ORDER NO. 25-223

ENTERED Jun 18 2025

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: MOTION FOR CLARIFICATION GRANTED IN PART; MOTION FOR REHEARING OR RECONSIDERATION OR, IN THE ALTERNATIVE, CLARIFICATION GRANTED IN PART

I. INTRODUCTION AND PROCEDURAL HISTORY

The Clearwater Project arose out of Portland General Electric Company's (PGE) 2021 Request for Proposals (RFP), where it was a benchmark bid. 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. In this proceeding, PGE made a Renewable Automatic Adjustment Clause (RAAC) filing to recover its owned and contracted portions of Clearwater, pursuant to OAR 469A.120(3).

On February 21, 2025, we issued an order granting PGE cost-recovery for Clearwater but finding that PGE was imprudent in its process because it was unclear in its communications to bidders regarding the transmission requirements in the RFP. In short, the Commission found that all bidders should have been informed clearly that the transmission requirement in the RFP was flexible so they could compete on a level playing field with the benchmark bid.

The final order in this proceeding had four conditions that were imposed on PGE as a result of the Commission's finding. We reiterate those four conditions here for convenience:

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.[1]

On April 21, 2025, PGE filed a motion for clarification. No party filed a response. On April 22, 2025, NewSun Energy LLC filed an application for reconsideration or rehearing and motion for clarification. On May 7, 2025, PGE filed a response.

II. PGE'S MOTION FOR CLARIFICATION

A. PGE's Position

PGE asks for clarification on three points. First, it notes that the term for Condition 1 is explicitly five years. PGE argues that Condition 2 is linked to Condition 1, and therefore that the duration of Condition 2 should also be five years. It states that the conditions are connected in Staff's testimony—Staff Witness Anna Kim discussed both in tandem and PGE states that "Staff does not suggest applying Condition 2 beyond the scope of Condition 1 and indeed it is unclear how such an application would be feasible."[2]

Next, PGE argues that it should be able to remedy Conditions 3 and 4 by securing 80 percent long-term firm transmission. PGE notes that these are "performance" conditions designed to protect customers if "Clearwater experiences significant transmission shortfalls in the future or experiences significant added costs of acquiring transmission."[3] PGE argues that these conditions should not apply if PGE secures 80 percent firm transmission because, in this scenario, PGE would fully have addressed the risk Conditions 3 and 4 are designed to mitigate.

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[1] Order No. 25-075 at 14 (Feb. 21, 2025).
[2] PGE Motion for Clarification at 3.
[3] *Id.* at 3-4.

Finally, PGE argues that Condition 4 does not apply if PGE delivers 240 MW or more Clearwater generation to customers. It states that Staff's stated purpose for proposing Condition 4 is to align with the 80 percent transmission level in the RFP. Accordingly, if Clearwater generates 240 MW (equivalent to the 80 percent transmission level), PGE states that this condition should be deemed satisfied. No other party addressed PGE's motion for clarification.

B. Discussion

We grant PGE's request for clarification in part. First, we deny clarification as to Condition 2. Unlike Condition 1, Condition 2 does not contain a duration in its terms. In adopting Condition 2, we did not intend to apply a five-year time limit. Nor do we agree that the condition cannot be imposed after Condition 1 has sunset. After five years, PGE's capacity factor may change, but the model should find the economic solution based upon the assumption that transmission availability will not have an incremental cost to ratepayers beyond the assumptions set for in the RFP. The model should be set up such that transmission congestion is not a binding constraint below 80 percent of the nameplate capacity.

We grant PGE's requested clarification for Conditions 3 and 4. We agree that these conditions cease to apply if PGE secures 80 percent long-term firm transmission for Clearwater. We agree with PGE that, in that scenario, it will have addressed the risks that Conditions 3 and 4 are designed to mitigate, and therefore there is no reason for the conditions to continue to apply.

Finally, we do not grant clarification on Condition 4. We have already clarified that this condition does not apply if PGE secures 80 percent long-term firm transmission, but if PGE fails to obtain that transmission, we believe it is appropriate to apply Condition 4.

III. NEWSUN'S APPLICATION FOR REHEARING OR RECONSIDERATION AND MOTION FOR CLARIFICATION

A. Parties' Positions

1. NewSun

NewSun seeks rehearing or reconsideration on seven issues, some of which are based on findings in the final order and others of which are based on what NewSun states are omissions. In particular, NewSun takes issue with the following items in our final order:

1. It was an error of law to find that PGE was permitted to apply the 80 percent long-term firm transmission requirement in a flexible manner with respect to its benchmark bid;

2. It was an error of law to find that the separation of functions requirement cannot attach at the Integrated Resource Plan (IRP) stage;

3. The Commission erred in failing to address whether Clearwater had preferential access to Snohomish Public Utility District (SnoPUD) transmission rights;

4. The Commission erred in failing to address whether Clearwater had a cost advantage over other bidders by not having to meet the minimum bid criteria;

5. The Commission failed to address PGE's knowing and anticompetitive behavior in designing an RFP requirement its benchmark bid did not meet;

6. The Commission erred in failing to find that the independent evaluator did not fulfill its legal obligations; and

7. The remedy imposed by the Order does not address Commission's finding that PGE acted in an anticompetitive manner.

NewSun concludes that this case is an example of a pattern of utility-run procurement processes resulting almost exclusively in utility-owned generation. It characterizes this proceeding as having an especially egregious set of facts and concludes that the consequences and remedies that flow from this effort will determine whether confidence can be restored in the RFP process. It also suggests that, to the extent the Commission determines that it does not have sufficient evidence in the record here to make explicit factual findings to support a conclusion one way or the other, this application requests that the Commission rehear this matter on those points or open a new investigation to investigate PGE's ownership bias in its RFPs over the past 15 years.

2. PGE's Response

PGE responds to NewSun on each point raised above. First, it defends flexibility in the transmission requirement, stating that there is no specific provision in the Competitive Bidding Rules that require an inflexible approach to the RFP and that NewSun fails to cite a specific rule that it thinks was violated. Next, it argues that NewSun cannot point to specific language to support its claim that the separation of functions requirement attaches during the IRP. It also states that Mr. M's role in the development of the RFP requirements was shown to be his limited assistance in the development of the 2019

Interim Transmission Solution in docket LC 73 for PGE's 2019 IRP, a different regulatory proceeding.

Next, PGE addresses the issue of the SnoPUD and Colstrip transmission rights and whether Clearwater was improperly provided access to those rights. PGE states that "the Competitive Bidding Rules did not require PGE to disclose SnoPUD or Colstrip transmission rights because they were neither utility-owned nor utility-secured at the time of the RFP publication and therefore were not available to all bidders during the 2021 RFP."[4] PGE also continues to maintain that PGE's evaluation team made a definitive decision to reject the proposed use of PGE's Colstrip and Mid-C transmission rights for the Clearwater bid.

Fourth, PGE addresses whether Clearwater gained a cost advantage by failing to meet the 80 percent transmission requirement and relying on utility-owned assets. PGE reiterates that Clearwater was not provided access to utility assets in the bid price and therefore did not obtain a cost advantage. It also states that the Independent Evaluator (IE) testified that "PGE applied the published transmission requirement when judging bids' nonconforming transmission plans by evaluating how far a plan was from the 80 percent threshold and the nature of the bid's plans to obtain additional coverage."[5]

Fifth, PGE argues that NewSun's claim that PGE designed the RFP transmission requirement knowing that Clearwater did not meet the requirements is unsupported and does not meet the standard for reconsideration. It also argues against NewSun's argument that the IE did not meet the legal obligations, citing the significant, relevant experience and the record evidence that no bid was better than Clearwater from a least-cost and least-risk perspective. Finally, PGE argues that NewSun does not support its requested remedies, stating that it shows no harm to warrant additional punitive action.

B. Discussion

We deny NewSun's application for rehearing and reconsideration in part. Our rules provide that the Commission will grant rehearing or reconsideration if the applicant shows:

> (a) New evidence that is 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

[4] PGE Response at 9.
[5] *Id.* at 11.

> (d) Good cause for further examination of an issue essential to the decision.[6]

NewSun has failed to meet this standard. Our initial order in this proceeding addressed the question of cost recovery in light of the extensive record developed in the case. The record was fully reviewed; however, our order focused on those areas where we believed discussion was necessary. NewSun has not offered good cause for further examination of these issues.

NewSun did raise an issue on which we feel additional discussion is warranted and where we grant reconsideration. NewSun raises the issue of "whether the Competitive Bidding Rules require utilities to provide an explanation of the decision not to make utility assets available to other bidders when those assets are relied on in support of a benchmark bid, or instead only applies when the utility acquires those assets before bid submission."[7] PGE, as noted above, argues that the rules did not attach because they were neither utility-owned nor utility-secured at the time of the RFP publication.

Our rules state the following:

> If benchmark bid elements secured by the electric company are not made available to all bidders, it must provide analysis explaining that decision when seeking RFP acknowledgement and recovery of the costs of the resource in rates.[8]

Accordingly, there are two points where the obligation to provide analysis explaining that decision attaches—when seeking RFP acknowledgment and when seeking recovery of the costs of the resource in rates. We are persuaded that PGE did not own or control the SnoPUD rights at the time it sought RFP acknowledgment and therefore that the obligation did not attach. PGE should, however, have explained its decision when seeking recovery of the costs in rates in this proceeding. A review of PGE's testimony in this proceeding does not show such an explanation. This is another item on which PGE was not sufficiently transparent.

This information is not sufficient to change our remedy in this proceeding, which is the remedy supported by Staff in its testimony and tailored to PGE's actions in this proceeding. We thus find that our remedy already addresses our concerns about the PGE's RFP process and lack of transparency regarding application of the transmission requirements. We also reiterate our caution to PGE that we expect greater rather than lesser transparency in its future RFP proceedings.

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[6] OAR 860-001-0720(3).
[7] NewSun Application at 13.
[8] OAR 860-089-0300(3).

IV. ORDER

For the reasons set forth above, Portland General Electric Company's motion for clarification is granted in part and denied in part. Further, NewSun Energy LLC's motion for rehearing or reconsideration and, or the alternative, clarification is granted in part and denied in part.

Made, entered, and effective Jun 18 2025.

Letha Tawney
Commissioner

Les Perkins
Commissioner

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.