



**Portland General Electric Company**

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April 22, 2011

***Via Electronic Filing and U.S. Mail***

Oregon Public Utility Commission  
Attention: Filing Center  
550 Capitol Street NE, #215  
PO Box 2148  
Salem OR 97308-2148

**Re: UM 1182**

Attention Filing Center:

Enclosed for filing in the captioned docket are an original and five copies of:

**▪ CLOSING COMMENTS OF PORTLAND GENERAL ELECTRIC**

This is being filed by electronic mail with the Filing Center.

An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise Saunders".

**V. DENISE SAUNDERS**  
Assistant General Counsel

VDS:cbm  
Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1182

Portland General Electric Company (PGE) submits the following Closing Comments in accordance with the Prehearing Conference Memorandum issued in this docket. As discussed below, no Party has provided any evidence that retaining an Independent Evaluator (IE) through the Request for Proposal (RFP) negotiation process will address the Oregon Public Utility Commission's (OPUC or Commission) goal of alleviating a perceived bias for utility self-build resources. In addition, the history of RFPs conducted since the Commission adopted its Competitive Bidding Guidelines indicates that expansion of the IE role is not necessary or helpful. Nonetheless, if the Commission determines to revise the Guidelines to expand the role of the IE, we respectfully request that the Commission afford Parties the opportunity to comment on any such proposed revisions and that the revisions be applied prospectively to RFPs for which no IE has yet been selected.

## **I. Expansion of the IE Role into PPA Negotiations does not Address the Commission’s Objective of Limiting Perceived Bias**

In its Opening Comments, PGE argued that retaining the IE through the RFP negotiation process will not address the Commission's goal of alleviating a perceived bias for utility self-build resources. No Party has provided any evidence to the contrary.

Renewable Northwest Project (RNP) states that the ongoing presence of an IE in negotiations may mitigate some of the very “worst” negotiating behavior on both sides of the

transaction. RNP Opening Comments at 4. Likewise, the Northwest and Intermountain Power Production Coalition (NIPPC) cites to a statement by former Commissioner Beyer that expansion of the IE role in a PacifiCorp RFP was necessary to keep a “cop on the beat.” NIPPC Opening Comments at 12. However, as discussed in PGE’s Opening Comments, the presence of an IE during negotiations would only serve to mitigate or impact behavior in negotiations affecting Power Purchase Agreements (PPAs). Because a benchmark project is scored prior to negotiations and is not part of the negotiations, the presence of an IE during negotiations would not affect any bias a utility might have for a benchmark resource.

To the extent the Commission’s concern is being able to determine why a utility might have closed a RFP without awarding a contract or to determine why a utility selected an ownership option over a PPA after final negotiations (*see* NIPPC Opening Comments at 13), such concerns can be addressed with existing regulatory mechanisms. OPUC Staff (Staff) and the Commission have the right to ask the utility to explain the RFP results at any time. *See* ORS 756.105. As Staff notes, “if a benchmark resource, or self-build option, which was not the top bidder going into the negotiations were to be selected and the top bidder were to fall-out of the process, Staff would focus considerable effort in determining the reasoning behind this development and whether this was in the best interest of customers.” Staff Opening Comments at 3. Staff believes that the information it can obtain from the utility through data requests, testimony and workshops is sufficient to make a prudence determination. Staff Opening Comments at 3. In addition, if there is any concern about improper behavior, the Commission can open an investigation at any time. ORS 756.515.

## **II. Commission Experience shows Expansion of the IE's Role is Unnecessary and would Offer Limited Value**

The history of RFPs conducted since the Commission adopted its Competitive Bidding Guidelines indicates that expansion of the IE role is not necessary or helpful. As noted in our Opening Comments, PGE is not aware of any instance where the Commission, bidders or customers have raised concerns with regard to the fairness of any RFP negotiations conducted under the Commission's competitive bidding guidelines. No Party offered any evidence of past unfairness in Opening Comments<sup>1</sup>. NIPPC states that Independent Power Producers (IPPs) who are still involved in the market may not go on the record discussing unfair conduct out of concern that they will not be seriously considered by the utility in future RFPs. NIPPC Opening Comments at 11. Any such concerns can be alleviated by the Commission's existing confidentiality rules which allow a party to request a protective order that provides additional protection. OAR 860-001-0080(4). Thus, in a RFP proceeding, NIPPC could request a protective order that would provide additional protection ensuring that any discussion regarding unfairness would not jeopardize an IPP's status in future RFPs.

NIPPC uses a tortured interpretation of past RFPs to imply that an expanded IE role is necessary. For example, NIPPC states that it is aware of only one case where a utility has executed a PPA for a major resource with an IPP in an Oregon RFP conducted under the 2006 Guidelines. NIPPC Opening Comments at 4. NIPPC also states that PGE did not secure resources through the RFP issued in docket UM 1345. NIPPC Opening Comments at 9. NIPPC is wrong. PGE acquired contracts for the output of two solar PPAs in the RFP issued in UM 1345 which is the only RFP that PGE has conducted under the Commission's current

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<sup>1</sup> NIPPC repeatedly cites to PGE and Idaho requests for a waiver of the RFP Guidelines. NIPPC Opening Comments at 4, 8. It is not clear to us why a utility's request that the Commission apply its waiver rule is unfair or what relevance it has to the question of whether an IE should be present in negotiations.

competitive bidding Guidelines. Thus, contrary to NIPPC's assertions, PGE's history during the short time the Commission's rules have been in effect has been one of acquiring PPAs, not benchmark resources.

Finally, as a number of parties note, the Commission has prior experience with requiring retention of the IE through the final short-list bidding process in two RFPs issued by PacifiCorp (UM 1368 and UM 1429). NIPPC Opening Comments at 12, PacifiCorp Opening Comments at 2, Staff Opening Comments at 2. At least in the view of Staff, this experience indicates that retaining the IE through negotiations provides little benefit: "Staff's experience with the extended IE role in these dockets was that, while it was informative, it did not provide information that would have much evidentiary value in a subsequent proceeding." Staff Opening Comments at 2. It is important to note, however, that these dockets demonstrate that it is possible to expand the role of the IE without having to revise the Guidelines.

**III. Parties should have the Opportunity to Comment on any Changes to the Commission's RFP Guidelines and Such Changes Should Apply Prospectively**

As discussed above and in our Opening Comments, PGE believes expanding the role of the IE will not address the Commission's concern about alleviating a perceived bias for self-build resources. As we and others stated in Opening Comments, it is likely to extend and encumber an already lengthy process at no discernable benefit. Nonetheless, if the Commission determines to revise the Guidelines to expand the role of the IE, we respectfully request that the Commission afford Parties the opportunity to comment on any such proposed revisions. Some of the details of how the IE might be used could be problematic. For example, RNP suggests that the Commission could continue to acknowledge the short list conditionally, with the proviso that any irregularities reported in the later-filed IE report on final negotiation and resource selection would prompt a reopened Commission review of the reasonableness of the utility's

procurement process. RNP Opening Comments at 5. Not only would reopening the Commission's review process prolong the RFP, but the specter of a potential reopener is likely to foster uncertainty on the part of both the utility and developers and in our view could harm, not help, the process.

Similarly, RNP cites to the California Public Utilities Commission (CPUC) procurement process "to help illuminate how an IE might participate during negotiations." RNP Opening Comments at 3. We note that, unlike in Oregon, the CPUC evidently considers cost recovery treatment when it approves actions taken in a procurement process. *See, e.g., Application of Pacific Gas and Electric Company* (U39E) 2008 WL 3374041 (Oct 15, 2009). This is a significant difference and could justify a different role for the IE. If the Commission were to use another jurisdiction's rules as a model, such differences should be taken into account.

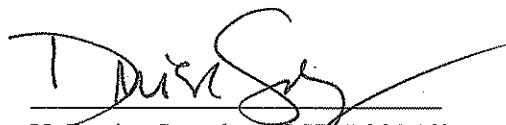
Finally, NIPPC implies that an expanded role for the IE might be used in PGE's upcoming RFPs. NIPPC Opening Comments at 15. After PGE filed its Opening Comments, the Commission approved retention of an IE for PGE's 2011 RFPs. *Portland General Electric Company*, Docket UM 1524, Order No. 11-111 (April 11, 2011). Consistent with the Commission's approval, PGE has signed a contract with Accion Group, Inc. The Commission's approval and the resulting contract were based on a bid and a recommendation from Staff that did not consider the costs, time or experience that might be needed of an IE serving in an expanded role. As a matter of fairness and efficiency, the Commission should not impose any new requirements on the role of the IE in PGE's 2011 RFPs.

#### IV. Conclusion

In conclusion, no party has offered evidence that retaining the role of the IE through negotiations and final bid process would address the Commission's concerns regarding a perceived utility bias for self-build resources. The history of RFPs conducted under the Commission's Competitive Bidding Guidelines indicates that an expanded IE role is unnecessary and of limited value. Nonetheless, if the Commission determines to revise the Guidelines to expand the role of the IE, we respectfully request that the Commission afford Parties the opportunity to comment on any such proposed revisions and that the revisions be applied prospectively to RFPs for which no IE has yet been selected.

DATED this 22<sup>nd</sup> day of April, 2011.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **CLOSING COMMENTS** to be served by electronic mail to those parties whose email addresses appear on the attached service list from OPUC Docket No. UM 1182.

DATED at Portland, Oregon, this 22<sup>nd</sup> day of April, 2011.



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