

ORDER NO. 12 376

ENTERED OCT 08 2012

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1613

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY

Request for Proposals for Renewable  
Resources.

ORDER

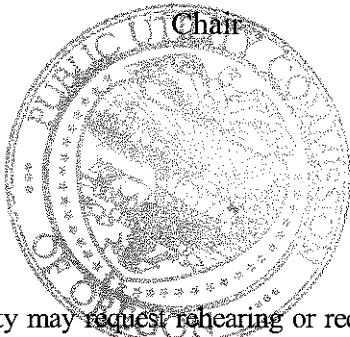
DISPOSITION: STAFF'S RECOMMENDATIONS ADOPTED

This order memorializes the decision of the Public Utility Commission of Oregon in this matter made and effective at a public meeting held on September 25, 2012. The Staff Report, detailing the recommendations adopted, is attached as Appendix A. Staff noted at the public meeting that Portland General Electric Company withdrew the challenged language in condition 9 of its final draft Request for Proposals.

Dated this 8<sup>th</sup> day of Oct., 2012, at Salem, Oregon.

  
Susan K. Ackerman

Chair



  
John Savage  
Commissioner

  
Stephen M. Bloom  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

## ITEM NO. 4

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: September 25, 2012

REGULAR X CONSENT \_\_\_\_\_ EFFECTIVE DATE Upon  
Commission Approval

DATE: September 17, 2012

TO: Public Utility Commission

FROM: Erik Colville *ME*  
*EC*

THROUGH: Jason Eisdorfer and Maury Galbraith *ME*

SUBJECT: PORTLAND GENERAL ELECTRIC COMPANY: (Docket No. UM 1613)  
Request for Proposals for Renewable Resources.

**STAFF RECOMMENDATION:**

Staff recommends the Commission approve Portland General Electric's (PGE) final draft Request for Proposals (RFP) – Renewable Energy Resources, with the following requirement:

- PGE delete Confidentiality and Non-Disclosure Agreement condition 9 limiting liability to \$100,000.

**DISCUSSION:**

Staff's report is organized into three sections. The first section provides a summary of Staff's discussion and recommendations. The second section is a summary of the Oregon Independent Evaluator's (IE) Assessment of the final draft RFP. Finally, the third section discusses the criteria that the Commission focuses on in approving an RFP.

On July 25, 2012, PGE issued its final draft renewable energy resources RFP. In accordance with the docket procedural schedule, PGE issued a revised final draft RFP on September 10, 2012. The purpose of the renewable resource RFP is to implement Action Plan Item 2 in the 2009 Integrated Resource Plan (IRP) to acquire 101 annual average megawatts (MWa) of renewable resources by the end of 2014.<sup>1</sup>

<sup>1</sup> The 2009 IRP Action Item 2 was to acquire 122 MWa of renewable resources. The 2009 IRP Update, filed November 23, 2011, reduced that acquisition to 101 MWa.

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On August 20, 2012, Citizens' Utility Board of Oregon (CUB), Industrial Customers of Northwest Utilities (ICNU), Northwest and Intermountain Power Producers Coalition (NIPPC), Renewable Northwest Project (RNP), and Staff filed comments in response to PGE's final draft RFP. PGE filed reply comments August 31, 2012.

### **Summary of the Oregon IE Assessment**

On August 14, 2012, the IE (Accion Group) submitted an assessment<sup>2</sup> of PGE's final draft renewable energy resources RFP. The IE reports that PGE has acted in good faith with all bidders, and created protocols and documents that will permit the RFP to be conducted in a fair and transparent manner.

The IE Assessment states the IE believes that PGE has acted in good faith in developing a RFP that will be fairly administered for all bidders, and created protocols and documents that will permit the RFP to be conducted in a fair and transparent manner. The IE further believes the RFP documents clearly set forth the terms and conditions of the RFP and the products being sought. Lastly, the IE believes the RFP can be conducted in a fair and unbiased manner using the documents and protocols presented by PGE.

In its Assessment, the IE notes eleven suggestions for revision to remove potential confusion and to provide clarity. In reply comments, PGE agreed to incorporate, or resolved, all of the suggested revisions. Of note, PGE agreed to: 1) assume Energy Trust of Oregon (ETO) funding for all eligible projects when compiling the initial short list. Then, after discussions with the ETO, PGE will finalize scores to reflect updated assumptions concerning ETO incentives; 2) adjust the scoring criteria to indicate that dispatchable power will receive the highest non-price score; and 3) set the bid submittal deadline to 12:00 p.m. PPT November 6, 2012.

Staff is in agreement with the IE Assessment, its suggestions and recommendations, and PGE's response.

### **Staff's Discussion and Recommendations**

Before proceeding to discuss the remaining issues in this docket, Staff wishes to highlight the goals the final draft RFP in this docket must accomplish. The final draft

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<sup>2</sup> The Independent Evaluator Assessment – Final Draft RFP was filed August 14, 2012, and can be found at the following internet address: <http://edocs.puc.state.or.us/efdocs/HAH/um1613hah131129.pdf>.

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RFP is one element of the competitive bidding guidelines. Order No. 06-446 presents the competitive bidding goals as:

1. Provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints;
2. Complement Oregon's integrated resource planning process;
3. Not unduly constrain utility management's prerogative to acquire new resources;
4. Be flexible, allowing the contracting parties to negotiate mutually beneficial exchange agreements; and
5. Be understandable and fair.

In Staff's review of the final draft RFP, the following four issues of substance were identified for discussion: Transmission Clarity and Transparency; Wind Integration Specificity; Risk Allocation; and Liability Limitation. This is not to say there were no other issues raised in the docket, but rather that these rise to the top in terms of substance. These four issues are presented and discussed below in the context of the competitive bidding goals.

#### 1. Transmission Clarity and Transparency

NIPPC comments that PGE should work with the IE to provide cost estimates of potential upgrades at all Bonneville Power Administration (BPA) points of delivery (POD) and at all of the PacifiCorp PODs. NIPPC's second comment related to transmission is that the benchmark resource's transmission cost assumptions should be shared with RFP stakeholders to ensure complete vetting of this issue in the RFP.

PGE replies that it is neither practical nor cost-effective for PGE to study in advance all of the possible scenarios under which a system upgrade might be needed at each of its POD. This is because potential bids can come in many configurations, and the potential costs of upgrades at PGE's various PODs can vary greatly depending on the size and location of the bid. PGE notes it does offer a process by which potential bidders can identify and obtain the costs of any system upgrades associated with their particular bid, and explore whether there are alternate PODs that are more cost-effective. This process is described in Sections 17 and 19 of PGE's Open Access Transmission Tariff (OATT) and involves having the bidder submit a request

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for Point-to-Point Transmission Service to PGE's Transmission and Reliability Services Department.

In response to NIPPC's second concern, PGE states that transmission costs and transmission cost increases will be applied comparably to all bids, including the benchmark bid. Thus, PGE expects all bidders proposing to use BPA transmission to include costs for transmission on BPA's system based on the rates in their BPA transmission service agreements (or the BPA tariff rate, if no transmission service agreement is in place) and to assume BPA transmission cost increases consistent with the increases used in PGE's 2009 IRP. In addition, consistent with the way it handles this issue in its Energy and Capacity RFP, PGE will use BPA transmission rates and associated BPA transmission cost increases as a proxy for the transmission costs for deliveries over the proposed Cascade Crossing transmission line. In accordance with Commission RFP Guidelines, both the Commission and the IE will have the opportunity to review the benchmark bid information to ensure that the transmission pricing is accurately captured by the bid and to ensure that it is scored comparably with other bids. PGE notes that the IE is retained expressly for the purpose of overseeing the RFP and ensuring that it is conducted fairly.

The CUB, ICNU, and RNP comments largely concur with those of NIPPC. Staff is satisfied that PGE's reply comments adequately address the transmission concerns expressed by NIPPC and therefore does not recommend revisions to the final draft RFP.

## 2. Wind Integration Specificity

NIPPC comments that the final draft RFP states that PGE will impute its costs of wind integration on its system to the price component of any bid that does not include firming and shaping. Although PGE has stated it will accept a dynamic transfer on the IE website and at workshops, the final draft RFP states, "Firm energy includes reserves and ancillary services to ensure that energy schedules are certain and delivered intact throughout the hour." NIPPC comments that the final draft RFP should be clarified to demonstrate that PGE will accept bids utilizing a dynamic transfer. For a bidder proposing a direct connect or a dynamic transfer triggering assignment of PGE's integration costs to the bid score, the final draft RFP should unambiguously define the deliverable product to be as-generated, intermittent energy, and environmental attributes.

PGE reply comments identify that PGE will revise the final draft RFP to clarify that PGE will accept bids utilizing a dynamic transfer. Scores for bidders who propose to

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put power to PGE via dynamic transfer will also include the full cost of wind integration as identified in PGE's wind integration study.

Also responding to NIPPC's concerns, PGE's reply comments agree to provide the following clarification in the final RFP:

Wind Integration costs represent the forecast error and generation firming services associated with a Variable Energy Resource (VER). One component of this cost estimate is associated with forecast deviation from Day-Ahead forecast to Hour Ahead actual. This component is \$3.61 per MWh and cannot be avoided if the resource is interconnected into BPA, PAC, or Dynamically into PGE. Balancing Authorities only provide tariff products associated with Generation Imbalance. The forecast deviation component described here is associated with the remainder of the Wind Integration cost.

For clarity, a wind resource directly interconnected into PGE's Service Territory will be assessed the full Wind Integration cost of \$9.15 per MWh. A resource integrating into BPA's balancing authority will be subject to the \$3.61 per MWh charge and is assumed to be firmed intra-hour by BPA.

Staff finds PGE's response to NIPPC's dynamic transfer concern is reasonable and adequate. Staff also agrees with PGE that firm energy is the appropriate basis for bids and bid evaluation in this RFP. As a result, Staff finds PGE's proposed final RFP firm energy clarification to be adequate, and does not recommend additional revisions to the final draft RFP.

### 3. Risk Allocation

NIPPC comments on two matters that fall into the category of risk allocation. The two matters are transmission curtailment, and mechanical availability guarantee. In regard to transmission curtailment, NIPPC comments that it is inconsistent for PGE to use BPA transmission costs for its benchmark resource and then to ignore that the benchmark resource must absorb the curtailment risks associated with BPA transmission.

In response, PGE notes it has included standard contractual provisions in the power purchase agreement (PPA) to allocate risk and protect customers in the event of interruptions or curtailments not caused by force majeure or a failure by PGE. PGE notes these provisions have been used in both the Edison Electric Institute and Western Systems Power Pool master agreements since at least 2001.

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Staff finds that PGE's response related to transmission curtailment addresses only one side of the concern – risk allocation related to PPAs. The other side of the concern is that there is risk to customers from curtailment of transmission for the benchmark resource. This risk to customers is not addressed in PPA terms. Staff does not find a reasonable method for quantifying the comparative risk of transmission curtailment for PPAs and the benchmark resource. Staff recommends that this comparative risk be addressed qualitatively at the time of short-list selection.

In regard to mechanical availability guarantee, NIPPC comments that PGE and the IE will need to develop a realistic expectation for a mechanical availability guarantee in order to evaluate bids. NIPPC argues that the final draft RFP provides no expectation in this regard for the benchmark bid, and that PGE does not provide a mechanical availability guarantee for the benchmark resource.

PGE's reply comments state there is no basis for NIPPC's assumption the benchmark bid will not have a mechanical availability guarantee. PGE notes it is standard industry practice for the equipment supplier/manufacture to provide the mechanical availability guarantee. In the absence of a privity of contract between PGE and a particular equipment supplier/manufacture, PGE will look to the bidder for that guarantee. Consistent with this standard industry practice, the benchmark bid is expected to obtain a similar guarantee from equipment manufacturers, the benefits of which will flow to customers.

While Staff agrees it is standard practice to obtain mechanical availability guarantees from equipment manufacturers, in practice the sum of the individual equipment guarantees does not equal a mechanical availability guarantee for the facility as a whole. This reality is due to the myriad interactions between individual pieces of equipment and standard limitation of responsibility language in guarantees. In the case of a third-party facility, that party will provide a guarantee for the facility. In the case of the PGE benchmark facility, PGE customers will be responsible for the risk of facility failure. Staff does not find a reasonable method for quantifying the comparative availability risk between PPAs and the benchmark resource. Staff recommends that this comparative risk be addressed qualitatively at the time of short-list selection.

#### 4. Liability Limitation

PGE's revised final draft RFP includes a \$100,000 limitation of liability in the Confidentiality and Non-Disclosure Agreement (NDA) as condition 9. The limitation of liability applies to both PGE and the agreement counterparty. In discussion with

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PGE, Staff learned that the liability limitation was included in response to a large judgment against an electric utility in Utah for its misappropriation of trade secrets and its breach of a written confidentiality agreement. According to PGE, the liability limitation provides protection for customers from such judgments.

Staff has not seen a limitation of liability in previous PGE or PacifiCorp resource RFP NDAs. Staff is concerned a limitation on liability in a non-negotiable NDA may limit participation in an RFP, and is not the norm in other RFPs. Due to the closeness of the filing date of the revised final draft RFP to the public meeting date, Staff is also concerned with the inability to develop the record on this matter. Due to Staff's concerns, even with the potential for a benefit to customers, Staff recommends the Commission require PGE to delete NDA condition 9. In this recommendation, Staff is not implying a similar condition is inappropriate in future NDAs.

#### Other Issues

Staff agrees with the position or resolution proposed by PGE in relation to the following other issues in NIPPC's comments:

- Provide Clarity With Regard to PGE's Preferred Online Date

*PGE Reply* – PGE will provide the clarification.

- The Template Power Purchase Agreement Should Contain No Unreasonable Terms

*PGE Reply* – PGE will allow bidders to negotiate mutually agreeable final contract terms that differ from ones in the standard form contracts.

- Remove Scoring Benefit for Projects Located in Oregon

*PGE Reply* – PGE does not agree to remove this scoring benefit.

- Remove the Request That IPP Bidders Provide PGE With Managerial Control Over the IPP Plant

*PGE Reply* – PGE does not agree to remove the request for information.

- Detailed Scoring Criteria Should Be Included in the RFP Document



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*PGE Reply* – PGE will provide the detail scoring criteria in the RFP Document.

### **Commission Decision Criteria**

The Commission uses three criteria to judge RFP approval:<sup>3</sup>

1. The alignment of the utility's RFP with its acknowledged IRP.<sup>4</sup>
2. Whether the RFP satisfies the Commission's competitive bidding guidelines.
3. The overall fairness of the utility's proposed bidding process.

#### IRP Alignment

The Company's 2009 IRP Update Action Plan called for 101 MWa of renewable energy resources by the end of 2014. Staff believes acquisition of these resources is consistent with the acknowledged IRP.

#### Competitive Bidding Guidelines

The IE has indicated that the final draft RFP aligns with Commission Guidelines. Guideline 6 requires the RFP set forth minimum bidder requirements, bid evaluation and scoring criteria, and include standard form contracts. The Guideline also requires a draft RFP be provided to all parties in the utility's most recent general rate case, RFP, and IRP dockets. In addition, the utility is required to conduct bidder and stakeholder workshops. Further, the utility is required to submit a final draft RFP to the Commission for approval. Staff believes that PGE has complied with Guideline 6 and therefore the final draft RFP aligns with the Commission Guidelines in Order No. 06-446.

#### Overall Fairness of the Proposed Bidding Process

The IE has monitored every aspect of the RFP process to date and has indicated that the RFP is being conducted in a fair and unbiased manner. As a result, Staff believes this criterion has been met.

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<sup>3</sup> See Guideline 7, Order No. 06-446 (at 9).

<sup>4</sup> On November 23, 2010, the Commission acknowledged PGE's 2009 IRP in part, including the company's plan to acquire 122 MW of renewable energy by the end of 2014. See Order No. 10-457 in Docket LC 48.

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**PROPOSED COMMISSION MOTION:**

Portland General Electric's final draft Request for Proposals – Renewable Energy Resources, be approved with the following requirement:

- PGE delete Confidentiality and Non-Disclosure Agreement condition 9 limiting liability to \$100,000.

Docket No. UM 1613 Renewable Energy Resources RFP