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To: OPUC Staff, Independent Evaluator and PGE RFP Scoring Team

From: PGE Benchmark Team

Date: December 21, 2023

Subject: Comments Regarding Staff's Report (UM 2274)

PGE's Benchmark Team appreciates the opportunity to comment and respond to select Staff recommendations included in the December 12, 2023, Staff Report (Staff Report). In these comments, PGE's Benchmark Team responds to the recommendations that specifically impact Benchmark Bids (as further described below) and does not comment on general issues related to RFP design.

Benchmark Bids Include Various Structure Types

PGE's Benchmark Team would like to clarify the language used in these comments. The term 'Benchmark Bid,' to PGE's knowledge, has not been defined beyond the language used in ORS 860-089-0300(2), which describes a benchmark bid as a 'cost-based alternative for customers.' While subject to interpretation, the definition in the competitive bidding rules likely refers to competitive bids that are sponsored by the Company *and* involve utility ownership of the resource. While this may have been the most common structure for a Benchmark Bid in early PGE RFP proceedings, it is important to understand that PGE's practice, specifically in its most recent RFPs (2018 and 2021) and as expected for the 2023 RFP and future solicitations, includes a broader range of commercial structures being utilized for Benchmark Bids. Benchmark Bids no longer solely refer to self-builds designed and built on behalf of the utility, but include third-party developer partnerships. Benchmark Bids may continue to include cost-of-service utility owned projects, third-party owned PPA projects, a mix of both, and/or affiliate-owned PPA projects. As a result, the Commission should keep in mind that because there is more diversity in the structures proposed for Benchmark Bids, requiring disclosure of Benchmark Bid elements may involve requiring the disclosure of bid elements from third-parties and not just PGE, and thus present different policy considerations.

RFP Condition 3 and RFP Condition 12 - Providing Transparency While Preserving Competition

The Benchmark Team has concerns with the disclosures included in Staff's proposed RFP Condition 3 and RFP Condition 12:

> *RFP Condition 3: 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.*

RFP Condition 12: 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.

Staff's proposed RFP Condition 3 would compel PGE's Benchmark Team to make significant disclosures regarding expected bid elements that far exceed the information required to be shared consistent with the Commission's Competitive Bidding Rules (CBRs). 860-089-0300 of the CBRs require only that the company disclose utility-controlled bid elements that benchmark bids intend to rely upon in their bid submissions. Staff's proposed disclosures exceed these requirements and would include commercially sensitive information such as the projects' development status, performance expectations, and cost structure details of Benchmark Bids. RFP Condition 12 specifically would appear to require disclosure of commercially quoted LTSA costs. Additionally, Staff proposes the disclosures be made prior to RFP issuance, such that they would be available for review by all competing bidders prior to the bidding deadline. As proposed, the same disclosures are not required of competing bidders.

Staff's Report notes that Idaho Power and PacifiCorp have disclosed certain Benchmark Bid information. However, the PGE Benchmark team believes that disclosures in separate proceedings should not limit consideration of the consequences of Staff's proposed conditions. For one, the listed information requested by Staff is different and goes beyond disclosure made by Idaho Power and PacifiCorp. Second, to the PGE Benchmark Team's knowledge, these disclosures were made in response to different circumstances relating to those utilities' role as transmission provider of RFP bids and also made following different arguments advanced by the respective utilities in those proceedings. PGE's Benchmark Team asks the Commission to consider the appropriateness of RFP Condition 3 and RFP Condition 12 in this proceeding given the arguments and alternatives offered below.

As an initial matter, as discussed above, PGE is not the only party involved in certain Benchmark Bids. PGE is party to non-disclosure agreements with third parties that would prevent PGE from publicly disclosing the enumerated items on a voluntary basis. Per PGE's standard NDA terms and conditions, disclosure of these items would require the mutual agreement of the NDA counterparty or could be furnished at the demands of a Commission Order. However, even though the Commission may compel disclosure, there are more important public policy reasons why the Commission should decline to do so.

First, should counterparties perceive that the Commission is comfortable forcing public disclosure of information protected under NDA, it is reasonable to expect that counterparties will be less willing to share sensitive information with PGE, which could have a negative effect on these communications and impede PGE's resource acquisition opportunities and activities, limiting PGE's ability to act in the best interests of customers.

Second, disclosure of the proposed elements of Benchmark Bids would place Benchmark Bids at a direct competitive disadvantage in the 2023 RFP (or any RFP). The disclosures would reveal 1) important elements of benchmark bid strategy and 2) benchmark bid economic information. Revealing bid strategy and bid economic information before third party bid submissions allows third-party bidders to adjust their bid strategy and adjust their own economic bid submission to increase the likelihood that the competing bids are found to be superior. For example, if the Benchmark Bid is forced to disclose its expected life and expected efficiency or the term and structure of its Long-Term Service Agreement, a competing bid can conceptualize those marks as measures to beat. Similarly, if a Benchmark Bid is forced to disclose the ambiguously defined product type (perhaps a specified resource delivery that is supplemented by some additional wholesale purchase), a competing resource is free to mimic such product strategy. These proposed RFP requirements appear anti-competitive and at odds with the competitive purpose of the RFP.

Moreover, the long-term consequence of such an RFP design would be to diminish the competitive nature of PGE's RFP process. Should one class of bids be put at an information advantage (third-party bids) at the expense of a second class of bids (Benchmark Bids), it is natural to expect fewer Benchmark Bids for the simple reason that any rational bidder would choose to bid in a fashion that provides a competitive advantage. The resultant loss of bidder diversity is expected to decrease the competitive quality of the RFP in the long-term to the detriment of customers.

The Benchmark Team recognizes that Staff's proposed RFP Condition 3 and RFP Condition 12 may be motivated by a desire to increase transparency in the 2023 RFP, and further recognizes that transparency is an important aim of the bidding process and is recognized in the purpose of the Division 089 rules.[1] However, PGE's Benchmark Team maintains that adoption of RFP Conditions 3 and 12 is not fair and would make the bidding process less competitive in the long-term. Further, the asymmetric information disclosure requirement would appear to be in direct conflict of ORS 860-089-0300 (1)(a), which states that "Electric company and affiliate bids must be treated in the same manner as other bids."

If the purpose of Staff's recommended Benchmark Bid disclosure is to broaden the public review of Benchmark Bid elements, the Commission should consider how such a review would conflict with the CBR's enumeration of IE duties. 860-089-0450(6) enumerates the many IE duties which include a review and evaluation of Benchmark Bids and their assumptions. Public disclosure of only the Benchmark Bids' assumed efficiency, LTSA costs, and expected life will invite third-party comment and establishing an additional venue for stakeholder evaluation and review that is separate and distinct from the processes and duties already described in the CBRs.

PGE's Benchmark Team believes that these tensions with the CBRs can be relieved if the disclosures contemplated in RFP Conditions 3 and 12 are either not required, consistent with past practice, or in the alternative, if they are applied to all bidders, not just Benchmark Bids, such that at time of notice to bid, bidders are all required to provide certain bid elements.

Should the Commission be uncomfortable compelling the disclosure of all Staff's enumerated bid elements for all bidders, the Commission should consider requiring bidders to only disclose those enumerated items which have diminished commercial sensitivity. In the Benchmark Team's judgement, those enumerated items which could be disclosed by all bidders include, Maximum Project Size, County Location, Generation Technology.

<u>RFP Condition 6 - Straw Bids</u>

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[1] Specifically, ORS 860-089-0010 (1) recognizes the purpose of the competitive bidding rules "to provide an opportunity to minimize long-term energy costs and risks, complement the integrated resource planning (IRP) process, and establish a fair, objective, and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms."

The Benchmark Team has concerns with Staff's Proposed RFP Condition 6:

> *RFP Condition 6: 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.*

RFP Condition 6 contemplates that third parties may be allowed to submit "straw" bids. This is in no way contemplated by the CBRs and would be a significant departure from prior practice. Though Staff explains that they intend to use the information associated with scoring these bids to perform sensitivity analyses, the Benchmark Team is concerned that this proposal would inject substantial uncertainty and confusion into the process, and would not likely yield useful data. While Staff is not totally clear regarding the purpose for the "straw" bids, the Benchmark Team assumes that if the third parties are submitting such bids, they are not considered a 'binding' bid. Since they are not binding, bidders would experience no repercussions from underbidding. Additionally, it is not clear that the "straw" bids would reflect "appropriate compensation" for use of electric company resources, as contemplated by OAR 860-089-0300 (3)(a).[2] In light of these concerns regarding straw bids, the Benchmark Team urges the Commission to decline to adopt Staff's proposed RFP Condition 6.

<u>RFP Condition 10 - Form Contract Redlines</u>

The Benchmark Team has concerns with Staff's proposed RFP Condition 10.

> *RFP Condition 10: PGE will require contract redlines from all bidders if their bid price based on contractual or commercial terms other than those contained in the form contracts provided by the Company.*

RFP Condition 10 requires bidders to furnish contracted redlines against full form contracts from all bidders. Such redlining should reveal any bidder's requested modifications of principle terms and conditions, which is an important element of their bid. Without commitment on the principal terms and conditions governing a commercial sale, the bid price that any bidder would submit would be incomplete. For this reason, the Benchmark Team supports inclusion of commercial redlines in the bid submission and evaluation process. However, redlines against complete form contracts is inefficient and logistically unrealistic given the length and complexity of those documents. Instead, the Benchmark Team suggests that term-sheet redlines (rather than full form contract amendments) be accepted as an appropriate and sufficient activity to comply with the requirement of RFP Condition 10.

However, submissions of commercial redlines is not a valuable exercise unless the RFP team commits to the redlines review and commits to incorporating the RFP team's judgments of those redlines into their selection process. While the RFP team has elected to not furnish a non-price score for commercial redlines, it should commit to prioritizing negotiations and selection with final-shortlisted projects that do not insist upon non-market commercial conditions. A

[2] "If electric company resources are offered and made available for use in third-party bids, then the RFP may provide for appropriate compensation of electric company resources by third-party bidders."

requirement for redlines without evaluation or selection consequence will invite bidder behavior to insist upon terms and conditions that transfer risk to PGE and its customers.

PGE's Benchmark Team would be happy to discuss any of these items further. The Benchmark Team appreciates your consideration of our comments and for the time and attention given to the development of this RFP.

For any follow-up questions or discussion, please reach out to Troy Gagliano at troy.gagliano@pgn.com

Sincerely,
PGE Benchmark Team