

than an aggregate of 80 megawatts with a duration of five or more years, as specified in OAR 860-089-0100(1).

Under OAR 860-089-0200(1), when an electric utility is subject to competitive bidding requirements, it must engage the services of an Independent Evaluator (IE) to oversee the Request for Proposals (RFP) process. Prior to engaging an IE's services, a utility must solicit input from interested parties regarding potential candidates and file a request for approval with the Commission.

OAR 860-089-200(2), requires the Company to file a request for approval to engage and IE and indicates that in its recommendation of an IE, Commission Staff should consider the input from the electric company and interested, non-bidding parties; the degree to which the IE is independent of the electric company and potential bidders; reasonableness of the cost of services, experience and competence of the IE; and the public interest.

OAR 860-089-0250(1) requires that an electric company prepare a draft RFP for review by all parties in the IE selection docket and that prior the electric company must consult with the IE in preparation of the RFP and conduct bidder and stakeholder workshops.

OAR 860-089-0250(2) requires that a draft RFP must reference and adhere to the RFP elements, scoring methodology, and associated modeling described in the Commission acknowledged IRP associated with the RFP.

Under OAR 860-089-0250(2)(a), a utility that does not have a Commission acknowledged IRP in which the RFP design, scoring methodology, and associated modeling was included, the utility must develop and file for approval, in the IE selection docket, a proposal for scoring methodology and associated modeling prior to preparing a draft RFP.

House Bill 2021 imposed new requirements on large, electric utilities, including the obligation to file a Clean Energy Plan (CEP). The Commission subsequently directed PGE to file its first CEP with its next IRP as a chapter, appendix, or accompanying filing.¹

Per OAR 860-089-0010(2), upon request or its own motion, the Commission may waive any of the Division 89 rules for good cause shown.

¹ See UM 2225, Order No. 22-206, June 3, 2022, page 1.

Analysis

Background

On January 31, 2023, PGE filed notice of the commencement of the process for a 2023 AS RFP and a corresponding request for a partial waiver for Oregon's CBRs.

PGE's last procurement, under docket number UM 2166, currently remains open and ongoing. The IE, Bates White, has informed Staff that it expects PGE to finalize commercial negotiations with select final bidders from the final shortlist acknowledged in Order No. 22-315 in coming weeks.

PGE spent much of the last year developing its 2023 IRP and its first Clean Energy Plan (CEP) required by HB 2021. PGE has also communicated preliminary results from its IRP development process with Staff and stakeholders in its monthly IRP Roundtables. The Company filed its 2023 IRP and CEP on March 31, 2023.²

In the process of developing the 2023 IRP, PGE identified significant resource deficits that it expects will emerge in 2026 and persist at least through the first HB 2021 compliance milestone in 2030. PGE states that the projected deficits will necessitate acquisition of approximately 181 MW of capacity each year at least through 2028.³

In the past, PGE has sought acknowledgement of its IRP before beginning an RFP process to acquire resources. However, given the large and immediate energy and capacity deficits and the Company's need to comply with HB 2021, Company believes it must begin the RFP process now, prior to IRP acknowledgement.

Experience in recent RFPs demonstrates that PGE's concerns about timing are reasonable, while the length of the RFP process is as much related to the rules as process decisions made by PGE. PGE's 2021 AS RFP was initially noticed on April 28, 2021 with an application for IE approval on June 15, 2021 and approval on July 13, 2021.⁴ The RFP was subsequently approved by the Commission on December 10, 2021⁵ and a final shortlist was acknowledged on August 31, 2022.⁶ As of March 31, 2023, PGE has still not completed contractual negotiations with all the resources it hopes to acquire in that proceeding, nearly two years after its initial application.

² See Docket No. LC 80.

³ See PGE 2023 IRP, March 31, 2023, page. 309.

⁴ See PGE 2021 All Source RFP, UM 2166 and Order No 21-235

⁵ See Commission Order No. 21-460.

⁶ See Commission Order No. 22-315.

Though the extended duration of the 2021 AS RFP was not due solely or mainly to the Commission's CBRs, it does demonstrate how complex the procurement process is. External factors such as supply chain disruptions or changes to federal policy can have a major impact on the procurement process. Given this complexity and uncertainty, seeking reasonable accommodations to save time and streamline the process is justifiable.

The Company has identified components of the RFP process laid out in the CBRs that it believes can be streamlined to allow PGE to acquire resources that will be in operation by 2026, when resource deficits are currently projected.

At the request of Staff, PGE held a stakeholder workshop on March 2, 2023, during which it described its waiver requests and presented its desired schedule for this RFP. Staff's goal was to seek feedback from stakeholders and identify any concerns with PGE's request prior to making a recommendation to the Commission. Stakeholders were invited to provide feedback both in the workshop and in written form. Constructive verbal feedback was provided by the Oregon Citizens' Utility Board (CUB), the Northwest and Intermountain Power Producers Coalition (NIPPC), and the Alliance of Western Energy Consumers (AWEC) at the workshop and in subsequent conversations with Staff. However, as of the writing of this memo, only AWEC has provided written feedback to the docket.

Waiver Request Components

PGE requested partial waivers of multiple CBR components. The Company also suggested ways to hold to the spirit of the CBRs and engage with stakeholders while targeting a request for final shortlist acknowledgment in December 2023. The waivers cover two areas of the CBRs:

1. Approval process for the Scoring and Modeling Methodology (SMM)
2. IE Selection process

Scoring and Modeling Methodology

In UM 2255, Idaho Power Company's (IPC) 2026 AS RFP, the Commission granted a request for a partial waiver of the CBRs.⁷ That waiver request arose both from a recognition of the time constraints facing Idaho Power and from conversations between Staff and various stakeholders that suggested it is difficult for stakeholders to review and analyze a proposed SMM without viewing it in the context of a draft RFP.

In recognition of these issues, Staff requested a partial waiver to allow for the concurrent review and consideration of the SMM and draft RFP for the IPC 2026 AS

⁷ See Commission Order No. 22-495, December 28, 2022, pages 8-9.

RFP. Staff subsequently worked with the Company and stakeholders to create a procedural schedule with one, combined review of both elements.

In its filing, PGE cited the partial waiver granted in Docket No. UM 2255 in requesting a similar waiver in this docket. PGE noted that it, too, is facing a very tight timeline to acquire resources in time to meet its projected shortfalls in 2026. The Company argued that the time constraints it faces warrant the granting of a partial waiver along the lines of that granted by Order No. 22-495. PGE also noted in its filing that it will be using the RFP and SMM from its most recent procurement in UM 2166 as the starting point for its 2026 AS RFP.⁸

As the IPC 2026 RFP is ongoing, neither Staff nor stakeholders have yet had the opportunity to evaluate this new process compared to prior RFPs which followed the process established in the CBRs more closely. However, feedback to Staff has been generally positive, with no stakeholders expressing dissatisfaction with the modified process to date. Lastly, at its March 2, 2023, stakeholder workshop, none of the attendees raised any questions or expressed any concerns with this component of PGE's request for partial waiver.

Staff Position

Given the time constraints described by PGE in its application in this docket, and subsequently reflected in its IRP,⁹ Staff is persuaded that there is good cause for an equivalent waiver in this case. PGE has been consistent in its claim that a streamlined approach is necessary for it to have new resources online to fill the energy and capacity needs forecasted in 2026.

Staff notes that the process for reviewing the 2021 AS RFP and associated SMM took approximately eight months and entailed significant engagement with stakeholders. Having so recently vetted and received approval for the RFP and SMM that will serve as the starting point for this procurement, a streamlined review process would ease some schedule constraints while allowing for iterative feedback and improvements on documents with which Staff and stakeholders are already very familiar.

To that end, Staff supports PGE's request to partially waive OAR 860-089-0250(2)(a) and allow for the concurrent review of the SMM and the draft RFP for this procurement. Staff will work with the Company and stakeholders to develop a procedural schedule that maximizes efficiency while maintaining adequate time and space for thorough analysis of both the SMM and the draft RFP by Staff and stakeholders.

⁸ See UM 2274 – PGE's Notice and Request for Partial Waiver of Competitive Bidding Rules, January 31, 2023, page 8.

⁹ See PGE 2023 IRP, March 31, 2023, pages 311-312.

Independent Evaluator

PGE last went through a competitive solicitation for IE services as part of its 2021 AS RFP in Docket No. UM 2166. The IE selection process resulted in a Staff recommendation and subsequent Commission order to approve Bates White to serve as the IE for the procurement at its public meeting on July 13, 2021.¹⁰

On August 31, 2022, in Order No. 22-315, the Commission acknowledged PGE's final shortlist for the 2021 AS RFP. In that order, the Commission directed PGE to keep Bates White under contract until the conclusion of all commercial negotiations and to file with the Commission if that negotiation process was expected to last beyond December 31, 2022.¹¹ On December 1, 2022, PGE made a compliance filing to notify the Commission that commercial negotiations were expected to continue into 2023 and argued for extending Bates White's contract through March 2023.¹²

Among the partial waivers requested by PGE, the Company is asking to extend Bates White's contract to the 2023 AS RFP without putting the contract through another public, competitive procurement process.

PGE states that going through the public process that would culminate in a Commission recommendation would delay the process beyond the point at which it could reasonably expect to acquire the new resources by the desired commercial operation date (COD).¹³ Additionally, the Company notes that its existing contract with Bates White was awarded on July 15, 2021, after a competitive solicitation which resulted in a Staff recommendation approved by the Commission.¹⁴

Stakeholder Comments

At the March 2, 2023, stakeholder workshop, and in subsequent communications with Staff, NIPPC expressed concerns with Bates White's performance in PGE's 2021 AS RFP. NIPPC stated that much of Bates White's analysis has been reactive, rather than proactive, identifying issues only after the fact and beyond the point when they can be addressed.

NIPPC also suggested that Bates White failed, in some instances, to provide a thorough analysis of how things like contractual terms or performance guarantees may

¹⁰ See Commission Order No. 21-235, July 15, 2021.

¹¹ See Commission Order No. 21-315, August 8, 2021, page 4.

¹² See UM 2166 – In the Matter of Portland General Electric Company 2021 All-Source Request for Proposals – PGE's Compliance Filing, December 1, 2022.

¹³ See UM 2274 – PGE's Notice and Request for Partial Waiver of Competitive Bidding Rules, January 31, 2023, page 7-8.

¹⁴ See Commission Order No. 21-235.

disadvantage independent developers, even if those provisions are deemed commercially reasonable. Despite these concerns, NIPPC informed Staff that it was not opposed to PGE's waiver request or to allowing Bates White to serve as IE for another procurement. However, NIPPC did request that Staff work to ensure that Bates White take a more aggressive approach in identifying issues early in the RFP and SMM review process and addressing reasonable concerns raised by stakeholders.

Staff Position

Given the time constraints facing PGE, the recency with which Bates White was competitively selected, and Bates White's willingness to maintain the pricing from its current contract, Staff believes it is reasonable to approve the use of Bates White's for the 2023 RFP and recommends granting a partial waiver of OAR 860-089-0200(1), (2). With the selection of Bates White in the 2021 AS RFP occurring less than two years ago, Staff believes that replicating the process would be an inefficient use of time and resources by the Company, Staff, and stakeholders.

However, Staff is wary of establishing a precedent that could allow IE service contracts to be renewed without the cost-control and public input provided by the CBR process. Staff is making no recommendation regarding this issue at this time, but will continue to monitor it going forward if requests to maintain IE contracts across multiple procurements arise in the future.

To address the concerns raised by NIPPC, Staff plans to request that Bates White include, as part of its initial report on the Scoring and Modeling Methodology and draft RFP, a report in which it examines the lessons learned from the procurement in Docket No. UM 2166.

This report should include, at a minimum:

1. A summary of the findings in Bates White's closing report from PGE's 2021 AS RFP and recommendations to apply those findings to improve the 2023 AS RFP;
2. An analysis of the form contracts which were used in the 2021 AS RFP and any uncompetitive or pro-utility bias that they may have introduced into the bidding and evaluation process, including any suggestions to improve the form contracts to better ensure a competitive procurement;
3. A discussion of the performance and credit provisions applied to PPAs and other third-party resources in UM 2166 and whether they unfairly impacted independent developers and biased the process in favor of Company built or owned resources; and

4. Any other recommendations to improve the competitiveness of this RFP based on Bates White's experience, including but not limited to its experience in PGE's 2021 AS RFP.

Including a discussion of unresolved issues from PGE's prior procurement—and recommendations to address them—in its initial report will allow Staff and stakeholders to evaluate those recommendations in written comments in this docket. This should allow a thorough vetting of those issues before Staff makes any recommendation on RFP and SMM approval to the Commission.

Parallel Review of PGE's 2023 RFP and 2023 IRP and CEP

In its filing, PGE requested that the Commission allow for parallel review of its 2023 AS RFP and its 2023 IRP and CEP, which would mark a break from established Commission procedures.¹⁵

In this case, PGE is requesting parallel review of its 2023 AS RFP and the 2023 IRP, which will provide the basis for the final procurement volume. PGE has been heavily engaged in modeling and analysis for its 2023 IRP and the associated CEP. In developing that IRP, PGE has identified significant and growing capacity needs over the next several years, beginning in 2026.¹⁶

Given the lead time associated with securing new resources through an RFP, the Company does not believe it can wait until its 2023 IRP has been acknowledged to launch its next RFP. The Company stated in its filing that it needs approximately three years from beginning a procurement to having resources built and operational for its system; contractual negotiations and construction alone can take two years.¹⁷ Staff would note here that commercial negotiations have already exceeded seven months for some projects from the shortlist acknowledged in UM 2166. Additionally, Staff would note that allowing approximately two years for construction of new resources is consistent with the timelines offered by Idaho Power in its 2026 AS RFP.

Working backwards from an assumed need beginning in January of 2026, PGE claims it must have an acknowledged shortlist by the beginning of 2024 in order to begin negotiations and have projects constructed in time to meet the January 2026 need.¹⁸

¹⁵ See UM 2274 – PGE's Notice and Request for Partial Waiver of Competitive Bidding Rules, January 31, 2023, pages 5-6.

¹⁶ See PGE Integrated Resource Planning Roundtable 23-2, Power Point Presentation, March 8, 2023, Slide 98.

¹⁷ See UM 2274 – PGE's Notice and Request for Partial Waiver of Competitive Bidding Rules, January 31, 2023, page 4.

¹⁸ Ibid, pages 5-6.

The procedural timeline for review of PGE's RFP is likely to last at least nine months. OAR 860-027-0400 establishes a six-month window after an IRP is filed for Staff and interested parties to file comments and recommendations. Additionally, in Order No. 23-010, the Commission adopted Staff's recommendation that an additional sixty days for preliminary comments and reply comments be added to the procedural schedule when granting PGE's request for a partial waiver of OAR 860-027-0400(2).

Assuming no delays or complications, the earliest the Company may expect a Commission decision on acknowledgement would likely be some time in December of 2023. If the Company were to wait until that time to begin a procurement based on the acknowledged need identified in the IRP, there would be insufficient time to run through the Commission's RFP process, seek acknowledgement of a final shortlist, successfully conclude commercial negotiations, and allow for construction to hit the desired COD.

In its waiver request, PGE described a process in which both the 2023 IRP and the final shortlist for the 2023 AS RFP would be presented to the Commission for a decision on acknowledgement at roughly the same time in December 2023. The Company would then select which bidders to negotiate with such that the final volume acquired from the shortlist would align with the action plan in the 2023 IRP, whenever it is acknowledged.¹⁹

Stakeholder Feedback

At the March 2, 2023, stakeholder workshop, the CUB questioned this component of PGE's filing. CUB expressed concern that the process contemplated by PGE could alter the dynamic between planning in the IRP evaluation process and the subsequent execution to meet identified needs through an RFP. Allowing a utility to proceed with a procurement without first receiving Commission acknowledgment of its needs, CUB argued, could present a risk to ratepayers. CUB ultimately informed Staff that it does not oppose PGE's proposal, but Staff appreciates the valid concerns CUB has raised.

In comments filed on March 31, 2023, AWEC urged caution in considering PGE's request. Like CUB, AWEC expressed concern that evaluating a procurement outside the context of a resource need identified in an acknowledged IRP places an undue burden on the Commission and stakeholders.²⁰ AWEC argues that without the supporting data from an IRP that has been thoroughly reviewed and acknowledged, Staff and other parties must rely on PGE's characterization of its resource needs.

Additionally, AWEC is concerned that Commission approval of an RFP, well before PGE's 2023 IRP acknowledgement is considered, may itself be used as an argument in

¹⁹ Ibid, page 6.

²⁰ See Comments of the Alliance of Western Energy Consumers, March 31, 2023, page 3.

favor of IRP acknowledgement.²¹ Overall, AWEC argues that the simultaneous review of a 2023 RFP and 2023 IRP represents a risk to ratepayers which the Commission must take into account when evaluating the waivers requested by PGE.²²

Staff Position

Staff recognizes the challenges facing PGE at this time. The aggressive decarbonization goals in HB 2021 and the tight timelines to achieve them require the Company to move quickly. This year is particularly challenging, both because of the significant work required to produce the 2023 IRP and the Company's first CEP and because the actions suggested by early 2023 IRP modeling must begin immediately for PGE to acquire resources it claims will be necessary to achieve HB 2021 compliance. This confluence of factors represents, in Staff's opinion, good cause to allow for the parallel review described in PGE's filing.

However, Staff appreciates the concerns raised by CUB and by AWEC and shares some of them. The sequential process from identification of a resource need in an acknowledged IRP to resource acquisition via a competitive RFP process is designed to protect ratepayers. Staff seeks to balance these factors against the public interest in seeing PGE achieve compliance with HB 2021. To alleviate some of the concerns raised, Staff believes that any Commission action on a final shortlist should align with the Commission's acknowledgment decision on PGE's 2023 IRP.

In Staff's view, requiring that the 2023 IRP align with the RFP prior to any acknowledgement decision on the 2023 AS RFP would ensure that the resource need and eventual procurement volume for the RFP will have been thoroughly vetted by Staff and stakeholders in the IRP docket.

In the event that PGE's 2023 IRP has not been acknowledged by the time the Company is seeking acknowledgment of its final shortlist in this procurement, Staff notes that other options would be open to PGE. If the Company feels confident that it has adequately demonstrated its need for new resources, it would always be free to procure those resources without an acknowledged shortlist. This would place the onus on PGE to demonstrate in a rate case that it acted in good faith based on a well-documented resource deficiency.

While the extenuating circumstances facing PGE warrant some regulatory flexibility, Staff is concerned that many of these circumstances are likely to persist for several years. Commission guidance on HB 2021 will continue to evolve; timelines for action will

²¹ Ibid, pages 2-3.

²² Ibid, page 4.

continue to be compressed; and external and market conditions will continue to require flexibility in planning and decision making.

Cognizant of these facts, Staff would like to use this opportunity to proactively explore PGE's forthcoming resource needs to meet 2030 emission reductions and how the Company intends to fill those needs without relying on ad hoc waivers of the CBRs.

Procurement Process Briefing

Staff requests that no later than 90 days after the adoption of these recommendations, PGE file in this docket a briefing in which the Company describes how its forecasted procurement needs interact with the cadence of its IRP development process. To the extent possible PGE should attempt to detail how its projected procurement schedule may change based on new IRPs or IRP updates over the next five years.

PGE should also identify any areas in which the Company expects it will need regulatory forbearance to meet its needs. Staff would like PGE to detail specific components of the CBRs or other Commission policies or procedures that the Company thinks may prevent it from filling projected deficits in a timely fashion. PGE should also list specific actions or decisions the Commission may be asked to take or approve to waive or amend the existing procurement process.

Finally, PGE may suggest any long-term alterations to the CBRs that it believes would streamline the procurement process while maintaining the spirit of the rules. Any recommended changes to those rules and procedures should include a discussion of how the goals of stakeholder engagement, competitive procurements, and ratepayer protection will be maintained.

Staff intends to use the information provided by PGE to evaluate if and how current Commission policies around resource procurement may need to change to meet the goals of HB 2021 in the face of very dynamic market and policy environments. However, Staff makes no commitment to support or adopt any recommendations.

Conclusion

Staff finds good cause to grant PGE's partial waiver requests and allow for the parallel review process described in its filing. As discussed above, the timelines of recent RFPs support PGE's assertion that the current procurement process can easily extend more than a year from initial application to final shortlist acknowledgment. In the context of this procurement, that could leave the Company with less than two years to successfully conclude commercial negotiations and see resources constructed and completed before the forecasted deficits in 2026. Granting these partial waivers will allow the Company to

fill its projected resource needs in the face of extenuating circumstances resulting from HB 2021 compliance.

Allowing Bates White to continue as the IE for the 2026 AS RFP will save several weeks in the procedural calendar. Similarly, combining and streamlining the review and approval of the SMM and RFP will also save several weeks or months in this docket.

Conversations with stakeholders and Staff's early experience with IPC's 2026 AS RFP suggest that granting these partial waiver requests will save time and provide flexibility without compromising a thorough and robust review of the RFP.

However, to attenuate any concerns about these requests, Staff requests the IE, Bates White, prepare a report on PGE's last procurement in Docket No. UM 2166 and make recommendations to improve the 2023 AS RFP based on the findings presented.

Allowing for concurrent review of the 2023 AS RFP and the 2023 IRP, though a break from the process envisioned by Oregon's CBRs, should be possible without overburdening stakeholders or the Commission or placing undue risk on ratepayers. To curtail that risk, Staff recommends that no action on a final shortlist in this docket should be taken until the 2023 IRP—and the resource need and exact procurement volume identified therein—have been aligned.

Finally, Staff directs PGE to submit a procurement process briefing detailing its resource needs. Staff also directs PGE to include an analysis of any waivers that might be necessary to meet its forecasted procurement plan as well as suggestions for potential long-term changes to the Commission's procurement procedures that may be required to achieve compliance with HB 2021.

PROPOSED COMMISSION MOTION:

Grant Portland General Electric's (PGE or Company) request for partial waiver of OAR 860-089-0200(1), (2) and approve PGE's use of Bates White as the Independent Evaluator (IE) for PGE's 2023 All-Source (AS) Request for Proposals (RFP).

Grant a partial waiver of OAR 860-089-0250(2)(a) to allow the Commission to consider PGE's proposed scoring and modeling methodology concurrent with its review of the draft RFP.