

ORDER NO. 21-328

ENTERED Oct 06 2021

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2176

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Application for Waiver of the Competitive  
Bidding Rules.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on October 5, 2021, 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:

A handwritten signature in blue ink, appearing to read "Nolan Moser".

**Nolan Moser**

Chief Administrative Law Judge

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 Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON  
REDACTED STAFF REPORT  
PUBLIC MEETING DATE: October 5, 2021**

REGULAR   X   CONSENT        EFFECTIVE DATE                      N/A

**DATE:** September 27, 2021

**TO:** Public Utility Commission

**FROM:** Zachariah Baker

**THROUGH:** Bryan Conway, JP Batmale, Kim Herb **SIGNED**

**SUBJECT:** PORTLAND GENERAL ELECTRIC:  
(Docket No. UM 2176)  
Application for Waiver of the Competitive Bidding Rules.

**STAFF RECOMMENDATION:**

Find that there is good cause to waive all the competitive bidding rules in OAR Chapter 860, Division 89 for the power purchase agreement recently executed by PGE and the Confederated Tribes of Warm Springs Reservation of Oregon.

**DISCUSSION:**

Issue

Whether the Oregon Public Utility Commission should grant a waiver of the competitive bidding rules for the power and purchase agreement recently executed by PGE and the Confederated Tribes of Warm Springs Reservation of Oregon.

Applicable Rule or Law

The Commission's competitive bidding requirements in OAR Chapter 860, Division 89 generally apply when an electric utility may acquire a resource or a contract for more than an aggregate of 80 megawatts and five years in length, as specified in OAR 860-089-0100(1). These requirements include the need to issue a Request for

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Proposals (RFP) and engage the services of an independent evaluator to oversee the RFP process.<sup>1,2</sup>

When a resource or contract is of sufficient duration and size to be subject to the competitive bidding rules, under OAR 860-089-0100(3) there are four specific competitive bidding rule exceptions, or, instances in which the competitive bidding rules do not apply: 1) emergency, 2) time-limited opportunity to acquire a resource of unique value to the electric company's customers, 3) explicit acknowledgement by the Commission of an alternative acquisition method proposed in the IRP, and 4) exclusively acquiring transmission assets or rights. Within 30 days of seeking to acquire a resource under one of the exceptions, the electric company must file a report with the Commission explaining the relevant circumstances.<sup>3</sup>

Upon request or its own motion, the Commission may also waive any of the Division 089 rules for good cause shown.<sup>4</sup> If a request for waiver is made, it must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition.<sup>5,6</sup>

## Analysis

### *Application Background*

On June 2, 2021, Portland General Electric (PGE or Company) filed an application (Application) requesting that the Commission waive the competitive bidding rules as applicable to a long-term hydroelectric power purchase agreement (Proposed PPA) with the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS or Tribes).<sup>7</sup> Specifically, at the time of the waiver application, PGE planned to enter into a power and capacity purchase agreement with CTWS for their share of the output of the Pelton and Round Butte plants (PRB) and the net output of the Re-regulation plant (Re-reg). Between the date of the Application and the date initial comments in the docket were due, the above-referenced Proposed PPA was executed.<sup>8</sup> **[BEGIN HIGHLY**

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<sup>1</sup> OAR 860-089-0250.

<sup>2</sup> Under OAR 860-089-0200(1).

<sup>3</sup> OAR 860-089-0100(4).

<sup>4</sup> OAR 860-089-0010(2).

<sup>5</sup> OAR 860-089-0010(2)(a).

<sup>6</sup> "Resource acquisition" is defined in OAR 860-089-0020(9) to refer "to a process for the purpose of acquiring energy, capacity, or storage resources that starts with... [c]ommunication of a final offer or receipt of a final offer in a two-party negotiation."

<sup>7</sup> Application. Page 1. See footnote 1: "PGE is requesting to waive all relevant competitive bidding rules, including OAR 860-089-0200 through OAR 860-089-0500."

<sup>8</sup> Application. Page 1. The PPA was not signed at application filing, but has since been:

<https://portlandgeneral.com/news/2021-07-19-pge-and-the-confederated-tribes-of-warm-springs-commit-to-16-more>.

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**CONFIDENTIAL]** [REDACTED]

.<sup>9</sup> [END

**HIGHLY CONFIDENTIAL].**

PGE's 2019 IRP Action Plan included pursuing dispatchable capacity through bilateral negotiations.<sup>10</sup> The Commission considered and acknowledged the Action Plan in LC 73 and Order No. 20-152.<sup>11</sup>

PGE and the Tribes are co-owners of PRB, with PGE acting as operator. The Tribes currently have a 33.33 percent ownership share in PRB and are the sole owner of the Re-reg generation facility. In 2000, the Commission granted approval for PGE's original sale of a one-third ownership interest of PRB to the Tribes, as well as subsequent ownership interest percentages, including sale of an additional 16.66 percent share of the PRB project to the Tribes at the end of 2021.<sup>12</sup>

A Long-Term Global Settlement Agreement (LTGSA) governs, among other things, the general terms and conditions whereby the Tribes can acquire an increased ownership in PRB. Pursuant to the LTGSA, the Tribes had, by no later than July 1, 2021, to provide formal notice of their intent to exercise their option to purchase an additional undivided 16.66 percent interest in PRB. The Tribes informally indicated to PGE they intended to exercise this option and requested a long-term power and capacity purchase agreement to support the financing of their purchase, which precipitated PGE's waiver application.<sup>13</sup>

The LTGSA also includes an Ownership and Operation Agreement (O&O Agreement) that provides the Tribes a right to take and schedule the Tribes' allocation of the output of the PRB and use, sell, or otherwise dispose of it as the Tribes may determine, rather than sell it to PGE.<sup>14</sup> In 2014, PGE and the Tribes entered into a PPA (the 2014 Agreement) in which PGE continued to purchase the Tribes' output of the facilities and the Tribes agreed to waive their right to sell to third parties for the length of the

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<sup>9</sup> **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

**[END HIGHLY**

**CONFIDENTIAL].**

<sup>10</sup> *In the Matter of Portland General Electric's 2019 Integrated Resource Plan*, Docket LC 73, Commission Order No. 20-152, Page 5 (May 6, 2020).

<sup>11</sup> Order No. 20-152. Page 25.

<sup>12</sup> See *In the Matter of the Application of PGE in Regard to the Sale of Portions of the Pelton-Round Butte Property to the Confederated Tribes of the Warm Springs Reservation of Oregon*, Docket No. UP 176, Order No 00-459 (August 22, 2000).

<sup>13</sup> Application. Page 3.

<sup>14</sup> Application. Page 2.

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agreement. The 2014 Agreement covered a period of 10 years through December 31, 2024. To enable this agreement outside of a competitive bidding process, the Commission waived the competitive bidding guidelines that were in place at the time.<sup>15</sup>

Given the Tribes' intent to exercise its purchase option this year, the Tribes and PGE negotiated a new PPA (the Proposed PPA).<sup>16</sup> This Proposed PPA is the subject of PGE's current application for a waiver of the competitive bidding rules.

Under the Proposed PPA, PGE would continue to make fixed capacity payments to the Tribes in exchange for the continued right to receive the Tribes' allocation of the output from PRB and the Re-reg net output through 2040.<sup>17</sup> The main difference between the 2014 Agreement and the Proposed PPA is an increase in the fixed capacity payment

**[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]<sup>18</sup> **[END HIGHLY**

**CONFIDENTIAL]**. The Proposed PPA would begin January 1, 2025, following the expiration of the 2014 Agreement, and extend through December 31, 2040. Assuming the Tribes officially complete their purchase option of an additional 16.66 percent of PRB by January 2022, the Proposed PPA would result in the sale of all Tribes-owned energy and capacity in the PRB facility and Re-reg to PGE. This includes 249 MW of nameplate capacity and a forecasted 89 MWh of annual energy deliveries.<sup>19</sup>

#### *Stakeholder Feedback and Staff's Initial Recommendation*

The Citizens' Utility Board of Oregon (CUB) filed initial comments in support of PGE's Application. The remaining comments were filed by Staff and PGE.

In its Initial Comments, Staff noted that while PGE requested a waiver, Staff felt it was important to also assess whether an exception to the competitive bidding rules applied. Staff identified two of the four exceptions in the competitive bidding rules that it thought could be applied to this project. The first was a time-limited opportunity to acquire a resource of unique value. The second was an explicit acknowledgement by the Commission of an alternative acquisition method proposed in the Integrated Resource Plan (IRP). Staff provided an initial analysis of these exceptions in both its Initial Comments and a more complete analysis of these in its Initial Recommendation. See

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<sup>15</sup> See Order No. 14-300.

<sup>16</sup> The PPA wasn't signed at the time of application filing, but has since been signed: <https://portlandgeneral.com/news/2021-07-19-pge-and-the-confederated-tribes-of-warm-springs-commit-to-16-more>.

<sup>17</sup> Application. Page 4.

<sup>18</sup> **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]**. Unredacted PGE

Application filed August 20, 2021. Page 5.

<sup>19</sup> Application. Page 5.

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Attachment 1. Staff ultimately recommended that the Commission could find that either or both of the exceptions applied.

PGE did not disagree with Staff's analysis of the exceptions, but argued that a waiver was still appropriate in this case.<sup>20</sup> PGE argued that there was time to seek a waiver of the competitive bidding rules and given the opportunity for Staff and parties to thoroughly review PGE's filing, there was value in seeking a waiver of this transaction and the accompanying review process.<sup>21</sup> PGE also provided its interpretation of the rules to allow for a waiver request.

Staff acknowledges that this Application, and the ensuing analysis, has raised a number of questions about how exceptions and waivers under the competitive bidding rules should be pursued, considered, and applied. There have been very few waiver requests or exception notices filed since the competitive bidding rules were adopted and this is the first waiver request for a routine RFP procurement following acknowledgment of an IRP by PGE under the rules. PGE also did not confer with Staff in advance of its filing.

Recognizing the challenge, Staff's Initial Recommendation was an attempt to address all potentially applicable circumstances and provide alternative recommendations. See Attachment 1. PGE filed comments in response to Staff's Initial Recommendation reiterating its request for a waiver.

Upon further analysis of the circumstances and timing of this acquisition, Staff recommends that the Commission focus its decision on consideration of a waiver in this case, per PGE's request. In its Initial Recommendation, Staff had alternatively recommended that the Commission find that there is good cause for a waiver of the competitive bidding rules for the Proposed PPA. Staff continues to conclude that there is good cause for a waiver of the competitive bidding rules for the Proposed PPA and summarizes its waiver analysis from the Initial Recommendation in the next section.

With that said, Staff would make a few observations as it relates to waiver and exception considerations and determinations by the Commission moving forward:

- 1) As always, the Commission has the authority to review the application of exceptions if it so chooses in this particular case, or in the future.
- 2) Staff encourages electric utilities to reach out as early as possible to Staff to discuss potential resource acquisitions that may need an exception, or

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<sup>20</sup> PGE's Comments on Staff's Recommendation. Page 2.

<sup>21</sup> PGE's Comments on Staff's Recommendation. Page 2.

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substantiate a waiver of the competitive bidding rules and discuss the appropriate filing in advance.

*Waiver for Good Cause Shown*

In its Initial Recommendation, Staff discussed and concluded that the Commission may find there is good cause for a waiver.<sup>22</sup>

As stated previously, very few waiver requests have been considered under the competitive bidding rules. Thus, Staff reviewed the Commission's order adopting the rules and the various circumstances and criteria reviewed in prior waiver requests under the competitive bidding guidelines, when a resource was not identified as a time-limited opportunity.<sup>23</sup> Staff found that in evaluating whether good cause is shown, it is helpful to consider how closely a procurement for which a waiver is granted may still align with the goals of a competitive bidding process.

The stated purpose of the competitive bidding rules in OAR 860-089-0010 is to minimize long-term costs and risks, complementing the IRP process, and ensuring a fair, objective, and transparent process that does not unduly restrict electric companies from acquiring new resources and negotiating mutually beneficial terms. Therefore, in addition to reviewing PGE's stated grounds for the waiver request, Staff considered the extent to which the resource or contract may 1) minimize long-term costs and risks, 2) complement the IRP process, and 3) be conducted in a manner that is transparent, understandable, and fair under the circumstances.

In reviewing PGE's stated grounds for a waiver, Staff noted that the proposed PPA addresses a substantial portion of PGE's capacity need as identified in the 2019 IRP. Staff also recognized the value of a hydroelectric facility for dispatchable capacity and non-emitting generation, particularly at this time with the recent passage of House Bill 2021. Staff also appreciated the important role bilateral negotiations play outside of RFPs in the context of hydroelectric projects and that opportunities may have particular time constraints that might not align with an RFP.

In addition, Staff found that the Proposed PPA minimizes long-term costs and risks, complements the IRP process, and was conducted in a manner that is transparent, understandable, and fair under the circumstances. Further, Staff would note that this

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<sup>22</sup> See Staff's Initial Recommendation, filed August 31, 2021 (included as Attachment 1 to this memo). Pages 10-12.

<sup>23</sup> See, e.g., Docket No. AR 600, Order No. 18-324, adopting the competitive bidding rules. See also Order in Docket No. UM 1182, Order No. 14-149 Appendix A for a copy of the guidelines. See also Staff Comments dated October 27, 2017 in Docket No. UM 1892. Page 3. See Order No. 16-221, Docket No. UM 1773, and See Order No. 17-494, Docket No. UM 1892.

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facility has already been operating as a resource fully within the PGE system for several decades and it is the largest hydroelectric on-system resource for PGE. The past and future operations of this facility, along with the joint ownership arrangements, represent a long-standing practice of cooperation between the Tribes and PGE, with no similar arrangement between a Tribal Government in Oregon and an investor-owned utility for co-ownership and operation of a hydroelectric facility.

As a result, Staff concluded, and continues to conclude that there is good cause for a waiver.

#### Conclusion

Staff recommends that the Commission find that there is good cause for a waiver of the competitive bidding rules for the Proposed PPA.

#### **PROPOSED COMMISSION MOTION:**

Waive all the competitive bidding rules in OAR Chapter 860, Division 89 for the power purchase agreement recently executed by PGE and the Confederated Tribes of Warm Springs Reservation of Oregon.

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In the Matter of

PORTLAND GENERAL ELECTRIC  
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Bidding Rules.

**STAFF INITIAL RECOMMENDATION**

On June 2, 2021, Portland General Electric (PGE or Company) filed an application (Application) requesting that the Commission waive the competitive bidding rules as applicable to a long-term hydroelectric power purchase agreement (Proposed PPA) with the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS or Tribes).<sup>1</sup> Specifically, at the time of the waiver application, PGE planned to enter into a power and capacity purchase agreement with CTWS for their share of the output of the Pelton and Round Butte plants (PRB) and the net output of the Re-regulation plant (Re-reg). Between the date of the Application and the date of Staff's Initial Comments, the above-referenced Proposed PPA was executed.<sup>2</sup> **[Begin Highly Confidential]** [REDACTED]

**[End Highly Confidential]**.

Staff filed its Initial Comments on August 3, 2021. The Citizens' Utility Board of Oregon (CUB) also filed initial comments. CUB's comments supported PGE's Application. PGE filed Reply Comments on August 17, 2021. PGE also responded to Staff's Information Requests prior to filing its Reply Comments.

Staff has reviewed all of the information provided to date and offers its initial recommendation summarized here and discussed in more detail below. Staff initially recommends the Commission take the following actions, based on PGE's Application:

<sup>1</sup> Application. Page 1. See footnote 1: "PGE is requesting to waive all relevant competitive bidding rules, including OAR 860-089-0200 through OAR 860-089-0500."

<sup>2</sup> Application. Page 1. The PPA was not signed at application filing, but has since been: <https://portlandgeneral.com/news/2021-07-19-pge-and-the-confederated-tribes-of-warm-springs-commit-to-16-more>.

<sup>3</sup> **[Begin Highly Confidential]** [REDACTED] **[End Highly Confidential]**.

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1. Find that the time-limited opportunity of unique value exception (OAR 860-089-0100(3)(b)) or the alternative acquisition method exception (OAR 860-089-100(3)(c)) to the competitive bidding rules, or both, apply to the Proposed PPA.
2. Accept PGE's Waiver Application as satisfying the reporting requirements for an exception, or partially or fully waive the exception-related reporting requirement.
3. Alternatively, find that there is good cause for a waiver of the competitive bidding rules for the Proposed PPA.

Staff welcomes public comment on its initial recommendation. Under the schedule for this docket, comments are due by September 7, 2021.

### **Background**

PGE's 2019 IRP Action Plan included pursuing dispatchable capacity through bilateral negotiations.<sup>4</sup> The Commission considered and acknowledged the Action Plan in LC 73 and Order No. 20-152.<sup>5</sup>

PGE and the Tribes are co-owners of PRB, with PGE acting as operator. The Tribes currently have a 33.33 percent ownership share in PRB and are the sole owner of the Re-reg generation facility. In 2000, the Commission granted approval for PGE's original sale of a one-third ownership interest of PRB to the Tribes, as well as subsequent ownership interest percentages, including sale of an additional 16.66 percent share of the PRB project to the Tribes at the end of 2021.<sup>6</sup>

A Long-Term Global Settlement Agreement (LTGSA) governs, among other things, the general terms and conditions whereby the Tribes can acquire an increased ownership in PRB. Pursuant to the LTGSA, the Tribes had, by no later than July 1, 2021, to provide formal notice of their intent to exercise their option to purchase an additional undivided 16.66 percent interest in PRB. The Tribes informally indicated to PGE they intended to exercise this option and requested a long-term power and capacity purchase agreement to support the financing of their purchase, which precipitated PGE's waiver application.<sup>7</sup>

The LTGSA also includes an Ownership and Operation Agreement (O&O Agreement) that provides the Tribes a right to take and schedule the Tribes' allocation of the output of the PRB and use, sell, or otherwise dispose of it as the Tribes may determine, rather than sell it to PGE.<sup>8</sup> In 2014, PGE and the Tribes entered into a PPA (the 2014 Agreement) in which PGE continued to purchase the Tribes' output of the facilities and the Tribes agreed to waive their right to sell to third parties for the length of the

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<sup>4</sup> *In the Matter of Portland General Electric's 2019 Integrated Resource Plan*, Docket LC 73, Commission Order No. 20-152, Page 5 (May 6, 2020).

<sup>5</sup> Order No. 20-152. Page 25.

<sup>6</sup> See *In the Matter of the Application of PGE in Regard to the Sale of Portions of the Pelton-Round Butte Property to the Confederated Tribes of the Warm Springs Reservation of Oregon*, Docket No. UP 176, Order No 00-459 (August 22, 2000).

<sup>7</sup> Application. Page 3.

<sup>8</sup> Application. Page 2.

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agreement. The 2014 Agreement covered a period of 10 years through December 31, 2024. To enable this agreement outside of a competitive bidding process, the Commission waived the competitive bidding guidelines that were in place at the time.<sup>9</sup>

Given the Tribes' intent to exercise its purchase option this year, the Tribes and PGE negotiated a new PPA (the Proposed PPA).<sup>10</sup> This Proposed PPA is the subject of PGE's current application for a waiver of the competitive bidding rules.

Under the Proposed PPA, PGE would continue to make fixed capacity payments to the Tribes in exchange for the continued right to receive the Tribes' allocation of the output from PRB and the Re-reg net output through 2040.<sup>11</sup> The main difference between the 2014 Agreement and the Proposed PPA is an increase in the fixed capacity payment

[Begin Highly Confidential]

[End Highly Confidential].

The Proposed PPA would begin January 1, 2025, following the expiration of the 2014 Agreement, and extend through December 31, 2040. Assuming the Tribes officially complete their purchase option of an additional 16.66 percent of PRB by January 2022, the Proposed PPA would result in the sale of all Tribes-owned energy and capacity in the PRB facility and Re-reg to PGE. This includes 249 MW of nameplate capacity and a forecasted 89 MWh of annual energy deliveries.<sup>13</sup>

### **Overview of the Application of Competitive Bidding Rules**

The Commission's competitive bidding requirements in OAR Chapter 860, Division 89 generally apply when an electric utility may acquire a resource or a contract for more than an aggregate of 80 megawatts and five years in length, as specified in OAR 860-089-0100(1). These requirements include the need to issue a Request for Proposals (RFP) and engage the services of an independent evaluator to oversee the RFP process.<sup>14,15</sup>

When a resource or contract is of sufficient duration and size to be subject to the competitive bidding rules, under OAR 860-089-0100(3) there are four specific competitive bidding rule exceptions, or, instances in which the competitive bidding rules do not apply: 1) emergency, 2) time-limited opportunity to acquire a resource of unique

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<sup>9</sup> See Order No. 14-300.

<sup>10</sup> The PPA wasn't signed at the time of application filing, but has since been signed: <https://portlandgeneral.com/news/2021-07-19-pge-and-the-confederated-tribes-of-warm-springs-commit-to-16-more>.

<sup>11</sup> Application. Page 4.

<sup>12</sup> [Begin Highly Confidential]

[End Highly Confidential]. Unredacted PGE Application filed August

20, 2021. Page 5.

<sup>13</sup> Application. Page 5.

<sup>14</sup> OAR 860-089-0250.

<sup>15</sup> Under OAR 860-089-0200(1).

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value to the electric company's customers, 3) explicit acknowledgement by the Commission of an alternative acquisition method proposed in the IRP, and 4) exclusively acquiring transmission assets or rights.

In addition, when the competitive bidding rules apply, the Commission may grant a waiver for good cause shown of any of the competitive bidding rules, at the request of a person or the Commission's own motion.<sup>16</sup>

While PGE's Application is requesting a waiver, Staff believes it is important to assess both whether a specific exception applies and, if the rules do apply, whether there is good cause for a waiver of the rules. Staff offered analysis of each of these in its Initial Comments and provides further analysis of each in turn below. If PGE's execution of the Proposed PPA meets a specific exception from the competitive bidding rules, a waiver of the rules may be unnecessary.

### **Analysis of Specific Exceptions**

Although PGE is applying for a waiver, PGE's waiver application refers to circumstances that support exceptions under criteria 2 and 3 above. PGE states that the PPA is a time-limited opportunity of unique value to PGE's customers.<sup>17</sup> PGE also notes that PGE's 2019 IRP was acknowledged with Commission support for PGE to pursue cost-competitive bilateral agreements for existing capacity resources.<sup>18</sup> Staff's analysis of the Proposed PPA based on each of these specific exceptions follows.

#### *Time-limited opportunity to acquire a resource of unique value*

The competitive bidding rules include the "time-limited opportunity" exception, which is similar to a common basis for a waiver request under the competitive bidding guidelines that were previously in effect. In the first application of a waiver on these grounds, PacifiCorp was granted a waiver for the Chehalis plant. Staff's memo in that docket notes that there was a time-limited opportunity and the plant appeared to "provide a better economic value to the Company's system and its Oregon customers than resources that might be available through current RFPs."<sup>19</sup>

Since the adoption of the competitive bidding rules in 2018, the Commission has found that wind facilities may involve a time-limited opportunity for production tax credits (PTCs) that may significantly benefit customers.<sup>20</sup>

The Commission, in the relatively recent past, has also applied a time-limited opportunity analysis specific to the resource in the current Application. In Docket

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<sup>16</sup> OAR 860-089-0010(2).

<sup>17</sup> Application. Page 2.

<sup>18</sup> Application. Page 2.

<sup>19</sup> *In the Matter of PacifiCorp*, Docket No. UM 1374, Order No. 08-376, Appendix A (July 17, 2008).

<sup>20</sup> See discussion in: *In the Matter of PacifiCorp dba Pacific Power Request for General Rate Revision*, Docket No. UE 374, Order No. 20-473 (December 18, 2020).

No. UM 1704, the Commission determined PGE's 2014 Agreement with the Tribes was a time-limited opportunity for a resource of unique value and granted a waiver to process requirements under the then-applicable competitive bidding guidelines.<sup>21</sup> In Order No. 14-300, the Commission adopted the recommendation in Staff's memo, in which Staff also stated, "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." Staff's memo explains:

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.

Upon reviewing the 2014 Agreement and the Proposed PPA, Staff concludes that the time-limited opportunity exception applies for the Proposed PPA in the current Application as well. Similar attributes that led the Commission to determine a time-limited opportunity of unique value previously are also true here:

- 1) There is also a time-limited opportunity. The time-limited opportunity stems from the fact that the Tribes had a one-time opportunity to purchase an additional share in the PRB project in 2021. To exercise the option, the Tribes had by no later than July 1, 2021, to provide formal notice of their intent to exercise their option to purchase an additional undivided 16.66 percent interest in PRB. The Tribes informally indicated to PGE they intended to exercise this option and requested a long-term power and capacity purchase agreement to support the financing of their purchase. Furthermore, the Tribes requested the execution of the power and purchase agreement prior to July 1, 2021. According to PGE, there also remained "considerable uncertainty" around the possibility of reaching agreement with the Tribes leading up to the Application.<sup>22</sup> Finally, there continues to be time pressure associated with the Proposed PPA to allow the Tribes sufficient time to complete the necessary financing activities related to closing the Tribes purchase option by December 31, 2021.<sup>23</sup>

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<sup>21</sup> See *In the Matter of Portland General Electric Company*, Docket No. UM 1704, Order No. 14-300.

<sup>22</sup> Application. Page 5.

<sup>23</sup> Application. Page 4.

- 2) The project continues to provide dispatchable, non-emitting generation, which continues to be increasingly valuable, making it a resource of unique value.
- Dispatchable capacity: PGE detailed in its Application how the market value for capacity resources such as PRB continues to increase due to a number of factors, including resource retirements and attention to resource adequacy.<sup>24</sup> Similarly, PGE notes how resources like PRB are of increasing value to PGE due to the limited availability of firm transmission products to procure.<sup>25</sup> PGE explains that PRB provides unique value given that it is a designated network resource on PGE's system and therefore can support PGE's capacity needs without the risk of third-party transmission provider curtailment.<sup>26</sup> PGE goes on in its Application to note that, "PRB is PGE's largest hydroelectric on-system resource and thus plays an important, and difficult to replace, role in PGE's portfolio."<sup>27</sup>

While Staff generally agreed with PGE's assessment of the value of PRB in Staff's Initial Comments, Staff wanted to more fully understand the dispatchability of the electricity under the Proposed PPA, including timing constraints and control over dispatch decisions. After reviewing PGE's response to a related Information Request, as well as PGE's Reply Comments, Staff is satisfied that the Proposed PPA provides PGE with valuable dispatchable capacity. The Proposed PPA **[Begin Highly Confidential]** [REDACTED] **[End Highly Confidential]**.<sup>28</sup>

- Non-emitting generation: PGE notes that PRB is also a non-emitting resource that continues to be increasingly valuable. Staff agrees with PGE that non-emitting resources are increasingly valuable due to PGE's decarbonization goals and the Governor's Executive Order 20-04, which includes direction to the Commission to work with utilities to reduce greenhouse gas emissions. Underscoring the increasing value of these resources, Staff also notes that subsequent to PGE filing its Application, the Oregon Legislature passed, and Governor Brown signed, House Bill 2021, which requires retail electricity providers to reduce greenhouse gas emissions associated with electricity sold to Oregon consumers to 100

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<sup>24</sup> Application. Page 6.

<sup>25</sup> Application. Page 6-7.

<sup>26</sup> Application. Page 7.

<sup>27</sup> Application. Page 7.

<sup>28</sup> See PGE's Highly Confidential Response to Staff Information Request No. 02.

percent below baseline emissions levels by 2040, with nearer term targets of 80 percent below by 2030 and 90 percent below by 2035.<sup>29</sup>

Furthermore, there is unique value in the Proposed PPA as it is not generally a project that would likely be acquired through an RFP. Hydroelectric projects do not often bid in utility RFPs and this project has characteristics that Staff thinks suggest it would not likely be bid into an RFP. As evidenced by the 2014 Agreement, the project has been the subject of bilateral negotiations and agreements for years. The terms of the 2014 Agreement and O&O Agreement limit the Tribes flexibility to bid into an RFP. In addition, as part of exercising their purchase option, the Tribes requested an executed, binding, agreement by a specific date, making bilateral negotiations the most feasible method to acquire such capacity. As a result, PGE and its customers likely would have missed out on this resource if it had relied on a RFP to acquire it.

PGE also pointed to the cost of the Proposed PPA relative to other projects as justification for the value of the opportunity. Costs are not as integral to this particular exception analysis as there is already unique value in being able to acquire a resource such as the one described above, which otherwise may not have been able to be acquired through an RFP. With that said, Staff sees value in trying to understand how this project compares financially with similar projects or market alternatives. As a result, Staff provides a discussion of costs below.

Staff requested additional information on the terms of the Proposed PPA and cost comparisons to better assess the value of the Proposed PPA. After reviewing the information provided, including supporting work papers, Staff agrees that the costs associated with the Proposed PPA are not out of line when compared to available cost data and to the extent relevant, supports the unique value of the opportunity.

First, a comparison of the capacity payment with existing projects and new construction, particularly when considering the increasing market value for capacity supports this finding. The capacity payment in the Proposed PPA has **[Begin Highly Confidential]** **[End Highly Confidential]** from the 2014 Agreement, but the market value for capacity has also increased. While there are differences between the projects and the agreements, the comparison demonstrates that the Proposed PPA is within a reasonable range. Furthermore, at **[Begin Highly Confidential]** **[End Highly Confidential]** than new construction as calculated by PGE's IRP analysis.<sup>30</sup> As PGE's Application points out, PGE's 2019 IRP Update forecasted a

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<sup>29</sup> Oregon House Bill 2021: <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2021>. Oregon Laws 2021, Chapter 508.

<sup>30</sup> See Highly Confidential Presentation Slides from PGE's Workshop on July 9, 2021 provided in response to Staff Information Request 01. Slide 10.

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capacity cost of approximately \$9.16/kW per month, based on the cost of the least-cost capacity resource identified in the IRP.<sup>31</sup>

PGE's own estimate is that the Proposed PPA will save customers [Begin Highly Confidential] [REDACTED] [End Highly Confidential] on a present value basis relative to the assumed cost of replacing capacity with new construction.<sup>32</sup> Similarly, PGE expects the Proposed PPA will save customers [Begin Highly Confidential] [REDACTED] [End Highly Confidential].<sup>33</sup>

In conclusion, based on the time-limited nature of the opportunity and the unique value it provides to customers including dispatchable capacity and non-emitting generation that otherwise may not have been secured through an RFP, and further supported by cost savings, Staff concludes that the Proposed PPA meets the time-limited opportunity to acquire a resource of unique value exception.

*Acknowledgment of an alternative acquisition method in IRP*

The Commission may also find that the competitive bidding rules do not apply to the Proposed PPA under the exception that an alternative acquisition method was proposed by PGE in the IRP and explicitly acknowledged by the Commission. Pursuing capacity resources through bilateral negotiations was supported by the Commission in the IRP process.<sup>34</sup> Though it was not detailed, PGE's Action Item 3A explained that it would pursue cost-competitive agreements for existing capacity through bilateral negotiations and, under Item 3B, pursue non-emitting dispatchable capacity through a RFP.<sup>35</sup> With this Proposed PPA and Docket No. UM 2166 regarding PGE's 2021 All Source RFP, PGE is pursuing both of these avenues respectively.

In addition, PGE's acknowledged Action Item in the IRP not only proposed pursuing bilateral negotiations, but to reach cost-competitive agreements through those negotiations.<sup>36</sup> Furthermore, cost estimates are an important matter of discussion in the IRP planning process. Underscoring the points above, in the Application, PGE noted it used IRP modeling to assess the costs of the Proposed PPA.<sup>37</sup>

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<sup>31</sup> Application. Page 7. See LC 73, 20219 IRP Update, Appendix F. Page 66. The all-in fixed cost of a Single-Combine

<sup>32</sup> Confidential version of PGE's Application for Waiver of the Competitive Bidding Rules. Page 3. Compared to a capacity cost of approximately \$110/kW-yr in PGE's 2019 IRP Update.

<sup>33</sup> See Highly Confidential Presentation Slides from PGE's Workshop on July 9, 2021 provided in response to Staff Information Request 01. See also Highly Confidential responses to Staff Information Request 02.

<sup>34</sup> See Order No. 20-152. Page 25.

<sup>35</sup> See Order No. 20-152. Page 22; *In the Matter of Portland General Electric Company's 2019 Integrated Resource Plan*, Docket LC 73, PGE's Amended Response to Staff Report at 3 (March 6, 2020).

<sup>36</sup> See Order No. 20-152. Page 22.

<sup>37</sup> Application. Page 7.



Through Information Requests, Staff asked for additional information to better understand the cost-competitiveness of the Proposed PPA to fully inform its determination regarding this exception. As discussed in the time-limited opportunity exception section above, after reviewing the information provided, Staff agrees that this agreement appears to be in line with available cost data such that it may be considered competitive. Given this, and the IRP acknowledgement of bilateral negotiations to reach cost-competitive agreements discussed above, the Commission may find the alternative acquisition method exception is also met.

*Summary of exception-related recommendations*

In summary, Staff recommends the Commission may find that the Proposed PPA meets one or both of the specific exceptions discussed above – the time-limited exception and the alternative acquisition method exception. The Commission only needs to find that one of these exceptions is met, and the competitive bidding rules will not apply, but it may find that both apply specifically or in the alternative. Whether the Commission finds that one or both exceptions apply, the outcome is the same.

With that said, if the Commission finds one or both of the exceptions apply, whether the associated reporting requirements for an exception were met with the Application or whether a partial or full waiver of the requirements is needed becomes an issue for the Commission's consideration. According to OAR 860-089-0100(4), within 30 days of seeking to acquire a resource under one of the exceptions, the electric company must file a report with the Commission explaining the relevant circumstances. "Resource acquisition" is defined in OAR 860-089-0020(9) to refer "to a process for the purpose of acquiring energy, capacity, or storage resources that starts with... [c]ommunication of a final offer or receipt of a final offer in a two-party negotiation." The report must be served on all the parties to the electric company's most recent rate case, RFP, and IRP dockets.

PGE's Application explains the relevant circumstances of the Proposed PPA and was served on all three dockets in a timely fashion, but was not captioned as a report on an exception to the competitive bidding rules.<sup>38</sup> Given just the titling difference, Staff recommends the Commission find the Application satisfies the requirement. Alternatively, Staff recommends the Commission find good cause for a waiver and partially waive the rules to allow PGE to re-submit the report with an updated title outside the 30-day timeframe. Given that PGE has provided the required information and PGE adhered to the schedule in the docket, there is good cause for such a waiver. The Commission may also choose to fully waive the reporting requirement on the same basis.

As an alternative to finding that an exception applies as discussed above, the Commission may find good cause to waive the competitive bidding rules, based on the following recommendation.

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<sup>38</sup> PGE filed its Application on June 2, 2021. On Page 5 of its Application, PGE noted: "PGE makes this wavier application to allow for a waiver of the CBRs prior to receiving a final offer."

### **Standard for Waiver of the Competitive Bidding Rules**

According to OAR 860-089-0010(2), upon request or its own motion, the Commission may waive any of the Division 089 rules for good cause shown. If a request for waiver is made, it must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition.<sup>39</sup>

PGE asserts in its Application that good cause exists for a waiver because the Proposed PPA would provide approximately 40 percent of the Company's remaining forecasted 2025 capacity need, reducing, but not eliminating, the capacity need in PGE's upcoming RFP solicitation. PGE states that the Proposed PPA will make "additional capacity available to PGE at a cost that is competitive compared to the most current IRP modeling and existing market indicators."<sup>40</sup> Further, PGE states that a hydroelectric facility holds unique value as a carbon-free resource with flexible dispatchable capacity. The Company states that existing hydroelectric projects do not often bid in utility RFPs, and specifically here, CTWS requested an executed, binding, agreement by a specific date, making bilateral negotiations the most feasible method to acquire such capacity. A waiver will also enable CTWS to successfully exercise their purchase option to purchase an additional 16.66 percent share in the PRB Project in 2021, for notice had to be issued by July 1, 2021, or the option expired.

Given that very few waiver requests have been considered under the competitive bidding rules, Staff reviewed the Commission's order adopting the rules and the various circumstances and criteria reviewed in prior waiver requests under the competitive bidding guidelines, when a resource was not identified as a time-limited opportunity.<sup>41</sup> Staff finds that in evaluating whether good cause is shown, it is helpful to consider how closely a procurement for which a waiver is granted may still align with the goals of a competitive bidding process.

The stated purpose of the competitive bidding rules in OAR 860-089-0010 is to minimize long-term costs and risks, complementing the IRP process, and ensuring a fair, objective, and transparent process that does not unduly restrict electric companies from acquiring new resources and negotiating mutually beneficial terms. Therefore, in addition to reviewing PGE's stated grounds for the waiver request, Staff considers the extent to which the resource or contract may 1) minimize long-term costs and risks, 2) complement the IRP process, and 3) be conducted in a manner that is transparent, understandable, and fair under the circumstances.

### *Good Cause to Support a Waiver*

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<sup>39</sup> OAR 860-089-0010(2)(a).

<sup>40</sup> Application. Page 2-3.

<sup>41</sup> See, e.g., Docket No. AR 600, Order No. 18-324, adopting the competitive bidding rules. See also Order in Docket No. UM 1182, Order No. 14-149 Appendix A for a copy of the guidelines. See also Staff Comments dated October 27, 2017 in Docket No. UM 1892. Page 3. See Order No. 16-221, Docket No. UM 1773, and See Order No. 17-494, Docket No. UM 1892.

Staff finds there is good cause shown for a waiver.

First, the Proposed PPA addresses a substantial portion of PGE's capacity need as identified in the 2019 IRP. Staff also recognizes the value of a hydroelectric facility for dispatchable capacity and non-emitting generation. Staff discussed this in the exceptions section earlier, and restates here for the waiver analysis that the Proposed PPA demonstrates some unique value. Staff also appreciates the important role bilateral negotiations play outside of RFPs in the context of hydroelectric projects and that opportunities may have particular time constraints that are not conducive to issuance of an RFP.

In addition to reviewing PGE's stated grounds for the waiver request, Staff considers the extent to which the resource or contract may 1) minimize long-term costs and risks, 2) complement the IRP process, and 3) be conducted in a manner that is transparent, understandable, and fair under the circumstances. After reviewing the information provided in Information Request responses and PGE's Reply Comments, Staff concludes that the Proposed PPA likely minimizes long-term costs and risks, complements the IRP process, and was conducted in a manner that is transparent, understandable, and fair under the circumstances:

1. Minimize long-term costs and risks: Staff requested additional information on the terms of the Proposed PPA and project economics to better understand the long-term costs and risks associated with the Proposed PPA. In its Application, PGE described the Proposed PPA as cost-competitive, enabling furtherance of its decarbonization goals, and supporting maintenance of reliable and affordable service for PGE's customers. These are all characteristics that speak to minimizing long-term costs and risks – and Staff agrees that these characteristics support a waiver for the Proposed PPA as much of the analysis Staff's Initial Recommendation has already addressed. In addition, the increasing value of existing capacity resources as discussed in the time-limited opportunity exception analysis above also contributes to the Proposed PPA minimizing long-term costs and risks. Similarly, Staff appreciates PGE's point that the non-emitting nature of the resource reduces customer exposure to future policy risks associated with emergent regulations designed to reduce greenhouse gas emissions.
2. Complement the IRP process: The Proposed PPA complements the IRP process. PGE previously established a need for capacity resources in IRP planning. This need was acknowledged in the 2019 IRP process.<sup>42</sup> According to the 2019 IRP Update, PGE forecasted a 511 MW 2025 capacity need, which reflected a future in which the existing PRB contract expired and no future agreement was secured.<sup>43</sup> PGE forecasts that the Proposed PPA would provide 224 MW of capacity contribution towards meeting PGE's forecasted need.

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<sup>42</sup> See LC 73, Order No. 20-152. Page 25.

<sup>43</sup> Application. Page 8.

Entering into the Proposed PPA would reduce PGE's forecasted 2025 capacity need from 511 MW to 287 MW.<sup>44</sup>

Furthermore, pursuing capacity resources through bilateral negotiations was supported by the Commission in the IRP process.<sup>45</sup> PGE explained that it would pursue dispatchable capacity through bilateral negotiations and through a RFP.<sup>46</sup> With this Proposed PPA and Docket No. UM 2166 regarding PGE's 2021 All Source RFP, PGE is pursuing both of these avenues respectively.

In addition, PGE noted it used IRP modeling to assess the costs of the Proposed PPA, which further supports that the Proposed PPA complements the IRP process.

3. Conducted in transparent, understandable, and fair manner: PGE's efforts satisfied this criteria. Staff believes PGE has kept stakeholders involved to the extent practicable for this particular action. PGE explained that it was "unprepared to make an earlier waiver request as there remained considerable uncertainty around the possibility of reaching agreement with the Tribes."<sup>47</sup> Subsequent to the filing, PGE held a workshop with interested stakeholders to provide additional information about the agreement as well as answer questions. PGE also provided cost comparisons and an explanation of reasonably available market alternatives in the Application, as well as the workshop, to help provide more context for assessing the Proposed PPA. These were also shared as part of Information Requests. Furthermore, according to PGE's Application and the signing of the Proposed PPA by both parties, the Proposed PPA was negotiated to a point that was seen as mutually beneficial to both parties.

In summary, Staff concludes that there is good cause for a waiver as outlined above, including Staff's assessment that the Proposed PPA minimizes long-term costs and risks, complements the IRP process, and was conducted in a manner that is transparent, understandable, and fair under the circumstances.

## **Conclusion**

As detailed above, Staff initially recommends the Commission take the following actions, based on PGE's Application:

1. Find that the time-limited opportunity of unique value exception (OAR 860-089-0100(3)(b)) or the alternative acquisition method exception (OAR 860-089-100(3)(c)) to the competitive bidding rules or both, apply to the Proposed PPA.

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<sup>44</sup> Application. Page 9.

<sup>45</sup> See Order No. 20-152. Page 25.

<sup>46</sup> See Order No. 20-152. Page 22.

<sup>47</sup> Application. Page 5.

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2. Accept PGE's Waiver Application as satisfying the reporting requirements for an exception or partially or fully waive the reporting requirement.
3. Alternatively, if the exceptions do not apply, find that there is good cause for a waiver of the competitive bidding rules for the Proposed PPA.

The remaining process for this docket includes an opportunity for all stakeholders and the Company to file written comments on Staff's Initial Recommendation no later than September 7, 2021; Staff's Public Meeting Report posted by September 30, 2021; and a decision at the Commission Regular Public Meeting on October 5, 2021.

This concludes Staff's initial recommendation.

Dated at Salem, Oregon, this 31<sup>st</sup> of August, 2021.

/s/ Zachariah Baker

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Zachariah (Zach) Baker  
Senior Energy Policy Analyst  
Energy Resources and Planning Division

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CERTIFICATE OF SERVICE

UM 2176

I certify that I have, this day, served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-001-0180, to the following parties or attorneys of parties.

Dated this 31st day of August, 2021 at Salem, Oregon

*Kay Barnes*

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