

ORDER NO.

14 300

ENTERED

SEP 02 2014

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1704

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Request for Waiver of Request for Proposal  
(RFP) Requirement.

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

At its public meeting on September 2, 2014, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



*Becky L. Beier*

**Becky L. Beier**  
Commission Secretary

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. CA4

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: September 2, 2014

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE September 2, 2014

DATE: August 11, 2014

TO: Public Utility Commission

FROM: John Crider

Jc

MA to MB

ra

THROUGH: Jason Eisdorfer, Maury Galbraith, and Aster Adams

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket UM 1704) Request for waiver of RFP requirement.**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should find that the exception to the Commission's Major Resource RFP requirement in Commission Guideline 2.a. is applicable to a power purchase agreement executed by PGE and the Confederated Tribes of Warm Springs Reservation of Oregon.

**DISCUSSION:**Background

On April 21, 2014, PGE submitted a report informing the Commission that it entered into a 10-year contract (hereinafter referred to as the "PPA") with the Confederated Tribes of Warm Springs Reservation of Oregon (Tribes) to continue purchasing the Tribe's share of the output of the Pelton and Round Butte plants (PRB) and all of the net output of the Tribes' Re-regulation plant (Re-reg). In its filing, PGE stated that it does not believe the PPA is subject to the Commission's Competitive Bidding Guidelines ("Guidelines") because PGE will continue to purchase the same amount of energy from the Tribes that it has purchased over the previous 12 years and would have continued to purchase under the terms of the 2002 Ownership and Operation Agreement ("O&O") between PGE and the Tribes.<sup>1</sup>

PGE asks that in the event the Commission concludes that the Guidelines are applicable, the Commission conclude that the PPA between it and the Tribes is exempt from the bidding requirements under Guideline 2.a. because the PPA "provides a

<sup>1</sup> PGE's report of a Major Resource Acquisition 1.

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significant and unique value to customers that would have been lost had PGE been required to issue an RFP.<sup>2</sup> Finally, PGE asks that if the Commission concludes the exemption in Guideline 2.a. is not applicable, the Commission waive the RFP requirement under Guideline 2.c., which allows a waiver on a case-by-case basis.

As explained below, Staff concludes that the PPA between the Tribes and PGE is a Major Resource under the Guidelines. However, because the PPA provides unique value to PGE's customers and that time and circumstances did not allow PGE to issue an RFP prior to executing the PPA, Staff finds that the exemption from the RFP requirement in Guideline 2.a. is applicable.

#### Staff analysis

Under the Guidelines, a utility must issue an RFP for all "Major Resource" acquisitions identified in its last acknowledged IRP. "Major Resources" are resources with durations greater than five years and quantities greater than 100 MW.<sup>3</sup> The requirement does not apply, however, if one of the exceptions in the Guidelines applies. The exceptions are in Guideline 2, which provides:

2. **Exceptions to RFP Requirement:** A utility is not required to issue an RFP under the following circumstances:
  - a. Acquisition of a Major Resource in an emergency or where there is a time-limited resource opportunity of unique value to customers.
  - b. Acknowledged IRP provides for an alternative acquisition method for a Major Resource.
  - c. Commission waiver on a case-by-case basis.

The PPA falls within the Guidelines' definition of a Major Resource; the PPA lasts more than five years and is for more than 100 MW. Staff disagrees with PGE that the Guidelines do not apply to this PPA because PGE is not purchasing any more energy for any greater length of time than it was already committed to under the O&O agreement between the Tribes and PGE. The PPA replaces another contract between these parties for the sale of the output of PBR and Re-reg. Although the PPA is similar to its predecessor it is in fact a new contract.

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<sup>2</sup> PGE's Report of a Major Resource Acquisition 1.

<sup>3</sup> Order No. 06-446, Appendix A at 1.

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Staff concludes that because the PPA provides unique value to customers that may have been lost had PGE been required to issue an RFP, the exception to the RFP requirement in Guideline 2.a. applies. Accordingly, PGE's decision to not issue an RFP prior to entering into a PPA with the Tribes is consistent with the Competitive Bidding Guidelines.

Under the O&O the Tribes are entitled to sell to PGE the output of the Re-reg. generation facility and their share of the PBR, and if the Tribes elect to do so, PGE is required to purchase. The Tribes can elect to sell the output to a third-party under the terms of the O&O. The O&O specifies that if the Tribes provide formal notice of the election to sell to a third party by April 1, the Tribes can begin to sell to the third party on January 1 of the following year.

In the summer of 2013, the Tribes informed PGE that they were considering exercising their right to sell PBR and Re-reg output to a third party (beginning January 1, 2015). The Tribes and PGE subsequently negotiated a PPA (the one at issue here) under which PGE continued to purchase the Tribes' share of the output of the facilities and the Tribes agreed to waive their right to sell to third parties.

PGE explains that once the Tribes informed PGE in the summer of 2013 that the Tribes might provide notice on April 1, 2014, of the Tribes' election to sell to a third party starting January 1, 2015, PGE and the Tribes began an accelerated negotiation process. PGE asserts that "[t]he nature and time frame of the transaction did not allow for the development, issuance and conduct of a RFP."<sup>4</sup> PGE also notes that it was unclear during the negotiation process whether PGE would actually lose any energy supplied by the Tribes under the O&O because if the Tribes chose to sell to PGE, PGE would be required to purchase.

Staff agrees that the circumstances surrounding the Tribes' possible election to sell to a third-party starting January 1, 2015 made issuing an RFP highly impractical. First, the time was limited. Second, PGE could not be sure that it had a need for the energy until the Tribes actually began to sell to a third party on January 15, 2015. The uncertainty regarding the Tribes' final decision as to whether to sell to PGE (in which case PGE would have to purchase) made issuing an RFP highly impractical.

Staff also agrees that the contract with the Tribes has unique value to PGE customers. PGE states that PRB is the only PGE-owned resource that provides usable reservoir storage for regulation and load-following services. The project also provides dispatchable, non-emitting generation, which as PGE notes, is becoming increasingly valuable.

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<sup>4</sup> Portland General Electric Company's Report of a Major Resource Acquisition 3.

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For these reasons Staff concludes that the contract between the Tribes and PGE is in the best interest of customers and recommends that the Commission conclude that the exception to the Major Resource RFP requirement in Guideline 2.a. is applicable.

**PROPOSED COMMISSION MOTION:**

The exception to Commission's Major Resource RFP requirements in Guideline 2.a. applies to the PPA between PGE and Tribes' share of the output of the Pelton and Round Butte plants and all of the net output of the Tribes' Re-regulation plant.

PGE RFP Requirements - JC