

ORDER NO. 23-369

ENTERED Oct 18 2023

**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: ADMINISTRATIVE HEARINGS DIVISION'S  
RECOMMENDATION ADOPTED

At its public meeting on October 17, 2023, the Public Utility Commission of Oregon adopted the Administrative Hearings Division's recommendation in this matter. The 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.

ITEM NO. RA3

**PUBLIC UTILITY COMMISSION OF OREGON  
AHD REPORT  
PUBLIC MEETING DATE: October 17, 2023**

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

**DATE:** October 12, 2023

**TO:** Public Utility Commission

**FROM:** Sarah Spruce

**THROUGH:** Nolan Moser **SIGNED**

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE  
HEARINGS DIVISION: (Docket No. UI 489) Portland General  
Electric Company's Application for Affiliated Interest Transaction  
with Portland Renewable Resource Company, LLC

**AHD RECOMMENDATION:**

AHD recommends that the Commission grant Portland General Electric Company's (PGE's) application for reconsideration for good cause and adopt Staff's recommended revisions to Condition 2.

**DISCUSSION:**

Issue

Whether to grant PGE's application for reconsideration or its motion for clarification regarding Condition 2 of Order No. 23-294.

Applicable Law or Rule

Under OAR 860-001-0720(3), the Public Utility Commission may grant reconsideration of an order for the following reasons:

- a. New evidence essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;
- b. A change in the law or policy since the date the order was issued relating to an issue essential to the decision;

- c. An error of law or fact in the order that is essential to the decision; or
- d. Good cause for further examination of an issue essential to the decision.

### Background

On May 22, 2023, PGE filed an application for approval of an affiliated interest transaction between itself and Portland Renewable Resource Company, LLC (PRR). PGE sought to provide service to PRR under its Master Service Agreement. As part of the application, PGE provided nine conditions intended to protect customers that it developed with Staff, the Oregon Citizens' Utility Board (CUB), and the Alliance of Western Energy Consumers (AWEC).

At the public meeting held on August 8, 2023, the Commission adopted Staff's recommendation to approve PGE's application with modifications to Staff's proposed Conditions 1 and 2. The Commission amended Condition 2 to add the following sentence: "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."<sup>1</sup>

On September 15, 2023, PGE filed an application for reconsideration and a motion for clarification regarding the Commission's modified Condition 2.

### PGE Application for Reconsideration and Motion for Clarification

PGE requests that the Commission remove the last sentence of Condition 2 in Order No. 23-294, because it is unnecessary and burdensome, will harm utility customers, and is fatally ambiguous as issued.<sup>2</sup>

If the Commission declines to remove the last sentence of Condition 2, PGE requests that the Commission revise the sentence and provide additional clarification. PGE requests that the Commission revise the last sentence of Condition 2 to specify that it:

1. Does not prohibit PGE employees whose access to highly confidential bidder information is limited to information about benchmark or affiliate bids from providing services to PRR;
2. Prohibits only PGE employees that have had access to highly confidential bidder information in PGE's last RFP from providing services to PRR;
3. Applies prospectively only to RFP processes initiated after the current process; and

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<sup>1</sup> Order No. 23-294 at 2 (Aug. 10, 2023).

<sup>2</sup> PGE Application for Reconsideration and Motion for Clarification at 1 (Sept. 15, 2023).

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4. Applies only to PGE employees who will be performing work on an RFP prior to PGE filing its final shortlist.

PGE proposes the following changes to the language of Condition 2:

In RFP processes initiated after the date of this order, nNo PGE employee that has had previous access to Highly Confidential information from ~~non-benchmark or affiliate~~ bidders in previous PGE's most recent Integrated Resource Plan or RFP processes may provide services for PRR with respect to a project bidding into an RFP conducted under the Commission's Competitive Bidding Rules if those services are provided before the final short-list has been filed by PGE with the Commission.

Additionally, PGE requests that the Commission provide the following clarifications if it does not remove the last sentence of Condition 2:

1. Condition 2 does not apply to assignment of PGE employees to the Benchmark Team in current or future RFPs, including those who have worked or will work on solar benchmark-sponsored bids;
2. Condition 2 does not prohibit services to PRR of PGE employees who have had access to highly confidential bid information regarding the benchmark bid only as a result of their past or current assignment to the Benchmark Team;
3. The phrase "highly confidential information from bidders" refers only to highly confidential bidder information submitted as part of RFP bids and does not include information regarding executed projects; and
4. Services performed by the Benchmark Team prior to Commission acknowledgment of a benchmark-sponsored Resource on the final shortlist is properly allocated to the utility and is not deemed services provided to PRR.

## Issues

### *Reconsideration*

#### *1. Remove the Last Sentence of Condition 2*

PGE argues that the expanded Condition 2 constitutes a significant and inappropriate expansion of the Commission's competitive bidding screening rule outside of a rulemaking process. PGE maintains that the condition as drafted would bar any PGE employees who ever worked on any RFP or IRP teams from ever providing services to PRR, which would be difficult and expensive to implement. PGE argues that it maintains two separate teams to comply with the current competitive bidding rules, but the additional restrictions in Condition 2

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would render the process unworkable. PGE contends that the key people at PGE necessary to perform work for PRR have had access to highly confidential information in past RFPs and that if they are unable to provide services to PRR, the affiliate would be forced to negotiate a contract with a third-party developer without the services of PGE's most experienced employees. PGE maintains that this condition would substantially undermine its efforts to deliver for customers the most beneficial contract for a benchmark-sponsored solar resource, deprive customers of the clear benefits recognized by the Commission in Order No. 23-294, and result in a less competitive process overall. PGE argues that the new requirements would also unreasonably limit the ability of PGE employees to be promoted to new roles and assignments and hamper the company's ability to retain and attract talent.

PGE contends that OAR 860-089-0300(1)(b) did not intend to preclude PGE employees who served on prior RFP or IRP teams from being assigned to affiliate teams in the future, and the Commission should refrain from significantly expanding the requirements of the rule in a one-off fashion. PGE notes that in the rulemaking process to adopt OAR 860-089-0300(1)(b), the Commission balanced the interests inherent in prohibitions on utility staffing and should not alter the framework for an individual application. PGE argues that the expanded Condition 2 may constitute an impermissible expansion or refinement of an existing rule, stating that while the order does not indicate that it applies to any affiliate other than PRR, there is also nothing indicating that this more expansive version will be limited to PRR in the future. PGE maintains that a recent Oregon Court of Appeals order found that the content of an order will be regarded as one of general applicability if it is applicable to a category or class of entities and not tied to a specific set of facts.<sup>3</sup>

PGE also argues that it cannot determine how the condition is intended to be applied without further clarification, because PRR has been formed in part as a vehicle for certain PGE benchmark bids to increase competition in the RFPs and PGE is now unclear on how the condition impacts assignment to its Benchmark Team. PGE maintains that PRR's role in the 2023 RFP is limited, and that PGE will begin providing services to PRR only if a solar Build-Transfer Agreement (BTA) based bid is on the final shortlist. PGE contends that by the time PRR becomes involved, highly confidential bidder information will no longer be a concern. PGE argues that the Commission's expanded staffing restrictions do not provide any basis on which any stakeholder would believe that the restrictions will not apply to all affiliate bids from all utilities and is therefore appropriately regarded as "generally applicable."

The Green Energy Institute at Lewis and Clark Law School (GEI) opposes PGE's application and motion. GEI argues that Condition 2 imposes reasonable

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<sup>3</sup> PGE Application for Reconsideration and Motion for Clarification at 14 (citing *PNW Metal Recycling, Inc. v. Or. Dept. of Environmental Quality*, 317 Or App 207, 212-213 (2022)).

restrictions on PRR as an affiliate of PGE and is necessary to address serious concerns raised in these proceedings. GEI maintains that Condition 2 reflects prudent public policy and is consistent with other requirements of the Federal Energy Regulatory Commission and other states. GEI contends that PRR's participation is not a prerequisite for the RFP to move forward and the question of whether PGE can immediately or easily comply with Condition 2 is not a persuasive reason for the Commission to reconsider.

NewSun Energy LLC argues that Condition 2 being burdensome on PGE is not grounds for reconsideration and that PGE's concerns are issues of the company's own making. NewSun contends that PGE had other options that it could have pursued but did not and that its staffing concerns are no different than those facing other market participants who seek to hire and retain qualified employees.

*2. Exclude from Condition 2 PGE Employees Whose Access to Highly Confidential Bidder Information Is Limited to Information About Benchmark or Affiliate Bids from Providing Services to PRR*

PGE states that it assumes the Commission did not intend to prevent employees who served on the Benchmark Team and only have access to highly confidential information about benchmark bids from working on behalf of PRR. PGE maintains that without this specification, it would need to disqualify virtually all of its employees with the requisite skills and capabilities from working on behalf of PRR.

Staff supports PGE's proposal to modify Condition 2 to exclude Benchmark Team employees from the condition. Staff maintains that Benchmark Team employees are the least likely to have confidential information from independent third-party bidders because they are screened from the RFP process by the requirements of OAR 860-089-0300(1)(b). Staff also maintains that this treatment of Benchmark Team employees is consistent with its understanding of how PGE intended to maintain separation of duties under both the original Condition 2 and the modified Condition 2.

Northwest & Intermountain Power Producers Coalition (NIPPC) argues that a third-party bidder would not have access to highly confidential information only related to a benchmark bid and PGE employees providing services to PRR should similarly not have access to that information. NIPPC argues that to allow otherwise would provide an unfair advantage to the affiliate over third-party developers. Oregon Solar + Storage Industries Association (OSSIA) contends that this concern is uniquely related to PRR's role in the ongoing RFP and that this issue is more properly addressed in the RFP. NewSun similarly contends that issues around the Benchmark Team or ongoing RFP are more appropriately addressed in the RFP.

*3. Limit Condition 2 to Employees with Highly Confidential Information from the Last RFP*

PGE requests that the Commission modify Condition 2 to prohibit only PGE employees that have had access to highly confidential bidder information in PGE's last RFP from providing services to PRR. PGE maintains that bidder information rapidly becomes stale and bidder information from one RFP is not relevant to those held in the future.<sup>4</sup> PGE notes that in the last RFP, PGE had to allow bidders to refresh their bids after the Commission acknowledged the final shortlist due to market for renewable resources changing so rapidly. PGE maintains that knowledge of the particulars of bids from past RFPs will not provide a team member with information that would be competitively useful in future RFPs. PGE further argues that any reference to the IRP should be removed because raw bidder information is not included in the IRP and the details of IRP resources are pulled from executed contracts. PGE maintains that narrowing the prohibition could limit some of the burden and cost associated with the Commission's new limitation. PGE argues that including highly confidential information associated with executed contracts would exclude almost everyone in its power operation group, which would seriously and negatively impact PRRs operation of resources.

Staff supports PGE's proposal to revise Condition 2 to limit the application to employees that had access to highly confidential bidder information in the most recent RFP. Staff argues that while PGE may be right in part that bidder information rapidly becomes stale, the competitive concerns are not unfounded for certain bidder characteristics, such as project characteristics.<sup>5</sup> Staff states that a condition that prohibits any employee that has ever had access to highly confidential bidder information produced in any RFP or IRP seems unduly restrictive. Staff argues that excluding employees that viewed highly confidential bidder information in the most recent RFP would strike a fair balance between maintaining competitive balance and allowing PRR to effectively operate.

NewSun, NIPPC, and OSSIA contend that PGE has routinely identified the information from RFPs as commercially sensitive information requiring protection for five years following the final order.<sup>6</sup> NewSun notes that other market participants are not provided access to that data during that period and therefore PGE's competitive affiliate should not have access. NewSun also argues that it is unclear what PGE means when it argues there is now raw bidder information in the IRPs as opposed to executed contracts because PGE's motions for modified protective orders in its IRPs clearly articulate that PGE has concerns about how market participants could gain a competitive advantage by viewing IRP data and

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<sup>4</sup> PGE Application for Reconsideration and Motion for Clarification at 8.

<sup>5</sup> Staff Response at 4-5 (Sept. 27, 2023).

<sup>6</sup> NewSun Response at 5-9 (Sept. 27, 2023); NIPPC Response at 15-16 (Sept. 27, 2023); OSSIA Response at 3, 5 (Sept. 27, 2023).

includes contracts for existing resources. NewSun argues that it seems like PGE is now proposing to use that information covered by protective orders to ensure that an affiliate's resources have a competitive advantage over other bids. NewSun also notes that there is also data beyond what is covered by Condition 2 that third-party developers are not permitted access to and states that most recently in docket UE 416, PGE requested that NewSun not seek access to Huddle until PGE could re-designate several data responses as highly confidential subject to the modified protective order. New Sun notes that other stakeholders raised concerns with the amount of information being designated highly confidential. NewSun states that it remains concerned that internal PGE employees that may work for the affiliate in direct competition to other resource options in the market have access to a large amount of highly confidential information that will give the affiliate an unfair advantage.

NIPPC similarly argues that limiting the affiliates involvement to contract negotiations after a resource is selected for the final shortlist still provides an affiliate with an unfair advantage, because highly confidential material remains relevant during contract negotiations. NIPPC maintains that price, operational characteristics, and contract terms are highly correlated, and an employee with previous access to highly confidential information will have insight into previous contract negotiations that a third-party bidder would not have, such as what provisions a bidder or PGE did or did not find acceptable.<sup>7</sup> OSSIA also maintains that while information from prior RFPs may be less relevant after two years, that information can still inform bids into a current RFP or negotiation of contracts resulting from bids.

#### *4. Limit Condition 2 to Future RFPs*

PGE argues that it formed its RFP team based on the existing rules and that it had no way of predicting that the Commission would adopt new requirements. PGE maintains that if it had known about these requirements ahead of time, it would have formed the teams differently or had time to seek waivers. PGE contends that enforcing these limitations on the current RFP is prejudicial and unfair and notes that retroactive enforcement of a rule is not favored.

Staff does not support PGE's proposal to limit the application of Condition 2 to future RFPs. Staff argues that employees participating in the current RFP or the most recent RFP are those employees most likely to have confidential third-party bidder information that could impact the competitive bidding process. Staff maintains that clarifying that Condition 2 does not apply to Benchmark Team employees should mitigate PGE's staffing concerns.

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<sup>7</sup> NIPPC Response at 16-17.



NewSun, NIPPC, and OSSIA each reject PGE's proposal to limit Condition 2 to future RFPs.<sup>8</sup> NewSun and OSSIA contend that the issue was raised in response to PGE's last affiliate filing, which the Commission denied, and PGE should, therefore, have been aware that such a condition could be imposed as a result of its filing. NewSun and NIPPC argue that PGE could have filed its application further in advance and instead waited to file it in close conjunction with its RFP. NewSun maintains that there are plenty of options available on the market and the ability of PRR to participate in this RFP is not a legitimate excuse to delay procurement. NIPPC maintains that if PGE cannot comply with Condition 2 due to staffing issues than the affiliate should not be allowed to bid into the 2023 RFP. NIPPC also notes that there is no retroactive treatment to the 2023 RFP as it has not yet been approved.

*5. Limit Condition 2 to Employees Working on RFP Prior to Final Shortlist*

PGE maintains that it is possible that PRR may own a resource bid into the RFP through a non-PGE entity under a BTA and that PRR will need the services of PGE employees to negotiate contracts and for ongoing operation and long-term maintenance of resources. PGE argues that there are no competitive concerns regarding employees providing services to PRR to negotiate the relevant contracts after the final shortlist is filed.

Staff states that it finds PGE's request to limit Condition 2 to employees working on the RFP prior to the final shortlist reasonable.

NewSun, NIPPC, and OSSIA oppose PGE's request to limit Condition to employees working on the RFP pre-final shortlist.<sup>9</sup> NewSun, NIPPC, and OSSIA contend that the final shortlist is not the end of the competitive process and the Benchmark Team and employees that work on the RFP after the final shortlist still gain insight to valuable competitively sensitive information. NIPPC notes that this insight could provide an unfair competitive advantage over third-party bidders. NewSun notes that the Commission has in previous RFPs directed the independent evaluator to stay on through the final resource selection. NewSun maintains that the Benchmark Team may be engaged in negotiations with third-party developers to submit the bid and would have access to competitive information. NewSun also reiterates that the issues PGE raises about the Benchmark Team and the RFP are more properly addressed in the RFP process.<sup>10</sup>

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<sup>8</sup> NewSun Response at 11; NIPPC Response at 24-25; OSSIA Response at 6-7.

<sup>9</sup> NewSun Response at 10; NIPPC Response at 25-26; OSSIA Response at 7.

<sup>10</sup> NewSun Response at 10.

*Clarification**1. Benchmark Team*

As stated above, PGE seeks four clarifications in the event that the Commission declines to reconsider Condition 2, three of which address its Benchmark Team:

1. Condition 2 does not apply to assignment of PGE employees to the Benchmark Team in current or future RFPs, including those who have worked or will work on solar benchmark-sponsored bids;
2. Condition 2 does not prohibit services to PRR of PGE employees who have had access to highly confidential bid information regarding the benchmark bid only as a result of their past or current assignment to the Benchmark Team; and
3. Services performed by the Benchmark Team prior to Commission acknowledgment of a benchmark-sponsored Resource on the final shortlist is properly allocated to the utility and is not deemed services provided to PRR.

Regarding its first clarification, PGE notes that the language the Commission added to Condition 1 states that PRR will be treated as a benchmark bid in an RFP. PGE contends that this statement is intended to reference the fact that PGE has committed that any affiliate bids will be submitted on the same timeline as a benchmark bid. PGE argues that given the heightened sensitivities raised by RFP processes, it is necessary for the Commission to state this explicitly.

Regarding its second clarification, PGE requests that the Commission modify Condition 2 to prohibit only PGE employees that have had access to highly confidential bidder information in PGE's last RFP from providing services to PRR. PGE maintains that bidder information rapidly becomes stale and bidder information from one RFP is not relevant to those held in the future. PGE notes that in the last RFP, PGE had to allow bidders to refresh their bids after the Commission acknowledged the final shortlist due to market for renewable resources changing so rapidly. PGE maintains that knowledge of the particulars of bids from past RFPs will not provide a team member with information that would be competitively useful in future RFPs. PGE further argues that any reference to the IRP should be removed because raw bidder information is not included in the IRP and the details of IRP resources are pulled from executed contracts. PGE maintains that narrowing the prohibition could limit some of the burden and cost associated with the Commission's new limitation. PGE argues that including highly confidential information associated with executed contracts would exclude almost everyone in its power operation group, which would seriously and negatively impact PRRs operation of resources.

Regarding its third Benchmark Team clarification, PGE argues that the Commission should clarify how it regards the Benchmark Team's services to avoid potential confusion and disputes. PGE maintains that any solar bids from PRR would be treated as a benchmark bid and that no work would be performed on behalf of PRR unless a solar benchmark-sponsored bid is on the final shortlist filed with the Commission. PGE contends that it should therefore follow that any work performed on behalf of a benchmark bid prior to the final shortlist would be allocated to the utility and not PRR. PGE argues that an employee's work would only be considered services to PRR at the point of preparing final documents for which PRR is a signatory. PGE notes that key members of the Benchmark Team have access to highly confidential bidder information from prior RFPs and requests that the Commission clarify this point to avoid future disputes.

NewSun and OSSIA argue that issues related to the Benchmark Team are outside the scope of this docket and are more properly addressed in the ongoing RFP docket.<sup>11</sup> NewSun argues that there is nothing in the order that applies Condition 2 to anything beyond the current affiliate and the current set of facts and there is no need for clarification. NewSun argues that the Benchmark Team may be engaged in negotiations with third parties and would have access to significant competitive information. NewSun also notes that in the last RFP, PGE provide an opportunity for bidders on the final shortlist to update their bids. NewSun maintains that employees with access to past or current benchmark bids should be restricted from working for the affiliate. Regarding PGE's clarification Benchmark Team services, OSSIA states that it is not entirely clear what PGE is seeking and that it does not appear to be properly before the Commission in this docket.

NIPPC argues that PGE's requested clarification regarding the assignments to the Benchmark Team is outside the scope of this docket and that Condition 2 is clear that the limitations only apply to the affiliate team.<sup>12</sup> NIPPC notes that PGE's request regarding employees with past or current assignments to the Benchmark Team is essentially the same as its first modification request and argues again that third-party bidders would not have access to such highly confidential information and, therefore, neither should affiliate team members. NIPPC supports PGE's requested clarification that any services by the Benchmark Team up to acknowledgment of the final shortlist would be assigned to PGE and work after the final shortlist would be assigned to PRR.

## *2. Executed Projects*

PGE requests that the Commission clarify that the phrase "highly confidential information from bidders" refers only to highly confidential bidder information submitted as part of RFP bids and does not include information regarding

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<sup>11</sup> NewSun Response at 9; OSSIA Response at 7-8.

<sup>12</sup> NIPPC Response at 26.

executed projects. PGE argues that highly confidential information from executed projects is distinct from highly confidential bidder information submitted with RFP bids and should be excluded from Condition 2. PGE argues that if this term in Condition 2 is not clarified and limited specifically to those bids submitted to PGE's RFP, virtually everyone in PGE's power group would be prevented from providing services to PRR and barred from membership on the Affiliate Team. PGE also notes that the only information included in the IRP is information from executed projects and that with this clarification there is no IRP information covered by Condition 2.

NIPPC agrees with PGE that highly confidential bidder information should not include information regarding the operations of a project if the information was obtained independently and separately provided outside an RFP.

NewSun argues that Condition 2 applies explicitly to the IRP and there is therefore no clarification that the Commission could offer that would exclude IRPs from the Condition. NewSun contends that PGE has designated data as competitively sensitive in its IRP, noting in its requests for modified protective orders that the heightened protections are necessary to ensure that such data does not fall into the hands of market participants or get used in commercial negotiations. Similarly, OSSIA argues that there is no need to create a distinction between highly confidential information from bidders and highly confidential information from successful projects and that instead the standard should include the information covered by modified protective orders. OSSIA maintains that information from executed contracts available to PGE's IRP team but not to third-party developers should be covered by the standard so that there is parity between the affiliate and other developers bidding into PGE's RFP.

### Analysis

AHD recommends that the Commission grant PGE's application for reconsideration on the grounds that there is good cause for further examination of the issue and recommends that the Commission adopt Staff's modifications to Condition 2.

PGE's application and the responses to the application raised several practical concerns with Condition 2 that would benefit from further clarification and amendment. PGE has argued that it lacks the Staff to implement Condition 2 as written, among other concerns. During the Commission's deliberations at the August 8 meeting, the Commission specifically contemplated that PGE may need to file an application for reconsideration in the event that staffing was a major concern.

In response to PGE's request to either remove or modify Condition 2, Staff proposes the following modifications to Condition 2 to incorporate some, but not all, of PGE's requested revisions and balance the competing concerns:

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.~~ No PGE employee that has had previous access to Highly-Confidential information from non-benchmark or nonaffiliate bidders in PGE's most recent RFP process may provide services for PRR with respect to a project bidding into an RFP conducted under the Commission's Competitive Bidding Rules if those services are provided before the final short-list has been filed by PGE with the Commission.

Staff's proposal would adopt all PGE's proposed conditions except for the request to limit application of the condition to future RFPs. Staff's revisions to Condition 2 balance concerns around access to highly confidential bidder information and PGE's Staffing concern and the costs to customers. Under OAR 860-089-0300(1)(b), employees involved in the Benchmark Team should already be separated from the RFP process and likely have less access to the confidential information of third-party bidders.

Regarding the proposal to limit highly confidential information covered by Condition 2 to information from the last RFP, several responses to the application raised concerns with PGE's argument that such information becomes stale quickly. In particular, NIPPC, OSSIA, and NewSun each argued that PGE has previously argued in its requests for modified protective orders that information in the IRP and executed contracts are highly confidential competitively sensitive information that requires five years of protection.<sup>13</sup> NewSun also identifies concerns that PGE employees working for an affiliate have access to a growing body of highly confidential information, noting that in its recent rate case, PGE appeared to be redacting an unusual amount of information following NewSun's intervention. While AHD recommends that the Commission adopt Staff's revisions to Condition 2, the potential inconsistency between PGE's arguments in its application and its arguments in modified protective orders is a legitimate concern that should be reviewed in its future requests for modified protective orders.

Some of the responses to the application raised concerns that issues around the Benchmark Team and bids are more appropriately addressed in the RFP. AHD

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<sup>13</sup> NewSun Response at 8-9.

recommends that the Commission provide the clarity PGE requests now, in the interest of overall efficiency. PGE will expend time and resources on PRR for the RFP; bidders will prepare for PRR involvement. Providing clarity, to the extent possible now, will allow all RFP participants to have a clearer understanding of the expectations of Commission for PRR's operation and participation.

However, as suggested by some responses, continued examination of issues related to PRR may be necessary during the RFP. For example, some concerns of stakeholders would be alleviated if PRR was to only act as a potential owner of PGE's benchmark bid. In argument and comment, PGE seems at times to indicate this is its primary purpose; but at others that PRR will submit independent bids or seek to enter into a BTA with other bidders. The RFP process can be utilized to provide clarity on the specific role of PRR in the near term. Additionally, in the RFP process stakeholders, Staff, and the independent evaluator can review PRR's engagement to ensure it acts consistent with the goals articulated by PGE; namely to serve customers by lowering overall costs.

Staff's proposed revisions should address PGE's staffing issue to the extent that there is no good cause to avoid applying Condition 2 to the 2023 RFP.

Additionally, as several responses to the application point out, PGE chose to seek the affiliate transaction close to its 2023 RFP and the conditions were adopted specifically to address concerns with the affiliate in the 2023 RFP and are not a rule of general applicability.

#### Recommendation

AHD recommends that the Commission grant PGE's application for reconsideration for good cause and adopt Staff's recommended revisions to Condition 2.

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

PGE's application for reconsideration granted for good cause and Staff's recommended revisions to Condition 2 granted.