

April 3, 2024

**Via Electronic Filing**

Oregon Public Utility Commission (“PUC”)  
Attention: Filing Center  
201 High Street, Suite 100  
Post Office Box 1088  
Salem, OR 97308-1088

**Re: UM 2274 – Staff October 30, 2023 UM 2166, Errata Memo for the Record**

Good Afternoon Commission, Staff and UM 2274 Stakeholders:

NewSun Energy LLC (“NewSun”) submits for filing in this docket the attached Staff memo filed in UM 2166 as an errata on February 5, 2024 (originally filed on October 30, 2023). As of the time of writing this letter, that memo was no longer posted to the UM 2166 docket page with a note that states: “This document is temporarily unavailable due to technical difficulties.”

The issues discussed in the memo, especially the newly unredacted portions (highlighted in the attached) are highly relevant to the integrity of the resource solicitation process and should be in the record in this docket. Those newly unredacted portions highlight four important facts:

1. PGE’s benchmark bid that ultimately went on to win the request for proposal (“RFP”) did not meet the minimum bid requirements for transmission, even in the transmission plan narrative submitted by PGE’s benchmark team;
2. Other similarly situated bidders were only given the options to withdraw or downsize, and both chose to withdraw;
3. The independent evaluator failed to protect against this; and
4. Stakeholders who were deprived of knowing this information earlier in the process were also deprived of the opportunity to use this knowledge to better inform comments and advocacy in the design of the present RFP.

These failures have implications also for ratepayers because if the minimum bid requirements reflected the level of transmission that PGE’s benchmark bid had obtained, then more projects could have bid into the RFP and could have been available at an even lower cost than the benchmark bid PGE eventually picked.

Given that this memo was re-released with newly unredacted material after comments and the Commission decision on the design of this RFP, there should be space made available within this process to review and discuss these issues and how they can be avoided.<sup>1</sup> This is especially

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<sup>1</sup> On December 22, 2023, NewSun also filed a request to move the public meeting date from January 4, 2024 until sometime in February so that the RFP design could be informed by other critical information expected in other processes. That request was opposed by PGE and Staff, who both had full knowledge of the information in this memo and was ultimately denied by the Administrative Law Judge. Had that request been granted, the information

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NewSun Letter re UM 2166 Memo

important in light of the commitments made by Staff in that memo to carry lessons learned from that RFP into future RFPs. It is not immediately clear what has been done in this RFP to apply the lesson learned from UM 2166. To the contrary, it appears that the Commission is relying the exact same independent evaluator to protect the process in lieu of other protections that could have been adopted.

As such, NewSun encourages replies to this comment letter and proposes that the Commission host a workshop to discuss lessons learned from the last RFP focused on the newly unredacted portions of that memo that were not known and available to all parties during the RFP design comment period. NewSun requests that stakeholder presentations be permitted at such a workshop and that the agenda should include discussion regarding how the Commission and Staff intend to avoid repeating the same or similar issues. Topics NewSun proposes for discussion include:

- **Abuse Exposures.** How was PGE's benchmark bid allowed to proceed even though it did not meet the minimum bid requirements? How can minimum bid requirements be made more clear, objective, and transparent in order to avoid this abuse potential? Is there potentially a parallel scoring method that can be piloted in this RFP that does not affect the final shortlist ranking but can be provided alongside the final shortlist to provide transparency into how bids might have been scored if the criteria were not based on subjective interpretations of narratives, but on clear, objective, and transparent criteria?
- **Benchmark/Affiliate.** Should PGE's benchmark bids be allowed to proceed? Does the presence of the affiliate increase the potential to abuse the process?
- **Independent Evaluator.** What about the process in the last RFP led to the IE allowing PGE's benchmark to proceed even though it did not meet the minimum requirements? How can that be protected against in the current RFP?
- **Highly Confidential Data.** How was it that data was designated as *highly* protected, limiting access to only PGE, Staff, the Commission, and certain individuals eligible to sign the modified protective order when that data should not have been protected at all? How can that be prevented in this RFP? How can stakeholders achieve sufficient transparency into data tending to show bias in the process in order to better inform their comments in future processes?

The process NewSun requests here can all be done without material delay to the RFP. As an example, if the Commission decides that PGE benchmark or affiliate participation presents too much of a risk, it could choose to disallow those bids at any point in the RFP, without affecting the schedule at all.

Thank you,

s/ Marie Barlow  
Marie Barlow  
Email: [mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net)

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in the memo could have also been made available to stakeholders prior to the decision on the RFP's design.



**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

February 5, 2024

[puc.filingcenter@puc.oregon.gov](mailto:puc.filingcenter@puc.oregon.gov)

ATTN: Filing Center  
Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-1166

**Re: Docket UM 2166 – Portland General Electric Company, 2021 All-Source Request for Proposals**

To Filing Center:

The Public Utility Commission of Oregon Staff (Staff) submits for filing the enclosed errata to the October 30, 2023 Staff Memo, Staff Summary Upon Conclusion of RFP. This errata filing corrects the redactions to disclose portions of the memo previously redacted, but which Staff has confirmed with the designating party are not subject to a protective order. In addition, based on further conferral with Portland General Electric Company and the Independent Evaluator, certain statements regarding the RFP have been corrected, as noted in this errata filing.

Sincerely,

*/s/ Johanna M. Riemenschneider*

Johanna M. Riemenschneider  
Sr. Assistant Attorney General  
Business Activities Section

JLM:kd5/950157860  
Enclosure



10/30/2023

Docket UM 2166

In the Matter of PGE's 2021 Request for Proposals

Re: Staff Summary Upon Conclusion of RFP



Staff of the Public Utility Commission of Oregon (Staff) files this summary of information gathered from the Independent Evaluator (IE) following acknowledgment of Portland General Electric Company's (PGE's) final short list for its 2021 All-Source Request for Proposals (RFP). While the docket for a utility's RFP often concludes with an acknowledgment decision on a Company's final short list, the Commission in this docket required additional activities following its acknowledgement decision, given the circumstances at the time. Staff files these comments to confirm the required actions have been taken and to summarize information of note that it received from the IE at the conclusion of this docket.

In Order 22-315, the Commission memorialized its decision to acknowledge the final shortlist, subject to conditions, and noting that "future developments and analysis will bear heavily on PGE's ultimate procurement decision."<sup>1</sup> Among the conditions, PGE was directed to ensure that the IE, Bates White, continued "to serve as IE through final resource selection, in order to monitor all contract negotiations, file a final resource selection closing report with the Commission no later than 30 days after final resource selection, and respond to any Staff or Commission questions on the final IE report." It also required the IE to answer any questions about its final report from the Commission or Staff.

On June 30, 2023, Bates White filed its final report on PGE's contract negotiations for its 2021 RFP. Bates White responded to Staff's questions seeking additional detail about the report, which is attached to this memo as Attachment 1. Subsequently, additional discussions regarding these issues took place between PGE, Staff and the IE.

Staff's review of the report, and engagement with stakeholders and the IE, highlighted issues with the 2021 procurement that Staff believes are worth noting in UM 2166 before closing the docket. Staff summarizes information below that primarily concerns the Clearwater Wind resource acquired by PGE under this RFP. Further, with this memo, Staff intends to close this docket and will work with the Company and Stakeholders to reflect lessons learned in future RFPs.

Clearwater transmission minimum requirements and downsizing: The Clearwater project did not meet the requirement that all renewable energy bids have long-term transmission rights equal to 80 percent of their maximum interconnection limit or to present a viable plan that met the transmission product and quantity requirements specified by the RFP. Further, the Clearwater project was allowed to maintain a project size that did not have the required matching transmission requirements, whereas two projects with similar transmission deficiencies were told that they could downsize the project to get them to conform. Both instead chose to withdraw.

Clearwater disclosure of resources: The Clearwater project's alternate transmission plan describes one of several options that includes the potential use of PGE assets that were neither offered to other

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<sup>1</sup> Order 22-315 at 4.

bidders nor disclosed as required by the competitive bidding rules. Ultimately, PGE advises that it did not accept the inclusion of these assets as part of Clearwater’s alternate transmission plan and did not score the bid using such assets.

The IE Final Report on Contract Negotiations notes that the Clearwater Energy Wind project did not “quite meet the letter of the law from the RFP” with regards to its transmission rights.

These events are described in more detail below.

Table 1: UM 2166 Timeline

Date	Event
12/02/2021	RFP approved for issuance at Public Meeting (Order No. 21-460 dated 12/10/2021)
12/06/2022	RFP Issued to Market
02/04/2022	Bates White Submits Benchmark Bid Report
05/14/2022	PGE Files Final Shortlist & IE Closing Report
05/2022	PGE begins negotiations with Clearwater after FSL Filed
08/12/2022	PGE allows updates to pricing and COD
08/14/2022	FSL Acknowledged at Public Meeting (Order No. 22-315 dated 08/31/2022)
08/26/2022	Price/COD updates received
10/2022	Clearwater contract executed
06/30/2023	Bates White Final Report on Contract Negotiations for UM 2166
9/01/2023	IE responds to Staff questions on Final Report

### TRANSMISSION MINIMUM REQUIREMENTS

The Clearwater wind project did not meet the requirement that all renewable energy bids have long-term transmission rights equal to 80 percent of their total interconnection. This project was developed by NextEra and offered as a benchmark bid, with a portion of the project sold to PGE under a BTA while the remainder will be owned by NextEra with the output contracted to PGE under a PPA. In its February 2022 benchmark bid report, the IE noted that Clearwater failed to secure long-term transmission rights for 80 percent of its output as required of all renewable energy projects by the RFP. At that time, Bates White recommended the project remain viable for consideration as Clearwater had proposed an alternative transmission plan that could allow the project to secure the necessary transmission rights to comply with the minimum requirements of the RFP. The benchmark report also noted that PGE had agreed to allow other bidders unable to meet the 80 percent transmission requirement to still be considered for further evaluation if they could provide a narrative description of a plan to secure the necessary transmission rights. This was confirmed on the Q&A webpage for the procurement.

**[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** The minimum requirements in the RFP explicitly stated that the lack of rollover rights would disqualify a project. **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

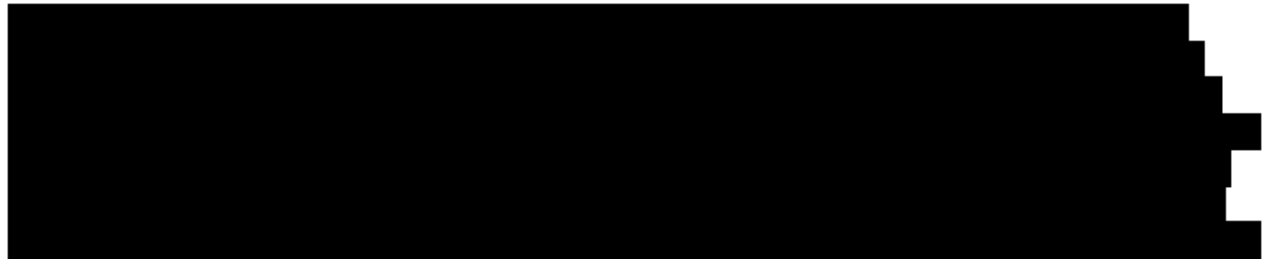
[END HIGHLY CONFIDENTIAL]

PGE allowed bidders to provide alternative transmission plans to achieve the necessary rights to meet the minimum requirements of the RFP. Of 110 offers, only 47 passed the minimum requirement threshold for transmission rights. Another 37 offers were rejected for failing to clear this threshold and did not move on to be scored by PGE. Finally, 26 offers—or nearly one quarter—did not meet the 80 percent transmission minimum requirement but were not eliminated on that basis because they had provided a viable alternative transmission plan. Of those 26 projects, eight made it to the final shortlist with ‘viable transmission plans’ for transmission and thus presumably meeting the RFP transmission requirements. These results are shown below.

Table 2: Transmission constrained bid considerations

Total Offers	110	
Passed Transmission Min Req	47	
Failed Transmission Min Req	37	
Deemed "Viable Alternative"	26	23.6%
Deemed "Viable Alternative"	26	
Ultimately Rejected	18	
Made it to FSL	8	30.8%
Made it to FSL	8	
Joint Ownership	5	62.5%
PPA	3	37.5%

In its Final Report on Contract Negotiations, Bates White said the Clearwater transmission plan did “not quite meet the letter of the law from the RFP.” [BEGIN HIGHLY CONFIDENTIAL]



[END HIGHLY CONFIDENTIAL] As already stated, the existing PGE transmission rights proposed for use in the alternate transmission plan were neither made available to other bidders nor described as part of the RFP development process as utility resources that would be used to support benchmark bids with the appropriate analysis.

Bates White, nonetheless, describes the Clearwater project arrangements in its final report as “...acceptable given PGE’s renewable and capacity needs.” Bates White further explains to Staff in response to Staff’s written questions that it believes the alternate transmission plan is viable because, in the long term, there is additional time to secure more firm service.

#### PROJECT DOWNSIZING

At the time Clearwater was selected and contracted, it still had not secured the long-term transmission rights required by the RFP. In the case of some other projects, PGE recommended that the projects reduce their total size to conform with the RFP’s transmission requirements based on the transmission rights that they had already secured. In the case of Clearwater, the project was allowed to proceed at its initial design size and was contracted at that level, despite the lack of transmission.

The [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] makes a useful point of comparison. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] originally proposed a combined solar and wind project with total nameplate capacity of [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] for which it had only secured [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of transmission capacity – 60 percent of its maximum interconnection limit just like Clearwater. The project was informed, at the initial screening stage of the RFP process, that to comply with the RFP and pass the minimum requirement screening, it should downsize the project or offer only its solar component. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] withdrew from consideration at the initial screening stage, prior to even being scored, rather than drop its wind component or reduce the nameplate capacity of its bid to conform with its secure transmission rights. However, had the project and its alternative plan been treated like Clearwater, it could have passed the minimum requirement screening and moved on for further evaluation. In response to a question from Staff, the IE notes that, “In retrospect, we as the IE could have pushed harder for [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] inclusion as offered in order to assure it had the same treatment as Clearwater. At the time we (and, we believe PGE evaluators) were more focused on making [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] offer the most competitive it could be.”<sup>2</sup> The IE also noted that based on the offered prices the bid was much less competitive than the Clearwater offer.

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<sup>2</sup> Bates White Memo in Response to Staff Questions, September 1, 2023, page 10.

## DISCLOSURE OF RESOURCES

PGE, and the IE, allowed Clearwater to continue for further evaluation and the project was eventually included by PGE on the final shortlist based on the alternative transmission plan, along with some other independent projects that provided alternative plans that PGE deemed viable. **\*[see note below]**

ORAR 860-089-0300(3) states that “If benchmark bid elements secured by the electric company are not made available to all bidders, it must provide analysis explaining that decision when seeking RFP acknowledgement and recovery of the costs of the resource in rates.” The RFP states that:

PGE’s Benchmark resources or affiliate bids will not rely on utility-controlled transmission rights to meet the 2021 All-Source RFP bid requirements. Should, through the course of this solicitation, additional certainty develop regarding the removal of Colstrip from PGE’s portfolio, PGE reserves its discretion to consider whether Colstrip associated transmission rights could become available across PGE’s planning horizon for the benefit of PGE’s customers. Should PGE make Colstrip associated transmission rights available to improve the long-term economics of a benchmark or other bid, those rights would also be made available for all bidders subject to the same constraints and limitations.

At the time of Bates White’s benchmark bid report in February 2022, the project was already considering multiple options that would use existing PGE transmission rights to deliver energy to PGE’s system. **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** Ultimately, PGE advises that it did not accept the inclusion of these assets as part of Clearwater’s alternate transmission plan and did not score the bid using such assets.

Staff found the continued engagement of the IE to oversee the contract negotiation process to be a valuable complement to the competitive bidding process and anticipates recommending similar engagement in future RFPs. Further, Staff plans to carry lessons learned from this process to future RFP investigations. Staff intends to closely monitor the bid scoring and evaluation processes, particularly for benchmark bids, and encourage communication between bidders and the utility in future RFPs. Staff concludes that all activities that the Commission required in this docket have been completed.

Dated this 30 day of October, 2023, at Salem, Oregon.

**/s/ Kim Herb**

Kim Herb  
Utility Strategy and Planning Manager  
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**\*[Note: Additionally, there was some highly confidential text that appeared at the end of this paragraph in the original memo, that appears to have been removed or possibly moved to a different location in the memo.]**



eDockets

Docket Summary

\*\*\*If sending a message to PUC staff, please note that as of March 29, 2021, all emails end with @puc.oregon.gov (instead of @state.or.us).

**Docket No:** UM 2166 **Docket Name:** PGE 2021 ALL-SOURCE REQUEST FOR PROPOSALS (RFP)

**Subject Company:** [PORTLAND GENERAL ELECTRIC](#)

**See also:** LEGAL HOLD ON APPEAL

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, 2021 All-Source Request for Proposals. Filed by Erin Apperson. Sent to Electric List.

**Filing Date:** 4/28/2021

**Order:** [22-315](#)

**Order Signed:** 8/31/2022

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**Date:** 2/13/2024      **Action:** SERVICE LIST CHANGE



**Description**

NewSun's Request to Change the Service List, removing Richard G. Lorenz and adding Marie Barlow. Filed by Marie Barlow.

**Date:** 2/5/2024      **Action:** OTHER FILING/PLEADING



**Description**

Staff's Certificate of Service for its 2/5/24 errata filing. Filed by Johanna M. Riemenschneider.

**Date:** 2/5/2024      **Action:** OTHER FILING/PLEADING

**Description**

STAFF ERRATA to the October 30, 2023 Staff Memo, Staff Summary Upon Conclusion of RFP. Filed by Johanna M. Riemenschneider. ALSO SEE 2/5/24 Staff's Certificate of Service **This document is temporarily unavailable due to technical issues.** (3/26/24) (Highly Confidential Saved in Agency Folder)

**Date:** 11/29/2023      **Action:** SIGNATORY PAGES



**Description**

PGE's Signatory Page to Modified Protective Order No. 22-025, filed by David White. Persons Qualified to receive Highly Confidential Information under Paragraph 13: David White and Lauren Davis.

**Date:** 11/9/2023      **Action:** OTHER FILING/PLEADING

