BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 600

In the Matter of	)	**NORTHWEST AND**
	)	**INTERMOUNTAIN POWER**
Rulemaking Regarding Allowances for	)	**PRODUCERS COALITION**
Diverse Ownership of Renewable Energy	)	**OPENING COMMENTS**
Resources.	)	

I. INTRODUCTION

Northwest and Intermountain Power Producers Coalition ("NIPPC") submits these Opening Comments for consideration by the Oregon Public Utility Commission ("Commission") addressing the key policy issues raised by Administrative Law Judge ("ALJ") Michael Grant's January 25, 2018 Notice. NIPPC would like to acknowledge all of the hard work from the Commission's staff ("Staff") and other stakeholders in preparation for this formal rulemaking process and looks forward to ongoing active engagement throughout.

Since 2006, the Commission has required utilities follow substantive competitive bidding guidelines when acquiring new major resources to mitigate the bias for utility ownership in the utility resource procurement process. Although the parties may disagree about the role this bias plays in utility procurement, the Commission has repeatedly concluded that the utilities' ability to earn a return on their capital investments serves as a powerful incentive driving the utilities' actions. There will never be fair competition, and it will be impossible to determine if customers are being served with the least cost and least risk resources, as long we have a regulatory model in which a utility has an inherent bias and financial incentive to make decisions that benefit itself over its competition.

To date, the existing Commission policies have been an almost complete failure and resulted in approximately 95% utility-owned generation projects.[1] It would be a real surprise if monopsony utilities elected to purchase generation assets from the sellers that were offering products that did not provide financial remuneration to themselves. This history, the inherent utility ownership bias, and the Commission's new statutory directive in Senate Bill ("SB") 1547, to allow for diversity of ownership,[2] provide adequate justification to make fundamental revisions to the Commission's competitive bidding policies and adopt new rules.

Overall, Staff's proposed competitive bidding rules are a step in the right direction, but the Commission should not be moved by the utilities' emotional protests. Now is not the time for the Commission to pull its Staff back from their honest and carefully considered proposals, but instead to strengthen and improve them. While we should be under no illusions that Staff's proposed new rules will result in a level playing field or result in a truly competitive process, we can at least expect that occasionally a truly least cost and least risk generation asset that benefits of utility consumers will surface.

Regarding the Commission's specific questions to be addressed in these comments:

- It is absolutely appropriate to allow a more abbreviated competitive bidding process when a utility does not seek to acquire utility-owned resources.

- The participation of the Independent Evaluator ("IE") provides value beyond its ability to mitigate the utility-ownership bias, including providing assistance to help the utility acquire the best resource as well as providing a record in a prudence evaluation. The significant costs of an IE, however, may outweigh its benefits, especially in a more limited request for proposal ("RFP") process. The

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1 Attachment A (Results from RFPs run under [current] Competitive Bidding Guidelines).

2 SB 1547, Section 6, (4)(d) directs the Commission to adopt rules "providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity."

benefits, especially in a more limited request for proposal ("RFP") process. The Commission should therefore not mandate that an IE participate in RFPs in which there is no utility-ownership option.

- The Commission should adopt rules that state it is per se imprudent for a utility not to make utility-owned facilities available to third-party bidders. If the utilities are honestly seeking to ensure that ratepayers are served with the least cost and least risk resources, then all of the utilities' assets should be considered ratepayer assets. Simply put, a utility's facilities and transmission rights belong to its customers and should be made available to benefit its customers whenever possible.

- NIPPC agrees in principle that transmission activity should be subject to competitive bidding requirements similar to generation assets. However, NIPPC does not believe that this issue has been fully considered and recommends that, at this time, the Commission decline to expand the scope of this proceeding to require the utilities to conduct a formal RFP to construct new transmission.

II. COMMENTS

1. It is Appropriate to Allow Exemptions from Certain Competitive Bidding Rules if a RFP Does Not Consider Utility Ownership of Resources

The Commission should establish two different tracks or options under the competitive bidding rules that distinguish between RFPs with and without utility-ownership options. The fundamental justification for going through the regulatory burden, overseeing utility actions, and expense of an RFP is because of a concern that the utilities will make the economically rational choice of choosing the interests of their shareholders over ratepayers.[3] When there are no incentives for the utility to choose its own generation assets, then there is less need to burden ratepayers with additional costs of policing the utilities' actions to ensure that they do not favor

[3] The Commission should be concerned by any claims that this bias does not exist or is irrelevant. NIPPC does not doubt that the majority of utility managers take seriously their responsibility to meet their statutory duty to make decisions with the ratepayers' best interests at heart. However, even the most conscientious of utility managers will need to act scrupulously to avoid both this real explicit and implicit bias.

certain bids. The Commission and the utilities have already recognized that there are certain situations in which the full protections and expense of following all the competitive bidding requirements are not warranted. These non-ownership situations outside of the formal RFP process have included the utilities' short-term firm transactions, PGE's recent bi-lateral capacity negotiations, which waived the competitive bidding guidelines, and PacifiCorp's current solar RFP. The new competitive bidding rules should simply and clearly codify that the full scope of rules are not required when there is no utility ownership option.

In large part, the purpose and need for competitive bidding rules stems from the utilities' bias to own resources.[4] In addition to its new statutory obligation to allow for diversity of ownership, the Commission has long had a statutory and administrative responsibility to protect the competitive power market to the benefit of ratepayers. In 2001, the Oregon Legislature directed the Commission "to eliminate barriers to the development of a competitive retail market structure" and "to mitigate the vertical and horizontal market power."[5] The Commission's primary tool for protecting competitive markets and limiting utility bias has been its competitive bidding guidelines. Even when the utilities win the bidding process and eventually own the

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4 See e.g., Re Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build-vs.-Buy Bias, Docket No. UM 1276, Order No. 11-001 at 6 (Jan. 3, 2011) ("Utilities must also engage in an IE to oversee the RFP process if they expect to receive Commission acknowledgement of the final short-list of RFP resources. Although these guidelines have greatly increased confidence that the utility RFP process is being conducted fairly and properly, we believe further improvements are needed to fully address utility self-build bias.").

5 ORS 757.646; see also ORS 469A.075(4)(d).

generation resources, consumers benefit from the competition that drives down costs and spurs market innovation.

It stands to reason that, if a utility is seeking to acquire resources without the option for utility ownership, then the need for certain rules, like the requirement for an IE for example, would be greatly diminished. When the Commission re-opened UM 1182 (the original competitive bidding guidelines docket) in 2011, it did so to investigate changes that might "mitigate utility self-build bias" and "ensure that the utility self-build bias does not result in the acquisition of higher cost utility-owned resources."[6] The most recent revisions to these rules, in 2014, were responsive to Portland General Electric Company's ("PGE") 2013 RFP where it awarded itself all three generating units, including the Carty Generating project. After this ill-fated RFP, the Commission explained, "In this proceeding [UM 1182] we have focused on reducing the bias through our competitive bidding guidelines."[7] Although the Commission has consistently updated its bidding guidelines to mitigate ever-changing forms of utility bias, the Commission's changes have largely been reactive, and the overall results of the utilities' RFPs overwhelmingly favor utility ownership.[8]

Allowing certain exemptions is consistent with both the utilities' and the Commission's common practice. PacifiCorp and PGE routinely enter into short-term firm contracts in the

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6 Re Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build-vs.-Buy Bias, Docket No. UM 1276, Order No. 11-001 at 7 (Jan. 3, 2011).

7 Re Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 14-149 at 1 (Apr. 30, 2014).

8 See NIPPC Petition for Temporary Rulemaking and Investigation into PacifiCorp's 2016 Requests for Proposal, Docket No. AR 598, NIPPC's Reply to PacifiCorp's Opposition at 7, Attachment A (May 13, 2016).

market, amounting to hundreds of megawatts.[9] In the aggregate these transactions are similar to new major resource acquisitions, but raise no utility-ownership issues, and are not subjected to additional scrutiny.

The Commission faced an intersection between these two types of purchases during PGE's last integrated resource plan ("IRP") proceeding. There, the Commission urged PGE to move swiftly in its bilateral negotiations to renew its existing hydro contracts, or to enter into new short-term hydro contracts, before seeking to acquire any new capacity resources.[10] PGE did so, updated the Commission on its progress throughout its IRP, and eventually requested a waiver of the competitive bidding guidelines to finalize the bilateral negotiations quickly. Importantly, PGE argued "if the Company is not able to move forward with its negotiations quickly or instead is required to issue an RFP to fill its capacity need, customers could lose the benefit of these unique and time-limited hydro resources." [11] Just as this exception to the competitive bidding guidelines was warranted, so is a broader exemption for bilateral contract negotiations.

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9 See e.g., PGE 2016 IRP, Docket No. LC 66, NIPPC's Comments on Revised Renewable Action at 2 (Oct. 6, 2017) ("PGE estimates its market purchases will be above 200 MWa in 2021"); PacifiCorp 2017 IRP, Docket No. LC 67, PacifiCorp's IRP at 2 (Apr. 4, 2017) (forecasting PacifiCorp's front office transactions from 273 – 1,575 MW over the planning horizon).

10 Re PGE Application for Waiver of Competitive Bidding Guidelines, Docket No. UM 1892, PGE's Application at 4 (Aug. 25, 2017) ("in the course of their review [of PGE's IRP], the Commission, Staff and stakeholders . . . urged PGE . . . to explore opportunities to meet its need in the medium term through bilateral negotiations for existing resources, particularly hydro resources"); PGE 2016 IRP, Docket No. LC 66, Order No. 17-386 at 16-18 (Oct. 09, 2017).

11 Re PGE Application for Waiver of Competitive Bidding Guidelines, Docket No. UM 1892, PGE's Application at 10 (Aug. 25, 2017).

PacifiCorp's 2016 and 2017 RFPs provide a clear example as to why this kind of exemption is appropriate. In 2016, PacifiCorp's original RFPs only accepted bids that allowed for utility ownership.[12] NIPPC, along with other stakeholders, argued that allowing this RFP to go forward without meaningful independent review put PacifiCorp's ratepayers at risk for the kinds of cost overruns commonly associated with utility ownership, and that the structure of PacifiCorp's RFP was inconsistent with the Commission's long-standing policy promoting fair and transparent competitive bidding.[13] While the Commission allowed the RFP to move forward, it expressed grave concern with this approach.[14] PacifiCorp's current solar RFP, on the other hand, does not allow utility-ownership.[15] This means that the RFP can proceed on a more level playing field and does need the formal monitoring by an IE. This option allowed

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12 PacifiCorp's 2016 Renewable Resource RFP at 1-2 (Apr. 11, 2016), available at http://www.pacificorp.com/sup/rfps.html (accepting bids for either build-and-transfers or 20-year PPAs with the option to purchase the asset).

13 See generally Re NIPPC Petition for Temporary Rulemaking and Investigation into PacifiCorp's 2016 Requests for Proposal, Docket No. AR 598, NIPPC's Request for Investigation (Apr. 25, 2016). NIPPC has also argued that allowing both ownership and non-ownership options chills the competitive market, because the mere appearance of unfairness limits the amount of time and effort bidders are willing to commit to what will inevitably be a losing bid. Re Investigation of Competitive Bidding Guidelines Related to SB 1547, Docket No. UM 1776, NIPPC's Summary Positions at 1 (Oct. 25, 2016).

14 Re NIPPC Petition for Temporary Rulemaking and Investigation into PacifiCorp's 2016 Requests for Proposal, Docket No. AR 598, Order No. 16-188 at 2 (May 19, 2016). ("We believe PacifiCorp is acting outside of our competitive bidding guidelines, and caution the company that it is proceeding on its own and remains at risk for everything with regard to future cost recovery of any resource acquired pursuant to these RFPs. PacifiCorp has apparently decided to forego our competitive bidding process in favor of its own process, and will carry the burden to establish that its process is open, fair, and transparent and resulted in the prudent acquisition of least-cost and least-risk resources.").

15 PacifiCorp's 2017 Solar RFP at 1-2 (Nov. 15, 2017), available at http://www.pacificorp.com/sup/rfps.html (not accepting bids for either build and transfers and not submitting a benchmark bid).

PacifiCorp to move more quickly and test the market, without going through all of the traditional RFP steps. Common sense tells us that an RFP that does not include utility ownership need not go through additional scrutiny designed to mitigate utility-ownership bias.

Allowing certain exemptions does not mean that the Commission's competitive bidding rules would be anti-utility ownership. Importantly, the utility has the option to choose which process it would like to undergo. If the utility can justify the additional expense and time as prudent, then it should recover those costs in rates. Allowing a more rigorous examination of utility-ownership is entirely consistent with the Commission's long-standing process and policy. Allowing a more abbreviated process, which would be the new addition to the policy, merely reflects the increased rigor and expense required to ensure RFPs that allow utility-ownership are fair and allow for diversity of ownership. The abbreviated process should therefore be seen as a new convenient option for utilities that allows them to avoid certain steps if they take utility ownership off the table rather than a penalty for utilities that seek utility ownership.

2. The Engagement and Participation of an IE is Valuable Regardless of Whether the RFP Contemplates Utility-Ownership Options, but the Costs Generally Do Not Outweigh the Benefits

The Commission has recognized that IEs provide value beyond the primary role of mitigating utility bias, but that value must be weighed against the rising costs attributed to IE involvement. In 2016, when PacifiCorp declined to use an IE for its RFPs, the Commission noted, "We highly value not only an IE's expertise and independence in its oversight of a competitive bidding process, but also the IE's review and documentation of that process to help

inform later prudence reviews."[16] Simply put, the prudence review should be significantly easier with the IE's help. In addition to better policing the utilities' actions, the assistance of a third-party evaluator can also serve to inform and improve the utilities' decision-making process. These benefits, however, come at a cost to both ratepayers and the Commission, which may not be justified where there is no risk that the utility will own the new generation assets.

The Commission's concerns about making a prudence review without the benefit of an IE report are not unfounded. As the Commission has explained,

> A utility always has the burden of proving that it acted prudently in acquiring its resources. It also bears the initial burden of producing evidence to support that proposition. When the utility has followed the [competitive bidding] Guidelines, however, the resulting resource acquisitions are presumed reasonable. Consequently any party that would question those decisions would carry the initial burden of producing evidence that the utility acted imprudently. Where the utility avoids [competitive bidding] Guidelines, the burden of producing evidence remains with the utility.[17]

This presumption makes the decision to avoid an IE much more significant.

In 2008 and 2009, PacifiCorp did not use the competitive bidding guidelines, when it constructed a number of generation resources slightly below the size threshold, and the Commission ultimately disallowed recovery for the 99 MW Rolling Hills wind project because it was markedly inferior to other resources.[18] PGE received a waiver when it sought to acquire the

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16 Re NIPPC Petition for Temporary Rulemaking and Investigation into PacifiCorp's 2016 Requests for Proposal, Docket No. AR 598, Order No. 16-188 at 2 (May 19, 2016).

17 Re PacifiCorp 2009 Renewable Adjustment Clause Schedule 202, Docket No. UE 200, Order No. 08-548 at 19 (Nov. 14, 2008).

18 See id. at 2, 19-20. PacifiCorp completed construction in 2008 and 2009, without requests for proposals, the 99 MW Glenrock I, 39 MW Glenrock III, 98 MW Goodnoe Hills, 99 MW High Plains, 99 MW Rolling Hills, 99 Seven Mile Hills, and 19.5 Seven Mile Hills II wind facilities.

400 MW Rock Creek wind project, which was ultimately abandoned due to Federal wildlife policies protecting golden eagles.[19] These examples involve utility ownership, but the projects ran into problems that could easily apply to non-utility ownership. Thus, the absence of an IE may mean more sleuthing for stakeholders and Staff to confirm that a utility's decision was prudent.

The absence of an IE could mean more work for utilities and Staff throughout the RFP process. In the case of PacifiCorp's 2016 RFPs, the Commission directed Staff "to monitor, evaluate, and document PacifiCorp's process going forward" to "help mitigate [the] loss" of an IE and even directed PacifiCorp to "be prepared to replicate a detailed IE report for use of the parties and our review in any future ratemaking proceeding."[20] Although the additional work may be negligible for a utility when conducting an RFP, this may be a much larger incremental burden on Staff.

The costs associated with using a worthwhile IE, however, should not be unnecessarily imposed upon ratepayers. Staff and ratepayers have reviewed the prudence of utility decisions, and can continue to do so on non-ownership acquisitions without the benefit of an IE. The Commission must balance the efficacy of an IE outside of utility-bias mitigation against the rising complexity and costs an IE adds to the RFP process. As the utilities are quick to point out,

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19 See Re PGE Petition for a Waiver of Competitive Bidding Guidelines and Application for an Accounting Order, Docket No. UM 1499, Order No. 10-394 at 1 (Oct. 12, 2010); Re PGE Petition for a Waiver of Competitive Bidding Guidelines and Application for an Accounting Order, Docket No. UM 1499, PGE's Request for Withdrawal of PGE's Petition for a Waiver of Competitive Bidding Guidelines and Application for an Accounting Order (Sept. 29, 2010).

20 Re NIPPC Petition for Temporary Rulemaking and Investigation into PacifiCorp's 2016 Requests for Proposal, Docket No. AR 598, Order No. 16-188 at 2 (May 19, 2016).

this rulemaking may lead to an increase in IE responsibilities and expand the frequency with which an IE is used.[21] While many of their claims are exaggerated and hyperbolic, this could mean a slightly longer and more expensive RFP process that is used more frequently.[22] Despite these criticisms, the utilities appear to support the use of an IE for all RFPs. NIPPC is not convinced that the costs warrant IE participation in all cases.

Even if an IE is used for all RFPs, however, there is no reason to have the same process for all RFPs. An abbreviated process for cases where utility ownership is not available would minimize the time and costs associated with the IE. Certain provisions make no sense without the utility-ownership option, like blinding of the bids, comparing the different lengths of utility 35-year assets with 15-20 year PPAs, or the due diligence analysis needed for utility-owned projects in the RFP that generally already happens for PPAs that need project financing. The parts of the RFP process that are designed to limit utility bias are unnecessary when there is no incentive for that bias. In the end, unnecessary costs may be avoided by either identifying times where an IE is not needed or identifying steps the IE need not take.

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21 Compare Re Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources, Docket No. AR 600, Idaho Power Comments at 3 (Jan. 16, 2018) ("Idaho Power is concerned that these additional tasks could result in *millions* of dollars of additional expense") (emphasis added) with Re PGE Application for Deferred Accounting of Certain Expenses Associated with an Independent Evaluator for a RFP, Docket No. UM 1858, PGE's Application at 4 (July 31, 2017) ("PGE currently estimates the amount subject to deferral will be approximately $400,000 for the RFP."); see also Re Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources, Docket No. AR 600, PGE Comments at 8 (Jan. 16, 2018) ("would result in significant and unnecessary cost increases in the RFP process").

22 Re Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources, Docket No. AR 600, PGE Comments at 6 (Jan. 16, 2018) ("an IE should be required to participate in all RFPs to help ensure a fair and transparent process").

3. Electric Companies Can and Should be Compelled to Offer Utility-Owned Facilities to Bidders Proposing Non-Utility-Owned Resources

Any decision by a utility not to allow bidders access to its utility-owned facilities or assets is harmful to customers and should be considered *per se* imprudence. The Commission's inherent power to protect customers allows it to deny cost recovery in situations where a utility has decided not to make its assets available to bidders. The Commission has the legal authority to ensure that, if the utilities wish to obtain cost recovery from ratepayers, then they need to allow independent power producers the same access to its transmission rights, sites and other assets that can be easily utilized by either the utility or its competitors.

It hardly seems debatable that allowing competitive bidding access to the same utility-owned resources as the benchmark bid will result in lower cost proposals. NIPPC and customer advocates have pointed out numerous examples where utilities have used their utility-owned facilities and access to transmission to favor their benchmark bids or otherwise ensure that a utility-owned bid wins.[23] There is simply no legitimate reason why customers should pay for any utility asset that is not used to their own benefit.

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[23] Re PGE Request for Proposals for Capacity and Baseload Resources, Docket No. UM 1535, NIPPC's Comments at 18-19 (Feb. 22, 2012) (asking the Commission to require PGE to provide granularity regarding the scoring criteria because PGE's proposed scoring criteria had scoring percentages for broad categories containing several project attributes); Re PGE Petition for Partial Waiver of Competitive Bidding Guidelines and Approval of Request for Proposals (RFP) Schedule, Docket No. UM 1773, Order No. 16-280 at Appendix A at 5 (July 29, 2016); Re Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 at 5-6 (Aug. 10, 2006); Re PGE Request for Proposals for Capacity Resources, Docket No. UM 1535, Order No. 11-371 at 5-6 (Sept. 27, 2011).

Rather than simply focus on reasons why a utility's assets should or should not be used, the Commission should take this opportunity to clarify its authority, and use its broad regulatory power to ensure that rates are fair, just and reasonable and that the resources that customers pay for in their rates are used to their full benefit. The Commission has repeatedly concluded that it prefers utilities offer up their assets, but has refused to take the final step in requiring utilities to put their customers' interests ahead of their shareholders'. In 2006, the Commission declined to require utilities to offer utility-owned facilities for development by independent power producers, but that decision should be revisited.

Over a decade of results of RFPs and the legislative mandate in SB 1547 warrant adopting new rules that will ensure utilities use ratepayer-funded assets to benefit their ratepayers. Early in UM 1182, the Commission explained that it shared concerns raised by Staff that it may not have the legal authority to implement this type of requirement. As such, the Commission adopted "Staff's suggestion that the utility be encouraged to offer its site for third party development" instead.[24] The Commission also declined to impose third-party access to utilities' transmission facilities, but "encouraged utilities … to provide information on the availability of transmission facilities and planned projects to bidders" instead.[25]

Despite vague suggestions in a 2006 order that the Commission may not have the legal authority to require the utility to use its assets to benefit rather than harm customers, these arguments have never been articulated. It is incumbent on those that may argue that the

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[24] Re Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 at 5-6 (Aug. 10, 2006).

[25] Id. at 6 ("We will not impose third party access to a utility's transmission facilities beyond the access allowed under [the Federal Energy Regulatory Commission] rules.").

Commission does not have this authority to demonstrate any legal and policy barriers that may exist. The 2006 order notes concern stem from "consultation with the Department of Justice," yet the legal basis for the Commission's concerns does not appear to be on the public record.[26]

The Commission's views on its own authority here may have evolved since 2006, calling into question whether the initial "consultations" remain relevant. In PGE's 2012 RFP, for example, NIPPC and other stakeholders argued that PGE should be required to allow third parties to submit bids for projects at PGE's Port Westward site.[27] PGE responded by relying on the Commission's 2006 order. Although the Commission did not require PGE to offer its utility-owned facilities to other bidders in that case, the Commission has never stated whether it either has or does not have the authority to do so. Instead, the Commission provided a more nuanced view of its authority, explaining:

> Whether the Commission can require PGE to make its site available to prospective bidders is a legal question that is not decided in this order. Whether to make its site available is a PGE management decision subject to prudency review by the Commission. In making its decision PGE should consider the recent build-own-transfers acquired by other utilities, recognizing that proof of prudent decision making is the key to future cost recovery.[28]

This means that although a utility may be free to decide to limit access of its utility-owned facilities, that decision is always reviewable by the Commission as being at least potentially imprudent.

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26 Id. NIPPC's non-exhaustive search of the relevant dockets has not turned up anything.

27 Re PGE Request for Proposals for Capacity Resources, Docket No. UM 1535, Order No. 11-371 at 6 (Sept. 27, 2011).

28 Id.

On the other hand, the Oregon Court of Appeals has confirmed the Commission has the broadest authority commensurate with that of the legislature itself to protect customers and that it:

> has been granted the power to represent the customers of [its regulated utilities] in all controversies respecting rates, valuations, service and all other matters under its jurisdiction and, in doing so, the legislature has directed that [the Commission] shall use its powers "to protect those customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates." [The Commission] has been granted the power to investigate utilities and to make whatever orders it deems justified or required by the results of its investigations. Thus, as we have said before, [the Commission] has been granted "the broadest authority -- commensurate with that of the legislature itself -- for the exercise of [its] regulatory function." Furthermore, the legislature has directed us to construe the provisions of the utility regulation laws liberally with a view toward the public welfare, efficient facilities and substantial justice.[29]

Given the Commission's repeated encouragement of utilities to make their utility-owned facilities available to other bidders, any utility decision not to do so should be considered *per se* imprudence. The Commission's rules should require utilities to offer up ratepayer-funded assets to bidders in order to obtain cost recovery for utility-owned assets. This is consistent with the Commission's 2006 order, its subsequent orders, and its statutory authority.

4. Transmission Activity Need Not Be Subject to Competitive Bidding Requirements at This Time

NIPPC interprets this question as whether the utilities' construction of new transmission should be subject to a competitive bidding process similar to when the utilities need new

[29] Pacific Northwest Bell Tel. Co. v. Katz, 841 P.2d 652, 116 Or. Ct. App. 302 (1992) (citations omitted).

generation.[30] This is particularly relevant as utilities are considering transmission investments to markets as an alternative to or party of a plan to meet their energy and capacity needs. Idaho Power, PacifiCorp and Puget Sound Energy are all in the process of planning to acquire or build new transmission to access new markets.[31] The Northwest is unique in the lack of functioning independent transmission system operators, which leave a balkanized and inefficient transmission system that drives up costs and locks up significant amounts of unused capacity to the detriment of ratepayers. Solving these problems and determining how a competitive bidding process meshes with the regulations and policies of the Federal Energy Regulatory Commission is a worthy subject for consideration, but just not at this time.

III. CONCLUSION

NIPPC thanks the Commission Staff for their diligent work to date on this docket and appreciates the opportunity to participate with the other stakeholders at the March 6, 2018 workshop addressing these important policy issues.

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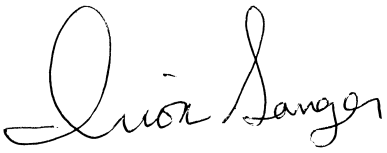
30 As explained above, independent bidders should be given the right to use a utility's transmission facilities and rights because they are more appropriately considered their ratepayers' transmission facilities.

31 Re Idaho Power 2017 IRP, Docket No. LC 68, Idaho Power's IRP at 133 (June 30, 2017); Re PacifiCorp 2017 IRP, Docket No. LC 67, PacifiCorp's IRP at 2 (Apr. 4, 2017); Puget Sound Energy 2017 IRP at 8-23 (Nov. 14, 2017), available at https://pse.com/aboutpse/EnergySupply/Documents/IRP17_Ch8.pdf ("In the next decade, PSE anticipates building approximately 104 plus miles of new transmission lines (100 kv and above) and upgrading over 122 miles of existing transmission lines. In addition, we anticipate needing to add up to three 230 kv bulk power substations across our service area.").

Dated this 14th day of February 2018.

Respectfully submitted,



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Attachment A

Oregon Public Utility Commission
Results from RFPs run under Competitive Bidding Guidelines[1]

Year	Utility	Location	Docket	Project/Capacity	Utility Owned[2]	Outcome
2008	PacifiCorp	Chehalis, WA	UM 1208, 1374	Chehalis Generation Facility 520 MW gas-fired CCCT	Yes	PacifiCorp acquires power plant from Suez Energy, with a waiver of the OPUC competitive bidding guidelines.
2008	PacifiCorp	Converse County, WY	UM 1368	Top of the World Windpower 200 MW	No	PacifiCorp and Duke Energy sign 20 year PPA.[3]
2009	PacifiCorp	Carbon County, WY	UM 1429	Dunlap I wind farm 111 MW	Yes	PacifiCorp follows Utah PSC's bidding process in parallel with OPUC.
2010	PacifiCorp	Utah County, UT	UM 1360	Lake Side 2 637 MW CCCT	Yes	PacifiCorp selects CH2M Hill E&C as its EPC contractor to build the power plant adjacent to its Lake Side 1 CCCT unit.
2010	Portland General Electric	Gilliam County, OR	UM 1499	Rock Creek Wind Power Facility 400 MW	Not completed	PGE petitioned to waive the bidding guidelines for a self-built project only to withdraw its request due to new USFWS golden eagle protection policy.
2012	Idaho Power	Payette County, ID	UE 248	Langley Gulch 330 MW gas-fired CCCT	Yes	After Idaho Power skips bidding guidelines, the OPUC conditions Oregon's share of Idaho Power's *future* rate recovery on adherence to Oregon's bidding guidelines[4]
2012	Portland General Electric	Columbia County, OR	UM 1535	Port Westward Unit 2 220 MW gas-fired reciprocating engines	Yes	Self-built power project with 12 reciprocating engines adjacent to Unit 1, a PGE-owned gas-fired CCCT power plant.
2013	Portland General Electric	Morrow County, OR	UM 1535	Carty Generating Station 440 MW gas-fired CCCT	Yes	PGE selects Abengoa S.A. as its EPC contractor to build the power plant adjacent to Boardman coal-fired power plant slated for retirement.
2013	Portland General Electric	Columbia County, WA	UM 1613	Tucannon River Wind Farm 267 MW	Yes	PGE acquires development rights from Puget Sound Energy and builds its first power plant outside Oregon.

[1] Oregon originally enacted its bidding guidelines in September 2006 with Order No. 06-446. It applies to resource acquisitions over 100 MW.

[2] In late 2003, PacifiCorp "won" its own RFP and, after securing regulatory approvals, built the 525 MW Currant Creek CCCT near Mona, UT. Last year a jury awarded USA Power $134 million after a jury concluded that PacifiCorp stole the plans from the IPP's bid submittal and used them to build its plant.

[3] In 2007-2009, PacifiCorp built a number of wind farms in close proximity to each other and sized "under" 100 MW to avoid the competitive bidding guidelines. Since 2005, outside of any Commission approved competitive bidding processes, PacifiCorp has obtained ownership of the 99 MW Glenrock I, 39 MW Glenrock III, 94 MW Goodnoe Hills, 99 MW High Plains, 100.5 MW Leaning Juniper, 140.4 MW Marengo, 70.2 MW Marengo II, 28.5 MW McFadden Ridge, 99 MW Rolling Hills, 99 MW Seven Mile Hills, and 19.5 MW Seven Mile Hills II wind facilities, a power purchase agreement with the 99 MW Campbell Hill-Three Buttes wind facility, and power purchase agreements with qualifying facilities.

[4] The Idaho PUC approved Idaho Power's Langley Gulch power project in September 2009 despite opposition.