

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: April 30, 2024**

REGULAR X CONSENT RULEMAKING EFFECTIVE DATE N/A

Date: April 19, 2024

To: Public Utility Commission

From: Katharine Mapes

Through: Nolan Moser **SIGNED**

Subject: ADMINISTRATIVE HEARINGS DIVISION:
Docket No. UM 2274 – Commissioner Work Session
Motion for Reconsideration of Order Nos. 24-011 and 24-024

ADMINISTRATIVE HEARINGS RECOMMENDATION:

Deny the motion for rehearing or reconsideration of Order Nos. 24-011 and 24-024.

BACKGROUND & PROCEDURAL HISTORY:

On January 4, 2024, the Commission held a Special Public Meeting, where it considered the design of Portland General Electric Company’s 2023 All-Source Request for Proposals (RFP). At the meeting, the Commission considered numerous recommendations from Staff and stakeholders related to the design of the RFP and ultimately, adopted the Staff recommendations with some modifications, as well as several recommendations from stakeholders to the proceeding. That decision was memorialized in Order No. 24-011 issued on January 12, 2024.

On March 12, 2024, NewSun Energy LLC filed a request for rehearing or reconsideration. NewSun’s request centers around a memorandum filed by Commission Staff in docket UM 2166 with an errata issued that unredacted further portions of the memorandum. NewSun states the errata offers new evidence that the Commission should consider on rehearing.

In particular, NewSun states that the errata shows PGE’s benchmark bid, NextEra’s Clearwater Wind Project, “should never have been eligible to bid, as it did not meet the threshold for long-term transmission rights.” NextEra’s Clearwater bid “failed to secure long-term transmission rights for 80 percent of its output as required of all renewable

energy projects by the RFP.” NewSun further points to the fact that at least one bidder with similar transmission deficiencies “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.” The bidder instead withdrew its project from the RFP.

NewSun requests that the Commission amend Order No. 24-011 to include the following:

- 1) That PGE and its affiliates be precluded from submitting benchmark bids or affiliate bids in the 2023 RFP.
- 2) That NextEra and its affiliates be precluded from submitting benchmark bids or affiliate bids in the 2023 RFP.
- 3) That Bates White be disallowed from continuing to serve as the [Independent Evaluator] IE in the 2023 RFP.
- 4) That the Commission actively supervise the 2023 RFP, particularly those elements that currently call for subjective evaluation by PGE and its IE.
- 5) That the scoring methodology for the 2023 RFP include objective consideration of non-price elements, along the lines of NewSun’s example proposal attached to its motion as Exhibit A.

NewSun argues that its requested changes to the order “will help ensure that the 2023 RFP provides a ‘fair, objective, and transparent competitive bidding process’ as required by the Commission’s rules.”

DISCUSSION:

Issue:

Whether to grant NewSun’s application for rehearing or reconsideration of Order Nos. 24-011 and 24-024.

Applicable Law or Rule:

Under OAR 860-001-0720(3), the Public Utility Commission may grant reconsideration of an order for the following reasons:

- a. New evidence essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;

- b. A change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- c. An error of law or fact in the order that is essential to the decision; or
- d. Good cause for further examination of an issue essential to the decision.

Analysis:

We recommend denying NewSun's motion. The Commission has put numerous conditions in place on both the RFP itself and on the participation of PGE's affiliate, Portland Renewable Resources Company, LLC (PRR). This, in conjunction with Staff's detailed knowledge of PGE's approach to the 2021 RFP as described in the aforementioned Staff Report posted to docket UM 2166, and Staff's management and oversight of the IE, are sufficient at this time to promote fair competitive processes in this instant RFP. Those conditions are more expansive than those put in place in previous RFPs and, in many cases, were adopted after Commission Staff had drafted its UM 2166 report and identified and reviewed the IE lessons learned from the 2021 RFP. Order No. 24-011 approved the RFP design with eleven conditions for the Scoring and Modeling Methodology (SMM), thirteen conditions for the RFP, and twelve conditions related to participation of PGE's affiliate, PRR. The Commission further adopted four conditions recommended by the Northwest & Intermountain Power Producers Coalition (NIPPC).

Together, those conditions resulted in significant changes to PGE's RFP. We will detail a few of the most relevant conditions here. Some of the conditions specifically address the issue of what transmission capacity is acceptable. For instance, SMM Condition 4 states that PGE will consider projects using Conditional Firm, System Conditions transmission products as conforming to transmission requirements. SMM Condition 5 states that PGE will reduce the transmission requirement for renewable resources from 80 percent of the resource's interconnection limit to 75 percent. One addresses utility-owned assets; RFP Condition 6 reviews the use of rate-payer funded assets by bidders.

Two conditions go towards ensuring proper retention and supervision of the IE. RFP Condition 7 states:

PGE shall retain the IE to oversee Contract Negotiations and include evaluation of the role of performance guarantee in negotiations and drivers and outcomes of price updates.

Condition 11 of the RFP condition requires PGE to retain the IE through final resource selection. It reads:

PGE shall retain the IE through final resource selection. PGE will require the IE to monitor all contract negotiations. In addition to filing a final resource selection report with the Commission no later than 30 days after final resource selection, the IE will report at least monthly on contract negotiations and any impacts to pricing or bid withdrawals. The final report will include a full analysis of how the specific commercial terms shaped the Final Short List seeking acknowledgment and any impact to bid prices, including but not limited to reporting on contract negotiations, which shall include, but not be limited to analysis of negotiations on the following contract terms: Guaranteed COD; Transmission Upgrade Cost; Transmission Scheduling of Energy Effective Date; curtailment; and output guarantees.

The Commission also adopted a number of conditions proposed by NIPPC. For instance, “[t]he affiliate PPA must include a provision that allows regular (e.g., quarterly) audits by Commission Staff to ensure compliance with the affiliate PPA terms.”¹

In docket UI 489, where the Commission considered participation of PGE’s affiliate, PRR, the Commission there adopted numerous conditions aimed at ensuring that the affiliate is participating in a fair manner. For instance, Condition 2 from Order No. 23-294 provides for a separation of duties between individuals engaged in the development of PRR bids and individuals engaged in the evaluation or scoring of bids. Likewise, Condition 6 from that order requires PRR to maintain separate books from PGE. Condition 7 requires that the Commission have access to any documents, internal communications, meeting minutes, financial statements, books, and records from PGE and PRR.

Through these conditions and Staff oversight, the Commission has put numerous safeguards in place in these proceedings aimed at protecting the integrity of the 2023 RFP. Conversely, some of the proposals by NewSun are not likely to have the same desired effect. For instance, disqualifying the IE at this stage of the RFP could lead to a scramble to find a new IE, who would then need to get up to speed rapidly, and may therefore lack the background necessary to review utility actions effectively and independently. Leaving Bates White in place and exercising Commission Staff’s existing supervisory powers, on the other hand, would ensure the continuity of the process while still adequately protecting its integrity.

¹ Order No. 24-011 at 3.

For the same reason, we are not persuaded that it is necessary to disqualify either PRR or NextEra from submitting bids in the 2023 RFP. As noted above, the Commission has numerous ways to supervise PRR and its bids, and PRR's participation is already limited by the UI 489 proceeding. And specific to NextEra, it is not clear if NextEra had anything to do with PGE's actions in selecting the Clearwater Project and disallowing other bids. Prohibiting NextEra from participation would serve to decrease the competitiveness of the RFP, by eliminating a viable bidder.

We recommend denying NewSun's proposed non-price scoring methodology. It is not clear it addresses the core issue related to the Clearwater Project and, instead, appears to be an attempt to introduce new proposals at a late stage of this proceeding. NewSun made similar proposals throughout this proceeding, which the Commission has already chosen to deny.

Finally, we note that the Commission is actively reviewing PGE's conduct associated with the 2021 IRP in an ongoing contested case, docket UE 427. The Commission issued an order in that proceeding rejecting a stipulation due to its concerns over PGE's conduct in its RFP.² Accordingly, the Commission may speak to many of the issues raised by NewSun in its reconsideration request in that final order.

PROPOSED COMMISSION MOTION:

That NewSun's Motion for Reconsideration or Rehearing of Order No. 24-011 and 24-024 be denied.

² Order No. 24-091.