

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2166

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

2021 All-Source Request for Proposals.

ORDER

DISPOSITION: SHORTLIST ACKNOWLEDGED

This order memorializes our decision, made and effective at our July 14, 2022 Special Public Meeting, to acknowledge the final shortlist for Portland General Electric Company's (PGE) 2021 All-Source Request for Proposals (RFP) subject to several conditions. As explained below, some of the conditions we adopt were proposed by Staff, and some include modifications to conditions proposed by Staff.

I. BACKGROUND

On May 6, 2020, we acknowledged with conditions PGE's 2019 Integrated Resource Plan (IRP), which included an RFP seeking up to 150 average megawatts (MWa) of new Renewable Portfolio Standard (RPS) eligible resources that contribute to meeting PGE's capacity needs by the end of 2024 and non-emitting resources to meet remaining capacity needs.¹

On April 28, 2021, PGE filed a request to open a docket to select an Independent Evaluator (IE) to comply with the requirements of OAR 860-089-0200. We approved Bates White as the IE at the July 13, 2021 Public Meeting. Subsequently, on September 25, 2021, House Bill 2021 (HB 2021) went into effect, establishing target greenhouse gas emissions reductions associated with electricity sold to Oregon consumers. HB 2021 established a target to reduce greenhouse gas emissions from each retail electricity provider by 80 percent below baseline emissions levels by 2030, by 90 percent below

¹ *In the Matter of Portland General Electric Company*, Docket No. LC 73, Order No. 21-129 (May 3, 2021). Additionally, PGE later filed an update to its IRP that stated it intended to conduct a single RFP solicitation rather than the two originally proposed. The Commission acknowledged this update at the April 20, 2021 Special Public Meeting.

baseline emissions levels by 2035, and by 100 percent below baseline emissions levels by 2040 and each subsequent year.

On October 5, 2021, we approved PGE's Scoring and Modeling Methodology for its RFP subject to several conditions.² In particular, we required PGE to run an analysis of its alternative procurement scenario for the RFP in which it would procure one-third of the estimated renewables needed to meet the 2030 target set forth in HB 2021, and to work with Staff to determine additional analysis that could be provided over the course of the RFP timeline to better understand where the RFP fits into HB 2021 compliance.

PGE filed its final shortlist on May 5, 2022, which includes the IE's Closing Report and procurement volumes necessary to comply with the targets in HB 2021. In the final shortlist, PGE presented analysis for three maximum procurement volume scenarios; the scenarios were entitled, respectively, 180 MWa, 250 MWa, and 400 MWa.³ PGE states that while the analysis showed that the 400 MWa scenario was the least cost, least risk option, it intends to procure from the Final Shortlist based on the 180 MWa scenario, which matched the level of procurement identified in its 2019 IRP action plan. This 180 MWa scenario included 150 MWa of renewables, 100 MW of resources for its Green Future Impact program (GFI), and non-emitting dispatchable capacity to meet PGE's remaining 2025 capacity needs.⁴ The final shortlist includes up to 1,131 MW of effective load carrying capacity (ELCC), including 604 unique MWa or 594 MW ELCC in renewables.⁵ PGE states that it used the portfolio analysis to inform the relative ranking of the projects and the priority of negotiations, rather than to further narrow the final shortlist.⁶ Specifically, to inform its actions, PGE identified the best performing portfolios and defined an "efficient frontier," dividing those portfolios from the remaining portfolios. These best performing portfolios are predominantly at the 400 MWa procurement level.⁷ PGE states that it may consider procuring additional resources on the final shortlist in excess of the 180 MWa scenario if additional resources are available.⁸

On June 29, 2022, Staff filed its report on PGE's final shortlist, which is attached to this Order as Appendix A. Staff's report recommended that the Commission acknowledge

² Order No. 21-320 (Oct 6, 2021).

³ PGE Final Shortlist at 36-42 (May 5, 2022); Errata to PGE's Final Shortlist (May 12, 2022); Second Errata to PGE's Final Shortlist (Jun 7, 2022).

⁴ PGE's Reply Comments at 1-2 (Jun 15, 2022).

⁵ Staff Report on Final Shortlist at 3; Errata to the IE's Closing Report at 31 (Jun 7, 2022).

⁶ PGE's Reply Comments at 12-13; Staff Report on the Final Shortlist at 4.

⁷ Staff Report on Final Shortlist at 29.

⁸ PGE's Reply Comments at 2.

the final shortlist subject to five conditions. PGE filed comments in response to the Staff Report, largely objecting to or seeking clarification on the proposed conditions.

II. DISCUSSION

A. Significance of Conditions on Acknowledgment

During the Special Public Meeting, PGE raised concerns that attaching conditions to acknowledgement could be problematic for several reasons. For example, PGE noted that conditions could imply that the acknowledgement could be reversed or revoked in the future, based upon information that is not known or available at the time of the acknowledgement. The discussion with PGE on this topic raised important issues around the purpose of acknowledging a final shortlist before procurement and the consequences of conditioning acknowledgment.

We clarify here the intent of the conditions that we attach to our acknowledgement. Acknowledgement of the final shortlist is a finding by the Commission that an electric company's final shortlist of bid responses appears reasonable at the time of acknowledgement, based on what is known or knowable at the time, and was determined in a manner consistent with the resource procurement rules.⁹ A core purpose of the final shortlist acknowledgement is to promote transparency.¹⁰ The requirement to file the final shortlist ensures that the Commission and stakeholders receive better explanations of PGE's procurement process and are able to see that the decisions leading to the shortlist are based on the factors that are most significant to customer outcomes. Acknowledgment of a shortlist, therefore, is highly dependent on the context in which the acknowledgment decision is made—the factors and circumstances that exist at the time of the acknowledgment.

In this instance, there is highly important context around our review of PGE's shortlist. For example and for various reasons explored in this docket, PGE has asked for acknowledgment of a shortlist that contains many more projects than it seemingly intends to procure. Additionally, PGE has not provided total clarity (and argues that it is unable to provide total clarity) around the level of resources it intends to procure. Finally, there are unique developments that may limit the viability of resources on the shortlist due to the U.S. Department of Commerce's investigation into solar tariffs, and recent developments with respect to that investigation, the consequences of which are not yet fully known. All of this means that we are asked to acknowledge a shortlist within a

⁹ OAR 860-089-500(1).

¹⁰ See *In the Matter of Public Utility Commission of Oregon Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 14-149 at 14 (Apr 30, 2014) (requiring utilities to file a shortlist acknowledgment application, finding that it promoted transparency in the utility procurement process).

context in which future developments and analysis will bear heavily on PGE's ultimate procurement decision. We determine that, in certain instances, it is important to identify this context within our order as "conditions" of acknowledgment, so that the acknowledgment decision can be understood in the future in an appropriate light, after circumstances may have changed, and more analysis and facts have come to light.

We fully recognize that circumstances may change as PGE's procurement process goes on. Therefore, we understand and expect that PGE's ultimate decisions about resource acquisitions may be different than they were contemplated to be at the time of acknowledgement. But the RFP and final shortlist process do provide important information regarding the least cost, least risk resource options, how different bids perform together in a portfolio, and what PGE understands to be the ideal procurement shortlist at the time acknowledgement is requested.

As explained more below, we find that certain conditions are required on our acknowledgment in order to identify why we find the shortlist reasonable, despite the length of the list, and the ambiguity that PGE presents around its intended acquisitions. In other instances, we intend the conditions to impose requirements on PGE to take certain specific actions.

B. Bates White as Independent Evaluator

Staff Condition 1 proposes to direct PGE to ensure that Bates White will continue to serve as the IE through the final resource selection, monitor contract negotiations, and file a closing report with the Commission no later than 30 days after final resource selection. In its comments, PGE proposed to modify Staff's language to direct Bates White to continue to serve as IE rather than directing PGE, stating that it had to confirm availability and interest from Bates White. At the Special Public Meeting, PGE stated that it had since confirmed Bates White was available and that it supported the condition.

We adopt Staff Condition 1 with modifications. We direct PGE to ensure that Bates White shall continue to serve as IE through final resource selection, in order to monitor all contract negotiations, file a final resource selection closing report with the Commission no later than 30 days after final resource selection, and respond to any Staff or Commission questions on the final IE report. We may modify this directive in response to the report that, below, we direct PGE to submit in the event that the period for negotiations under this RFP is expected to persist beyond December 31, 2022.

C. Procurement Target

Staff Condition 2 proposes that the Commission acknowledge the final shortlist to the extent that it is used to procure at the 250 MWa level. Staff argues that the analysis generally supports a higher procurement volume as the least cost, least risk path and supports the 250 MWa volume over the 180 MWa volume proposed in the final shortlist.¹¹ Staff notes that while the 400 MWa procurement scenario reduces the most emissions and is the least cost procurement option in a number of cases, it is the riskier option from a cost standpoint and is the more expensive option in certain scenarios. The 250 MWa procurement volume, however, outperformed the 180 MWa in emissions, as well as costs, with the exception of the “worst case scenario” in which the 250 MWa and 180 MWa procurement levels had nearly equivalent costs.¹²

PGE proposes to modify this condition to state that the final short list is acknowledged to the extent that it is used to procure “up to approximately 250 MWa” of renewable resources, with a total procurement volume (renewable resources and non-emitting dispatchable capacity) consistent with the identified 2025 system capacity need of 388 MW. Further, PGE argues that the Commission should clarify that this is not a condition of acknowledgement but instead is a statement of policy. PGE states that while it appreciates the flexibility to procure beyond the 150 MWa volume in its 2019 IRP action plan, and that it is open to procuring at the 250 MWa volume, its ability to procure 250 MWa should not be a condition of acknowledgement.¹³ PGE argues that it may not be able to procure to the 250 MWa scenario given the potentially significant barriers to executing commercial agreements, including ongoing implications from the U.S. Department of Commerce solar tariff investigation. At the Special Public Meeting, PGE stated that it was concerned Staff’s condition as written could result in acknowledgement being revoked if it was unable to procure exactly 250 MWa.

The Oregon Citizens’ Utility Board (CUB) raised concerns around the integrity of the IRP process and the potential impacts on customers from the procurement, as well as upcoming distribution investments. CUB stated that it supported the procurement level established in PGE’s most recent IRP.

At the Special Public Meeting, Staff and PGE clarified the intended meaning of “250 MWa,” in reference to the scenario under discussion for acknowledgment. PGE and Staff agreed that references to “250 MWa” were intended to include approximately 215 MWa in renewable resources, 100 MW nameplate for PGE’s GFI program, and

¹¹ Staff Report on Final Shortlist at 16.

¹² *Id.* at 20-21.

¹³ PGE’s Comments on Staff Report at 6-7 (Jul 7, 2022).

sufficient non-emitting dispatchable capacity to meet PGE's remaining 2025 capacity needs.

We conclude that the analysis supports 250 MWa as the least cost, least risk procurement scenario for this RFP, but we decline to adopt either the language proposed by Staff or PGE. As described above, the context in which our acknowledgment is issued is important to document, given the ambiguities around PGE's proposed acquisition amounts, and the unique circumstances that exist from the U.S. Department of Commerce's investigation and subsequent events. We therefore adopt a condition that makes clear that at the time of our acknowledgement, and based on the best information and analysis available at that time, the most reasonable course of action would appear to be an acquisition at the 250 MWa level, with the clarifying detail described above about what the individual components of that acquisition would be. This condition is made with a full understanding that certain future developments or analysis may indicate a different course is reasonable, or that an acquisition at that level is not possible. We will, of course, take those developments into account in any future review of the reasonableness of PGE's actions in making actual acquisitions. And, they should not be viewed as somehow invalidating or reversing our acknowledgement here. Rather, the condition will simply make clear the state of evaluation at the time of acknowledgment, which we expect will be useful in determining the reasonableness of PGE's subsequent actions, given any new developments.

We understand PGE's concerns with deviating from the IRP, as well as CUB's concerns with the integrity of the IRP process. However, the analysis performed for the final shortlist reflects the significant changes in the environment since the last IRP, including the passage of HB 2021. The analysis also demonstrates that the economies of scale at play in some bids create opportunities that the 180 MWa constraint may arbitrarily eliminate. We determine that it is not contrary to our IRP process to incorporate updated analysis and circumstances prior to an actual resource acquisition, and that providing for such flexibility is an important part of ensuring that customer interests are best served.

D. Preferred Portfolio

Staff Condition 3 proposes to require PGE to file, within one week of the acknowledgement decision, a designation of its preferred portfolio for the 250 MW procurement level. The designation would include the specific projects, the total MWa expected from those projects, how the portfolio analysis and sensitivities support the presented preferred portfolio, and any other relevant data to support the preferred portfolio. Staff states the purpose of designating a preferred portfolio is to facilitate future discussions around PGE's selections and decision-making process in the final resource acquisition.

PGE states that it is willing to provide a top performing portfolio for the 250 MWa procurement level as proposed by Staff but seeks clarification that its procurement is not limited to this specific preferred portfolio.¹⁴ PGE proposes to add the following language to Staff Condition 3: “PGE is not limited to procure exclusively from the preferred portfolio and its associated projects.” At the Special Public Meeting, Staff clarified that the purpose of Condition 3 was to establish a benchmark to assist the IE’s review of the procurement. Further, Staff argued that PGE’s additional language was unnecessary because PGE is always free to make its own decisions, but it must defend and explain its approach in prudence. At the Special Public Meeting, PGE also clarified that it had already provided the information Staff requests through filings over the course of this proceeding, but that it is comfortable with the filing requirement to make a more specific filing. PGE stated that its concern with the language is that the concept of a preferred portfolio is being conflated with the final shortlist in the RFP, and that it has a responsibility to procure the best resources for customers based on the knowledge it has at the time of the decision. PGE states that it is possible that the 250 MWa portfolio will no longer be the prudent selection at the time.

We adopt Staff Condition 3. The purpose of Condition 3 is not to conflate the preferred portfolio with the final shortlist, but to provide some baseline understanding of how the foundational analysis related to the ultimate procurement. PGE’s final shortlist includes a total amount of MWa well in excess of its proposed procurement of 180 MWa, as well as the 250 MWa level. Further, PGE’s proposed final shortlist including their approach to prioritizing negotiations, as described in the public meeting, appeared to be based on the 400 MWa procurement level. We appreciate PGE’s stated need for flexibility with respect to its actual acquisitions, but the final shortlist included 50 different portfolios and no clear indication regarding PGE’s intended procurement portfolio or strategy. Condition 3 is intended to address areas where the final shortlist was unclear, to inform the IE’s oversight of the procurement, and to assist with a future prudence review. We decline to adopt PGE’s additional language but reiterate that this condition is not a directive to procure certain resources and that PGE can and should make reasonable and prudent decisions informed by actual negotiations and based on the circumstances at the time the decision is made, even if they deviate from the modeled preferred portfolio.

E. Primary Rank Order

Staff Condition 4 proposes to require PGE to use the 250 MWa efficient frontier portfolio results as the primary rank order for which to pursue resources in the procurement. Similar to Condition 3, Staff states that the purpose of this condition is to address

¹⁴ PGE’s Comments on Staff Report at 7.

benchmarking and assist with future review. Staff agrees with PGE's decision to focus on the efficient frontier portfolios but argues that it seems like a mismatch to use the portfolios closer to a 400 MWh procurement level for a smaller portfolio size. Staff notes that the 250 MWh procurement level has more bids that show up in the efficient frontier portfolios.¹⁵

As with Condition 3, PGE argues that it is willing to provide a top performing portfolio for the 250 MWh procurement level as proposed by Staff but seeks clarification that is not limited to procuring this specific preferred portfolio. PGE proposes to add the following language to Condition 4: "PGE is not limited to procure exclusively from the 250 MWh efficient frontier portfolio results and its associated projects as the primary rank order for negotiations."¹⁶

We adopt Staff Condition 4. One of the important intentions of our competitive bidding rules is to ensure that, when utility-owned resources are selected, they are objectively demonstrated to be the best projects in a competitive solicitation. It is important for us to be aware of where shareholders may be less aligned with customer interests and pay special attention when benchmark resources are present—and is particularly important in this RFP given the significant flexibility that PGE wishes to preserve by maintaining a shortlist much larger than its expected procurement level. Differences in ranking depending on the portfolio size to be procured also heighten our need to understand, based on objective criteria, PGE's reasoning in the event a benchmark resource is selected. There are clear differences in the types of benefits and risks presented by utility-owned and PPA resources. Understanding the relative risks, costs, and benefits of a selected project necessarily includes some evaluation of the other resource options that were available, including rejected bids, in order to appropriately allocate the unique risks, costs, and benefits between customers and the utility.

We adopt Staff's recommended Condition 4 because it would align PGE's primary rank order in pursuing projects with the acquisition strategy that seemed most reasonable at the time of our acknowledgement, as explained in Condition 2. Again, we intend Condition 4 to be, like Condition 2, a statement of the important context that exists at the time of our acknowledgment. And, it would serve as an important safeguard in monitoring against potential utility bias by aligning the utility's acquisition strategy with the portfolio size determined to be most beneficial to customers. We recognize, however, that if circumstances change, and if the most beneficial and achievable acquisition target is reasonably modified, then the procurement strategy and rank order should be modified to reflect those changes as well.

¹⁵ Staff Report on Final Shortlist at 31.

¹⁶ PGE's Comments on Staff Report at 7.

F. Deadline to Complete Final Resource Selection

Staff Condition 5 proposes to direct PGE to complete its final resource selection by the end of calendar year 2022. Staff notes that since the start of the RFP process, PGE has stated that it intended to wrap up procurement by the end of the year and that the schedule for the proceeding was designed to accommodate an end-of-year deadline and timelines associated with Production Tax Credits. Further, the RFP only required bidders to hold bids for 250 days, which will expire in September 2022, well before the proposed end-of-year deadline. Additionally, Staff argues that an indefinite timeline would exacerbate its concerns with the size of the final shortlist, because PGE could wait out certain bidders and disrupt the overall order of procurement.¹⁷ Staff also states that PGE's proposal to continue contracting after the end of 2022 raises concerns regarding the integrity of the IRP and RFP planning cycles, and an ongoing final shortlist could undermine the planning efforts for the 2023 IRP.

PGE objects to Staff Condition 5, arguing that it is outside the scope of the acknowledgement and would shift risk onto customers by constraining commercial negotiation timelines.¹⁸ In particular, PGE argues the deadline could provide bidders with leverage to force PGE into granting concessions. PGE also maintains that it intends to complete all negotiations by the end of 2022 to the extent possible, but that there are some projects with a commercial operation date of 2024 or later that do not necessitate completion by the end of 2022. PGE also recommends that, to the extent contract negotiations extend past the end of 2022, the IE should continue to provide oversight and reporting to the Commission regarding negotiation progress and any appropriate next steps for the Commission.

We decline to adopt Staff Condition 5. If PGE expects procurement to extend past the end of 2022, we direct PGE to file a status report no later than December 1, 2022, that addresses the costs and benefits of the IE's engagement past December 31, 2022, and explains why it is in customers' interest for PGE to continue rather than conclude the procurement and begin a new planning and procurement cycle. We appreciate Staff's concerns that the process was designed around completing procurement by the end of 2022. We agree that the value of our acknowledgement decision diminishes as time elapses between the analysis that supported acknowledgment and the procurement, and circumstances continue to change. Additionally, we appreciate Staff's concerns that a lack of a firm end date further exacerbates the lack of specificity in PGE's final shortlist and undermines some of the significance of an acknowledgment of the final shortlist. We agree with Staff's concerns that the approach taken here departs, in some ways from the

¹⁷ Staff Report on Final Shortlist at 32.

¹⁸ PGE Comments on Staff Report at 8.

robust engagement with our competitive bidding rules that were intended to ensure customer benefit through a diversity of resource types and ownership and deal structures. We find, however, that it is not necessary to establish a hard deadline, and the status report will provide adequate insight into the procurement process. This report process will also provide adequate opportunity for us to direct a change to the IE's role if continuation is not in customers' best interests and will give further insights into the ongoing significance of our acknowledgment order here.

III. ORDER

IT IS ORDERED that Portland General Electric Company's final shortlist for its 2022 All-Source Request for Proposals is acknowledged as described within this order, subject to the conditions proposed by Staff and modified by the discussion above. We note that PGE filed the analysis required by Conditions 3 and 4 before this order issued.

Made, entered, and effective Aug 31 2022.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner

