

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1953

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC COMPANY)	RESPONSE OF NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION IN
Investigation into Proposed Green Tariff - Notice of Exception, and Request for Waiver - of Requirements of OAR 860-089-0010, RESOURCE PROCUREMENT FOR ELECTRIC COMPANIES))))))	OPPOSITION TO PGE NOTICE OF EXCEPTION AND ALTERNATIVE REQUEST FOR WAIVER.

Northwest and Intermountain Power Producers Coalition (“**NIPPC**”) submits this response in opposition to Portland General Electric Company’s (“**PGE**”)’s March 29, 2019 “Notice of Exception and Waiver” in the above-captioned docket. As addressed in greater detail below, NIPPC believes that the Commission’s Competitive Bidding Rules¹ clearly apply to the extent that PGE is acquiring a major resource, and there is no reason to offer PGE a blanket exemption from these rules. NIPPC conditionally supports PGE’s alternative request for a limited waiver of the Competitive Bidding Rules with respect to its acquisition of PPAs for its initial phase of its Green Tariff program, but only to the extent that PGE eliminates certain conditions to its non-tariffed “requirements” for its Green Tariff Program, especially as applied to the “Customer Supply Option.”

I. BACKGROUND

This proceeding addresses PGE’s proposal to implement a limited VRET program under which PGE would be authorized to provide customers electing to purchase service with renewable power generated by third parties and acquired by the utility through purchase power agreements (“PPA”). PGE originally proposed that all PPAs would be negotiated by PGE (the “PGE Supply Program”), but after consideration PGE changed course and also proposed to

¹ OAR Chapter 860, Division 89

implement a “bring your own PPA” option, also known as the “Customer Supply Option,” under which large customers could negotiate their own supply arrangements and bring such arrangements forward to PGE. As recounted by the Commission:

“PGE proposes to procure *through a competitive RFP* a PPA or PPAs for renewable resources to create a VRET available to [all] nonresidential customers, offering no more than 100 MW of nameplate capacity through Phase 1 of the program. (Described in the remainder of this order as "PGE Supply Option.")

For PGE's largest customers, those with an average load greater than 10 aMW, PGE proposes to implement a bring-your-own PPA option. This option is limited to 200 MW of nameplate capacity and is separate from the PGE-procured option. PGE proposes to retain final approval over any PPA terms and conditions. (Described in the remainder of this order as "Customer Supply Option.")”

See Order No. 19-075 (March 5, 2019) at p. 4. In its order approving the first phase of PGE’s program, the Commission expressly found that PGE’s proposal could not be considered a “pilot” program given its potential magnitude, which would clearly be subject to the competitive bidding rules:

“We do not consider it accurate to describe PGE's proposal as a "pilot." PGE may procure up to 300 MW of new nameplate resources through PPAs under this program. Under our competitive bidding rules, for example, such a procurement would qualify as a major resource. Instead of a pilot, we recognize this program as the first phase of a VRET offering, which may be followed by a second phase following the continuation of this proceeding.”

Order No. 19-075 (March 5, 2019) at p. 4.

Order No. 19-075 also expressly directed PGE to publish minimum PPA standards so that all eligible customers have non-discriminatory access to the Customer Supply Option. The Commission limited the Customer Supply Option to very large customers with loads of 10 aMW, but beyond that, acknowledged that size may not be the only criteria in determining the ability to

negotiate a competitive PPA, and placed consideration of any other limitations for discussion a in a future phase of the proceeding.²

On March 6, 2019, PGE filed tariff sheets to place the first phase of its program into effect,³ noting that it was “currently developing the "objective power purchase agreement (PPA) criteria" (directed in Order No 19-075 as part of the Customer Supply Option) and plans to publish the criteria no later than March 22, 2019.”⁴ On March 22, PGE made a further filing providing a link to its “Minimum Power Purchase Agreement requirements.” These requirements are set forth in Attachment A hereto. These minimum requirements contain terms and conditions not contemplated by the Commission Order in the VRET proceeding, and which appear designed to drastically reduce the Customer Supply Option opportunities, including a requirement that generation for the Customer Supply Option be from a “new” facility/expansion built expressly for the Green Energy Affinity Rider, and that such generation must hold its own long-term firm transmission rights.

On March 29, 2019, PGE filed a “notice of exception of Oregon Administrative Rules (OAR) Chapter 860, Division 89, and in the alternative, a request for waiver under OAR 860-089-0010(2) for PGE's procurement of a power purchase agreement(s) (PPA) to supply Phase I of PGE's approved Green Tariff” asking the Commission to find that the competitive bidding rules do not apply to PGE’s VRET program, or alternatively requesting a waiver of such rules. PGE made this request despite representing to the Commission that it was proposing to procure capacity for its VRET program *through a competitive RFP* and despite the Commission’s clear statement that “[u]nder our competitive bidding rules, ... such a procurement would qualify as a major resource.”⁵

²Order No. 19-075 (March 5, 2019) at p. 8.

³ See PGE Advice No. 19-06, New Schedule 55 Green Energy Affinity Rider (“GEAR”), March 6, 2019.

⁴ PGE Advice No. 19-06, id. at P. 1.

⁵ Order No. 19-075 (March 5, 2019) at p. 4

II. DISCUSSION

A. The Competitive Bidding Rules apply to the VRET Program

NIPPC objects to, and disagrees with, PGE's suggestions that the Commission's competitive bidding rules do not apply to PGE's potential acquisition of a major resource for its VRET program. The Commission recently has given detailed consideration to its competitive bidding rules in Docket AR 600, *Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources, culminating in rule revisions*.⁶ Section 860-089-0100 of the Commission's regulations specify that "an electric company *must* comply with the competitive bidding rules when it seeks to acquire generating or storage resources *or to contract for energy or capacity* if ... [t]he acquisition is of a resource or a contract for more than an aggregate of 80 megawatts and five years in length."⁷ In this case, PGE is seeking to "contract for energy or capacity" of 100 MW and for a long-term period. The rules apply on their face. As addressed below, the competitive bidding rules allow for waivers of such rules, and a waiver may be appropriate in this instance, but the Commission should reject PGE's contention that PGE could acquire a 100 MW resource through a 20 year PPA absent either following the newly instituted bidding guidelines or receiving a waiver therefrom.

The rationales PGE supplies in support of its contention that the rules do not apply are unavailing. PGE first argues that "the program design has been reviewed and approved by the Commission." The rules do provide for a limited exception when the acquisition was previously reviewed by the Commission, but only when "[a]n alternative acquisition method was proposed by the electric company in the IRP and explicitly acknowledged by the Commission."⁸ PGE does not and cannot allege that the VRET was proposed and acknowledged in its IRP. The fact that the VRET program design has been reviewed by the Commission does not support a finding that the competitive bidding rules do not apply. Virtually all of PGE's programs have been

⁶ As noted by the Commission, "These rules are the culmination of two years of engagement between Staff, stakeholders and this Commission, building on decades of direct experience with competitive bidding". OPUC Order No. 18-324 (August 30, 2018) at p. 1

⁷ See also *In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources*, AR 600. OPUC Order No. 18-324 at p. 6.

⁸ OAR 860-089-0100(3)(c).

reviewed and approved by the Commission. If PGE were acquiring a major resource to service its standard cost of service customers the rules would apply, and this is no different.

PGE's second rationale is that "the proposed procurement is assigned to voluntary customers and non-participating cost of service customers are protected from cost shifting." This rationale is similarly unavailing. Would it be appropriate for PGE to purchase a higher-cost resource to serve the voluntary customers, or to refuse negotiations with individual developers based on discriminatory intent?

Third, PGE submits that the underlying PPA and the subscriber agreements executed between PGE and subscribing customers will be subject to review by Commission Staff. The fact that the Commission may have an opportunity to review the agreement does not justify finding that the rules do not apply in the first instance. Submission of a PPA for a major resource does not substitute for a process to ensure that the proper resource was selected.

In summary, the competitive bidding rules apply on their face to PGE's VRET program to the extent PGE is acquiring a major resource, whether through PPA or otherwise, and the Commission should reject PGE's unsupported argument that the regulations do not apply.

B. Waiver of the Competitive Bidding Rules Should Be Contingent on Elimination of Non-Tariff Restrictions on Participation.

PGE's minimum terms and conditions for the Customer Supply Option contain restrictive and confusing limitations that were not addressed in this docket and that should be eliminated prior to granting any request for waiver of the Competitive Bidding Regulations.

First, PGE must remove from its minimum terms in the Customer Supply Option the requirement that the "product" be a "*new* facility/expansion *built for* Green Energy Affinity Rider (Green Tariff)" (PGE Minimum Requirements (emphasis supplied)). Nothing in PGE's tariff, nor the deliberations in this docket, limit a customer's option to generation capacity "built for" this program or require it be newly constructed. Numerous renewable facilities are in various phases of development in Oregon, many of which may already have been under construction or in service prior to approval of PGE's VRET program, but not fully contracted for

the long term. If a large customer brings forward to PGE a PPA from a facility that was constructed in 2018 that otherwise meets program requirements, PGE should not have authority to reject it by claiming either that it was not “new” nor not “built for” the VRET program. Such limitations are not consistent with the VRET program as approved by the Commission and are not appropriate.

Similarly, PGE should be required to remove the requirement that Customer Supply Option PPAs provide their own long-term firm service. As noted in the comments filed in this docket by Renewable Northwest, such incremental long-term firm transmission rights would be difficult to obtain, and could be unnecessary when alternative and sufficiently reliable transmission solutions—such as conditional firm—are possible. It is also unclear whether this criterion would enable PPAs on PGE’s own network to qualify as long-term firm if they were using Network Integration Transmission Service.⁹

As the Commission expressly noted in its order acknowledging the shortlist for PGE’s 2018 Request for Proposals for Renewable Resources, the requirement for long-term transmission can – and in fact did – severely limit the resources eligible to compete to participate in PGE’s programs.¹⁰ The Commission has already agreed to more fully address transmission issues in future workshops and proceedings, finding that “the transmission service and generator interconnection queues are affecting the utilities’ procurement and how we implement the state’s clean energy goals.”¹¹ Here again PGE has placed strict limitations on participating in one of its programs by requiring PPAs for the Customer Supply Option bring long-term firm transmission. This requirement is not appropriate, and serves to limit options available to customers seeking to purchase renewable power. PGE did not propose this limit in applying for its VRET, and the Commission has already determined that any limitations on the Customer Supply Option other than the customer size threshold should be set for discussion in a future phase of the proceeding. As such, it is inappropriate for PGE to place such limitations on the program at this point in time, especially if it is seeking a waiver of the competitive bidding rules.

⁹ See Comments of Renewable Northwest, Docket UM 1953, April 22, 2019.

¹⁰ See Docket UM 1934, Order No. 18-483 (December 19, 2018).

¹¹ Id.

C. CONCLUSION

NIPPC respectfully requests that the Commission reject PGE's Notice of Exception incorrectly asserting that the competitive bidding rules do not apply to PGE's VRET program for acquisition of a major resource. NIPPC does not oppose PGE's alternative request for a waiver of the competitive bidding rules, but only to the extent PGE eliminates from the Customer Supply Option limitations that are inconsistent with the VRET program as adopted and that could artificially limit customer choice.

Dated this 15th day of May 2019.

Respectfully submitted,



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ATTACHMENT A

PGE Minimum Requirements for Customer Supply Option

(source: <https://www.portlandgeneral.com/business/power-choices-pricing/renewable-power/choose-renewable> - accessed May 15, 2019))



Term	Requirement
Product:	<ul style="list-style-type: none"> New facility/expansion built for Green Energy Affinity Rider (Green Tariff) All energy, capacity, RECs, and environmental attributes transfer to PGE
Term Length:	<ul style="list-style-type: none"> Pricing options for 10, 12, 15, and/or 20 years
COD:	<ul style="list-style-type: none"> December 31st, 2020 preferred No later than Q4 2021
Pricing Structure:	<ul style="list-style-type: none"> Contract price on actual generation up to forecasted monthly generation estimated at P50 Monthly overgeneration paid either index or a 15% discount to contract price Flat \$/MWh price inclusive of all costs to integrate (15-minute increment minimum) and deliver the energy to PGE's system
Guarantees:	<ul style="list-style-type: none"> Annual output guarantee at or above P99
Default Damages:	<ul style="list-style-type: none"> Pre-COD- \$200/kW Post-COD- Cost to cover up to \$100/kW
Credit:	<ul style="list-style-type: none"> Investment grade entity or guarantor Acceptable credit support in lieu considered
Site Control:	<ul style="list-style-type: none"> Executed lease(s) or option agreement(s)
Permitting:	<ul style="list-style-type: none"> Approved Energy Facility Siting Council or equivalent
Interconnection:	<ul style="list-style-type: none"> Completed Facilities Study (FAS)
Transmission:	<ul style="list-style-type: none"> Long-term firm - notice prior to execution or a reasonable and achievable plan to deliver using long-term firm
Major Equipment:	<ul style="list-style-type: none"> Projects using widely deployed generating technologies with proven records of reliability
Contingencies:	<ul style="list-style-type: none"> No material contingencies
Developer Experience:	<ul style="list-style-type: none"> Demonstrated project development experience in the WECC

Disclaimer: This minimum requirements document is available for information purposes only and does not constitute an offer or solicitation and should not be taken as a form of commitment on the part of PGE. Neither party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this minimum requirements document. Either party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other party and may pursue a similar transaction without the involvement of, or liability to, the other party.