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February 26, 2018

***Via Electronic Filing***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High St. SE, Suite 100  
Salem OR 97301

Re: In the Matter of Rulemaking Regarding Allowances for Diverse  
Ownership of Renewable Energy Resources.  
**Docket No. AR 600**

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the Industrial Customers of Northwest Utilities' Reply Comments.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Haley M. Thomas  
Haley M. Thomas

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**AR 600**

In the Matter of	)	
	)	
Rulemaking Regarding Allowances for	)	REPLY COMMENTS OF THE
Diverse Ownership of Renewable Energy	)	INDUSTRIAL CUSTOMERS OF
Resources.	)	NORTHWEST UTILITIES
_____	)	

**I. INTRODUCTION**

Pursuant to the Chief Administrative Law Judge’s January 25, 2018 Notice, the Industrial Customers of Northwest Utilities (“ICNU”) files these Reply Comments on certain policy questions identified in this docket. ICNU appreciates this opportunity to respond to other parties’ views regarding key policy issues related to the Oregon Public Utility Commission’s (“Commission”) competitive bidding requirements.

**II. COMMENTS**

**1. The Commission should require an IE only for RFPs that allow utility ownership – or perhaps eliminate the IE requirement entirely.**

Most parties who filed opening comments agree with ICNU that an independent evaluator (“IE”) is an unnecessary expense when an RFP does not include a self-build option.<sup>1/</sup> The utilities, however, voice concern that an RFP with no self-build option will be materially cheaper if it does not include an IE and, therefore, it will be harder to justify an RFP with a self-build option.<sup>2/</sup> ICNU does not believe this concern is enough to justify the additional costs

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<sup>1/</sup> See Staff Opening Comments at 3, Renewable Northwest Opening Comments at 2, NIPPC Opening Comments at 3-8, CUB Opening Comments at 2, ICNU Opening Comments at 1-4.

<sup>2/</sup> Joint Utilities’ Opening Comments at 4.

customers will bear without receiving any clear benefit from an IE that oversees an RFP process with no self-build option. Nevertheless, the utilities' concerns are not wholly without merit and, to resolve them, the Commission should consider eliminating the IE in all RFPs.

What value does the IE really provide? Parties cite to increased “transparency” and “fairness” from an IE-led process.<sup>3/</sup> But how, specifically, does the IE provide these benefits? Throughout the Commission's long history with the competitive bidding process, RFPs overseen by an IE have almost uniformly resulted in utility-owned resources.<sup>4/</sup> This either means that utility-owned bids are always the least-cost, least-risk resources to customers, or it means that the IE is ineffective. ICNU is inclined to believe the latter. Recent history seems to indicate as much.<sup>5/</sup>

After all, the IE does not independently score RFP bids and does not have the in-depth knowledge of the utilities' systems to do so; it is reliant on the utilities' models and software to double-check the utilities' bid scores. The problem lies in the modeling itself, not the transparency of the process.<sup>6/</sup> The only benefit the IE provides is to give the Commission and stakeholders comfort that there is someone looking over the utilities' shoulders while they run the RFP. But if customers are paying to have a third party confirm results that would have

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<sup>3/</sup> See Renewable Northwest Opening Comments at 2, Staff Opening Comments at 4.

<sup>4/</sup> This is perfectly understandable. After all, why would any rational utility want to acquire a resource (through a power purchase agreement) that allows it to earn no profit?

<sup>5/</sup> In the Matter of PacifiCorp, dba Pacific Power, Request for Proposals of an Independent Evaluator to Oversee the Request for Proposal Process, Docket No. UM 1845, Revised Independent Evaluator's Final Report on PacifiCorp's 2017R Request for Proposals at 32-35 (Feb. 20, 2018) (“We were somewhat surprised by the fact that the [System Optimizer] model would choose projects that had lower levelized net benefits than other resources. Typically, we would expect resource selection to mirror the levelized cost analysis, and, therefore, expected to see [two PPAs] selected before the Benchmark projects.”).

<sup>6/</sup> Id.

occurred anyway (absent outright fraud on the part of the utilities), then what are customers getting for their money?

The IE, like most of the competitive bidding guidelines at this point, is just another way of papering over what has become an irreparably broken system. The competitive bidding guidelines apply to major, long-term resource acquisitions. As PGE's and PacifiCorp's most recent integrated resource plans demonstrate, however, customers no longer want to bear the risk of these long-term assets in an age of rapid and uncertain technological change. The utilities were able to largely avoid this tension by limiting their long-term resource acquisitions to renewables, but this only delays the inevitable as regional capacity becomes more constrained over time.<sup>7/</sup> Until the system changes in a manner that alters the utilities' incentive structure and requires the market bears the risk of these resources, rather than customers, the competitive bidding guidelines will do more to ensure cost recovery for the utilities than they will to ensure a least-cost, least-risk outcome for customers.

If, however, the Commission determines to retain the IE in at least some capacity, then ICNU reiterates its initial recommendation that the IE requirement be eliminated for all RFPs that do not allow for utility resource ownership, given that the primary purpose of the IE requirement is to mitigate the self-build bias. There is consensus among the non-utility parties that an IE is not warranted in such situations.<sup>8/</sup> ICNU suggests that the final rules should be structured so RFPs that do not allow utility ownership are presumptively conducted with less process, and without an IE, rather than allowing for a waiver of otherwise obligatory rules at the

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<sup>7/</sup> ICNU does not share what is apparently the consensus view that a long-term interest in existing renewable technologies is any less risky for customers than a long-term interest in capacity resources.

<sup>8/</sup> See Staff Opening Comments at 2, Renewable Northwest Opening Comments at 2, NIPPC Opening Comments at 3, CUB Opening Comments at 1, ICNU Opening Comments at 2.

Commission’s discretion. ICNU would support a rule allowing parties to petition the Commission to add process or an IE to proceedings that would presumptively be conducted without either – for example, such a provision would be responsive to Staff’s suggestion that IEs only be retained “where they are most needed.”<sup>9/</sup> Such an “opt-in” for IE participation, and perhaps other procedural rules, would appropriately balance ratepayers’ interest in a low-cost, efficient process with the (arguable) value an IE allegedly provides in RFPs of major significance.

**2. The Commission should clarify its authority to require utilities to allow third parties access to utility-owned sites.**

In contrast to other parties, ICNU does not have strong feelings regarding whether independent bidders should be entitled to access utility-owned sites, with the caveat that if such a policy could deliver lower-cost resources to ratepayers, then it should be considered. ICNU understands that the utilities are certain that such a policy would violate various provisions of the United States Constitution, Oregon Constitution, and state law.<sup>10/</sup> It may be that a maximalist implementation of such a policy would run afoul of the law – but there may also be a middle ground that delivers benefits to ratepayers while protecting utilities’ statutory and constitutional rights. This is not a settled question, and ICNU supports continued discussion on the issue.

**III. CONCLUSION**

ICNU appreciates the opportunity to provide these reply comments regarding Commission Staff’s draft competitive bidding rules and related policy issues. ICNU looks forward to providing further input as this rulemaking develops.

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<sup>9/</sup> Staff Opening Comments at 4.

<sup>10/</sup> Joint Utilities’ Opening Comments at 6-12.

Dated this 26th day of February, 2018.

Respectfully submitted,

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/s/ Tyler C. Pepple

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