

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 427

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Renewable Resource Automatic
Adjustment Clause (Schedule 122)
(Clearwater Wind Project).

ORDER

DISPOSITION: SCHEDULE 122 APPROVED AS MODIFIED, WITH CONDITIONS

I. SUMMARY

In this proceeding, we review whether Portland General Electric Company’s Clearwater Project’s revenue requirement may be included in rates. In doing so, we are asked to review PGE’s conduct in its 2021 Request for Proposal (RFP). We find that conduct was lacking, namely in the communication to bidders about the flexibility of the transmission requirements contained in the RFP. We do not find that PGE erred in applying its transmission requirements flexibly—in this transmission-constrained environment, flexible transmission requirements help ensure that the best projects can emerge from the RFP—however, all bidders should have been informed clearly that the requirement was flexible so they could compete on a level playing field with the benchmark bid. Accordingly, we adopt Staff’s proposed conditions, as detailed below.

II. FACTUAL BACKGROUND

On October 30, 2023, PGE filed Advice No. 23-20, a Renewable Automatic Adjustment Clause (RAAC) to recover its owned and contracted portions of the Clearwater Wind Project, pursuant to OAR 469A.120(3). PGE’s portion of the Clearwater project includes 208 MW of the wind generation facility (referred to as Clearwater East), which is PGE-owned, and 103 MW (referred to as Clearwater II) (collectively, Clearwater) sold to PGE under a power purchase agreement.

The Clearwater project arose out of PGE's 2021 RFP, where it was a benchmark bid. PGE's 2021 RFP process commenced upon receipt of PGE's Notice and Request to Open an Independent Evaluator Selection docket in June 2021. The Commission approved Bates White as the Independent Evaluator (IE) on July 13, 2021; approved PGE's Scoring and Modeling Methodology, with conditions, on October 5, 2021; and approved the final draft of the 2021 All-Source Request for Proposals, with modifications, on December 2, 2021.¹

Benchmark bids were submitted for evaluation on January 4, 2022, reviewed for conformity with minimum bid requirements, and scored and sealed on February 4, 2022, all before other bids were received by PGE.² Clearwater did not meet all the minimum bid requirements—namely, it did not have 80 percent of its output covered by long-term firm transmission rights.³ Instead, 60 percent of its output was covered by long-term firm transmission rights, and an additional 17 percent was covered by short-term (two year) firm transmission rights. The IE concluded that it agreed Clearwater could proceed because “PGE, in several public Q&A responses noted that it will ‘consider alternative transmission plans provided bidders that provide a clear and executable path to procuring transmission service.’ Under this consideration we believe that the bid can continue to be evaluated.”⁴

Following PGE's completion and submission of the Benchmark bid analysis, the IE shared all remaining bids with PGE for review for conformance with the minimum bid requirements. Bids initially found to be non-conforming were presented with non-conforming notices granting a “cure” period, during which bidders could remedy their bids through modification or clarification. Several of the bids were non-conforming because they did not meet the minimum transmission requirement.⁵ For example, one project was a 512 MW solar and wind project that had secured transmission capacity equal to 60 percent of its maximum interconnection limit. In light of its overall characteristics and competitiveness, at the initial screening stage of the RFP process, the PGE RFP team suggested that to comply with the RFP and pass the minimum requirement screening, the project should be downsized and offer only its solar component. The project eventually withdrew from consideration at the initial screening

¹ *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, Docket No. UM 2166, Order No. 21-235 (July 15, 2021), Order No. 21-320 (Oct. 6, 2021), and Order No. 21-460 (Dec. 10, 2021).

² PGE/410, The Independent Evaluator's Analysis of the Portland General Electric Benchmark Bids.

³ Staff/204, Dlouhy/6-7. The RFP required applicants to have “eligible transmission service * * * that is equivalent to at least 80 percent of the facility's interconnection limit.” Eligible transmission service products were defined as long-term firm service, long-term conditional firm bridge, number of hours, or long-term conditional firm reassessment, number of hours.

⁴ PGE/410, 14.

⁵ Staff Opening Brief at 4, n 8.

stage, prior to being scored, rather than drop its wind component and reduce the nameplate capacity of its bid to conform with its secured transmission rights. Another project had transmission capacity equal to 50 percent of its maximum output. PGE concluded the bid did not meet the eligibility requirements and similarly gave the project the opportunity to resize; the project withdrew instead. PGE states it did exercise flexibility with respect to both transmission and other bid elements, including moving forward some bids that did not meet the transmission requirement or the commercial online date and in allowing projects to increase their price offer at the best and final stage.⁶

PGE's final shortlist included 29 bids, which represented 13 unique projects.⁷ The Commission acknowledged the final shortlist at the July 14, 2022 Special Public Meeting, as memorialized in Order No. 22-315, consistent with the recommendation of Staff.⁸ Pursuant to one of the acknowledgment decisions, the IE continued to oversee final contract negotiations. Ultimately, Clearwater was selected along with two others as the top offers in PGE's portfolio modeling,⁹ and Clearwater was then selected from the final shortlist.

Clearwater II achieved commercial operation on December 11, 2023, and Clearwater East achieved commercial operation on January 5, 2024. In docket UM 2306, PGE filed applications for deferral of costs and benefits associated with the Clearwater Project for the 12-month periods beginning January 5, 2024, and January 6, 2025, which were authorized.¹⁰

III. PROCEDURAL HISTORY

On October 30, 2023, PGE initiated these proceedings by filing Schedule 122, the RAAC, to bring Clearwater into customer rates. On February 6, 2024, Staff filed its opening testimony. In that opening testimony, Staff raised concerns about Clearwater's transmission arrangements, stating

Staff notes that Clearwater has only secured 230 MW of long-term firm transmission from the Clearwater facility to PGE's load. In effect, this is only 77 percent of the project's 300 MW nameplate capacity and below

⁶ PGE Rebuttal Brief at 6.

⁷ PGE/100, Abel/Batzler/12; PGE/300, Batzler-Lindsay/8.

⁸ Docket No. UM 2166, Order No. 22-315 at 1.

⁹ PGE/100, Abel-Batzler/13.

¹⁰ *In the Matter of Portland General Electric Company, Application for Deferral of Costs Associated with Clearwater Wind Project, and Application for Reauthorization to Defer Costs Associated with Clearwater Wind Project*, Docket Nos. UM 2306 and UM 2306(1) Order No. 25-016 (Jan. 21, 2025).

the 80 percent long-term firm transmission minimum requirement in PGE's RFP.

While the IE deemed this "acceptable" given PGE's needs, Staff is concerned that this may diminish the value of Clearwater to PGE's retail customers. Further, Staff notes that some similarly situated bids may have been dissuaded from bidding into the RFP and some similarly situated bids in the RFP were given different treatment than Clearwater.¹¹

Following this testimony, PGE, Staff, and the Oregon Citizens' Utility Board reached a full settlement and stipulation in this docket, which was filed on March 5, 2024, along with joint testimony supporting the stipulation. On April 4, 2024, the Commission rejected the parties' joint stipulation in Order No. 24-091, on the basis that the Commission was "not satisfied that the stipulation offered by the parties is adequate to address the concerns with the 2021 [RFP] process through which Clearwater was selected, as raised in the record to date [by Staff's opening testimony], nor to ensure that ratepayers are protected from the potential costs of the resulting deliverability risk."¹²

PGE filed reply testimony on April 25, 2024. In the meantime, NewSun Energy LLC intervened on April 4, 2024, and requested an amended procedural schedule that allowed it the opportunity to file testimony. The ALJ granted that request and entered a new procedural schedule; NewSun filed intervenor testimony on May 29, 2024.

Subsequently, PGE filed reply testimony, and on November 20 and 21, 2024, a hearing was held. Parties filed simultaneous opening briefs and reply briefs, and PGE filed a rebuttal brief.

IV. POSITIONS OF THE PARTIES

A. Staff

Staff does not challenge the ultimate prudence of PGE's decision to acquire Clearwater. Staff does, however, take issue with the fact that Clearwater did not meet the minimum 80 percent transmission requirement, and "with the reasonableness of some of PGE's actions and communications to bidders with respect to the minimum bid requirement related to transmission."¹³ Staff does not think that PGE's actions likely changed the outcome of the proceeding, but argues that PGE's selection of a bid that does not meet

¹¹ Staff/200, Dlouhy/13.

¹² Order No. 24-091 at 1 (Apr. 04, 2024).

¹³ Staff Opening Brief at 1.

the minimum requirements introduced a risk of higher costs for transmission than contemplated by the bid because PGE has yet to identify the necessary transmission. It also argues that PGE appears to have treated some bidders disparately, which may chill future participation by some independent bidders.

Staff states that it has developed a proposed mechanism and adjustment that is narrowly tailored to address the potential harm it identified—namely, that PGE’s future costs will be higher than assumed because PGE has 60 percent long-term firm transmission rather than 80 percent. Staff’s proposed mechanism and adjustment is as follows.

First, Staff recommends using a static capacity factor to calculate power costs in PGE’s Annual Power Costs Update Tariff (AUT) for five years starting in 2025. Staff’s recommended capacity factor starts with the capacity factor calculated by the company, 43.93 percent, adjusted to reflect the long-term transmission minimum bid requirement in the RFP. PGE’s calculation of the net capacity factor is consistent with how it was modeled in the RFP and assumes transmission for 77 percent of Clearwater’s maximum output capacity. To ensure customers are held harmless by Clearwater’s failure to meet the minimum bid requirement, Staff recommends calculating the net capacity factor reflecting an assumption of 80 percent transmission.

Staff also recommends calculating the company’s net variable power costs (NVPC) assuming that PGE had 80 percent of its nameplate capacity covered by long-term firm transmission, as was required in its RFP. For purposes of UE 427, these adjustments combined increase the benefits of Clearwater in NVPC by approximately \$190,000.

Second, Staff develops a performance-based mechanism for Clearwater with two parts. As to the first, the cost of the first 10 MW of short-term transmission rights used to deliver power from Clearwater to PGE’s load at any given time will be held out of the Power Cost Adjustment Mechanism (PCAM) or any other cost recovery docket. This is intended to hold ratepayers harmless from any cost that results from PGE’s acquiring transmission rights necessary to deliver 80 percent of Clearwater’s nameplate capacity, which was the minimum RFP requirement. As to the second, whenever Clearwater is unable to deliver generated power to PGE’s load due to lack of available transmission, any marginal power costs incurred to cover this shortfall will be excluded from the results of the PCAM.

Staff notes that it is possible that potential bidders who chose to not submit their projects because they did not have sufficient transmission may have submitted bids had they known the project need only have enough long-term firm transmission to meet a 60 percent standard. Similarly, bidders that withdrew after being informed their bids did not meet the transmission requirement might have chosen to instead modify their bids to

incorporate short-term firm transmission to come closer to meeting the 80 percent requirement had they known this also was an option. Staff believes the Commission adopting Staff's adjustments will encourage utilities to be more careful in future RFPs to ensure communications with bidders are uniform and accurate to ensure all bidders' expectations and understanding of the requirements are consistent with the utilities' own.

B. NewSun

NewSun argues that by the express terms of the RFP, PGE was required to reject Clearwater as non-conforming without further evaluation. That it did not do so, NewSun states, is the result of “anti-competitive behavior to ensure from the outset that Clearwater—and only Clearwater—would win the 2021 RFP.”¹⁴ NewSun cites to the fact that other bid options with only 60 percent long-term firm transmission capacity were rejected by PGE without further evaluation. It also argues that PGE's long-term plan for Clearwater is to use the Colstrip transmission rights when Colstrip is retired and those rights become available, but that PGE did not offer those rights to any other bidders, despite a requirement to do so or to disclose that it is using rights not offered to other bidders when seeking RFP acknowledgment under OAR 860-089-0300(3).

NewSun notes that PGE did state that it will “consider alternative transmission plans provided bidders that provide[sic] a clear and executable path to procuring transmission service.”¹⁵ But PGE was also, it states, clear that the 80 percent long-term firm threshold must still be met; it stated in its Q&A on alternative transmission plans that “[f]or the avoidance of doubt, any clear and executable plan to procure transmission service must meet the transmission product and quantity requirements specified in the 2021 All-Source RFP.”¹⁶

Further, NewSun argues, PGE failed to maintain a separation of the benchmark and RFP teams in the 2021 RFP. First, it asserts there is no evidence that PGE finalized and shared the Staffing Principles documents with the teams—and that at a minimum, it shared that document well after operations were underway. Second, it states that PGE admits that it did not track who worked on the RFP, and that some individuals appear to have worked on both sides of the procurement without being listed as a team member on either team.

¹⁴ NewSun Opening Brief at 2.

¹⁵ Staff/206, Dluohy/2 (quoting PGE's Q&A).

¹⁶ NewSun Opening Brief at 17.

Finally, NewSun argues that PGE could have procured more generation and moved more quickly towards its HB 2021 targets. In particular, it states that PGE's analysis showed it was prudent to procure at the 400 MWa level, but it proposed to procure at the 180 MWa level with an additional 100 MWa for the Green Tariff program.

NewSun concludes that PGE's anti-competitive behavior in the conduct of the 2021 RFP is imprudent, unjust, unfair, and unreasonable. At a minimum, it states, PGE should be denied any return on equity for capital investments in Clearwater. It also argues that Bates White should be barred as serving as the IE in any future RFPs in Oregon. NewSun also proposes a variety of changes aimed at restoring confidence in the RFP process, particularly:

- Directing that the IE be hired directly by the Commission;
- Ensuring that the IE has a certain level of minimum competency on issues expected to be raised in the RFP, providing training for the IE, and/or to requiring that the IE disclose areas of inexperience;
- Aligning the Commission's expectations with the IE's work product;
- Requiring transparent reporting of all benchmark bids and minimum bid requirements;
- Requiring transparent reporting on PGE's RFP development team earlier in the RFP development phase;
- Requiring changes to PGE's staffing principles and internal practices;
- Preventing PGE employees from working on the IRP or RFP Team and moving over to the Benchmark Team in a subsequent RFP while the protective orders in the IRPs and prior RFPs are still in effect; and
- Clarifying that the RFP Q&As do not modify the terms of the RFP.

C. PGE

PGE defends the integrity of its RFP process. It states that PGE selected Clearwater from the Commission-acknowledged final shortlist in PGE's 2021 RFP following an RFP process that was comprehensively overseen by the IE. In that process, PGE argues, Clearwater was the top-performing resource in PGE's 2021 RFP that filled the capacity and energy needs identified in PGE's acknowledged 2019 IRP. The company also states that the IE independently validated PGE's analysis supporting its selection of Clearwater as the best resource in the 2021 RFP and confirmed that the RFP process was conducted fairly and in full compliance with the Commission's competitive bidding rules.

PGE argues that Clearwater was not given preferential access to transmission alternatives, stating that it was not allowed to use existing PGE transmission rights as part of its alternative transmission plan. It also argues that Clearwater's transmission plan is not unreasonably risky for customers because it has 77 percent coverage, only three percent short of the required 80 percent, through 2025. This, PGE states, buys the project more time to obtain long-term rights. This makes it relatively less risky than other projects submitted in the 2025 RFP which did not have alternative transmission plans with short-term coverage. PGE states that every project that dropped out of the RFP was "demonstrably more expensive and/or represented greater risk than Clearwater."¹⁷

PGE characterizes Staff's adjustments as punitive and contrary to the terms of the 2021 RFP which allowed renewable bids to have long-term firm transmission coverage for only 80 percent of project output. It also characterizes it as contrary to Oregon law, which allows for recovery of all prudently incurred costs.¹⁸ It also disagrees with Staff's proposal to fix the capacity factor for five years, stating that it is unrealistic from a market standpoint. It argues that if the Commission believes it needs more certainty as to Clearwater's capacity factor, it can place a cap on Clearwater's five-year rolling average capacity factor at no higher than 105 percent and no lower than 95 percent of the 2024 authorized capacity factor in this proceeding for the first four years of forecasting Clearwater energy benefits. This adjustment, PGE states, would provide additional assurances to customers that Clearwater will perform as expected, while also recognizing that wind resources will vary in their levels of production from one year to the next.

Finally, PGE disputes NewSun's claims that it conducted the RFP in a discriminatory manner. First, it states that it did not apply the 80 percent transmission minimum bid requirement in a discriminatory manner. PGE argues it took a flexible approach to the screening process and applied this flexible approach to all bids in the RFP, not just Clearwater. PGE maintains that feedback to bidders addressed how to improve the competitiveness of their bids, not simply to meet one minimum requirement. Second, PGE argues it maintained a strict separation of functions between the benchmark and evaluation teams and diligently followed the Commission's competitive bidding rules in its 2021 RFP. PGE states that it distributed its Staffing Principles document to members of both teams, and that there was never any communication between the evaluation team and benchmark team that violated or was inconsistent with the Staffing Principles document and the Commission's competitive bidding rules.

¹⁷ PGE Opening Brief at 41.

¹⁸ ORS 469A.120(1).

V. RESOLUTION

We find that including the Clearwater Project in rates is just and reasonable, though we find issues with PGE's RFP process sufficient to question Clearwater's prudence, and thus impose the conditions described below. In making this determination, we review our prudence standard, particularly with regard to the decision-making process a utility uses to make its investments. An example of a modern articulation of the prudence standard is as follows:

A prudence review must determine whether the company's actions, based on all that it knew or should have known at the time, were reasonable and prudent in light of the circumstances which then existed. It is clear that such a determination may not properly be made on the basis of hindsight judgments, nor is it appropriate for the [commission] to merely substitute its best judgment for the judgments made by the company's managers. The company's conduct should be judged by asking whether the conduct was reasonable at the time, under all circumstances, considering that the company had to solve its problems prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the task that confronted the company.¹⁹

The Commission has long used this standard when examining utility investments. Through various orders, the Commission has confirmed that prudence of an investment is measured from the point of time of the utility's actions and decisions without the advantage of hindsight,²⁰ that the standard does not require optimal results,²¹ and that the

¹⁹ See also *In the Matter of PacifiCorp, dba Pacific Power's Request for a General Rate Revision*. Docket No. UE 246 Order No. 12-493 at 25, n 40 (citing Phillips, Charles, *Regulation of Public Utilities*, 341 (3d ed 1993)).

²⁰ See e.g., *In the Matter of the Application of Portland General Electric Company for Approval of the Customer Choice Plan*, Docket No. UE 102, Order No. 99-033 at 36-37 (Jan. 27, 1999) (prudence is determined by the reasonableness of the actions "based on information that was available (or could reasonably have been available) at the time."); *In the Matter of the Revised Tariff Schedules for Electric Service in Oregon Filed by Portland General Electric Company*, Docket No. UE 88, Order No. 95-322 at 48 (Mar. 29, 1995) (a prudence review takes into account the information that was available to decision makers at the time the decision was made. It does not engage in hindsight or second-guessing; to do so would be unfair.); and *In the Matter of the Application of Northwest Natural Gas Company for a General Rate Revision*, Docket No. UG 132, Order No. 99-697 at 52 (Nov. 12, 1999) (we must determine whether NW Natural's actions and decisions, based on what it knew or should have known at the time, were prudent in light of existing circumstances.).

²¹ See e.g., *In the Matter of an Investigation of Transition Costs for Utilities*, Docket No. UM 834, Order No. 98-353 at 9 (Aug. 24, 1998) (The Commission has applied this prudency standard for many years in deciding whether to include in rate base the full amount of a utility's investment in a new resource (as opposed to a standard that, say, focuses on the outcome of the utility's decisions.); and *In the Matter of the Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs*, Docket No.

review uses an objective standard of reasonableness.²² Crucially in this case, “the process used by the utility to make a decision to invest in a plant is highly valuable in determining whether the utility’s actions were reasonable and prudent in light of the circumstances which then existed.”²³

Here, we examine PGE’s actions given what PGE knew when it took those actions, and we consider the process that PGE undertook in selecting the Clearwater project. In applying this frame, we find that its process was deficient even if, ultimately, it resulted in selection of a project with benefits for ratepayers, and therefore we cannot be confident that the process produced all of the relevant information to inform a prudence determination. Thus, we find that PGE has failed to meet its burden to demonstrate prudence, particularly with respect to the risk of higher future costs due to Clearwater not meeting the minimum bid requirement. However, with Staff’s proposed conditions, which we find appropriately address the deficiencies of the RFP process and mitigate the risk of such costs, we are able to conclude that the project is prudent and may be included in rates.

In particular, we find that PGE was not sufficiently transparent in how it addressed the issue of flexibility in transmission standards with other bidders. We do not believe PGE acted inappropriately in advancing the Clearwater project past the bid stage, nor in taking a flexible approach to the minimum transmission requirement. Transmission is a persistent constraint and in order to bring high-value projects with positive cost-benefit ratios into the generation portfolio, we believe it is appropriate to treat that requirement flexibly. In this case, PGE had 60 percent long-term firm transmission and 17 percent short-term firm transmission, and we believe it was appropriate to consider the project despite the fact that it did not meet the 80 percent long-term firm transmission requirement in the RFP.

What PGE did not do, however, was communicate clearly to other bidders about the flexibility it offered in the Benchmark bid. The minimum requirements in the RFP were quite clear:

UM 995 and *In the Matter of PacifiCorp’s Application for Partial Authorization of Its Request to Defer Excess Net Power Costs and Approval of Its Request to Implement an Amortization in Rates of Deferred Excess Net Power Costs*, Docket No. UE 121, Order No. 02-469 at 4 (July 18, 2002) (in applying this standard, the Commission does not focus on the outcome of the utility’s decision.).

²² See e.g., *In the Matter of Public Utility Commission of Oregon, Investigation to Consider Adoption of New Federal Standards Contained in the Energy Independence and Security Act of 2007*, Docket No. UM 1409, Order No. 09-501 at 5 (Dec. 18, 2009) (in a rate case the Commission would apply the “reasonable person” standard).

²³ Docket No. UE 246, Order No. 12-493 at 26.

To qualify for this RFP as a renewable resource, a Bidder must have an achievable plan for long-term transmission service for 80% of the interconnection limit of the facility. Short term firm services may be used for the remaining 20% of the facility's interconnection limit.²⁴

This hard stance may well have discouraged bidders who had transmission arrangements equivalent to Clearwater as an initial matter. Later, PGE clarified in the Q&A section of its bidder website that alternative transmission plans were acceptable, but it emphasized: "For the avoidance of doubt, any clear and executable plan to procure transmission service must meet the transmission product and quantity requirements specified in the 2021 All-Source RFP."²⁵ It is difficult to see how Clearwater's two years of short-term transmission could be considered a "clear and executable plan" to meet the 80 percent long-term firm requirement, and thus why PGE took pains to clarify that the full requirement remained in effect.

Further, it is not clear that PGE treated bids with transmission similar to Clearwater in an equitable fashion. For example, Staff cites Project X,²⁶ which had secured transmission for 60 percent of its maximum interconnection limit, like Clearwater.²⁷ (This project did not have short-term rights for an additional percentage, as Clearwater did). The project was informed, at the initial screening stage of the RFP process, that to comply with the RFP and pass the minimum requirement screening and improve its competitiveness, it should downsize the project and offer only its solar component. The project eventually withdrew from consideration at the initial screening stage, prior to even being scored, rather than drop its wind component and reduce the nameplate capacity of its bid to conform with its secure transmission rights.²⁸

Another project, Project Y,²⁹ had a plan for transmission equal to approximately 50 percent of its maximum output. PGE concluded the bid did not meet the eligible requirements and gave the project the opportunity to resize. Instead, Project Y withdrew its bid.³⁰

²⁴ NewSun/103, Stephens/17.

²⁵ NewSun/104, Stephens/3.

²⁶ We refer to this project pseudonymously for the purpose of keeping this order public and not subject to confidential protections. The name was disclosed at Staff/200, Dlouhy/16.

²⁷ PGE/200, Batzler-Goodspeed/11.

²⁸ Staff Opening Brief at 4.

²⁹ We again refer to this project pseudonymously. *See* PGE/200, Batzler-Goodspeed/12.

³⁰ *Id.*

PGE argues that it did communicate with third-party bidders extensively and that its “communications were aimed at understanding the transmission options each bid had available and working with bidders to make their projects as competitive as possible.”³¹ PGE continues that there is no reason to believe that communicating that the transmission requirements were flexible would have led to more competitive third-party bids and, indeed, that if it had communicated the requirements were flexible, “the third-party bids might have included even less transmission, making them less competitive.”³² Indeed, PGE states that although none of the notices of non-compliance at issue in the proceeding expressly conveyed to bidders that they may submit alternative transmission plans that did not meet the 80 percent requirement, the notices instead state that they should “propose necessary remedies to make the bid compliant.”³³ Finally, PGE states that its communications with those bidders were aimed at making those bids “as competitive as possible.”³⁴

While PGE may have intended to make the projects in question more competitive, the outcome was that neither PGE nor the IE communicated PGE’s flexibility in transmission requirements effectively, instead repeatedly reminding bidders that they needed eventually to become compliant with the full RFP requirement. We cannot, from this vantage point, know exactly why those projects withdrew, but we can and do review PGE’s communications for clarity and find it lacking. In its dual role as issuer of the RFP and bidder, PGE has the obligation to be scrupulously fair—to both be and appear even-handed—and here, it fell short. Bidders should have been informed when PGE reached the conclusion, that alternative transmission plans would be considered even if they fell short of the requirement for 80 percent firm transmission. PGE also should have informed bidders that fell short of the requirement that, consistent with PGE’s approach to other projects, they could move forward and be scored without resizing their project. While those bidders might not have been competitive without resizing—and while PGE was within its rights to discuss what would make them more competitive—they had the right to be informed of the facts surrounding the general approach that would be taken in the RFP.

We are not persuaded that PGE violated our separation of functions regulations. Those regulations state:

³¹ PGE Rebuttal Brief at 9.

³² *Id.*

³³ *Id.* at 12.

³⁴ *Id.*

Any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.³⁵

As PGE states in its opening brief, the separation of functions requirements cannot be considered to attach to the company in IRP proceedings preceding the RFP, and there is no evidence that company employees worked on both the RFP and the benchmark bids, except to the limited extent that a description of the benchmark bid was drafted and shared as Appendix P of the RFP. We do not find this to be an impermissible violation of the separation of functions, though we understand that NewSun and other stakeholders have argued for and may continue to argue for a tightening of our standards in light of more frequent RFPs.

We do, however, believe that a remedy is appropriate for PGE's unclear and unfair communications regarding the firm transmission requirement in the RFP. We have two options in the record before us—Staff's and NewSun's proposals. Under circumstances with a more developed record, we may have been prepared to adopt a more significant consequence than that proposed by Staff, but we are not prepared to go all the way to disallowing PGE's entire return on Clearwater for the life of the project, as proposed by NewSun. As Staff's analysis confirmed, Clearwater had significant advantages over the proposals that remained in the RFP. Accordingly, we adopt Staff's proposals.

PGE opposes Staff's remedies, stating that they are punitive and create perverse incentives. As to the first, we do not disagree; negative consequences are appropriate for PGE's lack of communication with respect to minimum criteria in the RFP. Additionally, as addressed above, these conditions are tailored to remedying the deficiencies of PGE's RFP process and essential to our finding of prudence. Further, we consider Staff's conditions a deterrent to PGE from offering unfair flexibility advantages to benchmark bids in the future. Staff's remedy, while a relatively minor financial consequence for PGE overall, is well tailored to the potential harm that PGE's process deficiencies created, because they are tailored to mitigate the risk that comes from Clearwater's transmission shortfall. As to the potential for this remedy to incent PGE not to diligently seek to acquire additional transmission output, we expect PGE to operate the Clearwater Project consistent with its obligations to the customers who pay for its costs in their bills and believe we have the regulatory oversight to prevent this. If PGE holds out additional Clearwater output because it will not recover the costs associated with short-term transmission, we expect Staff and stakeholders to bring that to our attention in future proceedings.

³⁵ OAR 860-089-0300(1)(b).

Finally, we do not adopt NewSun's proposals to change our RFP oversight process here. This docket may be relevant as a case study that informs how we respond to proposals to change RFP rules in our generic proceedings, but NewSun's proposals are out of scope for this proceeding. The consequences we have adopted are sufficient, at this stage, to demonstrate the importance we place on maintaining a competitive bidding environment to generate lower costs for regulated utility customers.

We adopt Staff's proposed conditions as follows:

1. PGE will use a static capacity factor to calculate power costs in its AUT for five years starting in 2025.
2. PGE will calculate its net variable power costs assuming that 80 percent of its nameplate capacity had been covered by long-term firm transmission, as was required in its RFP. The intention of this condition is to protect customers from the costs of potential transmission shortfalls, thus we clarify that the costs of this incremental transmission (the additional transmission needed to reach 80 percent) should not be charged to customers in the AUT in implementing this condition.
3. PGE will hold the cost of the first 10 MW of short-term transmission rights used to deliver power from Clearwater to its load at any given time out of the PCAM or any other cost recovery docket.
4. Whenever Clearwater is unable to deliver generated power to PGE's load due to lack of available transmission, it will exclude any marginal power costs incurred to cover this shortfall from the results of the PCAM.

We direct the company to implement these conditions as they would apply to the 2025 AUT in a revised Schedule 122, effective March 1, 2025.

Finally, we expect that PGE will file to amortize the Clearwater Project deferral in the near future.

VI. ORDER

IT IS ORDERED that:

1. Advice No. 23-20, filed on October 30, 2023, is permanently suspended.

2. Portland General Electric Company is directed to file a revised Schedule 122 consistent with this order.
3. Portland General Electric Company is directed to comply with the directives of this order.

Made, entered, and effective Feb 21 2025.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Les Perkins
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 Court of Appeals in compliance with ORS 183.480 through 183.484.