

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1892

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Application for Waiver of Competitive
Bidding Guidelines

STAFF COMMENTS

Introduction

On August 25, 2017, Portland General Electric (PGE or Company) filed an application (Application) requesting that the Commission waive the Request for Proposals (RFP) requirement of the Competitive Bidding Guidelines.¹ PGE launched these bilateral negotiations pursuant to requests by the Commission and stakeholders during the course of the Company's 2016 IRP process to explore alternatives.² Staff understands that if the request for waiver of the RFP requirement is granted, PGE plans to continue to engage in bilateral negotiations for medium-term capacity resources to meet its 2021 capacity need of 561 MW, which was acknowledged in Order No. 17-386.³

PGE appears to be requesting waiver of all of the individual Competitive Bidding Guidelines. PGE requests that the Commission grant PGE's waiver request so that "PGE may negotiate and execute agreements with the indicative offers on the shortlist to obtain medium-term resources to fill its capacity need."⁴

However, Guideline 13 of the Competitive Bidding Guidelines, requires a utility to request that the Commission acknowledge the utility's selection of the final list of RFP resources.⁵ It appears that PGE is requesting waiver of all of the Competitive Bidding Guidelines, but also seeking acknowledgement of the shortlist of offers derived from the

¹ Application, page 1 ("PGE respectfully requests that the Public Utility Commission of Oregon (Commission) waive the Request for Proposals (RFP) requirement in the Competitive Bidding Guidelines (Guidelines) to allow the Company to engage in bilateral negotiations . . .").

² See LC 66, PGE Reply Comments, March 31, 2017, page 11; Citizen's Utility Board, Initial Comments, January 24, 2017, page 5; Staff Comments, January 24, 2017, page 26 and May 12, 2017, page 17 and 18; Commissioner comments to PGE on December 20, 2016 at public workshop.

³ See LC 66, Order No. 17-386, page 17 ("We acknowledge PGE's capacity need of 561 MW...").

⁴ Application, page 16.

⁵ See Order No. 14-149, Appendix A, Guideline 13. RFP Acknowledgement.

bilateral negotiations. If this is the case, then PGE is asking for waiver of the normal RFP process and components, but is not asking for waiver of Guideline 13—that the Commission acknowledge its short-list of offers. If this is the case, then the second scheduled set of reply of comments and Staff's report should provide ample time prior to the public meeting on December 5th for clarification and for the issuance of additional information requests.

Background: LC 66 and PGE's Application for a Waiver of Guidelines

In PGE's 2016 IRP (LC 66), responding to concerns from the Commission, Staff and stakeholders, the Company took action to identify short- to medium-term contracts for capacity.⁶ PGE found that several owners of existing hydro and thermal resources in the Pacific Northwest were interested in developing contracts for capacity through bilateral negotiations. PGE solicited indicative offers from several companies.

In its Application, the Company claims to have evaluated each proposal it received using price and non-price scoring and portfolio analysis, consistent with the Guidelines. This work by PGE has culminated in a final shortlist of top-performing offers that the Company states most of which exceeded the performance of the point-of-reference gas plant.⁷ As a result, PGE now seeks a waiver of the Guidelines in order to conclude the negotiations and finalize medium-term contracts for 350 to 450 MW of capacity, likely within three to six months of Commission approval of its waiver request.⁸

PGE states that the Company could pursue bilateral negotiations without a waiver. PGE believes it could do so because of the time-limited nature of the offers and the reluctance of hydro operators to participate in a standard RFP process.

Second, PGE explains that the Commission directed it to engage in bilateral negotiations to acquire medium-term capacity from existing resources and report back.⁹

However, PGE decided to file a waiver application because it wanted to:

[P]rovide the Commission, Staff, and stakeholders with comprehensive information regarding the bilateral negotiation and scoring processes, and to provide opportunities for feedback before any acquisitions are completed. Despite the time-limited character of the indicative offers received, the Company has determined that the limited delay caused by the

⁶ See LC 66, PGE Reply Comments, March 31, 2017, page 11; Citizen's Utility Board, Initial Comments, January 24, 2017, page 5; Staff Comments, January 24, 2017, page 26 and May 12, 2017, page 17 and 18; Commissioner comments to PGE on December 20, 2016 at public workshop.

⁷ See Confidential Direct Testimony of James Lindsay, PGE/300.

⁸ See UM 1892, PGE's Initial Application, August 25, 2017, pgs. 1, 3.

⁹ *Ibid*, pg. 3.

waiver request likely will not compromise its ability to successfully negotiate capacity resource agreements.¹⁰

Staff supports PGE's decision to request a waiver of the Guidelines and is currently in the process of assessing the reasonableness of the waiver application, as well as the scoring process and design used to produce the shortlist of offers.

Standard for Waiver of the Competitive Bidding Guidelines

The Commission's Guidelines were first established in Docket UM 1182, Order No. 06-446. Subsequently, the Commission has amended the Guidelines four times, most recently in Order No. 14-449, and a complete set of the Guidelines is provided as Appendix A to that order. Generally, the Guidelines require issuance of a RFP for all Major Resource Acquisitions (defined as having duration greater than five years and quantities greater than 100 MW) and certain multiple small resource acquisitions that qualify for treatment as a Major Resource Acquisition.

Guideline 2 provides three exceptions to the RFP requirement. The third exception, which is applicable here, is found in Guideline 2(c) and allows the Commission to waive the RFP requirement on a case-by-case basis, explaining that the Commission will issue an order addressing the waiver request within 120 days.¹¹ Past Commission orders have indicated that the applicable standard for granting a waiver of the competitive bidding guidelines, or an individual guideline, is "for good cause shown."¹² Additionally, if a utility seeks waiver of Guideline 13, which requires Commission acknowledgement of the utility's selection of the final shortlist of RFP resources, the utility is required to show that the time required for a shortlist acknowledgement will preclude the ability to successfully complete negotiations with a top bidder, thereby causing harm to its ratepayers.¹³

Regarding further criteria by which to evaluate a utility's request for waiver of the Guidelines, in UM 1773, Staff suggested and applied five criteria to evaluate the merits of a waiver request.¹⁴ However, Staff proposed these criteria for evaluating a waiver request under a different exception—2(a) when there is a resource acquisition opportunity of a time-limited nature and that represents a unique value to customers. The applicable exception in this waiver filing is 2(c) Commission waiver on a case-by-case basis. Nevertheless, Staff has reviewed the five criteria proposed in UM 1773 and thinks they would also benefit the waiver request review and analysis in this case,

¹⁰ *Ibid.*

¹¹ See Order No. 14-149, Appendix A, at 2.

¹² Order No. 91-1383 ("a utility may request, and for good cause the Commission may grant, a deviation from, or waiver of, the competitive bidding guidelines . . ."); see also Guideline 13 (discussing that requirement of RFP Acknowledgement "Except upon a showing of good cause.").

¹³ Order No. 14-149 at 14-15.

¹⁴ See UM 1773, Order No. 16-221, June 8, 2016, Attachment A, pg. 11.

therefore, Staff will likely apply them in the Staff Report that is scheduled to be filed on November 22, 2017. The five suggested criteria are:

1. There is a need for procurement.
2. Functions of an Independent Evaluator (IE) are replicated.
3. Processes for sufficient stakeholder involvement existed.
4. Fairness of competitive bidding guidelines were preserved.
5. The process was clear and transparent.

In terms of the effect of a Commission decision to waive of the Guidelines, Staff has expressed in the past that a Commission decision to waive the Guidelines offers no assurance to the utility of future cost recovery for any capital investment or expense associated with acquisition of the subject resource.¹⁵ Likewise, the Commission has indicated that generally a request for waiver of the RFP process can be resolved quickly because the Commission is “not making any ratemaking decisions when [it] waive[s] an RFP requirement.”¹⁶ Finally, under ORS 757.210, a utility always has the burden of proving that it acted prudently in acquiring its resources.

Review of PGE's Application

Staff is still conducting the review process for PGE's Application. Staff has issued information requests and awaits important details such as PGE's remaining capacity need. Staff's preliminary review using the five elements discussed above are as follows:

- 1.) **Procurement Need:** Staff believes PGE has established a need for capacity resources in 2021. Further, this need was acknowledged in the 2016 IRP order.
- 2.) **The Process Replicates the functions of an IE from the Guidelines:** Staff is still investigating the extent to which this is true. Staff appreciates the very quick and diligent work by PGE staff to assemble and evaluate the indicative offers it received. However, Staff has several questions about the evaluation process that will need to be answered before any final determination can be made. The IRs issued by Staff should provide the information necessary for this determination.
- 3.) **Stakeholder Engagement:** Staff believes PGE has kept stakeholders involved to the extent practicable for this particular action, however, this UM 1982 review process will have to be used in lieu of the general expected process if PGE is requesting Commission acknowledgement of its shortlist of offers.
- 4.) **Preservation of Fairness:** When the Staff-proposed criteria were presented in 2016, Staff posed seven questions to consider with regards to fairness. At this point, Staff still has a few outstanding questions regarding aspects of the fairness

¹⁵ See Order No. 08-376, Appendix A-Staff Report.

¹⁶ Order No. 06-446.

of the bilateral negotiations and the portfolio development. Staff is inquiring into the following items among other things:

- a. PGE's current capacity need;
- b. Scoring process, including the price and non-price criteria;
- c. Flexibility assessment;
- d. Project ownership.

5.) **Clarity and Transparency of Process:** At this point, Staff would like to better understand: what was communicated as far as the products PGE sought at the start of the bilateral negotiations; the scoring system traits; and the number and reasons for any submissions to be rejected or considered non-conforming. The Company has been forthcoming as to questions and clarifications requested by Staff. Staff has recently issued a series of confidential and non-confidential Information Requests (IRs) to the Company. We look forward to PGE's responses. Staff will have a full analysis and conclusion in its Staff Report.

Conclusion

At this point, Staff believes PGE has done a thorough job in assembling the current indicative offers it has shared with the Commission pursuant to this filing. However, Staff would like to further understand some of the details behind the bilateral negotiation process, the final short list, and the application of IRP tools and approaches to developing and evaluating the least cost, least risk portfolio. Moreover, Staff would like clarification of whether the Company is requesting waiver of all of the Guidelines, or if it is seeking something different.

The remaining process for this docket includes an opportunity for written reply comments by all stakeholders and the Company on November 13, 2017; Staff's Report posted on November 22, 2017; opportunity for all stakeholders and the Company to file written comments no later than November 28, 2017; Regular Public Meeting on December 5, 2017. All written comments should be emailed to the filing center for posting in the docket.

This concludes Staff's Comments.

Dated at Salem, Oregon, this 27 day of October, 2017.



JP Batmale
Interim Administrator
Energy Resources & Planning Division