

ORDER NO. 13 346

ENTERED SEP 20 2013

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 46

In the Matter of

TROUTDALE ENERGY CENTER, LLC,

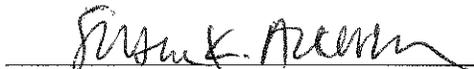
Petition for Declaratory Ruling.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at the special public meeting on September 19, 2013, to adopt Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

Dated this 20 day of September, 2013, at Salem, Oregon.



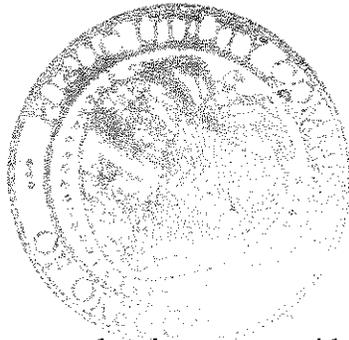
Susan K. Ackerman
Chair



John Savage
Commissioner



Stephen M. Bloom
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.

13 346

ORDER NO.

ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 19, 2013

REGULAR X CONSENT EFFECTIVE DATE Upon Commission Approval

DATE: September 11, 2013

TO: Public Utility Commission

FROM: Erik Colville *EC*

THROUGH: *MG for JE* Jason Eisdorfer, *MG* Maury Galbraith, and *MG for AA* Aster Adams

SUBJECT: TROUTDALE ENERGY CENTER: (Docket No. DR 46) Petition for Declaratory Ruling.

STAFF RECOMMENDATION:

Staff recommends the Commission deny the Troutdale Energy Center Petition for Declaratory Ruling.

DISCUSSION:

Staff's report is organized into three sections. First, Staff discusses the criteria for a declaratory ruling and whether the petition satisfies that criteria and warrants further substantive consideration. Second, Staff substantively analyzes the allegations made by Troutdale Energy Center and whether some Commission action regarding these allegations is warranted even if the Commission denies the request for declaratory ruling. Finally, Staff provides the Commission with options to address the petition, as well as Staff's recommendation to deny the petition for declaratory ruling and take no other action.

On June 10, 2013, Troutdale Energy Center, LLC (TEC) filed an Amended Petition for Declaratory Ruling (Amended Petition) that Portland General Electric Company (PGE), had certain failings in its communications with the Commission regarding its Cascade Crossing Transmission Project (Cascade Crossing), in implementing its 2012 Request for Proposals (RFP) for Energy and Capacity Resources, and in evaluating the resulting bids. TEC also asks for a declaratory ruling that PGE may not in a pending or future rate case recover some or all of the costs associated with the design, permitting, construction, or operation of PGE's planned Cascade Crossing, PGE's Port Westward

Docket No. DR 46
September 11, 2013
Page 2

Unit 2 Plant (PW 2), and a PGE ownership option for a generator using the site adjacent to PGE's Boardman facility (Carty) because "some or all of the costs are not prudent, and therefore, cannot be included in rates that are just, fair and reasonable." (Amended Petition at 6.) TEC asserts "[t]he Commission should hear this matter now because the unprecedented magnitude and interrelated nature of PGE's \$1.8 billion capital expenditure program for these facilities renders the Commission's traditional, post-expenditure prudence review insufficient to protect ratepayers." (Amended Petition at 1-2.)

PGE filed comments in response to the Amended Petition, objecting to the request for declaratory ruling, as did PacifiCorp. Northwest and Intermountain Power Producers Coalition (NIPPC), Turner Energy Center, Calpine Corporation, Grays Harbor Energy, Industrial Customers of Northwest Utilities (ICNU), Renewable Energy Coalition (REC), and The Community Renewable Energy Association (CREA) filed comments in support of the allegations in the petition.

Commission decision criteria for a declaratory ruling

TEC's Petition for a Declaratory Ruling should be denied without substantive consideration for several reasons.¹ First, under ORS 757.450, the Commission is authorized to issue a declaratory ruling as to the application of a statute or rule to any person, property, or state of facts. The declaratory ruling that TEC ultimately requests, that costs associated with Cascade Crossing, PW2, and Carty are imprudent and not recoverable in rates, does not turn on the application of a rule or statute identified by petitioner. Accordingly, TEC's petition does not satisfy the statutory criteria of ORS 757.450.

TEC does ask for a declaratory ruling that PGE's alleged failure to update the Commission regarding Cascade Crossing violated ORS 757.105² and that PGE's implementation of the bid criteria and evaluation process in the RFP gave an undue or unreasonable preference to certain sites, and unduly or unreasonably prejudiced and

¹ Under OAR 860-001-0430, the Commission will determine, within 60 days of the filing of a petition for declaratory ruling, whether to substantively consider the request.

² ORS 756.105 provides: (1) Every public utility or telecommunications utility shall furnish to the Public Utility Commission all information required by the commission to carry into effect the provisions of ORS chapters 756, 757, 758 and 759 and shall make specific answers to all questions submitted by the commission.

(2) If a public utility or telecommunications utility is unable to furnish any information required under subsection (1) of this section for any reason beyond its control, it is a good and sufficient reason for such failure. The answer or information shall be verified under oath and returned to the commission at the commission's office within the period fixed by the commission.

Docket No. DR 46
September 11, 2013
Page 3

disadvantaged other sites in violation of ORS 757.325(1).³ However, a Commission ruling that ORS 757.105 and ORS 757.325(1) were violated does not mean, as a matter of law, that costs associated with Cascade Crossing, PW 2, and Carty were imprudent. A prudence review would still await a rate case proceeding. Because the ultimate relief sought in TEC's Amended Petition for Declaratory Ruling (a ruling that any costs that PGE incurs associated with Cascade Crossing, PW2, and Carty are or would be imprudent) is not sufficiently linked to the application of a statute or rule to a specific set of facts, the Amended Petition should not be substantively considered under ORS 757.450.⁴

Second, a declaratory ruling is only binding between the petitioner and the Commission on the state of facts alleged. It is inconceivable that the facts ultimately presented to the Commission if and when PGE asks for recovery of costs associated with these projects will be limited to the facts alleged in this petition. Accordingly, it is extremely unlikely that a petition for declaratory ruling on the alleged facts will be of value. This is particularly true here because Staff's investigation shows that many of the facts alleged in this petition are disputed and even demonstrably incorrect.

Third, the Commission does not, as a matter of long-standing policy, issue rulings regarding the prudence of resources outside of a rate proceeding. The circumstances here do not warrant a departure from that policy.

PGE and PacifiCorp Positions

Both PGE and PacifiCorp contend that TEC's Amended Petition is attempting to misuse the declaratory ruling process. PGE continues in its comments contending that TEC's Amended Petition misstates facts related to Cascade Crossing and its use in the RFP.

TEC's allegations

When considering petitions for declaratory rulings in which facts are disputed or complex or both the Commission has occasionally denied the petition for declaratory

³ ORS 757.325 provides: (1) No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any public utility violating this section is guilty of unjust discrimination.

⁴ NIPPC notes that PGE previously used the declaratory ruling process to obtain guidance on whether its proposed course of action with respect to its Trojan Nuclear Plant would be prudent. (NIPPC's Response Comments at 5.) PGE sought a declaratory ruling in which the Commission provided its interpretation of how the law applied to certain assumed facts (whether ORS 757.355 precluded recovery of and on retired plant. (OPUC Order No. 93-1117 (*Re Portland General Electric Company* (DR 10/UM 535).))

Docket No. DR 46
September 11, 2013
Page 4

ruling but opened an investigation.⁵ In light of such precedent, Staff analyzed the allegations in TEC's Amended Petition to determine whether a similar Commission action may be warranted here. Staff reviewed the comments filed by Calpine, Grays Harbor Energy, ICNU, NIPPC, REC, CREA, PGE, and Turner Energy Center as well as information filed or provided in Docket No. UM 1535 and Docket No. LC 48, the docket opened to address PGE's last Integrated Resource Plan (IRP), to inform its recommendation as to whether the allegations in TEC's Petition for Declaratory Ruling warrant Commission action. As explained below, Staff concludes that an investigation regarding the allegations in TEC's application for declaratory ruling is not warranted.

TEC's argument that immediate Commission action is needed is incorrect.

As a preliminary matter, Staff disagrees with TEC's argument regarding the need for immediate Commission action. TEC asserts "the Commission should hear this matter now because the unprecedented magnitude and interrelated nature of PGE's \$1.8 billion capital expenditure program for these facilities renders the Commission's traditional, post-expenditure prudence review insufficient to protect ratepayers." (Amended Petition at 1-2.) TEC's assertion regarding the need for immediate action is without merit for at least three reasons.

First, the potential damage to ratepayers is not \$1.8 billion in capital expenditures but rather the net present value difference between the resources selected by PGE and alternative resources. Staff and other parties to the protective order in Docket No. UM 1535 have access to the summary bid evaluation and scoring details. Using this access Staff confirmed that there is less than a three percent difference in 30-year net present value between the selected resources and any of the alternative resources (the selected resource having the least 30-year net present value), thus the potential damage to ratepayers is comparatively small.⁶

Second, the Commission historically has not been swayed by the magnitude of cost associated with its decision when it is the right decision to make. Third, the Commission considers the prudence review during rate case proceedings to be sufficient to protect ratepayers.

⁵ See e.g., OPUC Order No. 02-542, *In the Matter of Oregon Telecommunications Association Petition for Declaratory Ruling on the Use of Virtual NPA/NXX Calling and Opening Generic Investigation*; OPUC Order No. 01-855, *In the Matter of WorldCom, Inc., and AT&T's Petition for Declaratory Ruling*.

⁶ Refer to CONFIDENTIAL spreadsheet filed in Docket No. UM 1535 with file name "Collective Exhibit 1-Final_Short_List_Candidate_PortfolioResults.xlsx", "Portfolio NPV" tab.

Docket No. DR 46
September 11, 2013
Page 5

Background

In its 2009 Integrated Resource Plan (IRP), PGE sought acknowledgment of a 500 kV double-circuit transmission line to connect resources in eastern Oregon with PGE's load on the western side of the state (Cascade Crossing). The Commission acknowledged the development of Cascade Crossing and required PGE to include an updated benefit-cost analysis of the project in its next IRP. PGE filed IRP Updates in 2011 and 2012 that included analysis and information regarding the status of Cascade Crossing. (LC 48.)

PGE issued its 2012 Request for Proposals for Capacity and Baseload Energy Resources (hereinafter referred to as "2012 RFP") to acquire capacity and baseload resources acknowledged in PGE's 2009 IRP Action Plan. (OPUC Order No. 10-457.) Although the 2012 RFP is for both capacity and baseload resources, PGE initially planned to issue serial RFPs to acquire capacity and baseload resources, and after providing opportunity for stakeholder input, filed a draft Final RFP for only capacity resources in May 2011.

After PGE filed its draft final RFP for capacity resources, the Independent Evaluator (IE) selected by Staff provided an assessment of the draft, followed by a round of comments by NIPPC, the Citizens' Utility Board of Oregon (CUB), ICNU, and Renewable Northwest Project (RNP), a round of PGE's reply comments, and a Staff Public Meeting Memorandum. Based on requests by NIPPC and ICNU, the Commission ordered PGE to issue a combined RFP for both capacity and baseload resources to allow bidders to take advantage of economies of scale. (OPUC Order 11-371 at 2.)

In the 2011 Order directing PGE to file a combined RFP, the Commission discussed several issues raised by parties regarding the previously-filed capacity RFP, including whether PGE should include costs of a possible transmission project (South of Allston) in its benchmark bid. (OPUC Order No. 11-371 at 5-6.) The Commission noted this particular cost consideration merited close review, and directed PGE and the IE to share with parties the cost allocation for transmission for benchmark projects so that parties could comment when PGE sought approval of the combined RFP. (Id.)

After opportunity for stakeholder input, PGE filed its draft final 2012 RFP in January 2012. Once again the IE provided an evaluation of the draft RFP and this time, CUB, ICNU, and NIPPC filed comments, followed by reply comments by PGE and a Staff Report.

NIPPC urged the Commission to order PGE to impute a portion (\$205 million) of the cost to construct the Cascade Crossing Transmission Project ("CCTP" or "Cascade Crossing") to the cost of the PGE benchmark resource (Carty or Carty Plant) asserting

Docket No. DR 46
September 11, 2013
Page 6

that CCTP would likely not be built unless it was used to serve Carty and that PGE's existing system could not integrate Carty. (February 22, 2012, NIPPC Comments at 17.) CUB urged the Commission to require "more exacting scoring criteria" for transmission[.] (February 22, 2012, CUB Comments at 1.) ICNU noted allocation of the transmission costs to PGE's benchmark resource options was a critical issue. (February 12, 2012, CUB Comments at 3-4.)

PGE opposed NIPPC's request to impute a portion of the projected CCTP costs to its benchmark bid, explaining that it was not yet sure it was going to build CCTP, that it did not need to build CCTP to deliver energy from the Carty benchmark resource, and that it had submitted transmission requests to Bonneville Power Administration (BPA) to meet the needs of Carty. (PGE Reply Comments at 16.)

PGE noted that it was examining BPA and self-build options for meeting transmission needs within the region and assuring the system reliability and capacity that customers require. Further PGE noted that the Commission had acknowledged Cascade Crossing, subject to achieving certain milestones and participation and providing an updated cost-benefit analysis in PGE's next IRP. PGE noted that while NIPPC was correct that PGE indicated that it could potentially use Cascade Crossing to deliver energy from the Carty benchmark and could potentially use South of Allston to deliver energy from the Port Westward II benchmark, "it is erroneous to conclude that the new transmission projects are *necessary* to deliver energy from the benchmark resources." (UM 1535 Reply Comments at 18-19.)

The Commission approved the draft final 2012 Combined RFP with conditions, one of which concerned the scoring criteria. The Commission concluded that additional granularity was necessary and ordered PGE to provide bidders detailed information regarding scoring criteria. (OPUC Order No. 12-215 at 3.) The Commission declined NIPPC's request to impute a portion of the cost of the CCTP to the Carty benchmark bid, noting PGE's assertion that CCTP is not needed to transmit energy from the Carty benchmark is consistent with PGE's IRP and concluding that PGE's proposal to use BPA transmission costs for Carty and all similarly situated bidders provided a level playing field. (OPUC Order No. 12-215 at 2.)

Subsequently, TEC asked the Commission to "intercede" in the 2012 RFP by directing PGE, the IE, and Staff to review the detailed scoring criteria provided by PGE to "ensure that the RFP properly evaluates costs, benefits, and risks associated with a project proposing a direct interconnection into PGE versus a project relying on BPA transmission services[.]" (October 5, 2012, TEC Letter at 3.) TEC asserted that PGE's scoring criteria was too favorable to projects relying on firm transmission from BPA because it failed to adequately account for the risks associated with such transmission.

Docket No. DR 46
September 11, 2013
Page 7

(October 5, 2012, TEC Letter at 3.) PGE opposed TEC's request, noting that the scoring criteria did in fact take into account the benefits of direct connection to PGE's system. (October 12, 2012, PGE Reply at 2-3.) The Commission declined to take action on TEC's request regarding the scoring criteria, noting that it was essentially an untimely request for reconsideration of its order approving the RFP by an entity that was not a party to the proceeding at the time of the order. (OPUC Order No. 12-398 at 1-2.)

The IE provided its Independent Evaluator Report for PGE 2012 Capacity and Energy Power Supply Resources RFP ("IE Report") in January 2013 and Staff filed it in Docket No. UM 1535. The IE concluded the RFP "was conducted in a fair and unbiased manner and that the Final Shortlist accurately identified the Bids with the most value for PGE customers." (IE Report at 2.)

TEC's allegations do not warrant further Commission action.

Staff analyzed the primary allegations in the Amended Petition to determine whether they are factually supported or whether they warrant the opening of an investigation or both. Staff identified five primary allegations:

1. PGE failed to update the Commission regarding the viability of Cascade Crossing;
2. PGE failed to correctly evaluate resource bids designating Cascade Crossing as their point of delivery;
3. PGE failed to properly evaluate combined capacity and baseload energy bids;
4. PGE failed to correctly evaluate resource bids with a point of delivery directly to the PGE system; and
5. The resources that PGE selected are not the resources with the best combination of cost and risk.

TEC's allegation that PGE violated ORS 757.105 and Order No. 10-457 by failing to update the Commission regarding Cascade Crossing is not supported.

TEC alleges PGE failed to include in its 2011 IRP Update multiple facts critical and material to the viability of Cascade Crossing, in violation of ORS 757.105⁷ and Order No. 10-457.⁸ (Amended Petition at 5 and 22.)

⁷ ORS 757.105 requires utilities to file certain budget information to the Commission.

Docket No. DR 46
September 11, 2013
Page 8

Facts readily apparent from PGE's IRP docket, Docket No. LC 48, contradict this allegation. In compliance with ORS 757.105 PGE provided New Construction Budget filings to the Public Utility Commission (PUC) on December 28, 2011, and January 15, 2013. In compliance with Order No. 10-457 PGE provided updates to the Commission regarding the viability of Cascade Crossing in the November 23, 2011, and November 21, 2012, IRP Updates, as well as in the March 19, 2013, Update on Cascade Crossing filed with the Commission in Docket No. LC 48. Accordingly, Staff concludes that PGE did, in compliance with statute and Commission order, update the Commission regarding viability of Cascade Crossing.

Cascade Crossing was not included in modeling used to evaluate bids

TEC alleges that using Cascade Crossing in the RFP as a potential point of delivery directly to the PGE system incorrectly advantaged bids for resources located on the Carty site. (Amended Petition at 14.) TEC asserts that because PGE modeled the costs of transmission assuming the existence of Cascade Crossing PGE did not obtain an accurate picture of the costs/risk to transmit power in the currently constrained Pacific Northwest transmission system. (TEC's Response to Comments of Portland General Electric at 6.)⁹

While PGE allowed bidders to designate Cascade Crossing as a point of delivery (POD) to PGE's transmission system, PGE evaluated such bids using the cost of BPA transmission to deliver energy from the POD to PGE's load.¹⁰ This treatment is consistent with the Commission's order approving the 2012 RFP. As discussed above, the Commission approved PGE's proposal to use BPA transmission service rates for pricing the transmission costs for all bids, except those directly interconnection to PGE's load (which incurred no transmission service costs). (OPUC Order No. 12- 215 at 2.)

PGE's decision to factor BPA transmission costs, rather than Cascade Crossing costs, into the costs of its Carty benchmark resource is, as the Commission concluded in Order No. 12-215, consistent with PGE's IRP. The IRP shows Cascade Crossing is not needed to transmit energy from the benchmark site to PGE's load. Also, the IE

⁸ Order No. 10-457 required PGE to provide an updated cost-benefit analysis of Cascade Crossing in its next IRP. Order No. 10-457 at 29.

⁹ TEC argues "What PGE avoids in its comments, however, is the fact that PGE's models for evaluating bids assumed the presence of the Cascade Crossing Project. * * * [T]hat fact impacted the scoring process of both the Energy RFP and the Capacity RFP, and prevented the selection of the least cost, least risk resources." (TEC's Response to Comments of Portland General Electric at 6.)

¹⁰ June 8, 2012, PGE Request for Proposals - Power Supply Resources filed in PORTLAND GENERAL ELECTRIC COMPANY: (Docket No. UM 1535) Request for Proposals for Capacity and Baseload Energy Resources at 16 and 31.

Docket No. DR 46
September 11, 2013
Page 9

confirmed that Cascade Crossing is not needed to transmit energy from Carty to PGE load.

Contrary to TEC's assertion, Cascade Crossing was not assumed to exist for purposes of the evaluative modeling performed by PGE and by the IE. Consider that the RFP states: "The Pacific Northwest (PNW) transmission system currently has numerous constraints that can limit the firm delivery of power products for extended periods of time. The scoring process for this RFP assumes continuation of the status quo; however, PGE retains the right to adjust the delivery risk of each proposal based upon the progress of BPA's network open season process and the development of the proposed Cascade Crossing transmission line." (RFP at 31 (emphasis added)). Although PGE reserved the right to update the scoring criteria for the RFP to evaluate the bids based on changing circumstances with Cascade Crossing and access to BPA transmission, PGE did not do so. Instead, PGE evaluated the bids using assumptions regarding BPA transmission rates.¹¹

Staff has access to the bid evaluation and scoring details for PGE's RFP. Staff confirmed that PGE used BPA transmission costs for projects located on the Carty Site.¹² Additionally, Staff investigated TEC's allegation that "PGE's models for evaluating bids assumed the presence of Cascade Crossing." Staff confirmed that, Cascade Crossing was not assumed to exist in any of the modeling supporting the selection of resources in the RFP. TEC's allegations to the contrary and its allegations that the results of the RFP were skewed because of the inclusion of Cascade Crossing in modeling that supported the selection of resources in the RFP are demonstrably incorrect.

Information in Docket No. UM 1535 contradicts TEC's assertion that PGE failed to properly evaluate bids for combined capacity and energy resources.

TEC alleges that by using outdated information and modeling, including but not limited to facts critical and material to the viability of Cascade Crossing, PGE failed to properly evaluate bids for combined capacity and energy resources that "take advantage of the potential significant cost benefits associated with combined bids." (Amended Petition at 22-23.) Other than its allegations regarding information pertinent to Cascade Crossing

¹¹ Page 21, January 30, 2013, Independent Evaluator Closing Report, filed in PORTLAND GENERAL ELECTRIC COMPANY: (Docket No. UM 1535) Request for Proposals for Capacity and Baseload Energy Resources.

¹² Refer to CONFIDENTIAL spreadsheet with file name "Final_Short_List_Candidate_Portfolio_Results_Final_121712.xlsx", "Input" tab, and the "Input" tab of each resource bid CONFIDENTIAL evaluation model spreadsheet. These spreadsheets show all resource bids, except direct interconnected resource bids, accrued cost for BPA transmission, not Cascade Crossing transmission.

Docket No. DR 46
September 11, 2013
Page 10

(including information regarding the state of the wind market), TEC does not identify what outdated information and modeling PGE impermissibly relied on to evaluate bids for combined capacity and energy resources.

Under the Commission's Competitive Bidding Guidelines,¹³ the IE evaluates the RFP scoring process to determine whether it is fair, reviews how PGE evaluates the bids to determine whether PGE adheres to the criteria outlined in the RFP and complies with the Bidding Guidelines, and also, independently scores the bids using the RFP criteria. The IE concluded that "PGE acted in good faith with all Bidders, and created protocols and documents that permitted the RFP to be conducted in a fair and transparent manner[,] and believed that "this RFP was conducted in a fair and unbiased manner and that the Final Shortlist accurately identified Bids with the most value for PGE customers." (Report of the Independent Evaluator; PGE Comments to TEC's Petition for Declaratory Ruling, Attachment B at 3.) TEC's assertion that PGE's impermissible reliance on some yet to be identified information led to PGE's failure to properly evaluate bids that combined projects for the Energy and Capacity RFP is insufficient to cast doubt on the IE's independent scoring of the bids and the IE's conclusions regarding the integrity of the RFP process.

In any event, Staff reviewed the confidential summary bid evaluation and scoring details. Staff confirmed that combined capacity and baseload energy bids were evaluated in the portfolio analysis and considered in the development of the Final Short List. Staff also confirmed that the combined bids failed to result in resources with the best combination of cost and risk.¹⁴ TEC's speculation that combined bids were not properly evaluated because the short list did not include a combined bid is not supported by the actual data.

No information supports TEC's allegation that proposals including a direct connection to PGE were incorrectly disadvantaged.

TEC alleges that using Cascade Crossing as a potential point of delivery that connects directly to the PGE system incorrectly disadvantaged bids with an actual direct interconnection to PGE's system. (Amended Petition at 14.) First, as discussed above, TEC's allegations regarding how Cascade Crossing was used in the RFP are incorrect. Staff investigated whether Cascade Crossing was assumed to exist in any of the modeling (IRP or RFP) and as a consequence impacted the cost of or risk associated with transmitting energy from the Carty site to PGE's system, or the cost of moving

¹³ The Competitive Bidding Guidelines are found in Order No. 06-446.

¹⁴ Refer to CONFIDENTIAL spreadsheet filed in Docket No. UM 1535 with file name "Collective Exhibit 1-Final_Short_List_Candidate_PortfolioResults.xlsx", "Portfolio NPV" and "Portfolio Composition" tabs.

Docket No. DR 46
September 11, 2013
Page 11

energy from PW 2 to PGE's system. Staff found that Cascade Crossing was not assumed to exist in any of the modeling for the IRP or RFP.

Second, the allegation that bids for directly interconnected resources would not be appropriately evaluated and scored was addressed during an early stage of the RFP process. In response to just such an allegation PGE filed a letter in Docket No. UM 1535 stating,

TEC's concern that the benefits of a direct connection are not considered in the RFP scoring process is misplaced. The two main issues TEC highlighted are:

- the benefits associated with the avoidance of a BPA wheel
- the risks associated with transmission on BPA's system

Clearly, a project that is directly connected to PGE's system avoids the cost of an additional leg of transmission that projects not directly connected to PGE's system will have to incur. This avoided cost is reflected in the price score of the bid which accounts for 60% of the total score.

TEC appears to suggest that bidders directly interconnected to PGE's system should get additional scoring benefits because of the "risk of wheeling power across the BPA system where PGE has no control over costs, maintenance or operations." TEC asks for "a full assessment of the benefits of directly interconnecting into PGE's system as compared to a project that must wheel across the BPA system." These assessments have already been conducted. All transmission providers, including BPA and PGE, perform interconnection studies for projects interconnecting to their systems. These studies identify and assess the known reliability risks and the costs for resolving such risks. If an interconnection study for a bid directly connected to PGE's system shows fewer reliability issues and therefore fewer costs than would be included in a study for a project connecting to BPA's system, such advantage will be reflected in the bid price and the corresponding bid score.

To the extent TEC is concerned about future cost increases or unforeseen reliability risks, we point out that unforeseeable costs and risks exist no matter who controls the system. Even a system operated by PGE may be subject to increased costs and risks. It would be impracticable to design scoring criteria to address future cost increases and risks which may or may not occur. TEC states that the BPA Network Open Season (NOS) process is of particular concern with regard to this issue. The uncertainties generally associated with the BPA NOS process and how they would affect the evaluation of bids were considered during

Docket No. DR 46
September 11, 2013
Page 12

the public proceedings in this docket. NIPPC Comments at 19 (Feb. 22, 2012); PGE Reply Comments at 20 (Mar. 7, 2012). There is no need to reconsider them at this time. (PGE October 10, 2012 Letter in Docket No. UM 1535 at 2-3.)

Using its access to the bid evaluation and scoring details for the RFP, Staff confirmed that direct interconnected resource bids received a high "Project Characteristics" score. As a result, resources with actual direct interconnection to PGE's system received evaluation and scoring that reflects the related benefits.¹⁵ In this regard, Staff concludes that PGE correctly evaluated resource bids with a point of delivery that connects directly to the PGE system.

TEC's allegations that the final short list does not represent the best combination of cost and risk are based on incorrect assumptions.

TEC alleges that using Cascade Crossing as a potential point of delivery directly to the PGE system created bid evaluation models that did not accurately select the least-cost resources. (Amended Petition at 20.) TEC asserts "[b]ids using the Cascade Crossing (which has now been placed on hold by PGE) were inappropriately treated as delivering power directly to the PGE system when they should have been treated as wheeling power through the BPA system to a point of interconnection with the PGE system." (Amended Petition 20.) TEC asserts that because of PGE's failure the models "did not account for risks associated with BPA operating characteristics in bids using the Carty site, while at the same time diminishing the significant benefits associated with bids connecting directly to the PGE system. (Amended Petition 20.)

TEC is simply wrong. Any bid designating Cascade Crossing as the POD to PGE's system was priced using BPA tariff rates. And, even though Cascade Crossing was the designated POD, Cascade Crossing did not exist for purposes of modeling performed in the RFP. So TEC's allegation that its inclusion in the modeling altered the risk of using BPA transmission is incorrect. Further, any resource that could connect directly to PGE's system received evaluation and scoring that reflects the related benefits.

Based on Staff's conclusions drawn from the analysis of the preceding five alleged issues, Staff finds that the Final Short List identified the resources with the best combination of cost and risk. Staff's finding is in agreement with the IE's conclusion that

¹⁵ Refer to CONFIDENTIAL spreadsheet with file name "Final_Short_List_Candidate_Portfolio_Results_Final_121712.xlsx", "Report" tab, showing direct interconnected resource bids did not accrue cost for BPA transmission. Refer also to CONFIDENTIAL spreadsheet filed in Docket No. UM 1535 with file name "Collective Exhibit 1-Final_Short_List_Candidate_PortfolioResults.xlsx", "Non Price Score" tab, showing direct interconnected resource bids received high "Project Characteristics" score.

Docket No. DR 46
September 11, 2013
Page 13

"the Competitive Bidding Guidelines were followed such that the RFP was conducted in a fair and unbiased manner and that the Final Shortlist accurately identified the Bids with the most value for PGE customers."¹⁶

Issues Raised by Other Parties

Turner Energy Center

Turner Energy Center (Turner) asserts that the RFP process was geared toward projects that can connect directly to PGE, and that insufficient time was allowed for securing transmission services. (Turner at 1.) In addition, Turner commented that private power producers were not treated fairly with regard to acquiring transmission services. (Turner at 2.) Because the RFP provides for a fair and unbiased evaluation¹⁶ of any resource that can provide firm delivery to the PGE system Staff does not agree with Turner's allegation that the RFP process was geared toward projects that can connect directly to PGE.

Regarding Turner's allegation that insufficient time was allowed for securing transmission services Staff notes that PGE's most recent IRP acknowledgement on November 23, 2010, provided public notification that PGE was in need of flexible capacity and baseload energy resources within the following three to seven year period. This IRP acknowledgement provided the independent power producer (IPP) community a three to seven year notice of need. Turner's letter states that 12 to 18 months are required to acquire transmission service. The 12 to 18 month requirement stated by Turner is well within the three to seven year notice given to the IPP community by PGE. Staff does not agree with Turner that insufficient time was allowed for securing transmission services.

Staff considered Turner's allegation that private power producers were not treated fairly with regard to acquiring transmission services. In Staff's consideration, the IE's conclusion that the RFP was conducted in a fair and unbiased manner¹⁶ is significant. In addition, Staff considered that the Federal Energy Regulatory Commission (FERC) regulates access to transmission, in part, to ensure private power producers are treated fairly. FERC Order No. 888 requires transmission owners to offer nondiscriminatory, comparable transmission service to others seeking such services over its own facilities. Based on the above, Staff does not agree with Turner that private power producers were not treated fairly with regard to acquiring transmission services.

¹⁶ Page 2, January 30, 2013, Independent Evaluator Closing Report, filed in PORTLAND GENERAL ELECTRIC COMPANY: (Docket No. UM 1535) Request for Proposals for Capacity and Baseload Energy Resources.

Docket No. DR 46
September 11, 2013
Page 14

Calpine Corporation

Calpine Corporation (Calpine) raises concerns related specifically to PGE's selection of the Engineer, Procure, and Construct (EPC) resource on the Carty site offered by Abengoa, and asks that the Commission open an investigation into the selection of the Abengoa proposal and direct PGE to seek Acknowledgment of the Abengoa selection. (Calpine at 3.)

The Commission historically has not ruled on the prudence of specific resource decisions outside of a rate case and Staff recommends that the Commission not do so here by acknowledging the resource selected by PGE.

Calpine asserts that had PGE sought acknowledgment of its final short list, information about the process would have been provided, opportunity for input allowed, and the level of satisfaction with the process would have increased. (Calpine at 5.) Staff agrees with Calpine that had PGE sought acknowledgement of its final short lists there would have been additional opportunity for parties to provide input. However, Staff will not speculate that the level of parties' satisfaction with the process may have increased. Further, Staff does not agree that additional information about the process would have been provided had PGE sought acknowledgement of its short list. Typically, the Commission relies on information available to PGE at the time PGE made its decision regarding the short list to determine whether acknowledgment is appropriate. Such information had already been included in the record in Docket No. UM 1535.

In support of its request to open an investigation, Calpine asserts that the "primary purpose of competitive bidding is to avoid self-build bias[,]" and that the Abengoa proposal is "tantamount to a self-bid." (Calpine at 3, 6.) Staff disagrees. First, the primary purpose of competitive bidding is not avoiding self-build bias. Based on the Competitive Bidding Guidelines the primary purpose of competitive bidding is identification of the resources with the best combination of cost and risk. Second, in Docket No. UM 1535, NIPPC, ICNU, and CUB recommended that the Commission require PGE to allow bidders to propose to build resources at the PGE sites.¹⁷ The Commission instead encouraged PGE to do so. (OPUC Order 11-371 at 6.) In response to Commission encouragement, PGE's final RFP allowed for EPC bids on its sites, with the requirement the resources bid met PGE's technical specifications and not be owned or operated by the bidder. Staff agrees that EPC bids are identical to self-build bids to the extent that the EPC bids were required to meet PGE's technical specifications and be owned and operated by PGE, but disagrees that they are when it comes to concerns

¹⁷ June 22, 2011, NIPPC's, ICNU's, and CUB's Comments filed in PORTLAND GENERAL ELECTRIC COMPANY: (Docket No. UM 1535) Request for Proposals for Capacity and Baseload Energy Resources.

Docket No. DR 46
September 11, 2013
Page 15

regarding self-build bias. EPC bids remove the utility from the design and construction manager role, as well as provide third party schedule, performance, and cost assurance to ratepayers. Finally, to the extent Calpine asserts that self-build bias played a role in the final selection, Staff notes that the Commission has been investigating this issue since 2004, in Docket No. UM 1182 and Docket No. UM 1276. These dockets have widespread participation by the utilities and interested parties. Comments related to the self-build bias are appropriately addressed to and addressed in those dockets.

Calpine states that PGE's failure to negotiate with Calpine is evidence that selection of Abengoa was a foregone conclusion. (Calpine at 6.) Staff disagrees that failure to negotiate with Calpine is evidence of any foregone selection conclusion. Instead, Staff concludes failure to negotiate with Calpine is evidence that PGE was able to successfully negotiate with a bidder more highly ranked on the final short list than Calpine.

Calpine asserts that Abengoa has a lack of combined cycle combustion turbine experience. (Calpine at 8.) The June 4, 2013, Abengoa press release Calpine attached to its comment letter references that Abengoa has "extensive experience in this type of project having developed similar facilities in Latin America and Europe. This project is the first of its kind to be built in the United States." The press release reference to Abengoa's extensive experience led Staff to consult Abengoa's internet site. The internet site notes more than 6 GW of experience in the combined cycle and cogeneration markets.¹⁸ The Abengoa press release also notes that the power block (gas turbine, steam turbine, and heat recovery steam generator) has been subcontracted to Mitsubishi Power Systems Americas. Staff concludes that Abengoa's experience, and that of its subcontractor Mitsubishi, is reason for it to be included on the final short list.

Calpine questions why there is a \$76 to \$91 million difference in project cost between PGE's 8K filing and Abengoa's press release. (Calpine at 9) The contract awarded to Abengoa does not represent all the PGE project costs. The total PGE project costs also include PGE's project budget contingencies, costs for the transmission substation upgrade, the natural gas pipeline lateral construction costs, and costs for PGE management of the contract. Staff has access to the bid evaluation and scoring details which show these costs are able to account for the difference noted by Calpine.¹⁹

Calpine questions what contractual assurances there are that the selected bidder will satisfactorily complete the work. (Calpine at 8.) Staff has access to the EPC RFP

¹⁸[http://www.abeinsa.com/export/sites/abeinsa/resources/pdf/en/folletos/20130326_0113_CCCogeneratio
n_en.pdf](http://www.abeinsa.com/export/sites/abeinsa/resources/pdf/en/folletos/20130326_0113_CCCogeneratio%20n_en.pdf)

¹⁹ Refer to CONFIDENTIAL spreadsheet with file name "Carty_Total_Capital_budget.xlsx."

Docket No. DR 46
September 11, 2013
Page 16

documents. Staff confirmed that the EPC Agreement²⁰ includes warranty requirements in Section 19, and schedule, performance, emission, and reliability guarantees with associated liquidated damages in Section 20. The Agreement also requires any subcontracts to include comparable provisions. Staff concludes there are assurances the selected bidder will satisfactorily complete the work.

Calpine's comments ask how differences between existing resource bids and new resource bids were accounted for in the bid evaluation. (Calpine at 9.) Staff has access to the bid evaluation and scoring details, and Staff and other parties that have signed the protective order in Docket No. UM 1535 have access to the summary bid evaluation and scoring details. Staff confirmed that the bid evaluation and scoring accounted for the reduced remaining life and reduced heat rate of an existing resource, as well as increased viability, and advantageous physical and credit characteristics. Staff concludes that differences between existing resource bids and new resource bids were accounted for in the bid evaluation and scoring.

Calpine is concerned because the bid evaluation and scoring process was not provided to the public. (Calpine at 10 and 11.) Staff recognizes that this is true but the need for protection of confidential information was considered by the Commission in writing Competitive Bidding Guideline 12 as follows:

Confidential Treatment of Bid and Score Information: Bidding information, including the utility's cost support for any Benchmark Resource, as well as detailed bid scoring and evaluation results will be made available to the utility, Commission staff and non-bidding parties under protective orders that limit use of the information to RFP approval and acknowledgment and to cost recovery proceedings.

The IE concludes that "the Competitive Bidding Guidelines were followed such that the RFP was conducted in a fair and unbiased manner and that the Final Shortlist accurately identified the Bids with the most value for PGE customers."¹⁶ Based on the IE's conclusion and Staff's access to the bid evaluation and scoring details Staff concludes the Final Short List identified the resources with the best of cost and risk.

Calpine concludes that outward evidence suggests the RFP outcome was preordained, and PGE may be acquiring a "higher cost, utility-owned resource." (Calpine at 2 and 12) As stated above, the IE concludes that "the Competitive Bidding Guidelines were followed such that the RFP was conducted in a fair and unbiased manner and that the Final Shortlist accurately identified the Bids with the most value for PGE customers."¹⁶

²⁰ Refer to CONFIDENTIAL with file name "Turnkey Engineering, Procurement & Construction Agreement, with file name "S-06-01-01_Turnkey_EPC_Agreement_R0_Confidential_NDA2.pdf".

Docket No. DR 46
September 11, 2013
Page 17

Staff concurs and concludes the Final Short List identified the resources with the best combination of cost and risk.

Conclusion

The allegations made by TEC and those issues raised in comments submitted by NIPPC, Turner, Calpine, GHE, ICNU, REC and CREA are more properly addressed in a rate case proceeding. Had PGE elected to seek acknowledgement of its Final Short List the acknowledgement proceeding would have used the same public meeting process and the allegations and issues, and the information used to evaluate the issues and the final short list, would be the same as those used in this proceeding.

The criteria used by the Commission in previous Final Short List acknowledgement proceedings are:

1. Was the RFP process conducted fairly and properly?
2. Does the Final Short List represent the resources with the best combination of cost and risk?
3. Is the RFP outcome consistent with the acknowledged IRP Action Plan?

The IE evaluated the RFP scoring process to determine whether it was fair, reviewed how PGE evaluated the bids to determine whether PGE adhered to the criteria outlined in the RFP and complied with the Bidding Guidelines, and also, independently scored the bids using the RFP criteria. The IE concluded that "PGE acted in good faith with all Bidders, and created protocols and documents that permitted the RFP to be conducted in a fair and transparent manner[.]" and believed that "this RFP was conducted in a fair and unbiased manner and that the Final Shortlist accurately identified Bids with the most value for PGE customers." (Report of the Independent Evaluator; PGE Comments to TEC's Petition for Declaratory Ruling, Attachment B at 3.)

After considering the Commission decision criteria for a declaratory ruling, the allegations raised in the Amended Petition, and issues raised by other parties, Staff identified five potential paths for going forward, but offers only four of the five as alternatives in this report for the Commission. Staff considered and rejected the option of denying the Amended Petition and opening an investigation into the prudence of PGE's resource selections. Staff dismissed this alternative because it would be inconsistent with the Commission's long-standing policy to not make prudence determinations outside of rate cases. The remaining four potential paths forward are:

Docket No. DR 46
September 11, 2013
Page 18

1. Decide to substantively consider the request for declaratory ruling and refer to the administrative hearings division for further proceedings;
2. Deny the Amended Petition and close Docket No. DR 46 with no further action;
3. Deny the Amended Petition and open a Final Short List acknowledgement investigation; or
4. Deny the Amended Petition and open an investigation into the integrity of PGE's RFP process or into PGE's alleged failure to keep the Commission updated regarding Cascade Crossing.

For the reasons discussed above, Staff concludes substantive consideration of the request for declaratory ruling is not warranted. As a result, Staff recommends the Amended Petition be denied.

Based on Staff's substantive analysis of the allegations raised in the Amended Petition and party comments Staff recommends the Commission take no action to address TEC's allegations at this time. Staff finds that PGE fairly and properly conducted the RFP process; that the RFP scoring and evaluation and short list of resources are consistent with PGE's acknowledged IRP Action Plan; and that the final short list represents the resources with the best combination of cost and risk for the utility and ratepayers. As a result, Staff finds no basis to recommend a Final Short List acknowledgement investigation or an investigation into the integrity of the RFP process. Finally, whether PGE acted prudently with respect to Cascade Crossing, Carty, or PW2 will be determined in connection with any request to recover costs associated with the projects. Staff considers prudency review during rate case proceedings to be sufficient to protect ratepayers.

PROPOSED COMMISSION MOTION:

The Commission deny the Troutdale Energy Center Petition for Declaratory Ruling.

Docket No. DR 46 Troutdale Energy Center Petition for Declaratory Ruling