

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 489

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Application for Affiliated Interest
Transaction with Portland Renewable
Resource Company, LLC.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our August 8, 2023 Regular Public Meeting, to adopt Staff's recommendation to approve Portland General Electric's application for approval of an affiliate interest agreement with Portland Renewable Resource Company, LLC (PRR) with changes to Condition 1 and 2 in Staff's proposal. Specifically, we amend Condition 1 to state as follows:

The sole and exclusive purpose of PRR is to submit bids or to be used as a vehicle for evaluating utility ownership bids submitted into PGE's Request for Proposals (RFP) processes and, if PRR will be the vehicle for ownership of a resource selected in the RFP, sell power to PGE for service to cost of service customers, PRR will not ~~submit bids into a process used to source power to sell through~~ participate in PGE's Green Tariff Program Phases 1 or 2 (as described in Commission Order No. 21-091) without express approval from the Commission. PRR will not submit bids into any non-PGE competitive procurement process. PRR will be treated as a benchmark bid in any RFP.

PRR will only submit bids using a Commission-approved RFP form agreement with changes limited to those based on the characteristics of the specific bid and project.

PRR will no longer be allowed to submit bids into a PGE RFP process if (1) federal tax laws are changed such that regulated utilities are no longer required to normalize Investment Tax Credit (ITC) benefits or (2) if the ITC or a substantively equivalent tax credit is no longer provided for under federal or state law or regulation or (3) the Commission has not reviewed PRR in a public process following the first RFP PRR has participated in. PRR will be allowed to continue to operate under any executed PPAs with PGE for the duration of those contract(s).

We amend Condition 2 as follows:

PGE and PRR will maintain separation of duties and prohibit sharing of certain information between individuals engaged in the development of any PRR bids and any individuals engaged in the evaluation or scoring of bids as part of the PGE RFP process such that PGE employees who participate in the development of the RFP or the evaluation or scoring of bids may not participate in the preparation of any PRR bids and will be screened off from the process. All employees will abide by the Federal Energy Regulatory Commission (FERC) Standards of Conduct. No PGE employee that has had previous access to Highly Confidential information from bidders in previous PGE Integrated Resource Plan or RFP processes may provide services for PRR.

We approve this affiliated interest agreement solely because we determine it may result in lower cost proposals being put before PGE in RFPs, to the advantage of customers. Given the potential for PRR projects to have risks associated with performance, default, and other factors that are not the same as those implicated in traditional PPAs, the RFP process must review and consider these unique risks and ensure that they are addressed.

The Staff Report with the recommendation is attached as Appendix A.

Made, entered, and effective Aug 10 2023.



Megan W. Decker
Chair



Letha Tawney
Commissioner




Mark R. Thompson
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 Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 8, 2023**

REGULAR X **CONSENT** **EFFECTIVE DATE** **N/A**

DATE: July 31, 2021

TO: Public Utility Commission

FROM: Curtis Dlouhy

THROUGH: Caroline Moore and Scott Gibbens **SIGNED**

SUBJECT: PORTLAND GENERAL ELECTRIC:
(Docket No. UI 489)
Application for an Affiliated Interest Transaction between PGE and
Portland Renewable Resource Company, LLC.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve Portland General Electric's (PGE or Company) Application for Approval of an Affiliate Interest (AI) Agreement with Portland Renewable Resource Company, LLC ("Application") to provide support services to the Portland Renewable Resource Company, LLC (PRR) in accordance with the Master Service Agreement (MSA) between PGE and its affiliates, subject to the nine conditions contained in Attachment 1 to this memorandum.

DISCUSSION:

Issue

Whether the Commission should approve PGE's application for approval of an affiliate transaction with PRR to provide support services in accordance with the Master Service Agreement subject to nine conditions.

Applicable Law

ORS 757.495(1) requires a public utility to seek Commission approval of contracts involving the direct or indirect payment to any person or corporation having an affiliated interest within 90 days after execution of the contract. The required process for

Docket No. UI 489
July 31, 2023
Page 2

submitting an agreement for review by the Commission is set forth in ORS 757.495 and OAR 860-027-0040.

“Affiliated interest,” as defined in ORS 757.015(6), includes “[e]very corporation and person, five percent or more of which is directly or indirectly owned by a public utility.”

ORS 757.495(3) provides that the Commission may approve an affiliated interest contract if it is “fair and reasonable and not contrary to the public interest.” The “fair and reasonable and not contrary to the public interest” standard is customarily applied as a “no harm” standard by the Commission.¹

OAR 860-027-0040(2) sets forth information to be included in an application to the Commission regarding an affiliate interest transaction.

OAR 860-027-0048(4)(a) provides that “when an asset is transferred to an energy utility from an affiliate, the transfer shall be recorded in the energy utility’s account at the lower of net book value or fair market value.”

OAR 860-027-0048(4)(b) provides that “when an asset is transferred from an energy utility to an affiliate, the transfer shall be recorded in the energy utility’s accounts at the approved rate if an appropriate rate is on file with the Commission or with FERC. If no approved rate is applicable, proceeds from the transfer shall be recorded in the energy utility’s accounts at the higher of net book value or fair market value.”

The Commission need not determine the reasonableness of all financial aspects of the contract for ratemaking purposes, as the Commission reserves that issue for a subsequent proceeding, per Commission Order No. 11-071 in Docket No. UI 306.

Analysis

Background and ITC Normalization

PGE filed its Application pursuant to OAR 860-027-0040, OAR 860-027-0041, ORS 757.015, and ORS 757.495 on May 22, 2023, requesting approval for an affiliated interest transaction with PRR to provide PRR with support services in accordance with PGE’s MSA.² PGE filed the signed copy of its updated MSA with its initial filing. Staff notes that the Company’s filing is essentially identical to the Company’s filing in UI 461

¹ See e.g., *In the Matter of Portland General Electric Co. Application for Approval to Sell its 2.5 Percent Ownership Share of the Centralia Steam Electric Generating to Avista Corporation* (UP 165), Order No. 00-152 (*Order on Reconsideration* March 12, 2000).

² *Application for Approval of an Affiliated Interest Transaction with Portland Renewable Resource Company* (“Application”), p. 1.

Docket No. UI 489
July 31, 2023
Page 3

but with some version of Staff's proposed conditions in its primary UI 461 recommendation included. The Commission ultimately followed Staff's alternative recommendation in UI 461 and rejected the proposed affiliate.³ However, PGE was invited to conduct stakeholder outreach and come up with a more workable solution in the future at the public meeting where the Commission made its decision.

PRR is a wholly owned direct subsidiary of PGE and qualifies as an affiliate under ORS 757.015(6).⁴ PGE states that upon the request of its board of directors, officers, or managers, PGE will furnish administrative services including office support, business analysis, finance and treasury support, human resources, investor relations, legal service, construction and engineering services, purchasing, consulting and training services, and other services.⁵ The Company states that these services will be provided to PRR at the higher of cost or market unless otherwise specified and approved by the Commission.⁶

PGE notes that the reason behind its overall proposal to establish PRR as a subsidiary is to address structural tax disadvantages encountered by utilities due to what PGE describes as unintended consequences of the Internal Revenue System's (IRS) rules around investment tax credit (ITC) normalization.⁷ Whereas independent power producers (IPP) are allowed to realize the tax benefits from ITCs up front, regulated utilities are required by the IRS to normalize ITCs over the life of the asset. Due to the time-value of money, a regulated utility that submits a project would have a higher price than an identical project submitted by an IPP that is not subject to normalization. PGE characterizes this structural tax disadvantage experienced by utilities as a hindrance to House Bill (HB) 2021's goals to reduce greenhouse gas emissions because it lowers access to competitively priced renewable energy.⁸ PGE characterizes the inefficiency of ITC normalization as adding an additional 20 percent to the levelized cost of energy for a project.⁹

³ Order No. 21-482.

⁴ Application, Page 17.

⁵ Application, Page 18.

⁶ *Id.*

⁷ Application, p. 2.

⁸ Application, p. 9.

⁹ Application, p. 10.

Docket No. UI 489
July 31, 2023
Page 4

To get around the ITC normalization requirements, PGE proposes to allow PRR to bid renewable energy projects into its Requests for Proposals (RFPs).¹⁰ PRR would then sell any power generated back to PGE through a Power Purchase Agreement (PPA) and keep capital investment from any projects associated with the PPA out of rate base. Through this PPA rate and removal of PRR assets from rate base, PGE claims that the resource would be viewed as non-public-utility-owned by the IRS and thus not be subject to the inefficiency caused by ITC normalization.¹¹

The Company has explored other alternatives to address ITC normalization, such as a holding company structure, tax equity and Federal legislative fixes.¹² While the Inflation Reduction Act passed in 2022 does partially mitigate the ITC normalization issue, the Company notes that disparity between ITC and PTC valuation leaves open the need for an alternative way to address normalization.¹³ In particular, the Company notes that the IRA provides a 10 percent adder to both ITCs and PTCs if certain conditions are met related to material sourcing and siting of resources in energy justice communities. However, the ITC benefit is added onto previous benefits (i.e. increasing ITCs from 30 percent to 40 percent) whereas the PTCs are increased multiplicatively (i.e. increasing PTCs from \$27/MWh to \$29.70 per MWh), resulting in ITCs becoming disproportionately more valuable in many circumstances.¹⁴

PGE does not currently have an estimate for the amount it expects to receive from PRR as a result of its filing because the services PRR would receive from PGE are contingent upon future activities.¹⁵ The Company also states that it does not expect PRR to have its own employees.¹⁶

The Company notes that any PPA procured through a competitive bidding process will be subject to approval through a subsequent affiliated interest filing.¹⁷ PGE also intends to seek approval of a parental guaranty on behalf of PRR with a subsequent affiliated interest filing if PRR does indeed win a bid.¹⁸ This parental guaranty would allow PRR to secure loans with PGE responsible for payment in the event that PRR is unable to pay.

¹⁰ *Application*, p. 11.

¹¹ *Application*, p. 5.

¹² *Application*, p. 13.

¹³ *Application*, p. 14.

¹⁴ *Application*, p.5.

¹⁵ *Application*, p. 21.

¹⁶ *Id.*

¹⁷ *Application*, p. 22.

¹⁸ *Application*, p. 8.

Docket No. UI 489
July 31, 2023
Page 5

Following the Commission's rejection of UI 461, the Company worked collaboratively with stakeholders to develop a set of controls meant to address the competitive and customer protection concerns raised by Staff and stakeholders in UI 461. This resulted in a total of nine conditions that are meant to place guardrails on the affiliate's activities, provide transparency in its operations, protect customers, protect the competitive process, and meet the "no harm" standard. These conditions are included in Attachment A.

Staff's Analysis of the Company's Proposed Conditions

In the time between the Commission's decision in UI 461 and the filing of the Application, the Company worked with Staff and stakeholders to update the proposed conditions through a variety of informal workshops. Only proposed condition 9 is materially different than the initial eleven conditions proposed by Staff in UI 461.¹⁹ The new proposed conditions are contained in attachment A to this memo. While the Company titles these "Customer Protection Conditions", Staff notes that many of the conditions are also put in place to preserve the competitive process in an RFP. At a high level, Staff identifies the following concerns with an unchecked affiliate:

1. Without constraints, PRR may be given freedom to do more than just solve problems caused by ITC normalization laws that exceeds the scope of its purpose.
2. Customers may not be adequately protected from underperforming PRR assets or may not realize the full benefit of the affiliate structure if the affiliate is exceptionally successful.
3. Potential anticompetitive outcomes may arise from PGE and PRR sharing company time and resources and the inherent incentives of the affiliate arrangement.
4. The expenses and assets of PGE and PRR may be comingled in a way that makes just and reasonable ratemaking difficult.

On the whole, Staff is satisfied that the conditions proposed by the Company ensure that the "no harm" standard is met. However, Staff feels it necessary to point out that approval of the affiliate means that regulating PGE's interactions with the affiliate will be an ongoing item of interest in planning, procurement, and ratemaking proceedings. In this next section, Staff will expand upon the four concerns outlined above and how the proposed conditions address each concern. Staff concludes the analysis section of this memo by summarizing highlights from stakeholders' comments to the Application and discussing the timing of this docket with PGE's ongoing RFP in UM 2274.

¹⁹ Throughout the informal workshops prior to the filing of UI 489, Staff and the Company were able to combine some of the eleven conditions from UI 461 into nine conditions without changing anything materially apart from condition 9.

Docket No. UI 489
July 31, 2023
Page 6

Concern 1

Staff notes that absent added controls, there would be nothing to stop PRR from bidding into other entities' RFP proceedings or engaging in wholesale market transactions while under the umbrella of a regulated utility. Given that the affiliate is framed as a tool purely used to eliminate ITC normalization, Staff feels that this would be improper and would subject ratepayers to undue risk. Condition 1 limits the scope of PRR to only bid into PGE's RFPs and sunsets the use of PRR should ITC normalization laws be removed at the federal level. This condition also bars PRR from bidding into PGE's Green Tariff program or entering into bilateral agreements outside an RFP.

Concern 2

Perhaps Staff's largest concern in the UI 461 proceeding was customer exposure that could result from PRR and the potential inability to fully pass on the benefits of PRR to cost of service customers. This exposure may take the direct form of a PPA between PRR and PGE not delivering as much electricity as initially forecasted. It may also occur more indirectly through possible diminished PGE credit ratings as a result of poor business practices in PRR, or opaque backchannels where costs could be double recovered through both the PPA and base rates.

The following conditions are meant to address these concerns:

- Condition 4, which protects PGE retail customers from any adverse effects of startup costs, operational costs, changes to cost of capital, production problems, or decommissioning costs associated with PRR.
- Condition 5, which mandates that PGE will report any events that materially impacts PRR operations within 30 days of becoming aware of the event.
- Condition 6, which states that PRR will maintain separate financial books and records from PGE. The Commission shall be given access to these records, among others, through Condition 7.
- Condition 8, which states that PGE cannot recover a "return on" any costs included in a PPA with PRR.

Staff believes that these conditions provide adequate notice of any potential problems at PRR that may trickle into PGE operations and separation of risk away from customers. However, Staff notes that if the Application is approved, it would be up to Commission Staff to analyze PRRs operations to make sure that any deleterious spillovers from PRR are not improperly recovered through a retail rate proceeding.

Docket No. UI 489
July 31, 2023
Page 7

On the other hand, Staff was also concerned that PGE would be unable to satisfy the “lower of cost or market” condition contained in OAR 860-027-0048(4) if indeed PRR was so exceptionally successful that customers would have faced a lower rate if the asset were owned by the utility. In UI 461, Staff proposed that any excess net income be reported in the Company’s Results of Operations, which would then be used to inform any dockets that require earnings tests for cost recovery.

Following outreach with Staff and stakeholders, the Company proposed to allow excess net income into the Results of Operations with added conditions. In Condition 9, the Company proposes to include excess net income in the Results of Operations on a rolling, five-year average basis in a similar manner to a typical income tax bracket. The brackets are as follows:

- Bracket 1 – If actual Net income is between 150 percent and 200 percent of forecasted Net Income, 50 percent of the excess net income beyond 150 percent of the forecast will be included in the Results of Operation.
- Bracket 2 – If actual Net Income is between 201 percent and 250 percent of forecasted Net Income, 75 percent of the excess net income beyond the 200 percent forecast will be included in the Results of Operations in addition to the amounts from Bracket 1.
- Bracket 3 – If actual Net Income exceeds 250 percent of the forecasted Net Income, all excess net income beyond 250 percent of the forecasted amount will be included in the Results of Operation in addition to the amounts from Bracket 1 and Bracket 2.

Staff believes this to be a reasonable way to pass on excess income from an exceptionally successful affiliate to customers.

Concern 3

Staff notes that if unchecked, an affiliate structure provides the Company with incentives to award PRR with bids or improperly supply it with information that would not otherwise be available to competitors. While Staff believes that many of these concerns can be addressed in the RFP process and overlap with concerns surrounding benchmark bids, the Company includes the following conditions to enshrine proper separation between PGE and PRR and ensure that the Commission has adequate access to PRR operations:

- Condition 2, which limits the information that can be shared between employees forming PRR bids and PGE employees working on a PGE RFP.
- Condition 3, which requires PGE to submit any changes to PRR governing documents to the Commission within 30 days of any changes.

Docket No. UI 489
July 31, 2023
Page 8

- Condition 4, which states that any operational costs, startup costs, cost of capital, production problems, and decommissioning costs can only be recovered through the terms of the PPA.

While Condition 4 is primarily meant as a customer protection, in effect it incentivizes PGE and PRR to include all costs that a bidder would need to include in its bid rather than trying to submit a lower bid and attempting to recover these less visible costs through base rates. Staff believes that these conditions provide adequate separation of functions between PGE and PRR and mitigates any incentives to improperly shift costs between PGE and PRR.

Concern 4

Staff's fourth concern is that the costs of PGE and PRR may be comingled in a way that makes ratemaking difficult. Staff believes it to be important to maintain a record of PRR costs so that it is clear that these were not included in the Results of Operation and are not included in any labor loadings or overheads in base rates. To address this concern, the Company includes the following conditions:

- Condition 6, which states that PGE and PRR will maintain separate financial records and track employee time spent on each project.
- Condition 7, which gives the Commission access to documents, internal communications, meeting minutes, and financial records from both PGE and PRR upon request and subject to existing law and attorney-client privilege.

Contingent on approval, Staff notes that this would likely be a new ongoing item that the Commission would need to be mindful of in future PGE rate cases and reviews of the Results of Operations.

Outside of analyzing the proposed conditions and Application, Staff's review included examining attached materials, PGE's responses to stakeholder data requests, and stakeholder comments. In addition to the analysis of the conditions above, Staff reviewed the following standard issues in considering whether the Agreement is fair and reasonable and not contrary to the public interest:

1. Terms and Conditions of the Agreement;
2. Transfer Pricing;
3. Public Interest Compliance; and
4. Records Availability, Audit Provisions, and Reporting Requirements.

Docket No. UI 489
July 31, 2023
Page 9

Terms and Conditions of the Agreement

In this docket, the Company seeks to provide various services to PRR. However, the Company's larger proposal is to establish an unregulated subsidiary to bid and execute renewable projects. Staff will discuss both the services provided in the MSA and elements of the Company's larger proposal.

Staff reviewed the MSA and concluded it did not include any unusual terms or conditions. Staff also notes that the terms of any parental guaranty or executed PPA between PRR and PGE will be submitted in a separate affiliated interest filing for Commission approval.

Transfer Pricing

PGE indicates that the services provided to PRR in this docket will be provided at the higher of cost or market unless otherwise approved by the Commission in accordance with OAR 860-027-0048(4)(b).²⁰ Should the Commission approve the Company's request in this docket, this would apply to all services PGE provides to PRR. Conditions 6 and 7 ensure that there is proper bookkeeping to back up the services provided to PRR by PGE and that the Commission has access to these records.

Although this docket does not ask for approval of any executed contract wherein PGE purchases power from PRR, Staff believes that it is appropriate to include additional controls to ensure that the price of power sold from PRR to PGE is the result of an unbiased competitive process. As discussed above, Conditions 4, 8, and 9 are meant to ensure that a future PPA adheres to the "lower of cost or market price" standard of a regulated utility purchasing goods from an affiliate required by OAR 860-027-0048(4)(a).

Public Interest

The Commission customarily applies a "no harm" standard in determining what is "not contrary to the public interest" in matters involving affiliated interest transactions. See, e.g., *In the Matter of a Legal Standard for Approval of Mergers*, Commission Order No. 01-778 at 10 (September 4, 2001). Staff believes PGE's current filing meets the "no harm" standard if approved with the proposed controls.

The proposed controls were developed initially in UI 461 largely to address public interest concerns and improved collaboratively with Staff, stakeholders, and the Company prior to the Company's Application in UI 489. Staff believes that the resulting controls adequately protect customers from adverse effect of the proposed affiliate while improving the competitive RFP process.

²⁰ Application, p. 9.

Docket No. UI 489
July 31, 2023
Page 10

Records Availability, Audit Provisions, and Reporting Requirements

The Commission retains the ability to review all of PGE's affiliate transactions through both its annual affiliated interest report and in general rate case filings.

Conditions 3, 5, 6, and 7 provide the Commission additional access to PRR records, and the ability to be informed of any changes to PRR governing documents and activities.

Stakeholder Comments and Staff's Analysis of Comments

Staff requested that stakeholders provide comments on the Company's proposal no later than June 29, 2023 and allowed the Company to respond to these comments by July 20, 2023. Oregon Solar + Storage Industries Association (OSSIA) and Northwest and Intermountain Power Producers Coalition (NIPPC) both filed comments.

Both NIPPC and OSSIA claim that the affiliate violates ORS 757.646, which requires the Commission to design policies that mitigate vertical and horizontal market power of incumbent utilities by prohibiting preferential treatment from the utilities toward generation or market affiliates.²¹ Both entities also assert that PRR would likely have an unfair competitive advantage over third party developers by virtue of sharing personnel between the PRR and PGE.²² In a similar manner, OSSIA brought up concerns about whether PGE would actually be incentivized to seek damages from PRR in the event of non-compliance with a PPA and suggests that a mechanism be developed.²³

Given that the Company made this filing while its own RFP is ongoing, NIPPC recommends that the affiliate not be allowed to participate in the Company's ongoing RFP, UM 2274.²⁴ NIPPC also recommends that a PRR bid be treated as a benchmark bid in an RFP should the Commission ultimately approve the affiliate.²⁵

The Company's comments both expand upon the reasons for the affiliate and respond directly to the comments filed by NIPPC and OSSIA. PGE notes that a PRR bid would be treated in the same manner as a benchmark bid, meaning that it would be submitted earlier than third-party bids, subject to more rigorous review by the independent evaluator (IE), and include disclosures regarding the use of any PGE property.²⁶ In response to NIPPC's and OSSIA's claim that the Application violates ORS 757.646, the Company states its view that these laws don't apply because the affiliate would be competing in wholesale markets while ORS 757.646 concerns the Commission's duty to

²¹ OSSIA's comments, page 2. NIPPC's comments, page 4.

²² OSSIA's comments, page 3. NIPPC's comments, page 15.

²³ OSSIA's comments, page 5.

²⁴ NIPPC's comments, page 10.

²⁵ NIPPC's comments, page 10.

²⁶ PGE's comments, page 6.

Docket No. UI 489
July 31, 2023
Page 11

eliminate barriers between ESSs and electric companies in the retail electric market.²⁷ The Company also claims that existing Commission powers to review PPAs mitigates OSSIA's concerns about damages, as does the requirement to have FERC approve the PPA.²⁸

The Company also asserts that the existing affiliate laws and rules, competitive bidding rules, presence of an IE, the Commission's involvement in the RFP process, and the Commission's obligation to approve any PPA or parental guaranty involving PRR protect against the competitive concerns raised by NIPPC and OSSIA.²⁹ In particular, the Company states that the competitive bidding rules already contemplate the use of employees working on benchmark projects, which the Company also argues is consistent with allowing Company employees to work on a bid submitted on behalf of PRR.³⁰

Staff is sensitive to the competitive concerns raised by NIPPC and OSSIA and would not support the affiliate if there were large concerns about customer protections or anticompetitive effects. In fact, it merits repeating that Staff's alternate recommendation in UI 461 was to reject the affiliate based on the inadequate customer protections and potential harms to the competitive process.³¹ However, Staff believes that there are plenty of venues for the Commission, the Independent Evaluator, and stakeholders to examine anti-competitive aspects of an affiliate bid or subsequent project. In particular, Staff notes that the Company clarifies that a PRR bid would be evaluated on the same timeline as a benchmark bid, be reviewed by the Independent Evaluator, be part of the acknowledged RFP final shortlist, approved again in a subsequent affiliated interest filing, and then incorporated into a power cost ratemaking proceeding. Staff also believes that these same steps provide adequate opportunity to inquire about an underperforming PPA and any possible damages PRR would owe to PGE and ultimately retail customer.

Staff also agrees with the Company that there is an adequate separation of functions between PGE employees working on PRR's behalf and PGE employees performing other company functions. Staff feels it important to reiterate that regulating this separation may create a new item to be mindful of in RFP, affiliated interest, and ratemaking dockets than the Commission has had in the past. However, Staff also agrees with the Company that allowing Company employees to work on a PRR bid is not substantively different than allowing Company employees to work on a benchmark

²⁷ PGE's comments, page 7.

²⁸ PGE's comments, page 15.

²⁹ PGE's comments, page 7-8.

³⁰ PGE's comments, page 10.

³¹ Order No. 21-482.

Docket No. UI 489
July 31, 2023
Page 12

bid. PGE also notes that the same rules and principles that apply to the benchmark bid will be applied to an affiliate bid.

Timing with PGE's RFP and Issues Not Addressed in this Docket

Staff notes that PGE intends to use the affiliate in its ongoing RFP, UM 2274. While Staff recommends that the Commission approve the affiliate subject to the proposed conditions created by Staff, the Company and stakeholders, Staff does not recommend whether the affiliate should be allowed to participate in UM 2274 in this docket.

Staff believes that this docket is best meant to determine whether or not to approve the affiliate and to establish guardrails and controls that should be maintained across proceedings rather than dig into details specific to an individual RFP or an IE's recommendation. As such, Staff believes that the questions of whether the affiliate be allowed to participate in UM 2274, how to treat an affiliate bid, and how to enforce damages in the event of PRR non-compliance or breach of the terms of any PPA should be addressed in UM 2274 or in a future rate proceeding. Staff reiterates though that the Company intends to treat a PRR bid like a benchmark bid and expects that treatment in an RFP.

However, Staff notes that UM 2274 is on the regular agenda at an upcoming public meeting, and the Commission will have an opportunity to weigh in on these outstanding issues.

Conclusion

Staff concludes, based on its review, that PGE's Application involves an affiliated interest transaction that passes the "no harm" standard subject to the nine conditions included in the Company's filing. These conditions are set forth in Attachment 1.

PROPOSED COMMISSION MOTION:

Approve PGE's Application for Approval of an Affiliate Interest Agreement with PRR subject to the conditions set forth in attachment 1.

PGE UI 461 Affiliated Interest Agreement with PRR

Docket No. UI 489
 July 31, 2023
 Page 13

Attachment A

Customer Protection Conditions Agreed to By PGE and PRR

1	<p>The sole and exclusive purpose of PRR is to submit bids or to be used as a vehicle for evaluating utility ownership bids submitted into PGE's Request for Proposals (RFP) processes and, if PRR will be the vehicle for ownership of a resource selected in the RFP, sell power to PGE for service to cost of service customers. PRR will not submit bids into a process used to source power to sell through PGE's Green Tariff Phases 1 or 2 (as described in Commission Order No. 21-091). PRR will not submit bids into any non-PGE competitive procurement process.</p> <p>PRR will only submit bids using a Commission-approved RFP form agreement with changes limited to those based on the characteristics of the specific bid and project.</p> <p>PRR will no longer be allowed to submit bids into a PGE RFP process if (1) federal tax laws are changed such that regulated utilities are no longer required to normalize Investment Tax Credit (ITC) benefits or (2) if the ITC or a substantively equivalent tax credit is no longer provided for under federal or state law or regulation. PRR will be allowed to continue to operate under any executed PPAs with PGE for the duration of those contract(s).</p>
2	<p>PGE and PRR will maintain separation of duties and prohibit sharing of certain information between individuals engaged in the development of any PRR bids and any individuals engaged in the evaluation or scoring of bids as part of the PGE RFP process such that PGE employees who participate in the development of the RFP or the evaluation or scoring of bids may not participate in the preparation of any PRR bids and will be screened off from that process. All employees will abide by the Federal Energy Regulatory Commission (FERC) Standards of Conduct.</p>
3	<p>PGE and PRR will submit any amendments or changes to PRR's Articles of Organization and PRR's Operating Agreement to the Commission for informational purposes within 30 days of such amendments or changes. PGE and PRR will submit to the Commission for approval any parental guaranty from PGE on behalf of PRR.</p>
4	<p>Rates for PGE utility customers may only reflect the cost of a PRR-owned generating facility based upon the pricing, terms and conditions of the executed PPA between PGE and PRR. PGE utility customers shall be held harmless from any adverse rate impacts that may be caused by PRR. PGE bears the burden of demonstrating that its customers are held harmless. These adverse impacts include but are not limited to:</p> <ul style="list-style-type: none"> • Startup costs associated with PRR; • Operational costs associated with PRR or any PRR projects (except to the extent such costs are reflected in the price under any PPA between PRR and PGE); • Changes in PGE's cost of capital or cost of long-term debt caused by PRR; • Production problems, poor performance, or cost overruns with PRR projects. <p>Any PRR bid or bid that is evaluated based on PRR ownership should implicitly include recovery of any decommissioning costs and PGE customers should be held harmless from costs to the extent those costs are not already included in the PPA.</p>

Docket No. UI 489
 July 31, 2023
 Page 14

	Any PRR bid pricing should implicitly include all relevant tax benefits.
5	PGE agrees to report to the Commission any event that materially impacts the operations of any PRR resource within 30 days of becoming aware of such event.
6	PRR will maintain separate financial books and records from PGE, and PGE will maintain systems to track time employees spend on PRR business.
7	Upon Commission request, and subject to existing law and attorney-client privilege, the Commission shall be given access to any documents, internal communications, meeting minutes, financial statements, books, and records from PGE and PRR.
8	For the ratemaking treatment of any PPA between PRR and PGE, PGE will seek recovery of the costs associated with the price, terms, and conditions of such PPA and PGE will not seek to recover from customers a “return on” on top of such costs.
9	<p>Excess net income¹ associated with the financial performance of PRR will be included in PGE’s annual Return on Operations (ROO) only if excess net income exceeds certain threshold levels described in this Condition. The amount of excess net income will be calculated on a rolling five-year basis by comparing actual net income to forecasted net income. Forecasted net income is defined as the forecasted net income used to inform the PRR bid pricing or the pricing contained in any PPA between PRR and PGE, which will be included in filings made at the Commission. The actual net income will be provided in the annual PRR financial statements. Similar to marginal tax brackets, an increasing amount of excess net income will be applied to the ROO to the extent excess net income falls into higher brackets, as described below. The excess net income will be included in PGE’s ROO for each of the subsequent five years.</p> <p>Bracket 1: The first bracket applies to the amount of accumulated actual net income that is between 150% and 200% of accumulated forecast net income on a rolling five-year basis. Fifty percent (50%) of this amount will be included in PGE’s ROO.</p> <p>Bracket 2: The second bracket applies to the amount of accumulated actual net income that is between 201% and 250% of accumulated forecast net income on a rolling five-year basis. Seventy-five percent (75%) of this amount will be included in PGE’s ROO.</p> <p>Bracket 3: The third bracket applies to the amount of actual net income that is more than 250% of forecast net income on a rolling five-year basis. One hundred percent (100%) of this amount will be included in PGE’s ROO.</p> <p>¹ “Net income” as defined by Generally Accepted Accounting Principles (GAAP).</p>