

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2274**

In the Matter of  
  
PUBLIC UTILITY COMMISSION OF  
OREGON,  
  
2023 All-Source Request for Proposals.

COMMENTS OF NEWSUN  
ENERGY LLC ON STAFF REPORT

**I. INTRODUCTION**

NewSun Energy LLC (“NewSun”) appreciates the opportunity to provide comments on the Staff Report for Portland General Electric’s (“PGE”) 2023 Request for Proposals, Request for Partial Waiver of Competitive Bidding Rules. Staff has recommended that the Public Utility Commission of Oregon: (a) Approve PGE’s Scoring and Modeling Methodology subject to the conditions outlined in the Staff memo; and (b) Approve PGE’s final draft of the 2023 All-Source Request for Proposals, as modified by the Company in Reply Comments filed June 28, 2023, with an update to Appendix P filed September 1, 2023 and supplemental filing on December 11, 2023, subject to the conditions outlined in the Staff report.

Overall, Commission Staff did a uniquely thorough and commendable job on its report, which in many ways appears to be the best RFP staff report we have ever read at the Commission. NewSun agrees with many of the conditions Staff has recommended to improve PGE’s RFP.

Despite this, and Staff identifying many of the major issues, the proposed remedies and solution on most of the key issues to protect against PGE’s ability to abuse

the process to advantage, are woefully inadequate. The protections, conditions, barriers, scrutiny and transparency required to *prevent* a structurally biased process, or, at a minimum, a framework ripe for abuse potential--and woefully insufficient in transparent and publicly scrutinizable standards and scoring as relates bids, and their fundamental viability, have not been put in place.

NewSun does have several recommendations and clarification to the RFP. As further described below.

We also support NIPPC's position that the affiliate bid must be banned from participation.

**A. Oregon Law Requires A Fair, Objective, and Transparent Scoring and Modeling Methodology**

NewSun's primary concern with the RFP design is that it still lacks transparent and objective scoring criteria. Oregon law requires that RFP design be "fair, transparent, and objective." ORS 469A.075(4)(d) states that "[t]he commission shall adopt rules [p]roviding for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy resources that generate qualifying electricity." Pursuant to this statutory mandate, the Commission adopted OAR 860-089-0010. ("The [RFP] rules . . . are intended to . . . establish a fair, objective, and transparent competitive bidding process . . ."). Thus, in designing and approving the RFP, the Commission must adopt a scoring system that is fair, objective, and transparent. The end result of which should be a bidding process that allows for diverse ownership of renewable energy resources.

The outcome proposed here achieves *none* of these statutory criteria. It therefore

must be remedied, to clearly and overwhelmingly achieve those statutory standards.

“The IE will do it”, as a conceptual answer to these standards (and deficiencies), is not adequate. Each of the most critical factors on bidder viability will not be scored in a public manner. Indeed, the Staff proposes that there *is no bidder or publicly transparent scoring for any of the key bid factors*. Not for interconnection viability or economics. Not transmission viability. Not for permitting and entitlement. Not for curtailment exposures.

Each of these is highly susceptible to some basic objective scoring criteria. But none are adopted. Only minimum criteria, after which the most important project viability attributes will be evaluated in a vacuum, closed off to scrutiny as to actual application. That non-transparent, non-objective criteria approach will apply to the PGE benchmark and affiliate bids, as PGE competes with others non-PGE bidders—i.e. with the bidders which, should they win, permanently reduce PGE’s profit opportunity.

Instead of objective criteria, using transmission as an example, the PGE’s proposal (as endorsed by Staff) is to set the standard for Minimum Bidder Requirements at an essentially meaninglessly low standard (any TSR in BPA’s queue), then evaluate the bidder’s “plan” to achieve transmission service in a vacuum. Staff proposes that IE will aid in this evaluation. But, first, the IE has no established credentials (nor related briefing) for expertise in the BPA TSEP process, nor in its complex, development realities-challenge, case-by-case application to PNW generation projects. Certainly none sufficient to critically scrutinize the spectacularly diverse array of claims, circumstances, and plans which may apply to bidder’s claimed “plan”. Bidders which include PGE’s

plan—while PGE will be in the room and regular contact with the I.E. as the non-transparent, post-RFP-Design Order evaluation criteria are evaluated.

In short, this (as applies repeatedly in the RFP design) meets *none* of the statutory criteria. It is not “transparent” (bidders and stakeholder literally have *no idea at all* how the “plans” will be scored or evaluated). It is not objective (again *no criteria, much less objective ones; indeed arguably the opposite, as IE subject opinion of what criteria do and don’t apply*). And it is not “fair”. The RFP “buyer” is bidding next to these same bids, submitting their own “plan”, while bidding against everyone else in the market, while in the room with the evaluator. The evaluation criteria process could be both too harsh and too forgiving—and would be developed in a vacuum, completely non-transparently to stakeholders, in consultation with PGE, as they compete with us, and maintain knowledge of their own bids and financial outcomes as such unfolds. This is patently un-fair, not “fair”.

The (very simple) solution here is objective, points-based scoring criteria, related to the quality, maturity, and viability of key bidder project aspects. At a minimum, these are: Interconnection, Transmission, Permitting, Site Control.

History of One-Sided Outcomes Indicates a Broken Process: It appears necessary for NewSun to remind the Commission (as have others, such as NIPPC, OSSIA, etc), that the Commissioner’s prior approved bidding process that results in diverse ownership of renewable resources have come up short.

It is no secret that PGE and its affiliates almost always win their bidding processes. In its most recent RFP, for example, PGE was the overwhelming winner of one of the largest resource acquisitions in the utility’s history: three power plants totaling

over \$1 billion in investment.<sup>1</sup> And was effectively a part of *all the winning bids' projects, as the other half of its wind project build transfer was a PPA to the same owner they get to buy a rate-base-able asset from—and picked as a winner.* Although PGE has not publicly disclosed the full details of the contracts that it has executed, PGE appears to have a direct ownership interest in three of the four resources it will acquire through that RFP.

A few years prior, PGE again won its own RFP, having successfully prevent many of the viable bidders from participating in the RFP, due to bid criteria; again splitting a Build-Transfer project with a PPA deal at Wheatridge. Once again, giving PGE a rate-based asset. From a process that, despite 1000s of MW of options in the PNW market, only had one hand's worth of fingers with of bidders. Surprise, PGE won, again.

This continued the prior pattern. In 2013 PGE awarded a bid to its own remote Carty Generating Station over a third-party bid that was not only cheaper but also located directly on PGE's system. The international firm that PGE hired to construct Carty Generating Station had no experience with that type of resource. PGE eventually had to fire the unqualified general contractor and assume control of the project's final construction.<sup>2</sup> The Carty fiasco was spectacular. But PGE got another multi-hundred million dollar rate-based asset.

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<sup>1</sup> Sickinger, Ted, *In Portland General Electric's \$1.3 Billion Investment Plan, Winning Bidder is PGE*, THE OREGONIAN (Jun 15, 2023), [https://www.oregonlive.com/business/2013/06/pges\\_1\\_billion\\_aquisition\\_plan.html](https://www.oregonlive.com/business/2013/06/pges_1_billion_aquisition_plan.html).

<sup>2</sup> Plaven, George, *PGE Takes Over Construction of Carty*, EAST OREGONIAN (Dec 21, 2015), <https://www.>

These results speak for themselves. The Commission needs to do much more to affirmatively encourage and promote fairness, objectivity, and transparency in the bidding process.

This appears to happen over and over again, without exception, in *every* RFP. *When is the Commission going to DO something about it?*

Where the rubber meets the road is in the scoring methodology. Little else matters in the RFP design if PGE and its captive “independent evaluator” are able to score bids in a black box based solely or heavily on subjective criteria. This gives PGE nearly *carte blanche* to select its own projects, even when they are more expensive and more risky than competitive bidders. The current RFP design suffers from the same fatal flaw as the prior RFP designs—and it is therefore likely to end in the same outcomes. The relies too heavily on subjective inputs and secretive evaluations.

Regardless, the Commission has an obligation to adopt standards which *meet the statutory criteria*. Your discretion here does not exceed the plain language of the law. As such, changes are required. You must ensure the RFP Design meets these criteria. For the RFP Design—the architecture of who *can* bid and how PGE *will* score its *competitors*—is the backdrop against which the entire market will live and die—against competition will or won’t actually successfully occur—and the nearly entire protective structure against IOU abuse of the entire competitive bidding rules and process impose in Oregon rules and statute.

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[eastoregonian.com/news/local/boardman-pge-takes-over-construction-of-carty/article\\_22b280a9-ba81-58bf-a464-657e74a1bb2f.html](http://eastoregonian.com/news/local/boardman-pge-takes-over-construction-of-carty/article_22b280a9-ba81-58bf-a464-657e74a1bb2f.html).

NewSun believes (as do others) that a scoring matrix can be developed—publicly transparent, which can show relative bidder qualities, alongside price proposal<sup>3</sup> based scoring. We request you make space to support that being developed and implemented.

**B. Transmission Scoring**

A more objective and transparent scoring system is urgently needed to sort bidders and potential projects based on viability of transmission and interconnection. Appendix N of RFP DRAFT Scoring Criteria refer to having a “plan” for securing transmission, and an “eligible TSR” -- rather than actually having the transmission confirmed -- or even identified as explicitly offered by BPA. While this language may refer to the minimum bidder requirements, PGE should confirm that projects having a “plan” for transmission are not scored the same as a project having secured firm transmission rights. It appears that all projects that are merely in “Study” mode with BPA may be “scored” the same and given equal rights to participate in the RFP, irrespective of any fundamental viability criteria. As NewSun has previously noted, this is merely a generic designation given by BPA to all transmission service requests, and does not indicate any likelihood of transmission service. There are over 17,000MW of TSRs in “Study,” and the vast majority of them will never come on-line. Thus, merely having a transmission “plan,” or being in “Study,” is neither a sufficient nor even a useful

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<sup>3</sup> Price proposals are not binding. The Commission’s Final Shortlist Approval—its last meaningful regulatory oversight opportunity before PGE negotiates and later signs the actual binding PPAs—precedes final PPA pricing. Thus the scoring—and shortlisting and PUC FSL approval--is overwhelmingly based on a bid feature that may actually *change after the IE report, after the Staff review, and after the PUC Final Short List approval order.*

for distinguishing between the few projects that have transmission service, or are likely to be offered transmission services, from the many project that may never actually obtain transmission service.

This not only expands the potential for abuse by PGE, but unnecessarily burdens the bid scoring process (and the IE and Staff jobs in reviewing bids) by forcing extra pointless work to evaluate bids—and their transmission service plans—that have no chance of timely transmission service. The raw physical work of evaluating a massively greater than necessary (due to non-viability) number of bids is further compounded by how this will expand the complexity and time required to even *develop* evaluation criteria. Worse yet, that evaluation will happen behind closed doors. How will bidder know how they and others are *actually* being scored? Are hopeless bids scored equally those the TSEP report (due after the RFP Approval date is scheduled) indicates are being offered service? We don't know. We can't know.

The presumptions seems to be “trust us”, “trust PGE”, and/or “trust the IE”. But that is not only not the statutory standard, but patently anti-thetical to the *point* of the Competitive Bidding Rules and statute. “Trust us” doesn't work. As history has shown. Which is why these rules were added. To put the review criteria *into* transparency. PGE's RFP design has done the opposite. By shifting the overwhelming evaluation of bids into MBR-threshold-only, then black-box evaluation with no transparency.

NewSun agrees with OSSIA that the requirement for bidders to demonstrate an “achievable plan” for transmission is absolutely too subjective and discretionary. The IE will do it just does not cut it. *Stakeholder and bidders have a right to know exactly how they will be scored—and how PGE will be scored—and what the results are.* They



should be visible side by side, bid by bid. And PGE should never have any chance of getting a 10 out of 10 on transmission when an equivalent bid gets 2 out of 10. That should be verifiable, full stop.

Fortunately, the transmission viability of a project *can* be scored using quantitative tools that are clear and knowable. Clearly, those projects that are objectively further in the TSR process should be scored higher—in concrete numerical terms—than those projects that are at the early stages of the process and therefore unlikely to ever realize any of the limited transmission capacity that is available. Further, these objective, numeric scores should be made public to ensure that the scores were assigned correctly, and weighted correctly in PGE’s overall bid evaluations.

For example, “confirmed” gets 10 points, while no written evidence of service being achievable to support COD at the POR gets zero.

In addition to transmission viability, the RFP design should also objectively score different transmission products. As Staff correctly noted, long term firm transmission is the most secure transmission product offered by BPA and is in short supply.<sup>4</sup> PGE indicated that there is approximately 700 MWs of long term firm TSRs available in PGE’s balancing area. NewSun supports PGE’s approach of prioritizing resources that utilize the remaining inventory of LTF and CF-NH rights for dispatchable capacity resources, especially those intending to achieve the December 31, 2025 COD to meet PGE’s immediate capacity needs. This same approach for prioritizing projects that utilize the remaining inventory of LTF and CF-NH rights should also be utilized for non-

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<sup>4</sup> Id.

emitting resources. Instead of holding non emitting resources to this standard, PGE is agreeing to a more flexible approach for such projects by allowing an extension of the COD to the end of its CEP/IRP action plan period, or December 31, 2027. NewSun urges the Commission to require PGE to prioritize projects that utilize the remaining inventory of LTF and CF-NH rights for non-emitting resources.

One of the minimum bidder requirements includes a requirement that bidders have transmission rights using one of three conforming equal to 80 percent of the projects maximum interconnection limit. Staff and OSSIA have recommended to reduce the transmission threshold in the MBR's from 80 percent to 70 percent, in order to "pursue the largest universe of potential projects in the RFP."<sup>5</sup> NewSun does not object to this change to the MBRs, but the transmission threshold should be considered in the scoring for projects on the short list.

Meanwhile, as noted in NewSun's 12/20/24 Motion for Schedule Changes, the BPA TSEP report—i.e. the most important document available to evaluate such matters—is due in the next 3 weeks. By simply pushing the public meeting for approval out until early February, the Commission could incorporate clear language, direct standards, and criteria to remedy this problem. To do so (and to avoid harm), the Commission should and must delay its 1/4/24 planned public meeting to approve PGE's RFP Design, and allow further comment on these matters.

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<sup>5</sup> Id. at 15

### **C. Interconnection Scoring**

The Independent Evaluator noted that queues for interconnection studies were a significant impediment to resources meeting aggressive commercial operation dates.<sup>6</sup> The IE recommended relaxing the requirement for submission of a completed facilities study until after selection to the final shortlist. The PGE Benchmark Team proposed easing the requirement that off-system bidders have an active transmission service request, which generally requires participation in the BPA Transmission System Expansion Process (TSEP). NIPPC also commented on interconnection issues and agreed with the IE's recommendation to remove the requirement for a completed facilities study for selection to the final short list.<sup>7</sup>

As with transmission service, the RFP design and bid review process needs to be able to discriminate between projects that have a viable interconnection pathway from those that do not. The RFP design needs to recognize BPA's newly announced final policies on interconnection reform. Specifically, BPA will require all LGIRs show (i) concrete site control; and (ii) a Commercial Readiness demonstration, by June 30, 2024 (plus cure periods). Those queue positions failing to do so will be removed, and the entire queue will be re-stacked. There is also major push for BPA to finish whatever studies it can before June 30th. Depending on status of those reports, certain queue positions may be able to be fast-tracked, deemed "Late Stage," and/or be grandfathered into the current serial process. Generally, projects need a Facilities Study, SIS, or BPA designation of

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<sup>6</sup> Staff Report p. 11.

<sup>7</sup> NIPPC Comments on Final Draft RFP, June 16, 2023 p. 6.

being “late-stage” worthy (simple interconnection). *All other queue positions* will be relegated to Transition Cluster study process. Any transition cluster queue positions are (with very few exceptions likely) are unlikely to complete their *study process* before **June 2027**.

Thus, *essentially nothing that is not ahead of the transition cluster dividing line -- grandfathered as serial or Late Stage -- has any chance of being online in the RFP's COD timeline requirements (or even close)*. These outcomes will be tentatively known or knowable in Q2-2024 (and some earlier), but definitively known by late July 2024, and they must be expressly considered as part of the scoring and evaluation process.

RFP Design and schedule should be adjusted further to account for TC-25, queue removals, and

The Commission should *not* allow bids BPA has removed from the queue, as a result of its TC-25 GI Reform process, to have any chance of being on the Final Short List which the Commission review to approve. Nor should it put stakeholders and non-PGE bidders in the position of having to argue from the outside (i.e. via appeals and protests, after RFP Design Approval) to fix things that we know should be addressed now. These are preventable and necessary and simple changes. Again, the decision should be delayed to allow discussion and adaptation.

**D. Compliance with ORS 469A.405(2)**

The Scoring and Modeling Methodology does not appear to account for the state’s policy goals included in ORS 469A.405(2). ORS 469A.405(2) provides

[It is the policy of the State of Oregon...] [t]hat electricity generated in a manner that produces zero greenhouse gas emissions also be generated, to the maximum extent

practicable, in a manner that provides additional direct benefits to communities in this state in the forms of creating and sustaining meaningful living wage jobs, promoting workforce equity and increasing energy security and resiliency.

The scoring and modeling methodology should allocate points to projects that meet the policy goals delineated in ORS 469A.405(2). The goals include providing “additional direct benefits to communities in this state” by “creating and sustaining meaningful living wage jobs”, “promoting workforce equity” an “increasing energy security and resiliency”. NewSun is not suggesting that out of state projects be prohibited in the RFP, only that PGE recognize the State’s policy goals and adjust the scoring accordingly.

The policy goals in ORS 469A.405(2) are intended to provide benefits to Oregonians. An Oregon based renewable energy project would provide construction jobs to Oregonians, and would also help increase local energy security and resiliency. Out of State projects, which clearly further clean energy policy goals in general, do not provide the specific benefits to Oregonians outlined in ORS 469A.405. Accordingly, PGE should allocate points in the Scoring Matrix to projects that further the goals in ORS 469A.405.

These should be added to other project development viability scoring. They should facilitate achievement of the “maximum extent practicable” policy adopted by the State of Oregon in HB 2021. We’d suggest 20 points, out of 50 non-price points, based on a mix of factors the bid projects would achieve (jobs, resiliency, etc).

**E. Timing of Commission’s Decision**

On or about December 20, 2023, NewSun filed a Motion requesting that a scheduling conference be held in this docket. There are certain events expected to happen in the near future that will likely impact the Commission’s decision in this case. Without

repeating the entirety of NewSun’s Motion, these events include the pending Commission decision on HB 2021 implementation in UM 2273 and BPA’s long-awaited TSEP Report on pending TSRs. As NewSun explained in its Motion, the UM 2273 final order could substantially affect the design of the RFP by providing the Commission’s guidance on what is procured, when it is procured, and where it is procured to meet the requirements and policy goals of HB 2021. Further BPA’s TSEP Report will provide greater transparency into which projects actually have a viable transmission “plan.” As NewSun also noted in its Motion, the procedural schedule for this docket has always assumed that these two events would occur *prior* to a final order in this docket. A short delay in the Commission’s decision would ensure that remains true—and should not have any impact on the timing of the completion of PGE’s RFP process. Thus, the Commission should both allow another round of comments to address these issues and defer its ultimate decision by a few weeks to make sure it is fully informed and accurate.

**F. Other Comments**

As noted, we believe additional review and comment time is needed. The Staff Report was very detailed, and therefore very long. Stakeholders had barely a week to review, analyze, and comment on a 100 page document. A second round of comments may be helpful to the Commission.

NewSun supports OSSIA’s comments.

NewSun also support NIPPC’s comments through page 25.

We should appreciate further opportunity to review other parties’ comments and review and comment further before the Commission’s decision.

### III. CONCLUSION

NewSun appreciates the opportunity to provide comments on the Staff Report and looks forward to working with PGE, Staff, and other Stakeholders in the remainder of the docket.

Dated this 21<sup>st</sup> day of December 2023.

Respectfully submitted,

s/Richard Lorenz  
Richard Lorenz, OSB No. 003086  
Cable Huston LLP  
1455 SW Broadway, Suite 1500  
Portland, OR 97201  
(503) 224-3092  
Email: rlorenz@cablehuston.com