolved.

2. Imputed Debt

The Commission should direct PGE to remove the imputed debt price adder. Just recently, the Commission rejected Idaho Power's proposed use of an imputed debt adder for PPA and storage capacity agreement bids in its 2026 RFP.¹¹⁴ The IE recommended deleting the imputed debt adder if PGE was unable to provide any evidence that the imputed debt risk had increased in the past few years.¹¹⁵ PGE explained that its imputed debt proposal was consistent with S&P's methodology and allowed for a fairer comparison between PPA bids and utility-owned bids.¹¹⁶ At the Commissioner Workshop on July 6, a Commissioner asked PGE what had changed since it declined to adopt Idaho Power's proposed imputed debt adder. Nothing has changed since then.

¹¹³ Staff Report at 10-11, 68 (see SMM Condition 3 that states "The RFP will be adjusted to require all bids to include a contract with redlines that reflects the rationale behind their bid price and other elements of their bid." and RFP Condition 9 that states "PGE will require contract redlines from all bidders if their bid price is based on contractual or commercial terms other than those contained in the form contracts provided by the Company.").

¹¹⁴ Docket No. UM 2255, Order No. 23-260 at 1-2 (see SMM Condition 3).

¹¹⁵ See IE's Assessment of PGE's 2023 Draft All-Source RFP at 19; see also IE's Second Assessment of PGE's 2023 Draft All-Source RFP at 5.

¹¹⁶ PGE's Reply Comments at 15-16.

Staff recommends the imputed debt adder be removed for any bids especially PPAs.¹¹⁷ If the Commission adopts Staff’s recommendation, then this issue is resolved. The Commission should direct PGE to remove the imputed debt price adder.

3. Effective Load Carrying Capability Tool

PGE adopted NIPPC’s recommendation to provide bidders with a tool to estimate a project’s effective load carrying capability similar to what it provided in the 2021 RFP.¹¹⁸ Thus, this issue is resolved.

D. Benchmark

1. The Commission Should Require Complete Disclosure of PGE’s Benchmark Resources

The Commission should require complete disclosure of PGE’s benchmark resource(s). At minimum, PGE should be required to provide the following information for each benchmark bid similar to what PacifiCorp and Idaho Power Company have provided in their respective RFPs: size (in MW), location, technology type, interconnection status, expected life, expected efficiency, target COD, status (new build vs. existing facility), and product type (resource-based or market purchase).¹¹⁹ PGE updated its benchmark information in Appendix P, but it has still not provided the

¹¹⁷ Staff Report at 18-19 (see SMM Condition 7 that states “PGE does not add or apply any cost of imputed debt to the price scores of any bids, specifically those using PPAs or similar contractual structures that do not involve the utility taking ownership.”).

¹¹⁸ PGE’s Reply Comments at 18.

¹¹⁹ See Docket No. UM 2255, Order No. 23-260 at 1, 3 (see Supplemental RFP Condition 1); see also *In re PacifiCorp Application for Approval of 2022 All-Source Request for Proposals*, Docket No. UM 2193, PacifiCorp’s Final Draft 2022AS RFP, Appendix O (Jan. 14, 2022).

information NIPPC requested above or information on the utility-owned assets specific benchmark and/or the affiliate bids plans to use.¹²⁰ Without identification of the benchmark information, it is not possible for the IE, Staff, or stakeholders to understand whether and how ratepayer assets could be biasing the RFP toward more expensive and less reliable assets.

Staff agreed with NIPPC’s recommendation and recommends PGE provide the same details on benchmark bids that PacifiCorp and Idaho Power have provided including size (in MW), location, technology type, interconnection status, expected life, expected efficiency, target COD, status (new build vs. existing facility), and product type (resource-based or market purchase).¹²¹ This issue is resolved if the Commission adopts Staff’s recommendation.

2. The Commission Should Require PGE to Make Utility-Owned Assets Available to All Bidders Regardless of Ownership

PGE also intends to only allow utility-owned resources and its affiliate to use its assets and not make those assets available third-party bidders.¹²² PGE reasons it will only allow utility-owned resources to use it assets “[d]ue to security risks associated with co-location.”¹²³ PGE has a strong history of co-owned projects, such as Pelton Round

¹²⁰ See PGE’s Reply Comments at 24-25; see also PGE’s Response to NIPPC Data Requests 53, 54, 56, and 57 (Attachment B).

¹²¹ Staff Report at 33-34 (see RFP Condition 3 that states “Prior to issuance, PGE will provide the size (in MW), location, technology type, interconnection status, expected life, expected efficiency, target COD, status (new build vs. existing facility), and product type (resource-based or market purchase) for each benchmark bid and if they will be transferred to the Affiliate Interest, PRR.”).

¹²² PGE’s Updated Appendix P at 1 (Oct. 24, 2023).

¹²³ PGE’s Updated Appendix P at 1 (Oct. 24, 2023).

Butte, Boardman, and Coyote Springs, and should allow third-party bidders to use its assets for bids into the RFP. Additionally, successful renewable projects from PGE’s last RFPs have included joint ownership structures. Thus, it is unclear why a new joint ownership structure would have security concerns if these various co-ownership projects or joint ownership projects did not have those concerns. However, if PGE has concerns with multiple entities conducting operations and maintenance services within a shared substation, then PGE could provide the operations and maintenance services at the substation and require the third party to compensate PGE for those services.

Staff recommends PGE be required to update Appendix P to provide a more thorough analysis on any decision to not make these utility-owned assets available to non-utility owned bids.¹²⁴ With regards to PGE’s intention to use land in Northeast Oregon, Staff states it “is unconvinced by PGE’s claims of the risks associated with co-location” because of “PGE’s experience with joint-facilities[.]”¹²⁵ For the Biglow Canyon LGIA/transmission rights and Wheatridge Wind Farm LGIA/transmission rights, Staff requests further clarification and justification from PGE on whether it will make these assets available to non-utility owned bids and if not, then why.¹²⁶

¹²⁴ Staff Report at 33-34 (see RFP Condition 4 that states “Prior to issuance, PGE will update Appendix P to include analysis supporting its decision not to make the elements associated with the Biglow Canyon Wind Farm available to non-utility-ownership bids.” and see RFP Condition 5 that states “Prior to issuance, PGE will update Appendix P to provide a more thorough analysis of its security concerns regarding the parcels of land that will be made available for benchmark bids if they will not be made available to third-party bids. This analysis should specifically discuss note any existing examples of co-location on its system.”).

¹²⁵ Staff Report at 33.

¹²⁶ Staff Report at 33.

In addition to requesting more analysis, Staff makes a new and creative recommendation that PGE allow third-party bidders to provide one straw bid that uses these utility-owned assets without charging bidders a fee. These bids would be scored by both PGE and the IE, the bids would include a description of the bidder's experience operating a joint-facility or one owned by a utility to address PGE's concerns about security risks, and PGE would have ultimate discretion on whether these bids were selected on the initial and final shortlist.¹²⁷ Staff reasons the competitive bidding rules do not require utility-owned assets to be shared, but that "[t]here is a public interest in ensuring that assets like transmission and interconnection rights that were funded by ratepayers should be put to the greatest beneficial use for ratepayers."¹²⁸ This is a new recommendation that NIPPC has not opined on before.

These issues remain unresolved. NIPPC continues to strongly recommend the Commission should direct PGE to make its utility-owned assets that its benchmark plans to use available to all bidders or prohibit the affiliate from using utility-owned assets as explained above. NIPPC recognizes that the Commission's rules do not require that a utility offer ratepayer funded benchmark or utility-owned assets to third-party bidders, but instead allows a utility to refuse to use ratepayer funded assets to drive up ratepayers' costs. Despite this, the Commission does recognize "that the use of utility owned

¹²⁷ Staff Report at 33-35 (see RFP Condition 6 that states "PGE will allow third-party bidders to provide one straw project bid designed to take advantage of the utility-owned elements disclosed in Appendix P, without charging bidders bid fees or other expenses. The bids will be scored by both PGE and the IE. Bids should include a description of the bidder's experience operating within a joint-facility or one owned by utility to address PGE's concerns about security risks.").

¹²⁸ Staff Report at 33-34.

resources by third parties to develop additional or better, more efficient bids will help facilitate the objective of more and better options.”¹²⁹

The Commission, however, should have no concerns with imposing reasonable restrictions on the affiliate’s participation in the RFP, and the Commission can easily bar the affiliate from using any assets that are not also offered to other bidders. In fact, the administrative rules require the affiliate to be treated in the same manner as other bids.¹³⁰

If the Commission rejects NIPPC’s recommendation, then the Commission should at least adopt Staff’s recommendations in RFP Conditions 3-6 with NIPPC’s two requested clarifications to RFP Condition 6. First, a bidder should only be required to provide the description on the bidder’s experience operating a joint-facility or utility-owned facility, if the bidder intends to use the land in Northeast Oregon referenced in Appendix P. A bidder should be able to redirect the other utility-owned transmission and interconnection rights listed in Appendix P and not be required to provide a description because PGE only notes the security concerns for the land in Northeast Oregon. There needs to be more distinction between a bidder using PGE’s land and a bidder using PGE’s transmission or interconnection rights.¹³¹

¹²⁹ *In re Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources*, Docket No. AR 600, Order No. 18-324 at 10-11 (Aug. 30, 2018).

¹³⁰ OAR 860-089-0300(1)(a).

¹³¹ NIPPC notes that transmission rights are valuable for the RFP especially that transmission rights other than long-term firm are given reduced capacity values. Thus, transmission rights should be made available to all bidders and bidders should be allowed to redirect those transmission rights. *See* Staff Report at 23 (Staff discussion on capacity values and transmission rights).

Second, if bidders are going to be submit straw bids, then PGE should be required to provide basic information on its utility-owned assets so that bidders can effectively submit straw bids. For example, for PGE-owned land, bidders would need any wind resource meteorological data, solar meteorological data, geotechnical, hydrology, and environmental studies, lease agreements, and any applicable maps in order to develop an accurate straw proposal. For the transmission and interconnection rights, bidders would need copies of the LGIAs and transmission service agreements and any wind or solar resource meteorological data to assess potential curtailments when other projects are using these rights in order to develop an accurate straw proposal. Without access to this type of information, bidders will not be able to provide accurate straw bids that would compare the prices.

E. Form Contracts

The Commission should direct PGE to revise the form PPA to be more aligned with the market. As explained above, an unreasonable form PPA could cause bidders to increase the bid's price, which does not result in the least cost resource for ratepayers. NIPPC made several recommendations of changes to the form contracts that would be more aligned with market conditions. Some recommended changes included:

- changing the Guaranteed COD to 180 days after the Scheduled COD;
- reducing delay damages and extending the timing for each level of delay damages by 30 days;
- requiring an annual output guarantee of 80 percent instead of a monthly guarantee of 90 percent;
- reducing the Mechanical Availability Percentage to 80 percent;

- reducing the Guaranteed Availability in the Storage Capacity Agreement to 85 percent;
- requiring PGE to pay for test energy at the lower of 85 percent of Index Rate or 85 percent of Contract Price;
- removing the uncompensated curtailment provision;
- reducing the security amounts to \$100/kW;
- removing the step-in rights provision;
- clarifying the labor requirements; and more.¹³²

NIPPC is not repeating all of its arguments on the form contract provisions, but would like to specifically note that a monthly output guarantee is not aligned with market and something most bidders rejected in the last RFP.¹³³ If PGE is going to require an output guarantee it should be an annual guarantee and not monthly. Additionally, PGE should not be allowed to require both an output guarantee and availability guarantee. One of the two is sufficient, and the Commission should require PGE to revise the form contracts to note only one is required.

PGE responded that the form contracts represented PGE’s “preferred terms” but noted the terms were subject to negotiation.¹³⁴ PGE did not substantively respond to NIPPC’s specific recommendations on the proposed changes to the form contracts.¹³⁵ Many of NIPPC’s recommendations were aligned with the observations the IE noted from contract negotiations in the 2021 RFP in UM 2166.¹³⁶ The IE however did not

¹³² NIPPC’s Comments on Draft RFP at 30-39.

¹³³ IE’s Assessment of PGE’s Draft 2023 All Source RFP at 6.

¹³⁴ PGE’s Reply Comments at 12-13.

¹³⁵ See PGE’s Reply Comments at 11-13.

¹³⁶ IE’s Assessment of PGE’s Draft 2023 All Source RFP at 5-7.

make any recommendations to modify the form contracts even though it noted it hoped PGE would be receptive to these type of changes in the upcoming negotiations.¹³⁷

Staff only recommends changing the form contracts to clarify that a project may comply with state and federal labor requirements in multiple ways instead of only requiring a Project Labor Agreement.¹³⁸ Staff did not recommend any other changes because the form contracts will be subject to commercial negotiations.¹³⁹ Staff recommends that the IE be retained to monitor contract negotiations and report on negotiations with special attention to the issues NIPPC raised as concerns and how contract negotiations affect PRR and non-PRR bids.¹⁴⁰

These issues remain unresolved, and the Commission should adopt NIPPC's recommended changes to the form contracts to ensure the contracts are more aligned with market terms, negotiations are more transparent, and the RFP is not biased against PPA

¹³⁷ IE's Assessment of PGE's Draft 2023 All Source RFP at 7.

¹³⁸ Staff Report at 10, 66, 68 (see RFP Condition 8 that states "Form Contracts must clarify that a project can comply with state and federal labor requirements in the various applicable ways under those laws." and SMM Condition 2 that states "PGE will remove the requirement for a Project Labor Agreement from the Minimum Bidder Requirements in Appendix N.").

¹³⁹ Staff Report at 67.

¹⁴⁰ Staff Report at 67-68 (see RFP Condition 10 that states "PGE shall retain the IE through final resource selection. PGE will require the IE to monitor all contract negotiations. In addition to filing a final resource selection closing report with the Commission no later than 30 days after final resource selection, the IE will report at least monthly on contract negotiations and any impacts to pricing or bid withdrawals. The final report will include a full analysis of how the specific commercial terms shaped the Final Short List seeking acknowledgement and any impact to bid prices, including but not limited reporting on contract negotiations, which shall include, but not be limited to analysis of negotiations on the following contract terms: Guaranteed COD; Transmission Upgrade Cost; Transmission Scheduling of Energy Effective Date; curtailment; and output guarantees.").

bids. The Commission should be aware that failure to make this recommendation will guarantee that PPA prices will be higher than necessary and increasing costs to ratepayers in the unlikely event that a non-affiliate PPA wins, or helping ensure that the affiliate wins the RFP. If the Commission will not adopt NIPPC's recommendations, then at the very least the Commission should make it clear these contract provisions are subject to negotiation and clarify state that PGE's preferred contract terms are not market terms.

F. Non-Disclosure Agreement

PGE agreed to adopt NIPPC's recommendation to revise the non-disclosure agreement ("NDA") to increase the liability cap to \$2 million and increase the term of the NDA to five years, which is consistent with the NDA in Docket No. UM 2166.¹⁴¹ Thus, this issue is resolved.

PGE claims it cannot release a bidder's company name, a benchmark's partner name(s), a bidder's project name, or other information when it identifies the initial shortlist and final shortlist because Section 1(a) of the NDA designates that information as confidential.¹⁴² PGE also did not include any recommended changes to language in the NDA so that this information could be public.¹⁴³ NIPPC informally raised this with PGE, but this is a new issue NIPPC is formally raising now. NIPPC does not believe this information should be treated as confidential and it should be disclosed when PGE

¹⁴¹ PGE's Reply Comments at 16-17.

¹⁴² See PGE's Responses to NIPPC Data Requests 66 and 67 (Attachment B).

¹⁴³ See PGE's Response to NIPPC Data Request 67 (Attachment B).

provides the initial shortlist and final shortlist. PacifiCorp has provided this type of information in previous RFPs.¹⁴⁴

Unless the Commission explicitly interprets the Section 1(a) of the NDA as somehow covering this information, then NIPPC will assume that PGE will make the following information public: bidder company name, benchmark partner names, bidder project names, and whether any benchmark bid elements secured by the utility will be used or were used in the RFP. If PGE does not agree to treat this information as public, then NIPPC intends to raise this issue after the RFP is issued because NIPPC does not want this issue to delay the RFP.

It is unclear if this issue is unresolved.

G. Clarification Issues

In opening comments, NIPPC sought clarification on two issues. First, NIPPC sought clarification on NIPPC's understanding of the CODs, which PGE clarified NIPPC's understanding was correct.¹⁴⁵ Thus, this issue is partially resolved.¹⁴⁶

Second, NIPPC sought confirmation that a permitting narrative explanation is allowed if a bidder is unable to meet the permitting guidelines in Appendix N.¹⁴⁷ PGE did not address this in reply comments, but the IE and Staff noted they agreed with

¹⁴⁴ See, e.g., *In re PacifiCorp Application for Approval of 2020 All-Source Request for Proposal*, Docket No. UM 2059, PacifiCorp's Updated Request for Acknowledgement of Final Shortlist of Bidders in 2020 All-Source Request for Proposals (Corrected Updated Requested) at 27 (Aug. 12, 2021).

¹⁴⁵ PGE's Reply Comments at 2-4.

¹⁴⁶ See NIPPC's recommendation above on extension of COD due to delays caused by PGE.

¹⁴⁷ NIPPC's Comments on Draft RFP at 41-42.

NIPPC’s interpretation.¹⁴⁸ If the Commission adopts Staff’s recommendation, then the issue is resolved.

H. Staff’s Miscellaneous Considerations

1. RFP Schedule

In the Staff Report, Staff requested stakeholder feedback on Staff’s announced approach to regularly adjust the RFP schedule to reflect progress and decisions in PGE’s IRP docket, LC 80.¹⁴⁹ This is a new issue that NIPPC has not opined on before, but NIPPC agrees with this recommendation and believes the RFP schedule should be adjusted based on what happens in LC 80. If the schedule in LC 80 requires the schedule for the RFP to be adjusted, then there should also be a day-for-day extension of the COD as explained above.

2. Process Prerequisites to Final Shortlist Acknowledgment

In the Staff Report, Staff requested any suggestion on how PGE should structure the final shortlist and final shortlist project selection process, which includes timing considerations, the size of the final shortlist, and how projects should be ranked and selected for negotiations.¹⁵⁰ This is a new issue that NIPPC has not opined on before, but NIPPC recommends that the final shortlist match or slightly exceed PGE’s need. In PGE’s previous RFP, the final shortlist listed much more resources than what PGE needed. The purpose of the final shortlist is to identify what resources a utility is

¹⁴⁸ IE’s Second Assessment of PGE’s Draft 2023 All Source RFP at 8; Staff Report at 10 (see SMM Condition 1 that states “PGE will remove footnote 4 regarding permitting from the Minimum Bidder Requirements in Appendix N.”).

¹⁴⁹ Staff Report at 72.

¹⁵⁰ Staff Report at 72-73.

expected to contract with.¹⁵¹ With PacifiCorp's last RFP, PacifiCorp's final shortlist was close to its needs and PacifiCorp indicated they would try and negotiate with each project on the final shortlist.¹⁵² NIPPC is not opining on whether it was reasonable for PGE to include more resources than it needed on the final shortlist in the last RFP. However, for this upcoming RFP, the final shortlist should only include resources that match or slightly exceed PGE's need as identified in its acknowledged integrated resource plan. If the resources on the final shortlist are insufficient to meet PGE's need because negotiations do not finalize or a project drops out, then PGE could select the next highest-ranking project from the initial shortlist to contract with.

3. Planning and Procurement Going Forward

In the Staff Report, Staff requested feedback on the best docket and associated timing to consider, discuss, and potentially refine PGE's proposal related to ideas and pathways to accelerate the procurement process to meet the goals of House Bill 2021.¹⁵³ This is a new issue that NIPPC has not opined on before, but NIPPC recommends stakeholders address PGE's proposal after this RFP is approved in this docket. Addressing the issue in this docket, rather than a separate proceeding, would be more administratively efficient and appropriate. There is not enough time to opine on PGE's proposal before the RFP is approved.

¹⁵¹ See OAR 860-089-0500(1)-(3).

¹⁵² Docket No. UM 2059, PacifiCorp's Request for Acknowledgment of Final Shortlist of Bidders in 2020 AS RFP at 33-34 (June 15, 2021).

¹⁵³ Staff Report at 73 (citing PGE Planning and Procurement Forecast (July 17, 2023)).

III. CONCLUSION

NIPPC appreciates the effort that PGE and Staff have put into the preparation and review of the RFP and urges the Commission to direct PGE to make all changes and clarifications identified in these comments.

Dated this 21st day of December 2023.

Respectfully submitted,

Sanger Law, PC



Irion A. Sanger
Ellie Hardwick
Sanger Law, PC
4031 SE Hawthorne Blvd.
Portland, OR 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Attorneys for the Northwest &
Intermountain Power Producers Coalition

Attachment A

NIPPC Issues Matrix

Table of NIPPC’s Issues-Updated December 21, 2023

Draft RFP Issues

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed?¹
Transmission and Conditional Firm System Conditions	Allow conditional firm system conditions transmission at a reduced capacity value ²	No ³	Yes ⁴	IE agrees w/ NIPPC, provided PGE can model conditions ⁵	Resolved by Staff Report, disputed by PGE
Interconnection Study Requirements	Remove the requirement for a completed facilities study for selection on the Final Shortlist ⁶	Yes ⁷	Resolved prior to report	IE agrees w/ NIPPC	Resolved

¹ NIPPC states disputed by PGE if PGE did not adopt in its June 27, 2023 Reply Comments. NIPPC realizes PGE has not filed its comments on the Staff Report and PGE may agree to some of Staff’s recommended changes.

² NIPPC Comments at 3-6 (June 16, 2023).

³ PGE Reply Comments at 8-11 (June 28, 2023).

⁴ Staff Report at 14-15, 24-25 (Dec. 12, 2023).

⁵ IE’s Second Assessment at 2-3 (July 14, 2023).

⁶ NIPPC Comments at 6-7 (June 16, 2023).

⁷ PGE Reply Comments at 11 (June 28, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed? ¹
Credit Requirements	Allow the bidder to provide a parental guarantee or post liquid security, not both, and clarify credit requirements to bid into the RFP and selection onto the Final Shortlist ⁸	Somewhat – PGE clarified that Appendix K is only guidance and Appendix N contains the requirements to bid into the RFP and selection onto the FSL ⁹	No recommendation, believes issue to be resolved ¹⁰	IE did not address issue	Unresolved because NIPPC still recommends bidder be required to provide a parental guarantee or post liquid security, not both
Transferability	Reduce the transferability discount for utility-owned bids to 20-30% ¹¹	No ¹²	Staff suggests PGE will apply the same tax credit carrying cost from its 2021 RFP for purposes of price scoring ¹³	IE agrees the uncertainty should be considered, but rejects 50% rate ¹⁴	Unresolved, disputed by PGE

⁸ NIPPC Comments at 8-10 (June 16, 2023).

⁹ PGE Reply Comments at 14 (June 28, 2023).

¹⁰ Staff Report at 27 (Dec. 12, 2023).

¹¹ NIPPC Final Comments at 34-35 (Dec. 21, 2023). NIPPC originally recommended 50%, but revised its recommendation based on more current information and the IE’s position that 50% is too high.

¹² PGE Reply Comments at 17 (June 28, 2023).

¹³ Staff Report at 17 (Dec. 12, 2023).

¹⁴ IE’s Second Assessment at 6-7 (July 14, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed? ¹
Long-Term Service Agreements	Ensure fair treatment between third-party bids and utility-owned bids ¹⁵	Not addressed	Staff recommends amending Appendix P RFP to include a proposed cost adder for the long-term service agreement costs associated with any utility-ownership; IE to oversee ¹⁶	IE did not address this issue	Resolved by Staff Report

¹⁵ NIPPC Comments at 13-14 (June 16, 2023).

¹⁶ Staff Report at 68 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed? ¹
Grid Integration	Assess a bid on the actual reserve rate a bid relies on from third-party balancing authorities instead of assuming BPA reserve rates for all bids so that bidders submitting PPAs only state the balancing authority reserve rate included in their price and PGE discloses and includes the actual balancing authority's reserve rate in the costs for utility-owned bids ¹⁷	Not addressed	Yes ¹⁸	IE generally supports, recommends PGE clarify applicability ¹⁹	Resolved by Staff Report if NIPPC's requested clarification is adopted

¹⁷ NIPPC Comments at 14-15 (June 16, 2023); NIPPC Final Comments at 35-36 (Dec. 21, 2023).

¹⁸ Staff Report at 19 (Dec. 12, 2023).

¹⁹ IE's Second Assessment at 8 (July 14, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed?¹
Contract Redlines or Term Sheet Redlines	Require bidders to submit contract redlines aligned with the bid's price score ²⁰	No ²¹	Yes ²²	IE presumes negotiations will be made in good faith, but does not require redlines ²³	Resolved by Staff Report, disputed by PGE
Imputed Debt Adder	Remove the imputed debt adder ²⁴	No ²⁵	Yes ²⁶	IE agrees w/ NIPPC ²⁷	Resolved by Staff Report, disputed by PGE
ELCC Calculator	Require PGE to provide a tool so that bidders can estimate the project's ELCC ²⁸	Yes ²⁹	Resolved, not addressed	IE did not address this issue	Resolved

²⁰ NIPPC Comments at 15-17 (June 16, 2023).

²¹ PGE Reply Comments at 11-15 (June 28, 2023).

²² Staff Report at 10-11, 68 (Dec. 1, 2023).

²³ IE Report at 13-15 (May 31, 2023).

²⁴ NIPPC Comments at 20-21 (June 16, 2023).

²⁵ PGE Reply Comments at 14-16 (June 28, 2023).

²⁶ Staff Report at 18-19 (Dec. 12, 2023).

²⁷ IE's Second Assessment at 5 (July 14, 2023).

²⁸ NIPPC Comments at 17 (June 16, 2023).

²⁹ PGE Reply Comments at 18 (June 28, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed? ¹
Non-Disclosure Agreement	Modify the NDA to increase liability and extend the term of the NDA	Yes ³⁰	Not addressed	IE did not address this issue	Resolved
Information Public and Changes to Non-Disclosure Agreement (New Issue)	Require PGE make the following information public: bidder company name, benchmark partner names, bidder project names, and whether any benchmark bid elements secured by the utility will be used or were used in the RFP. The Commission should conclude that Section 1(a) of PGE's NDA does not require this information to be confidential or direct PGE to make changes to the NDA so that this information can be public ³¹				Unresolved

³⁰ PGE Reply Comments at 16-17 (June 28, 2023).

³¹ NIPPC Final Comments at 47-48 (Dec. 21, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed?¹
Permitting Requirements	Confirmation that bidders will be allowed to submit a permitting narrative explanation ³²	Yes ³³	Yes ³⁴	IE agrees w/ NIPPC ³⁵	Resolved
Benchmark Bid Disclosures	Require complete disclosure of PGE’s benchmark resource(s), including at minimum: size (in MW), location, technology type, interconnection status, expected life, expected efficiency, target COD, status (new build vs. existing facility), and product type (resource-based or market purchase) ³⁶	Not addressed	Yes ³⁷	IE briefly mentioned that PGE should provide more details regarding the benchmark as it becomes known ³⁸	Resolved by Staff Report

³² NIPPC Comments at 41-42 (June 16, 2023).

³³ PGE Reply Comments at 7-8 and Appendix N at 4 (June 28, 2023).

³⁴ Staff Report at 10 (Dec. 12, 2023).

³⁵ IE’s Second Assessment at 8 (July 14, 2023).

³⁶ NIPPC’s Final Comments at 39-40 (Dec. 21, 2023).

³⁷ Staff Report at 33-34 (Dec. 12, 2023).

³⁸ IE’s Report at 21 (May 31, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed? ¹
Utility-Owned Assets Disclosure	Require PGE to disclose more details on the utility-owned assets, and if PGE is not making the utility-owned assets available to all bidders, then explain why ³⁹	Generally, no (PGE included a few more details, but not like what NIPPC is asking for) ⁴⁰	Yes ⁴¹	IE briefly mentioned that PGE should provide more details regarding the benchmark as it becomes known ⁴²	Resolved by Staff Report, disputed by PGE

³⁹ NIPPC's Final Comments at 40-44 (Dec. 21, 2023).

⁴⁰ PGE Reply Comments at 24-25 (June 28, 2023).

⁴¹ Staff Report at 33-34 (Dec. 12, 2023).

⁴² IE Report at 21 (May 31, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed? ¹
Bidder Access to PGE-Owned Resources	Allow all bidders to have access to and use ratepayer funded PGE-owned resources, and if PGE does not make its assets available to all bidders, then the affiliate should not have access to PGE-owned assets ⁴³	No ⁴⁴	No (Recommends bidders be allowed to submit one free straw bid using utility-owned assets that would be scored by PGE and the IE. If the bidder is using utility-owned assets that requires joint operation, then provide description on its experience with joint ownership/operation of facilities.) ⁴⁵		Unresolved (if the Commission will not adopt NIPPC’s main recommendation, then NIPPC supports Staff’s recommendation with the requirement that PGE provide background documentation for bidders to accurately develop a straw bid)

⁴³ NIPPC Final Comments at 10-11, 43-44 (Dec. 21, 2023).

⁴⁴ PGE Reply Comments at 24 (June 28, 2023)

⁴⁵ Staff Report at 33-35 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report	IE Position (May 31 Report and July 14 Report)	Issue Resolved or Unresolved/ Disputed?¹
COD Extension (New Issue)	Extend the COD to on or before June 9, 2028, and if there are delays in the RFP schedule due to LC 80 or any other reason, then extend COD on a day-for-day basis ⁴⁶				Unresolved

⁴⁶ NIPPC Final Comments at 29-30, 49 (Dec. 21, 2023).

Issues Applicable to Both the Form Contracts for PPA and SCA Bids

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Contract Forms/Term Sheets	Modify the form contracts to be more aligned with market terms consistent with the IE's Assessment from the 2021 RFP ⁴⁷	No ⁴⁸	No ⁴⁹	IE notes negotiation should be allowed ⁵⁰	Unresolved
Guaranteed COD	Change the guaranteed COD to 180 days after the scheduled COD ⁵¹	No ⁵²	No ⁵³	IE agrees that it is non-market but defers it to negotiations ⁵⁴	Unresolved

⁴⁷ NIPPC Comments at 29 (June 16, 2023).
⁴⁸ PGE Reply Comments at 11-13 (June 28, 2023).
⁴⁹ Staff Report at 66-68 (Dec. 12, 2023).
⁵⁰ IE Report at 13-15 (May 31, 2023); IE's Second Assessment at 5-6 (July 14, 2023).
⁵¹ NIPPC Comments at 30-31 (June 16, 2023).
⁵² PGE Reply Comments, pp 2-4 (June 28, 2023).
⁵³ Staff Report at 58, Table 8 and 67 (Dec. 12, 2023).
⁵⁴ IE Report at 5, 7 (May 31, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Delay Damages	Timing for each level of delay damages should be extended for each level by 30 Days ⁵⁵	No	No ⁵⁶	IE agrees that it is non-market but defers it to negotiations ⁵⁷	Unresolved
Output Guarantee	Revise to clarify there is an annual output guarantee instead of a monthly output guarantee, and there should be an output guarantee or availability guarantee, not both ⁵⁸	No	No ⁵⁹	IE agrees that it is non-market but defers it to negotiations ⁶⁰	Unresolved

⁵⁵ NIPPC Comments at 31-32 (June 16, 2023).

⁵⁶ Staff Report at 57, Table 8 and 67 (Dec. 12, 2023).

⁵⁷ IE Report at 5, 7 (May 31, 2023).

⁵⁸ NIPPC Comments at 32 (June 16, 2023); NIPPC Final Comments at 45 (Dec. 21, 2023).

⁵⁹ Staff Report at 58, Table 8 and 67 (Dec. 12, 2023).

⁶⁰ IE Report at 6 (May 31, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Mechanical Availability	Reduce mechanical availability percentage to 80%, and there should be an output guarantee or availability guarantee, not both ⁶¹	No	No ⁶²	IE agrees that it is non-market but defers it to negotiations ⁶³	Unresolved
BESS Availability	Reduce guaranteed availability percentage to 85% ⁶⁴	No	No ⁶⁵	IE did not address this issue	Unresolved
Test Energy	Require compensating bidders for test energy at the lower of 85% of index rate or 85% of contract price ⁶⁶	No	No ⁶⁷	IE agrees that it is non-market but defers it to negotiations ⁶⁸	Unresolved

⁶¹ NIPPC Comments at 32-33 (June 16, 2023); NIPPC Final Comments at 45 (Dec. 21, 2023).

⁶² Staff report at 67 (Dec. 12, 2023).

⁶³ IE Report at 6 (May 31, 2023).

⁶⁴ NIPPC Comments at 33 (June 16, 2023).

⁶⁵ Staff Report at 67 (Dec. 12, 2023).

⁶⁶ NIPPC Comments at 33-34 (June 16, 2023).

⁶⁷ Staff Report at 67 (Dec. 12, 2023).

⁶⁸ IE Report at 6 (May 31, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Curtailment	Remove the uncompensated curtailment provision ⁶⁹	No	No ⁷⁰	IE agrees that it is non-market but defers it to negotiations ⁷¹	Unresolved
Performance Assurance/Security	Reduce the security amounts to around \$100/kW to be more aligned with the market and allow bond as form of security for PPA bids ⁷²	No	No ⁷³	IE agrees that it is non-market but defers it to negotiations ⁷⁴	Unresolved
Labor Requirements	Clarify whether projects built outside of Oregon must comply with HB 2021 requirements ⁷⁵	No	Yes ⁷⁶	IE did not address this issue	Resolved by Staff Report, disputed by PGE

⁶⁹ NIPPC Comments at 34-35 (June 16, 2023).

⁷⁰ Staff report at 58, 67 (Dec. 12, 2023).

⁷¹ IE Report at 7 (May 31, 2023).

⁷² NIPPC Comments at 35-36 (June 16, 2023).

⁷³ Staff Report at 55, Table 8 and 67 (Dec. 12, 2023).

⁷⁴ IE Report at 7 (May 31, 2023).

⁷⁵ NIPPC Comments at 36-37 (June 16, 2023).

⁷⁶ Staff Report at 66, 68 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Carbon Emissions on Imbalance Energy	Remove the carbon emissions cost on imbalance energy or require PGE to add this cost to any utility-owned bids ⁷⁷	No	No ⁷⁸	IE did not address this issue	Unresolved
Transmission	Revise the PPA form contract to note that conditional firm transmission service is allowed and revise the SCA form contract to include provisions necessary for an off-system project ⁷⁹	No	No ⁸⁰	IE did not address this issue	Unresolved
Force Majeure	Revise force majeure provisions related to the unavailability of energy or bundled RECs and “loss events” ⁸¹	No	No ⁸²	IE did not address this issue	Unresolved

⁷⁷ NIPPC Comments at 37 (June 16, 2023).

⁷⁸ Staff Report at 67 (Dec. 12, 2023).

⁷⁹ NIPPC Comments at 37-38 (June 16, 2023).

⁸⁰ Staff Report at 67 (Dec. 12, 2023).

⁸¹ NIPPC Comments at 38-39 (June 16, 2023).

⁸² Staff Report at 54, Table 8 and 67 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Step-In Rights	Remove the step-in rights provision ⁸³	No	No ⁸⁴	IE did not address this issue	Unresolved

Issues Applicable to the PGE Affiliate and Affiliate Form PPA

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
PGE Affiliate	Prohibit the affiliate from bidding into this RFP ⁸⁵	No ⁸⁶	No ⁸⁷	IE supports PGE's proposal ⁸⁸	Unresolved

⁸³ NIPPC Comments at 39 (June 16, 2023).
⁸⁴ Staff Report at 67 (Dec. 12, 2023).
⁸⁵ NIPPC Comments at 20-29 (June 16, 2023).
⁸⁶ PGE Reply Comments at 19-25 (June 28, 2025).
⁸⁷ Staff Report at 40 (Dec. 12, 2023).
⁸⁸ IE's Second Assessment at 7 (July 14, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
PGE Affiliate – Benchmark Treatment	If the affiliate will be allowed to bid into this RFP, then treat it as a benchmark bid ⁸⁹	Yes ⁹⁰	Yes (agreeing with PGE’s proposal) ⁹¹	IE Supports PGE’s proposal ⁹²	Resolved
Bidder Access to PGE-Owned Resources	The affiliate should not have access to PGE-owned resources that third-party bidders do not ⁹³	No ⁹⁴	No ⁹⁵	IE supports PGE’s Proposal ⁹⁶	Unresolved
Blank PPA Provisions	Any affiliate form PPA should not leave blank provisions that would provide an unfair negotiation advantage to PGE and PRR ⁹⁷	Do not know PGE’s position	Yes ⁹⁸		Resolved by Staff Report

89 NIPPC Comments at 20-29 (June 16, 2023).
90 PGE Reply Comments at 21-22 (June 28, 2023).
91 Staff Report at 40 (Dec. 12, 2023).
92 IE’s Second Assessment at 7 (July 14, 2023).
93 NIPPC Final Comments at 10-11 (Dec. 21, 2023).
94 PGE Reply Comments at 24-25 (June 28, 2023).
95 Staff Report at 33-35 (Dec. 12, 2023).
96 IE’s Second Assessment at 7 (July 14, 2023).
97 NIPPC Final Comments at 12-13, 17-18 (Dec. 21, 2023).
98 Staff report at 58, Table 8 and 59 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Performance Assurance Amount	The performance assurance for the affiliate form PPA should be the highest number from bidders in the last RFP or 90 percent annual output guarantee ⁹⁹	Do not know PGE's position	Generally, yes (recommend IE oversight) ¹⁰⁰		Resolved by Staff Report
Security/Performance Assurance Requirements	Affiliate should be required to meet the security/performance assurance requirements with cash instead of a letter of credit from a Qualified Institution ¹⁰¹	Do not know PGE's position	Generally, no (does not recommend cash or specific amounts) ¹⁰²		Unresolved
Force Majeure	Delete the force majeure provision in Article 4 and delete references throughout the PPA to force majeure ¹⁰³	Do not know PGE's position	No ¹⁰⁴		Unresolved

⁹⁹ NIPPC Final Comments at 10, 13 (Dec. 21, 2023).

¹⁰⁰ Staff Report at 58, Table 8 and 59 (Dec. 12, 2023).

¹⁰¹ NIPPC Final Comments at 13-14 (Dec. 21, 2023).

¹⁰² Staff Report at 55, Table 8 and 59 (Dec. 12, 2023).

¹⁰³ NIPPC Final Comments at 14-15 (Dec. 21, 2023).

¹⁰⁴ Staff Report at 54, Table 8 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Audits to Ensure Compliance	Should include a provision that allows regular (e.g., quarterly) audits by Commission Staff to ensure compliance with the affiliate PPA terms ¹⁰⁵	Do not know PGE's position	Not addressed		Unresolved
Default Provisions	Provision should be added to the affiliate form PPA that when any default occurs, or the Commission initiates it in its oversight of the affiliate PPA, a Special Master should be appointed to the Commission to represent PGE customers ¹⁰⁶	Do not know PGE's position	No (Staff suggests this is resolved in future affiliated interest filings) ¹⁰⁷		Resolved for now and to be addressed when PGE files the affiliate PPA

¹⁰⁵ NIPPC Final Comments at 15 (Dec. 21, 2023).

¹⁰⁶ NIPPC Final Comments at 15-16 (Dec. 21, 2023).

¹⁰⁷ Staff Report at 59, Table 8 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Affiliate Cost Protections	A provision should be added to the affiliate form PPA for accounting protection to ensure the affiliate's expenditures and any potential damages owed to PGE under the PPA are accurately tracked and paid by PRR ¹⁰⁸	Do not know PGE's position	No (Staff believes these are resolved in UI 489) ¹⁰⁹		Resolved if Condition 4 addresses this concern
Sale of Affiliate Project	Any sale of the project under Section 2.4 would first require Commission approval ¹¹⁰	Do not know PGE's position	Generally, yes ¹¹¹		Resolved if Condition 5 requires Commission approval before selling, but NIPPC recommends clarification

¹⁰⁸ NIPPC Final Comments at 16 (Dec. 21, 2023).

¹⁰⁹ Staff Report at 58, Table 8 (Dec. 12, 2023).

¹¹⁰ NIPPC Final Comments at 17 (Dec. 21, 2023).

¹¹¹ Staff Report at 54, Table 8 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Option to Purchase or Extend Term	The option to purchase or extend the term from Section 2.5 should not be allowed in the affiliate form PPA because either option should require PRR to bid the project into another RFP ¹¹²	Do not know PGE's position	Yes ¹¹³		Resolved by Staff Report
Blank Transmission Upgrade Cost Cap	This should not be left blank and should be the highest amount of any bid from PGE's 2021 RFP ¹¹⁴	Do not know PGE's position	No (Staff recommends not leaving blank but does not recommend value) ¹¹⁵		Resolved if Commission requires IE to oversee contract negotiations
Blank Effective Date for Transmission and Scheduling of Energy	This should not be left blank and should be the shortest time period of any bid from PGE's 2021 RFP ¹¹⁶	Do not know PGE's position	No (Staff recommends not leaving blank but does not recommend value) ¹¹⁷		Resolved if Commission requires IE to oversee contract negotiations

¹¹² NIPPC Final Comments at 17 (Dec. 21, 2023).

¹¹³ Staff Report at 54, Table 8 and 59 (Dec. 12, 2023).

¹¹⁴ NIPPC Final Comments at 17 (Dec. 21, 2023).

¹¹⁵ Staff Report at 57, Table 8 and 59 (Dec. 12, 2023).

¹¹⁶ NIPPC Final Comments at 17-18 (Dec. 21, 2023).

¹¹⁷ Staff Report at 57, Table 8 and 59 (Dec 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Assignment under Section 15	Any assignment under Section 15 should not occur without Commission approval ¹¹⁸	Do not know PGE's position	Generally, yes (Staff believes these are resolved in UI 489) ¹¹⁹		Resolved by Staff Report if Condition 3 or a provision added to the affiliate form PPA would require Commission approval before assigning the project, but NIPPC recommends clarification
Dispute Resolution	There needs to be more explanation on how the dispute resolution would work if there were a disagreement between PGE and PRR. The Special Master should be appointed in these situations ¹²⁰	Do not know PGE's position	Generally, yes (Staff suggests this is resolved in future affiliated interest filings) ¹²¹		Resolved

¹¹⁸ NIPPC Final Comments at 18 (Dec. 21, 2023).

¹¹⁹ Staff Report at 55, Table 8 (Dec. 12, 2023).

¹²⁰ NIPPC Final Comments at 16 (Dec. 21, 2023).

¹²¹ Staff Report at 56, Table 8 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Article 20 Confidentiality	This whole article should be deleted for an affiliate form PPA as everything should be public and be able to be reviewed ¹²²	Do not know PGE's position	Generally, yes (recommends specifying that the PGE benchmark team employees are excluded from reviewing any confidential provisions of the PRR PPA) ¹²³		Resolved by Staff Report
COD	There needs to be clarity under the affiliate form PPA on who is going to complete these events and who is going to review to determine if the project can become commercially operational. Either the Commission or a Special Master should be the entity that determines if they are met ¹²⁴	Do not know PGE's position	Not addressed		Unresolved

¹²² NIPPC Final Comments at 19 (Dec. 21, 2023).

¹²³ Staff Report at 56, Table 8 and 59 (Dec. 12, 2023).

¹²⁴ NIPPC Final Comments at 19 (Dec. 21, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
No Consequential Damages	Section 8.4 on no consequential damages should be removed ¹²⁵	Do not know PGE's position	Yes ¹²⁶		Resolved by Staff Report
<i>Mobile Sierra</i> Standard of Review and the Waiver of Federal Energy Regulatory Rights	Sections 11.1.1 and 11.1.2 on the <i>Mobile Sierra</i> standard of review and the waiver of Federal Energy Regulatory Rights should be deleted ¹²⁷	Do not know PGE's position	No ¹²⁸		Unresolved
Attorneys' and Legal Fees	In Section 18.5, PGE should not have to owe attorneys' and legal fees to PRR ¹²⁹	Do not know PGE's position	Generally, yes (Staff believes these are resolved in UI 489) ¹³⁰		Resolved by Staff Report if Condition 4 would prohibit PGE from owing attorneys' and legal fees to PRR, but NIPPC recommends clarification

¹²⁵ NIPPC Final Comments at 19 (Dec. 21, 2023).

¹²⁶ Staff Report at 54, Table 8 and 59 (Dec. 12, 2023).

¹²⁷ NIPPC Final Comments at 19-20 (Dec. 21, 2023).

¹²⁸ Staff Report at 57, Table 8 (Dec. 12, 2023).

¹²⁹ NIPPC Final Comments at 20 (Dec. 21, 2023).

¹³⁰ Staff Report at 56, Table 8 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
Notices Sent Under Section 21.1	Any notices sent to PGE or PRR under Section 21.1 should also be sent to the Commission ¹³¹	Do not know PGE's position	Generally, yes (Staff believes these are resolved in UI 489) ¹³²		Resolved by staff Report if Condition 5 would require PGE or PRR to send any notices it sends to the other party also to the Commission, but NIPPC recommends clarification
PGE's Explanation on Price Conversion Is Too Vague	The Commission should require PGE to provide a more detailed explanation on how the fixed prices will be converted ¹³³	Do not know PGE's position	Yes ¹³⁴		Resolved by Staff Report

¹³¹ NIPPC Final Comments at 20 (Dec. 21, 2023).

¹³² Staff Report at 58, Table 8 (Dec. 12, 2023).

¹³³ NIPPC Final Comments at 20-23 (Dec. 21, 2023).

¹³⁴ Staff Report at 48-49 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
BTA/APA Bid Price to PPA Price Conversions	PGE’s RFP team should convert all BTA or APA bid prices to fixed PPA prices or third-party bidders should be allowed to convert third-party BTA or APA bid prices to fixed PPA prices similar to how PGE proposes to have the PGE benchmark team convert PGE-sponsored BTA or APA bid prices to fixed PPA prices. Third-party developers should also be able to convert their BTA or APA bid prices to fixed PPA prices instead of the RFP team ¹³⁵	Do not know PGE’s position	Yes ¹³⁶		Resolved by Staff Report

¹³⁵ NIPPC Final Comments at 23-24 (Dec. 21, 2023).

¹³⁶ Staff Report at 49 (Dec. 12, 2023).

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by PGE Reply Comments June 28, 2023?	NIPPC Recommendation Adopted by Dec. 12, 2023 Staff Report?	IE Position	Issue Resolved or Unresolved/ Disputed?
BTA and APA Bid Price Conversion Timing	The BTA and APA bid prices should be converted to fixed PPA prices before selection on the Final Shortlist ¹³⁷	Do not know PGE's position	Generally, no (Staff recommends any bidder that will utilize PRR should be allowed to include a forecasted PPA price that the IE will use to review) ¹³⁸		Resolved by Staff Report (NIPPC prefers its original recommendation, but this is an acceptable alternative)
Price Update After Final Shortlist Acknowledgment	Do not allow a price update after the Final Shortlist acknowledgment ¹³⁹	Do not know PGE's position	Generally, no (Staff recommends IE oversight) ¹⁴⁰		Unresolved

¹³⁷ NIPPC Final Comments at 24-25 (Dec. 21, 2023).

¹³⁸ Staff Report at 49 (Dec. 12, 2023).

¹³⁹ NIPPC Final Comments at 26 (Dec. 21, 2023).

¹⁴⁰ Staff Report at 50-51 (Dec. 12, 2023).

New Staff Recommendations

Issue	Staff Recommendation	Staff Recommendation Addressed by Dec. 21, 2023 NIPPC Final Comments?	Issue Resolved or Unresolved/ Disputed?
Third-Party BTA/APA Bid Treatment	Any BTA or APA bid that will utilize PRR, whether PGE sponsored or third-party sponsored, should be treated as a benchmark bid ¹⁴¹	Yes ¹⁴²	Resolved by Staff Report
Shortlist Comparison for Affiliate Bids	If the RFP includes affiliate bids, then PGE must provide a comparison of the initial shortlist with and without participation of affiliate bids and the IE will analyze and report on any impacts, findings, and recommendations ¹⁴³	Yes ¹⁴⁴	Resolved by Staff Report

¹⁴¹ Staff Report at 43-44 (Dec. 12, 2023).

¹⁴² NIPPC Final Comments at 27 (Dec. 21, 2023).

¹⁴³ Staff Report at 26 (Dec. 12, 2023).

¹⁴⁴ NIPPC Final Comments at 27-28 (Dec. 21, 2023).

Issue	Staff Recommendation	Staff Recommendation Addressed by Dec. 21, 2023 NIPPC Final Comments?	Issue Resolved or Unresolved/ Disputed?
PGE Employees Working on the RFP Team, Benchmark Team, and Providing Services to PRR Throughout the RFP	PGE be required to provide the IE a list of all employees working on the RFP team, benchmark team, and any employees providing services to PRR at several stages of the RFP including when the benchmark bids are filed and scored, the final shortlist is filed, and contract negotiations are complete. Employee lists should be available to any stakeholder that have signed the appropriate protective order as well ¹⁴⁵	Yes ¹⁴⁶	Resolved by Staff Report
Description on How PGE Will Prioritize Earlier COD Projects for its Capacity Need	Prior to issuance of the RFP, PGE must provide a description of how it would prioritize resources to fill its 2026 capacity need if there are insufficient projects with a COD on or before December 31, 2025 and PGE's execution of this prioritization would be reviewed by the IE. ¹⁴⁷	Yes ¹⁴⁸	Resolved by Staff Report

¹⁴⁵ Staff Report at 42 (Dec. 12, 2023).

¹⁴⁶ NIPPC Final Comments at 28 (Dec. 21, 2023).

¹⁴⁷ Staff Report at 30-31 (Dec. 12, 2023).

¹⁴⁸ NIPPC Final Comments at 29-30 (Dec. 21, 2023).

Issue	Staff Recommendation	Staff Recommendation Addressed by Dec. 21, 2023 NIPPC Final Comments?	Issue Resolved or Unresolved/ Disputed?
Transmission Percentage Requirement	Reduce the transmission requirement from 80 percent to 70 percent of the resource's interconnection limit. ¹⁴⁹	Yes ¹⁵⁰	Resolved by Staff Report

¹⁴⁹ Staff Report at 16 (Dec. 12, 2023).

¹⁵⁰ NIPPC Final Comments at 32-33 (Dec. 21, 2023).

Attachment B

PGE Data Responses to NIPPC

June 8, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 017
Dated May 30, 2023

Request:

Please explain how PGE would enforce provisions in the power purchase agreement (“PPA”) against PGE’s affiliate. Provisions include, but are not limited to damages, legal disputes, performance guarantees, and security.

Response:

See **Attachment 2 – Customer Protection Conditions**, developed in consultation with OPUC Staff, Citizen’s Utility Board, and Alliance for Western Energy Consumers, and submitted as part of PGE’s affiliate application in Docket No. UI 489 provides the requested information.

PGE has conducted extensive outreach to parties within UI 489 and in relation to PGE’s 2021 affiliate application (UI 461). PGE expects that any additional customer protection conditions needed will be discussed and ultimately adopted through the affiliated interest docket process.

June 15, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 023
Dated June 1, 2023

Request:

Please reference PGE's 2023 RFP, Appendix P where PGE states it intends to submit benchmark bids in the 2023 RFP.

- a. Please clarify whether the site for the benchmark resource will be made available to other bidders. If not, please provide an analysis explaining why the site for the benchmark resource will not be made available to other bidders.
- b. Please clarify what transmission rights the benchmark resource will use.
- c. Please clarify whether the transmission rights for the benchmark resource will be made available to other bidders. If not, please provide an analysis explaining why the transmission rights for the benchmark resource will not be made available to other bidders.

Response:

- a. PGE objects to the request on two bases. First, the information requested would not be known to members of PGE's RFP Team absent disclosure to the general public. Second, the information requested cannot be made available to one party without ensuring the same information is made available to all parties. For these reasons, in lieu of a response to this data request, PGE is updating Exhibit P to the 2023 RFP with the requested information.
- b. Please see response to DR 23(a).
- c. Please see response to DR 23(a).

June 15, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 024
Dated June 1, 2023

Request:

Please reference PGE's 2023 RFP at page 12 where PGE states it will consider submitting an affiliate bid in the 2023 RFP.

- a. Please clarify what site the affiliate resource will use.
- b. Please clarify whether the site for the affiliate resource will be made available to other bidders. If not, please provide an analysis explaining why the site for the affiliate resource will not be made available to other bidders.
- c. Please clarify what transmission rights the affiliate resource will use.
- d. Please clarify whether the transmission rights for the affiliate resource will be made available to other bidders. If not, please provide an analysis explaining why the transmission rights for the affiliate resource will not be made available to other bidders.

Response:

- a. PGE objects because the request is not reasonably calculated to elicit or lead to relevant information in this case. PGE further objects because PGE is not required by Commission rules or policy to disclose this information to the parties.
- b. Please see response to DR 24(a).
- c. Please see response to DR 24(a).
- d. Please see response to DR 24(a).

July 12, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 048
Dated June 29, 2023

Request:

In PGE's Reply Comments, PGE states it will "disclose whether any elements of a PGE sponsored-affiliate bids are owned or secured by PGE and also whether or not they will be made available to all bidders." (See page 21). Please identify what assets of an affiliate bid are owned or secured by PGE, including but not limited to site location and transmission rights, and whether or not those assets will be made available to all bidders.

Response:

PGE provided an updated Appendix P – Benchmark Submission details with its Reply Comments filed 6/28/2023 within Docket UM 2274. This Appendix reflects the most recent disclosure of assets that would be used by either a Benchmark or PGE sponsored-affiliate bid, and whether or not those assets would be made available to all bidders.

July 21, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 053
Dated July 7, 2023

Request:

In PGE's Reply Comments from June 28, 2023, PGE provided an updated Appendix P on the benchmark submission. PGE states the listed utility-controlled bid elements may be used to support benchmark or affiliate bids.

- a. Please clarify which utility-controlled bid elements will be used for a PGE benchmark bid.
- b. Please clarify which utility-controlled bid elements will be used for an affiliate bid.
- c. Please clarify which utility-controlled bid elements will be used for a PGE and affiliate partnership benchmark bid.
- d. Please clarify which utility-controlled bid elements will be used for a PGE and third-party partnership benchmark bid.

Response:

PGE objects to the request on the basis that the information requested would not be known to members of PGE's RFP Team.

July 21, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 054
Dated July 7, 2023

Request:

In PGE's updated Appendix P, PGE states it may use land in Northeast Oregon to support a solar resource. Please confirm PGE would only use this land resource for a solar resource.

Response:

PGE objects to the request on the basis that the information requested would not be known to members of PGE's RFP Team.

July 21, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 056
Dated July 7, 2023

Request:

In PGE's updated Appendix P, PGE states it may use land in Northeast Oregon to support a solar resource. Please provide a narrative explanation of any other existing interconnection and transmission assets located around the site that PGE intends to use, whether those assets have been included in PGE's rates, the total value and revenue requirement impact of those assets, and whether those assets have been depreciated (and if so, the remaining undepreciated amounts).

Response:

PGE objects to the request on the basis that the information requested would not be known to members of PGE's RFP Team.

July 21, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 057
Dated July 7, 2023

Request:

Please clarify if PGE intends to use any of the interconnection facilities from the decommissioned Boardman coal plant, including but not limited to the generator lead-line from Boardman to Grassland 500 kV Switchyard, Grassland 500 kV Switchyard, and 500 kV step-up transformer. If so, state whether those assets have been included in PGE's rates, the total value and revenue requirement impact of those assets, and whether those assets have been depreciated (and if so, the remaining undepreciated amounts).

Response:

PGE objects to the request on the basis that the information requested would not be known to members of PGE's RFP Team.

August 29, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 062
Dated August 15, 2023

Request:

Please refer to NIPPC's data request 53. In PGE's response, PGE objected to the request because PGE claims the requested information would not be known to members of PGE's RFP Team. Please have PGE's benchmark preparation team and/or PRR's preparation team provide an updated response to NIPPC data request 53.

Response:

For convenience, NIPPC's Data Request No. 53 is set forth again below:

In PGE's Reply Comments from June 28, 2023, PGE provided an updated Appendix P on the benchmark submission. PGE states the listed utility-controlled bid elements may be used to support benchmark or affiliate bids.

- a. Please clarify which utility-controlled bid elements will be used for a PGE benchmark bid.
- b. Please clarify which utility-controlled bid elements will be used for an affiliate bid.
- c. Please clarify which utility-controlled bid elements will be used for a PGE and affiliate partnership benchmark bid.
- d. Please clarify which utility-controlled bid elements will be used for a PGE and third-party partnership benchmark bid.

In response to NIPPC's Data Request No. 62, PGE's Benchmark team responds as follows:

PGE will be filing an updated Appendix P no later than Friday, September 1, 2023, to the 2023 All-Source Request for Proposal (RFP) to include a revised list of certain elements owned or secured by PGE that are under consideration for use in support of benchmark bids. If there are additional updates, the Benchmark Team will file an updated Appendix P in accordance with the RFP schedule.

August 29, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 064
Dated August 15, 2023

Request:

Please refer to NIPPC's data request 56. In PGE's response, PGE objected to the request because PGE claims the requested information would not be known to members of PGE's RFP Team. Please have PGE's benchmark preparation team and/or PRR's preparation team provide an updated response to NIPPC data request 56.

Response:

For convenience, NIPPC's Data Request No. 56 is set forth again below:

In PGE's updated Appendix P, PGE states it may use land in Northeast Oregon to support a solar resource. Please provide a narrative explanation of any other existing interconnection and transmission assets located around the site that PGE intends to use, whether those assets have been included in PGE's rates, the total value and revenue requirement impact of those assets, and whether those assets have been depreciated (and if so, the remaining undepreciated amounts). Please clarify which utility-controlled bid elements will be used for a PGE benchmark bid.

In response to NIPPC's Data Request No. 64, PGE's Benchmark Team responds as follows:

Please refer to the Benchmark Team's response to NIPPC's Data Request No. 62, which describes forthcoming updates to Appendix P to the 2023 All-Source Request for Proposal (RFP) of all current elements that may be used for a benchmark bid.

PGE intends to supplement this response with the requested information concerning whether those assets have been included in PGE's rates, the total value and revenue requirement impact of those assets, and whether those assets have been depreciated (and if so, the remaining undepreciated amounts).

September 14, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE *First Supplemental* Response to NIPPC
Data Request 064
Dated August 15, 2023

Request:

Please refer to NIPPC's data request 56. In PGE's response, PGE objected to the request because PGE claims the requested information would not be known to members of PGE's RFP Team. Please have PGE's benchmark preparation team and/or PRR's preparation team provide an updated response to NIPPC data request 56.

Original Response (Dated August 29, 2023):

For convenience, NIPPC's Data Request No. 56 is set forth again below:

In PGE's updated Appendix P, PGE states it may use land in Northeast Oregon to support a solar resource. Please provide a narrative explanation of any other existing interconnection and transmission assets located around the site that PGE intends to use, whether those assets have been included in PGE's rates, the total value and revenue requirement impact of those assets, and whether those assets have been depreciated (and if so, the remaining undepreciated amounts). Please clarify which utility-controlled bid elements will be used for a PGE benchmark bid.

In response to NIPPC's Data Request No. 64, PGE's Benchmark Team responds as follows:

Please refer to the Benchmark Team's response to NIPPC's Data Request No. 62, which describes forthcoming updates to Appendix P to the 2023 All-Source Request for Proposal (RFP) of all current elements that may be used for a benchmark bid.

PGE intends to supplement this response with the requested information concerning whether those assets have been included in PGE's rates, the total value and revenue requirement impact of those assets, and whether those assets have been depreciated (and if so, the remaining undepreciated amounts).

First Supplemental Response (Dated September 14, 2023):

The following provides the requested information based upon the September 1, 2023 update to PGE's Appendix P – Benchmark Submission to the 2023 All-Source Request for Proposals.

Biglow Canyon Large Generator Interconnection Agreement (LGIA)

Included in PGE's prices	Yes
Capital or O&M	Capital (owned asset)
Original Cost	\$15,612,934
Current amount in prices	\$0 (asset is fully depreciated)

Biglow Canyon Transmission Rights

Included in PGE's prices	Yes
Capital or O&M	O&M (BPA PTP Transmission Rights)
Original Cost	N/A
Current amount in prices	450 MW of long-term firm BPA PTP rights at current BPA Contract rates

Wheatridge LGIA

PGE does not have an asset record for this.

Wheatridge Transmission Rights

Included in PGE's prices	Yes
Capital or O&M	O&M (BPA PTP Transmission Rights)
Original Cost	N/A
Current amount in prices	300 MW of long-term firm BPA PTP rights at current BPA Contract rates

Grasslands Substation¹

Included in PGE's prices	Yes
Capital or O&M	Capital
Original Cost	\$24,170,856
Current amount in PGE's property record (as of 7/31/2023) and annual depreciation expense	\$20,690,992 included in net plant and \$610,488 in annual depreciation expense

Generation Lead Line at Grasslands²

Included in PGE's prices	Yes
Capital or O&M	Capital
Original Cost	\$19,282,197
Current amount in PGE's property record (as of 7/31/2023) and annual depreciation expense	\$16,437,221 included in net plant and \$503,283 in annual depreciation expense

¹ PGE notes that Appendix P does not specifically identify this asset, only the generation lead line

² PGE notes this property record includes all transmission plant assigned to "Carty Generating Plant" and thus may not solely be the lead line from Grasslands to Slatt.

August 29, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 066
Dated August 15, 2023

Request:

Please provide a citation to the draft RFP that precludes PGE from disclosing a bidder's company name, a benchmark's partner names, and a bidder's project name.

Response:

PGE's draft RFP (referring to the main document that discusses the RFP process and structure) does not include any specific language on what PGE may or may not disclose. Rather, the non-disclosure agreement – provided as Appendix L to PGE's draft RFP filing within Docket UM 2274 – describes the information safeguards to protect bidder confidentiality.

August 29, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 067
Dated August 15, 2023

Request:

Please identify whether PGE intends to release a bidder's company name, a benchmark's partner names, and a bidder's project name when it identifies the initial shortlist and final shortlist similar to how PacifiCorp has done in past RFPs (*see, e.g., In re PacifiCorp Application for Approval of 2020 All-Source Request for Proposal, Docket No. UM 2059, PacifiCorp's Updated Request for Acknowledgement of Final Shortlist of Bidders in 2020 All-Source Request for Proposals (Corrected Updated Requested) at 27 (Aug. 12, 2021)*). If PGE believes this information is would be confidential and cannot be disclosed publicly, then please identify what changes are necessary to the Non-Disclosure Agreement (Appendix L of draft RFP) in order to publicly disclose this information.

Response:

PGE does not intend to release bidder names at the time of initial shortlist nor final shortlist. PGE reads Section 1(a) of the draft non-disclosure agreement as designating all bidder-specific information as confidential:

“all information concerning the Disclosing Party's and its affiliates', and their customers', suppliers' and other third parties' past, present and future business affairs including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies;”

A change to this section of the non-disclosure agreement would be needed to clearly specify that bidder names and project names are not designated as confidential information.

August 29, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 068
Dated August 15, 2023

Request:

Please have PGE's benchmark preparation team and/or PRR's preparation team identify whether PGE intends to partner with PRR to submit a benchmark bid(s). If so, please provide drafts of all the agreement that are necessary for this type of partnership for a benchmark bid. If PGE is unwilling to provide drafts of the agreements, then please provide a list of the typical agreements for a PGE-PRR benchmark partnership.

Response:

PGE's Benchmark Team does not intend to partner with PRR to submit an affiliate bid(s). PGE's Benchmark Team understands (based upon published RFP Team questions and answers), that PRR may be used as a vehicle for any PGE owned solar resource to obtain the full benefit of certain tax credits on behalf of customers.

As provided in the Commission order approving the affiliated interest agreement with PRR, Order No. 23-294, Condition 1, the agreement that would be used by PRR is the "Commission-approved RFP form agreement with changes limited to those based on the characteristics of the specific bid and project."

September 5, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 069
Dated August 15, 2023

Request:

Please refer to Order No. 23-294 at 2 in Docket No. UI 489 that states “Given the potential for PRR projects to have risks associated with performance, default, and other factors that are not the same as those implicated in traditional [power purchase agreements (‘PPAs’)], the RFP process must review and consider these unique risks and ensure that they are addressed.” Please explain how PGE reviewed and considered the unique risks associated with a PRR bid as identified in the Commission’s order, and please identify each provision of the PPA that has been revised to consider those risks.

Response:

PGE has requested a brief suspension of the procedural schedule in Docket No. UM 2274 to work through questions that may impact the timing and structure of the 2023 RFP, including potentially the provision referenced above. PGE will consider the potential risks as directed in Order No. 23-294 and will propose any needed changes for review as part of the Commission’s consideration of the RFP structure.

November 9, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 080
Dated November 1, 2023

Request:

Please refer to Order No. 23-294 in Docket No. UI 489 that conditions approval of PRR on any PRR bid being treated as a benchmark resource with regards to Oregon's competitive bidding rules in OAR 860-089. (See Order No. 23-294 at 1 (Condition 1)). See also PGE's Response to NIPPC Data Request 76 that states third-party developer Build-Transfer Agreement ("BTA") bids will be treated as benchmark bids. However, in PGE's RFP Affiliate Services Overview Memo filed on October 30, 2023, PGE states "Any PGE-sponsored benchmark ITC-eligible solar ownership bid will be submitted and scored consistent with the competitive bidding rules." The diagram on page 5 states "Benchmark bids are submitted and scored prior to any bids being received by third- parties." Will third-party BTA or APA bids (that are not sponsored by PGE) be required to be treated as a benchmark bid for compliance with the competitive bidding rules?

- a. Will the third-party developer BTA bid be required to be submitted before other third-party bids as required by OAR 860-089-0350(1)?
- b. Will PGE be required to score the third-party developer BTA bid before other third-party bids as required by OAR 860-089-0350(3)?
- c. Will the Independent Evaluator independently score and evaluate the unique risks and advantages (including constriction cost over-runs, reasonableness of forced outages rates, reasonableness of any proposal or absence of a proposal to offer electric company owned or benchmark resource elements, end effect values, environmental emissions costs, reasonableness of operation and maintenance costs, adequacy of capital additions costs, reasonableness of performance assumptions for output, heat rate, and power curve, and specificity of construction schedules or risk of construction delays) associated with the third-party developer BTA and compare the results with PGE's scores as required by OAR 860-089- 0450(5)-(7)?

Response:

- a. Third-party developer BTA or APA bids for ITC-eligible solar resources will be required to be submitted and scored with Benchmark bids before all other third-party developer bids are submitted and scored. This is not required by the competitive

bidding rules, but is a design choice recommendation from Staff that PGE has agreed to.

- b. See response to subpart a.
- c. Yes.

November 9, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 081
Dated November 1, 2023

Request:

In PGE's RFP Affiliate Services Overview Memo, PGE states "[u]pon execution of the PGE-sponsored benchmark BTA or APA between PRR and the third-party, PGE's benchmark team would then convert the BTA or APA price to a PPA price utilizing standard economic practices" (the left side column in the diagram on page 5) and "[u]pon execution of the BTA or APA between PRR and the third-party, PGE's RFP evaluation team would then convert the BTA or APA price to a PPA price utilizing standard economic practices" (the right side column in the diagram on page 5). Please explain why the PGE benchmark team and PGE RFP evaluation team are both converting the BTA or APA price to a PPA price. Why is one of the teams not converting all the BTA or APA prices to PPA prices?

Response:

The PGE benchmark team is best positioned to convert executed PGE-sponsored benchmark BTA or APA bids to a PPA price due to their familiarity of those bids. The RFP Staffing Principles would still be enforced during the process of converting BTA or APA bids to a PPA price, so the PGE benchmark team is precluded from working on converting any third-party developer BTA or APA bid to a PPA price.

November 9, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 082
Dated November 1, 2023

Request:

PGE references “price utilizing standard economic practices” when a BTA or APA price will be converted to a PPA price.

- a. Please explain in detail how the price will be converted.
- b. Is there a set formula that converts the price or is it different for each bid.
- c. Please provide an example of the calculations for converting a BTA or APA price to a PPA price.
- d. Has the Independent Evaluator reviewed the methodology that will be used to calculate the prices? If so, please provide such review.

Response:

- a. PGE plans to use standard financial formulas to ensure that PRR’s ownership costs, whether through an APA or BTA, are recovered through PPA contract prices. The standard financial formulas would be applied so that the present value revenue requirement of all future forecasted PPA payments is less than or equal to the present value of the future forecasted revenue requirement of the APA or BTA as evaluated in the RFP. This standard financial formula would be applied to all bids, including both benchmark APA and BTA and third-party APA and BTA bids. The terms and conditions of the formula are set in advance via adherence to the Form PPA to be approved in UM 2274. PGE is incentivized to ensure that the PPA price is no greater than the BTA or APA bid price as evaluated in the RFP, because the PPA price would be reviewed for regulatory prudence in a subsequent ratemaking process. The IE review and report will serve as another checkpoint to ensure prudent decision-making.
- b. See response to subpart a.
- c. There is no existing calculation to share. PGE will follow the approach described in subpart (a) to convert the BTA or APA price to a PPA price. The price conversion will focus on the economic principle of keeping the present value revenue requirement of all future forecasted PPA payments to less than or equal to the present value of the future forecasted revenue requirement of the APA or BTA as evaluated in the RFP.

- d. The Independent Evaluator (IE) has not reviewed any methodology for converting a BTA/APA acquisition to a PPA structure. As with prior RFPs, PGE expects that the IE will maintain involvement throughout the process and will review the conversion as it occurs.

November 9, 2023

To: Irion Sanger
Northwest and Intermountain Power Producers Coalition

From: Erin Apperson
Assistant General Counsel III

Portland General Electric Company
UM 2274
PGE Response to NIPPC Data Request 084
Dated November 1, 2023

Request:

PGE states it will convert the BTA or APA price to a PPA price after the bid is selected on the final shortlist and the BTA or APA is executed between PRR and the third-party developer. Please explain why the BTA or APA price is not converted to a PPA price before the scoring and evaluation of bids.

Response:

The BTA or APA contract needs to be negotiated and executed before the initial BTA or APA price can be converted to a PPA price. PGE will score bids based on the submitted BTA or APA price, with tax credit assumptions around normalization. If top performing, PGE will identify the bid as part of the final shortlist request for acknowledgment and will begin commercial negotiations from the price submitted as BTA/APA. This process flow is intended to remove subjectivity of a BTA/APA to PPA conversion during the scoring process, and would look to request regulatory acknowledgment based on the price submitted by the bidder. PGE would then look to convert to a PPA price that does not exceed the BTA/APA price, taking into account the PPA form contract and the contractual BTA or APA risks, which will vary between different third parties.