

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 600

In the Matter of

Rulemaking Regarding Allowances for
Diverse Ownership of Renewable Energy
Resources.

STAFF'S FINAL COMMENTS

I. INTRODUCTION

The Public Utility Commission of Oregon Staff (Staff) files these comments in Docket No. AR 600, Allowances for Diverse Ownership of Renewable Energy Resources. These comments offer Staff's final comment on the proposed competitive bidding rules, as well as Staff's response to stakeholder comments on the proposed rules received during the May 16, 2018 rulemaking hearing and formal comment period.

II. BACKGROUND

The Commission opened a permanent rulemaking, Docket AR 600, in 2016 to implement provisions of Senate Bill 1547 regarding diverse ownership of renewable energy resources used to meet renewable portfolio standards by converting the competitive bidding guidelines to administrative rule with updates.¹ Staff commenced

¹ See 2016 Or. Laws, ch.28, sec. 6, S 4(d), codified at ORS 469A.075(d).

informal rule development in AR 600 by facilitating multiple workshops with stakeholders, focusing on the issues described in Commission Order No. 17-173,² and the Commission's competitive bidding guidelines in general. Staff circulated informal draft rules on August 21, 2017, followed by several rounds of written comments from stakeholders and workshops to discuss informal draft rule components and potential changes. With Order No. 18-015, issued January 17, 2018, the Commission adopted Staff's final informal draft rules and recommendation to open the formal rulemaking, with an anticipated timeframe for the rulemaking to extend from 90 to 150 days. The order indicated that the schedule would include an early opportunity for the Commission to provide direction on policy issues.

At the Commission workshop on March 6, 2018, the Commission agreed upon five final revisions to the draft proposed rules to be made before filing with the Secretary of State. With Order No. 18-127, the Commission approved Staff's updated draft proposed rules and the issuance of a notice of proposed rulemaking on competitive bidding requirements. The notice was filed with the Secretary of State on April 18, 2018.

The Commission held a rulemaking hearing on May 16, 2018, for parties to provide oral comments on the proposed rulemaking. Portland General Electric Company (PGE), PacifiCorp d/b/a Pacific Power (PacifiCorp), Idaho Power Company (Idaho Power), The Northwest and Intermountain Power Producers Coalition ("NIPPC"), and Alliance of Western Energy Consumers (AWEC) provided oral comments on the proposed rulemaking. The public comment period opened with the Notice of Proposed Rulemaking, and is scheduled to close June 15, 2018, at 5 pm. PGE, PacifiCorp, and Idaho Power (collectively, Joint Utilities) submitted written comments on May 14, 2018, in advance of the May 16, 2018 rulemaking hearing. The Joint Utilities submitted supplemental written comments on June 7, 2018. NIPPC submitted written comments on May 29, 2018.

² Commission Order No. 17-173: <http://apps.puc.state.or.us/orders/2017ords/17-173.pdf>.

These comments represent Staff’s final comments on the proposed rules, as well as, Staff’s response to stakeholder comments made to date under the formal comment period. Staff does not support adoption of all the revisions offered in comments, but on consideration of the issues raised in comments, Staff recommends some additional revisions as set forth below.

III. STAFF COMMENTS

Staff Comments on Proposed OAR 860-089-0010—Applicability of Division 089

This rule identifies the utilities to which the proposed competitive bidding rules apply, electric companies. The rule sets forth requirements for requests for a waiver of the competitive bidding rules, such as when the Commission will consider a waiver request, and the persons to be notified of the request.

Guideline 2 of the Competitive Bidding Guidelines, also allowed for a waiver of the guidelines.³ The proposed rule, as set forth in the Notice of Proposed Rulemaking, does not authorize a waiver request after the utility has initiated a resource acquisition. The proposed rule authorizes a utility to file a written waiver request before initiating a resource acquisition, and outlines whether a request for acknowledgement of a shortlist would be part of the alternative process, should a waiver be granted. The proposed rule clarifies that a waiver does not equate to the Commission’s acknowledgement of a resource acquisition. These provisions allow for flexibility in application of the proposed rules, but also encourage utilities to request a waiver at the beginning of the process to allow the Commission to evaluate the alternative process proposed.

The joint utilities provided written edits with constructive comments and suggested edits. The joint utilities propose these edits to sections (2) and (3):

³ UM 1182, Order No. 14-149, April 30, 2014, pg. 19.

(2) Upon request or its own motion, the Commission may waive any **part or all** of the Division 089 rules for good cause shown. A request for waiver must be made in writing to the Commission prior to ~~or concurrent with the initiation of a~~ **completion of** the resource acquisition, and the request must indicate whether the electric company intends to request acknowledgement of the final short list or resource acquisition.

(3) Any request for waiver **may be** filed by an electric company after it acquires a resource **in appropriate circumstances. The Commission will determine the impact of such waiver, if granted, on a case-by-case basis.** ~~does not result in or equate to the Commission's acknowledgement of the resource acquisition.~~

The joint utilities propose the edit to the first sentence of section (2) to preserve flexibility in situations where a utility may propose waiver to only portions of the competitive bidding guidelines. Staff finds the proposed edit to be unnecessary as this sentence is consistent with other waiver rules of the Commission.⁴

The additional changes suggested by the joint utilities to sections (2) and (3) would authorize a utility to request a waiver of competitive bidding rules after acquiring a resource. The proposed rule, as set forth in the Notice of Proposed Rulemaking, does not authorize a waiver request after the utility has initiated a resource acquisition. The proposed rule authorizes a utility to file a waiver request before initiating a resource acquisition. This allows the Commission to weigh the merits of the alternate process proposed, including whether it will be presented with a shortlist for acknowledgement, before granting a waiver. Time should not be a limiting factor that would prevent a timely waiver request as acquisitions in the event of emergencies and time-limited opportunities to acquire a resource of unique value are exempted from the competitive bidding rules under proposed OAR 860-089-0100.

⁴ See OAR 860-001-0001(2); OAR 860-016-0005(1); OAR 860-021-0005(1); OAR 860-022-0000(2).

In the event a waiver was requested of section (2), section (3) clarifies that such a waiver would not equate to Commission acknowledgement. This is a statement of an obvious fact, which Staff concedes may not be necessary, as a waiver of a rule means that the rule will not be enforced by the Commission. Acknowledgement would require a decision by the Commission beyond granting a waiver. The utilities' proposed insertion implies there could be a different meaning attributed to a waiver. Staff is not aware of any alternate meaning and finds this proposed insertion to be unnecessary.

Accordingly, on consideration of the joint utilities' comments, Staff recommends that section (3) be revised to better align the timing restriction of the request for waiver between subpart (2) and subpart (3):

(3) Any request for waiver filed by an electric company ~~after it acquires a resource~~ does not result in or equate to the Commission's acknowledgement of the resource acquisition.

In conclusion, Staff supports the proposed rule language, but recommends the refinement for section (3) set forth above.

Staff Comments on Proposed OAR 860-089-0015—Purpose of Division 089

Proposed OAR 860-089-0015 was created in response to revisions required by the Commission in Order 18-087. Its intent is to provide an overall purpose to Division 089 and to clearly state that any differentiation between RFPs involving benchmark resources and RFPs not involving benchmark resources is not to discourage the former or favor an RFP outcome in terms of ownership structure.⁵

The joint utilities provided written edits with constructive comments and suggested edits. The joint utilities propose this edit to section (1):

⁵ See Order No. 18-087: <https://apps.puc.state.or.us/orders/2018ords/18-087.pdf>.

(1) OAR chapter 860, division 89 is intended to provide an opportunity to minimize long-term energy costs **and risks**, complement the integrated resource planning process, and establish a fair, objective and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms.

Staff does not support this edit. The language in the proposed rule mirrors the Commission's competitive bidding goals, as set forth in Order Nos. 91-1383 and 06-446. The proposed rule is a statement of purpose. Certainly, selecting the least-cost, least-risk resource is a means to achieve the goal of minimizing long-term energy costs, but the method is not the goal itself.

Staff Comments on Proposed OAR 860-089-0020—Definitions

The purpose of this rule is to provide a central location to define critical terminology used throughout the proposed rules.

The Competitive Bidding Guidelines did not have a separate section providing definitions for key terminology.⁶ The proposed rule as a section, as set forth in the Notice of Proposed Rulemaking, achieves clarity for critical terminology, while at the same time allows for avoidance of needless definitional repetition.

The joint utilities provided written edits with constructive comments and suggested edits.

The joint utilities propose these edits to section (5):

(5) "Emergency" means ~~a human-caused or natural catastrophe resulting from an unusual~~ **any unplanned for** and unexpected event, including but not limited to earthquake, flood, war, **market disruption, change of law**, or a catastrophic energy plant **or infrastructure** failure, that requires an

⁶ UM 1182, Order No. 14-149, April 30, 2014, pg. 19.

electric company to take immediate action **to acquire additional resources**.

The proposed amendments expand the definition of “emergency”. The deletion of terms such as “unusual” and “catastrophe” from the definition and inclusion of examples such as market disruptions and changes of law, which are near everyday occurrences, are inconsistent with the meaning of the term and may limit application of the proposed rules. “Emergency” is commonly defined as “an unforeseen combination of circumstances or the resulting state that calls for immediate action” such as “a pressing need: exigency” or “a usually distressing event or condition that can often be anticipated or prepared for but seldom exactly foreseen”. Deleting the terms “unusual” and “catastrophe” is not consistent with the common definition. The proposed insertion of “unplanned for” is inappropriate for similar reasons, as an emergency is something a utility may plan for (and should not be discouraged from doing so to avoid the need for competitive bidding). It is the exact scope of the emergency and corresponding need that may not be predicted.

Staff does not support the changes related to expanding the definition of emergency besides in the instance of infrastructural failure. Staff does support the joint utilities’ proposed addition to the last sentence. The addition clarifies specifically as to what taking immediate action involves. Taking immediate action entails acquiring additional resources. Staff recommends these changes, based on the joint utilities’ comments:

(5) “Emergency” means a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant **or infrastructure** failure, that requires an electric company to take immediate action **to acquire additional resources**.

The joint utilities propose these edits to section (6):

(6) "independent evaluator" or "IE" refers to a person engaged by an electric company to oversee an RFP process under the rules in this division and who also reports directly to the Commission Staff during that process. **The IE must be independent of the utility and likely potential bidders, and also be experienced and competent to perform all IE functions identified in these Division 089 rules.**

Staff does not support this change. The joint utilities' proposed insertion to the definition of "independent evaluator" adds substantive criteria for the selection of the IE, which is inappropriate for a definition.⁷ The process for selecting an IE, including substantive criteria, is set out in proposed OAR 860-089-0200(3).

The joint utilities recommend deleting the definition of "resource acquisition" in proposed OAR 860-089-0020(11), and adding the following definition:

"Major Resource" means a generation or capacity resource with a duration greater than 5 years and quantities greater than 100 MW.

The definition of "resource acquisition" was intended to identify the moment when the competitive bidding rules apply. The phrase is used for this purpose in proposed OAR 860-089-0010(2). However, the phrase is also used in the proposed rules to refer to the act of taking possession or control over a resource.⁸ The joint utilities are correct that the definition may cause confusion.

The joint utilities' proposed addition of the definition of "major resource" into this rule may be confusing. The Commission refers to major resource acquisitions for the purpose of determining avoided costs for renewable resource qualifying facilities, and

⁷ See Oregon Attorney General's Administrative Law Manual, Appendix B, Guide to Rule Writing at B-3 (July 2014).

⁸ See proposed OAR 860-089-0010(3); 860-089-0100(5), (6); 860-089-0250.

has adopted a 100 MW standard for “major resources” in that context.⁹ Staff recommends a different threshold than 100 MW, therefore the term “major resource” should not be used as short-hand to refer to procurements that are subject to competitive bidding. In addition, Staff finds the term of “major resource” to be somewhat of a misnomer at this point in time. Staff’s approach to setting the coverage threshold is to identify significant investments that will have a substantial impact on customers, in the aggregate or by single resource.

Staff does not support the joint utilities addition of the definition of “major resource” into this rule. Staff does support amending the definition of “resource acquisition” to avoid the confusion the joint utilities outline, as below:

- (11) **“Initiation of a resource acquisition”** refers to a process for the purpose of acquiring energy, capacity or storage that starts with an electric company’s:
- (a) Circulation of a final or draft RFP to third parties; or
 - (b) Communication of an offer or receipt of an offer in a two-party negotiation.

In conclusion, Staff supports the proposed rule language, but recommends the refinements for section (5) and section (11) set forth above.

860-089-0100 – Applicability of Competitive Bidding Requirements

This rule describes the circumstances in which an electric company must comply with the proposed rules. It covers threshold participation issues around the size and type of the resources, aggregation of resources, locational issues, and exceptions.

The proposed rules covering applicability come from the existing Competitive Bidding Guidelines, specifically Guideline 1 (RFP Requirements) and Guideline 2 (Exceptions to

⁹ See In the Matter of Investigation into Determination of Resource Sufficiency, pursuant to Order No. 06-538, Order No. 10-488 at 3, 8 (December 22, 2010).

RFP Requirements).¹⁰ Beyond the guidelines, the proposed rule contains the following changes from the guidelines:

- The minimum level of resource acquisition was lowered from 100 megawatts (MW) and five years' duration in the guidelines to 50 MW and a duration greater than five years in length. This includes aggregated resources and contracts.
- Resources of unspecified size or duration that may result in acquisitions greater than 50 MW and a duration greater than 5 years in length.
- Acquisition of energy storage with capability in excess of 25 megawatt hours (MWh) and a duration greater than 5 years in length.
- Clarification that the acquisition of transmission assets is not covered by these proposed rules.

The Joint Utilities in their written comments offered some constructive changes to the proposed rules in this section. Specifically, the Joint Utilities propose to:

- Limit the applicability to the acquisition or contracting for resources defined previously as a "Major Resource," which would raise the applicability to back to 100 MW level. ¹¹ (Section (1)).
- Establish an exemption for Requests for Information (RFI). (Subsection (1)(b))
- Remove mention of the rules applying to energy storage. (Section (3))
- Add language that states a request for waiver need not be filed when certain exemptions apply. (Section (4)).
- Expanding the transmission asset acquisition exemption to include transmission rights. (Section (6)).

AR 600 was opened to implement the legislature's direction with SB 1547 to the OPUC to adopt rules, "providing for the evaluation of competitive bidding processes that allow

¹⁰ UM 1182, Order No. 14-149, April 30, 2014, pg. 19.

¹¹ See Joint Parties Comments, OAR 860-089-0015 and the proposed definition of a "Major Resource."

for diverse ownership of renewable energy sources that generate qualifying electricity.”¹² Oregon’s electric utilities have already begun to consider more modular, gradual, glide-path type acquisition strategies to meet their increasing RPS requirements. In this sense, it is critical for the State’s procurement rules to reflect this reality, especially if we are to meet the direction to promote diversity of ownership.

Based on recent IRP updates, the overnight cost of capital for utility-scale solar or wind is approximately \$1,500 per kilowatt (kW).¹³ Meaning, a 50 MW facility would cost close to \$75 million.¹⁴

This overnight cost amounts to over 4.2 percent and 6.3 percent of PGE and PAC’s respective revenue requirements in 2017.^{15, 16} While the ratepayer impacts of such an acquisition would of course be spread out over the life of the technology, it is worth noting that a 50 MW acquisition is not a small financial risk.

A near-term capacity deficit of ~ 100 MW could, in theory, be met by two procurements over four years that are not covered by these rules, would not necessarily be competitively bid and would not necessarily receive the benefit of the IE involvement.

Staff would also note the joint utilities object to a threshold below the 80 MW size limit for QF facilities.¹⁷ However QF’s above 10 MW must be allowed to participate in any RFP under current Competitive Bidding Guideline 6. Staff is unclear on why allowing QF’s above 10 MW to bid is not currently an issue at 100 MW but will be when it is lowered to 50 MW. Further, considerations raised by the joint utility comments regarding

¹² SB 1547, as found in ORS 469A.075(4)(d).

¹³ See LC 66, IRP Update, March 8, 2018, page 26, Table 7.

¹⁴ 50 MW * \$1,500/kW = \$75 Million.

¹⁵ PacifiCorp 2017 Revenue Requirement for RPS:

<https://edocs.puc.state.or.us/efdocs/HAQ/re14haq91452.pdf>.

¹⁶ PGE 2017 Revenue Requirement for RPS under UE 319, Order 17-511.

¹⁷ Joint Utilities Rulemaking Comments Attachment 1 at Pg. 4:

<https://edocs.puc.state.or.us/efdocs/HAC/ar600hac162652.pdf>.

applicability to avoided cost calculations Staff believes are outside the scope this rulemaking.

With regards to the joint utilities' proposed language clarifying the exemption for RFIs, Staff is in agreement as long as the RFI is issued to seek market information and an RFP must be issued if a resource is to be acquired. This distinction may best be made in the definition of the term "request for production". Staff is not in agreement with respect to enabling agreements for short-term resources.

With regards to joint utility comments' suggestion to remove the rule applicability to energy storage, Staff would note that SB 1547 explicitly includes the, "...costs related associated energy storage," as part of the RPS.¹⁸ While Staff is open to raising the 25 MWh threshold for applying the proposed rules to an energy storage systems, Staff believes that given energy storage technology's ever decreasing costs and ability to reshape variable energy load profiles to better meet system needs, the applicability of these rules to energy storage technology is crucial for a modernizing grid and transmission system cost-effectively.

Regarding the proposed insertion of "or file a request for waiver" in the text of subsection (4). This addition is unnecessary. We do not assume that every rule applies to everyone, unless a person receives an order waiving the rule. The proposed rule identifies the circumstances in which the competitive bidding rules do not apply. There is no need for the Commission to waive application of a rule that the Commission has already stated does not apply.

Finally, regarding the proposed insertion to add that the competitive bidding rules do not apply to the acquisition of transmission rights, Staff does not support this change at this time. The proposed rules apply to energy and capacity resources and to storage resources that require transmission rights. In both PGE's RFP (UM 1934) and PAC's

¹⁸ SB 1547, Section 11(2)(a), codified at ORS 469A.120(2)(a).

RFP (UM 1845) the Commission signaled that they would like to better understand transmission issues related to resource acquisitions. Therefore, it may be premature to exclude transmission rights from these competitive bidding rules.

In conclusion, Staff's recommendations for OAR 860-089-0100 are that all six sections remain as is, but Staff is supportive of clarifying that certain RFIs are not subject to these rules.

Staff Comments Regarding Proposed OAR 860-089-0200

This proposed rule requires an electric company to engage an independent evaluator. The proposed rule largely codifies Guideline Five of the Competitive Bidding Guidelines, set forth in Order No. 14-149, Appendix A. Both require an IE to be engaged before an RFP is issued, and provide that the process for selecting the IE must allow for stakeholder input, a recommendation from Commission Staff and approval by the Commission. Both the proposed rule and Guideline 5 require that the IE be contracted for and paid by the electric company, and allow for cost recovery in rates. The proposed rule further provides criteria for Staff's recommendation, a requirement that the electric company solicit input regarding the manner in which it intends to solicit proposals, and states that the Commission may determine that engagement of an IE under this rule is not necessary in a specific circumstance.

These provisions allow for a fair and transparent process that is also consistent with the requirements of Senate Bill 1547, now in ORS 469A.070(4)(d) which requires that rules provide for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources.

The joint utilities recommend in written comments that section (6) be deleted:

(6) The electric company's contract with the IE must require that the IE fulfills its duties under the rules in this Division and that the IE confers as necessary with the Commission and Commission Staff on the IE's duties.

This provision is essential to ensuring the competitive bidding process is conducted in an appropriate manner. The Commission does not have jurisdiction over the actions of the independent evaluator as it does over the electric company. The relationship is contractual between the IE and the electric company. It is entirely appropriate for the Commission to direct an electric company to include these provisions in its contract with the IE.

The joint utilities recommend these edits to section (7):

(7) The Commission may determine that engagement of an IE under this rule is not necessary ~~when the electric company's RFP explicitly prohibits the submission of proposals that allow the electric company to own the resource that is the subject of any bid or acquire an ownership interest in the resource at a later date~~ **on a case-by-case basis.**

Staff does not support this change. On a case-by-case basis, a waiver of the IE requirement may be appropriate. The proposed rule, as drafted, however, may encourage a utility to consider whether it is necessary to participate in competitive bidding for a particular resource when it is developing a resource acquisition strategy, given the additional time and costs involved with retaining an IE for a procurement. In this way, the proposed rule may serve the goal of minimizing long-term energy costs and allow the opportunity for diverse ownership of resources.

For the foregoing reasons, Staff supports retaining the proposed rule language, without any changes.

Staff Comments Regarding Proposed OAR 860-089-0250

The proposed rule sets forth the requirements for developing a draft RFP and provides a process for approval of the final draft RFP by the Commission. The proposed rule incorporates Guidelines 6 and 7 of the Competitive Bidding Guidelines, as set forth in Order No. 14-149. Guideline 6 and the proposed rule provide for review of a draft RFP

by the IE and stakeholders. Guideline 7 and the proposed rule both provide criteria for development of the draft RFP, a review process, and a timeframe for Commission review of the final draft RFP once it is filed. Consistent with the review criteria, section (2) requires that the draft RFP reflect the RFP elements, scoring methodology and associated modeling from electric company's Commission-acknowledged IRP. The proposed rule updates this requirement by authorizing the electric company to present an alternative RFP design, scoring or methodology that differs from that proposed in the IRP. The proposed rule provides for additional transparency to stakeholders and bidders during the review process. And it provides for greater flexibility in the RFP approval timeline than is currently provided in Guideline 7.

The joint utilities offer constructive edits to this rule in their written comments. With respect to section (2), they recommend the following addition:

(2) The draft RFP must reflect the RFP elements, scoring methodology and associated modeling described in the Commission-acknowledged IRP. The electric company's draft RFP must reference and adhere to the specific section of the IRP in which RFP design and scoring is described. **To the extent that RFP design and scoring differs from that proposed in the IRP, the electric company must explain and support the different approach taken in the RFP.**

The joint utilities state that this addition adds flexibility to allow for a different scoring or modeling than set forth in the IRP. The proposed rule, in subsection (2)(a), already allows for different methodologies, provided they are presented in a separate filing prior to development of the draft RFP. Staff does not support the joint utilities' proposed change.

The joint utilities propose changes to subsection (2)(a):

(2)(a) If the electric company's Commission-acknowledged IRP does not include a specific section devoted to describing the RFP design, scoring methodology and associated modeling process, the electric company must develop and present ~~in a separate filing with the Commission~~ a proposal for scoring and any associated modeling ~~which must be filed with the Commission before the electric company may prepare the draft RFP.~~ The electric company must consider resource diversity (e.g. with respect to technology, fuel type, resource size, and resource duration) in preparing its proposal. ~~The Commission or an administrative law judge may establish a process for review of the filing.~~

Regarding the proposed deletions, the joint utilities propose removing any process for review of an RFP design, scoring and methodology that was not included in an acknowledged IRP, other than the existing process for review of the draft RFP. The extensive IRP review, comments and Commission acknowledgment process will not benefit review of a draft RFP in that instance. Staff proposed the two-step process to allow for confirmation of an appropriate alternative design and modeling prior to development of an RFP in order to replicate, on a limited scale, the value inherent in the IRP process. Staff does not support removing requirements for review of RFP design, scoring and modeling, limiting review to the draft RFP document.

The joint utilities propose changes to subsection (3)(e):

(3)(e) Description of how the electric company will share information about bid scores, ~~including what information about the bid scores and bid ranking may be provided to bidders~~ and when and how it will be provided;
and

Staff supports retaining the rule language as proposed. The rule increases the transparency of the RFP process for the Commission and for bidders. The joint utilities

assert that providing any information about the bid ranking process will allow a bidder to learn confidential information about other bidders. The rule language itself does not require a utility to share information about bid scores or rankings, it just requires the utility to describe what information may be provided to bidders, and when and how it will be provided.

The joint utilities propose changes to section (4):

(4) An electric company may set a minimum resource size in the draft RFP, ~~but it must allow qualifying facilities that exceed the eligibility cap for standard avoided cost pricing to participate as bidders.~~ **Qualifying facilities that have not yet executed a power purchase agreement may participate in the RFP.**

The rule language is consistent with Guideline 6, of the Competitive Bidding Guidelines. Guideline 6 states, “The utility may set a minimum resource size, but Qualifying Facilities larger than 10 MW must be allowed to participate.”¹⁹ The Commission adopted this language following comments by the Oregon Department of Energy (ODOE), “if an RFP is issued, all resources over 10 MW should be allowed to bid, consistent with Order 05-584 which established that qualifying facilities under 10 MW nameplate are eligible for a standard contract and tariff under the federal Public Utility Regulatory Policy Act of 1978.”²⁰ In adopting this guideline, the Commission stated, “We agree with ODOE with respect to qualifying resources under the Public Utility Regulatory Policy Act, and include language that prohibits utilities from excluding Qualifying Facilities larger than 10 MW from participating.”²¹ The proposed rule does not use the “10 MW” number as the eligibility cap may vary over time, but it is otherwise consistent with

¹⁹ See Order No. 14-149, Appendix A at 2.

²⁰ See Oregon Department of Energy’s Reply Comments on Bidding Guidelines, Docket UM 1182, at 1 (October 21, 2005).

²¹ See Docket UM 1182, Order No. 06-446 at 8.

Commission policy. Staff is not aware of any issues associated with this provision while Guideline 6 has been in effect.

For the foregoing reasons, Staff does not support the proposed changes to Section (4).

The joint utilities propose changes to section (9):

(9) Subject to the provisions of subsections (a) and (b) of this section, the Commission will generally issue a decision approving or disapproving the RFP **within 60 days after the final draft RFP is filed. If the utility is also presenting information about RFP scoring and design that was not included in the utility's Commission-acknowledged IRP, the Commission will generally issue a decision approving or disapproving the RFP** within 100 days after the final draft RFP is filed.

(a) An electric company may request an alternative review period when it files the final draft RFP for approval. If the accompanying request is for an alternative review period shorter than ~~400~~**60** days, the electric company must demonstrate good cause for the alternative review period.

(b) Any person may request an extension of the review period of up to 30 days per request upon a showing of good cause.

Regarding the proposed changes to section (9), these changes are associated with the joint utilities' proposal to limit review of alternate RFP design scoring and modeling not included in a Commission-acknowledged IRP in sections (2) and (3). Staff does not support those changes. Staff supports an increase in the general timeline for review of a final draft RFP from the 60 days provided in the guidelines. Review of the draft terms is essential to the success of the RFP, and Staff finds that an extension of this timeframe will aid the Commission, stakeholders and bidders in their review. The rule, as proposed, also adds flexibility by authorizing an electric company to request an alternative review period, and allowing any person to request an extension up to

30 days for good cause. For these reasons, Staff does not support the joint utilities' proposed changes.

For the foregoing reasons, Staff supports the proposed rule language, without any changes.

Staff Comments on Proposed OAR 860-089-0300—Resource Ownership

Proposed OAR 860-089-0300 sets requirements for addressing resource ownership in the competitive bidding process such that electric company and affiliate bids are placed on the same footing as other bids. It incorporates much of Competitive Bidding Guideline 3 and Guideline 4, as set forth in Order No. 14-149. Beyond Guidelines 3 and 4, the proposed rule provides restrictions based on current utility practices, such that an individual, acting on behalf of the electric utility, may not participate in both 1) the preparation of an RFP, and 2) the development of the RFP or the evaluation or scoring of bids. The proposed rule encourages utilities to make elements secured by the utilities (e.g., site, transmission, or fuel arrangements) available for use in third party bids. The rule also requires that the utility issuing the RFP allow independent power producers optionality in both ownership and contract renewal. These updates provide appropriate clarifications on the issue of resource ownership. And they serve both the statutory goal of allowing for the opportunity for diverse ownership of resources and the underlying goal of the Commission to minimize long-term costs through encouraging utilities to make elements secured by the utilities available to third party bids.

The joint utilities provided written edits with constructive comments and suggested edits. The joint utilities propose these edits to section (1):

(1) An electric company may submit or allow its affiliates to submit bids in response to the electric company's request for proposals. ~~Electric company and affiliate bids must be treated in the same manner as other bids.~~

Staff does not support this change. The joint utilities propose this deletion because benchmark bids are treated differently, in that benchmark bids must be sealed. Storing bids separately is not the same as treating the bids differently in scoring and evaluation, which is what the rule is intended to prevent. There are more detailed provisions for benchmark bids in proposed OAR 860-089-0350.

The joint utilities' written comments initially proposed inserting the term "significantly" to subsection (1)(a) and (1)(b). In the Joint Utilities' Supplemental Rulemaking Comments filed on June 7, 2018, they request extensive revisions to this section that would allow any individual to participate in the preparation of a bid and in the development of the RFP.²²

Staff does not support these changes. Inserting "significantly", would present difficulty in enforcing this rule, though the degree of involvement and respective responsibilities of an individual could be more specifically addressed. Staff does not find such clarifications necessary at this time. More importantly, the extensive edits proposed by the utilities could, over the long-term, undermine the integrity of the RFP development process. The human resources available to the utilities are not so limited they cannot have separate RFP and benchmark teams with appropriate support.

The joint utilities propose these edits to section (2) and (3):

(2) An electric company may propose a benchmark resource in response to its RFP to provide a potential cost-based alternative for customers. The Commission encourages the electric company to make elements of the benchmark resource ~~owned or secured by the electric company~~ **that are utility property the cost of which has been included in customers' rates** (e.g. site, transmission or fuel arrangements) available for use in third-party bids **provided that third party bids fully compensate the electric company's customers for the cost and risk of use such**

²² See <https://edocs.puc.state.or.us/efdocs/HAC/ar600hac11501.pdf>.

elements. In determining whether to make such utility property available to third parties, the electric company may consider safety, reliability, and contractual issues that may militate against such use by third parties of utility property.

(3) If the acquisition may result in ownership of a generation resource by the electric company, the Commission encourages the electric company to make elements secured by the electric company of the generation resource **that are utility property the cost of which has been included in customer rates** (e.g. site, transmission or fuel arrangements) available for use in third-party bids for resources to be owned by the electric company or owned by third parties after construction **provided that third party bids fully compensate the electric company's customers for the cost and risk of use such elements. In determining whether to make such utility property available to third parties, the electric company may consider safety, reliability, and contractual issues that may militate against such use by third parties of utility property.**

Staff does not support these changes. The joint utilities' proposed changes introduce a number of terms that would require definitions, such as "utility property" and "fully compensate". The proposed rule refers to elements "owned or secured by the electric company", which is more specific than utility property. The inclusion of only property that has been added to rate base excludes property recently acquired by a utility for the purposes of preparing a bid. No explanation is provided for the distinction that the proposed changes do not prohibit a utility from proposing to add such property to its rate base at a later time. The remainder of the joint utilities' proposed changes to sections (2) and (3) focus on specific terms for bidding, which may best be reviewed in a draft RFP on a case by case basis

In conclusion, Staff supports the proposed rule language.

Staff Comments on Proposed OAR 860-089-0350—Benchmark Resource Score

Proposed OAR 860-089-0350 sets requirements to prevent the inspection, review or scoring of non-benchmark bids prior to submission of the benchmark bid score. It incorporates Competitive Bidding Guideline 8, as set forth in Order No. 14-149 and requires that the electric company submit any benchmark resource scores to Commission Staff. The proposed rule preserves the integrity of the process by isolating the benchmark scoring process from exposure to information about other bids.

The joint utilities provided written edits with constructive comments and suggested edits.

The joint utilities propose these edits to section (1):

(1) Prior to the ~~opening of bidding on an approved RFP~~ **review and scoring of non-benchmark bids**, the electric company must submit to ~~Commission Staff~~ and the IE for review and comment a detailed score for any benchmark resource with supporting cost information, any transmission arrangements and all other information necessary to score the benchmark resource. The electric company must apply the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids.

(3) Before the IE provides the electric company an opportunity **to evaluate and** score other bids, the electric company must submit the final benchmark resource score developed in consultation with the IE, cost information and other related information shared under this section, either in hard copy in a sealed envelope or a digital copy on electronic media, to the IE ~~and Commission Staff~~.

Staff recognizes, as pointed out by the joint utilities' comment, that the timing of the proposed rule in section (1) may be too restrictive. But, Staff does not support the joint utilities' proposed changes. The intent of the proposed rule is to prevent inspection, review or scoring of non-benchmark bids prior to submission of the benchmark bid

score. The timing of the proposed rule, though consistent with Guideline 8, may be too restrictive. The joint utilities' proposed change, on the other hand, is not specific enough. Staff recommends that section (1) be revised to better define the timing of the proposed rule:

(1) ~~Prior to the opening of bidding on an approved RFP~~ **any inspection, review or scoring**, the electric company must submit to Commission Staff and the IE for review and comment a detailed score for any benchmark resource with supporting cost information, any transmission arrangements and all other information necessary to score the benchmark resource. The electric company must apply the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids.

Staff does not support the joint utilities' proposed deletions in sections (1) and (3) of the requirement to share information with Commission Staff. Under the proposed rules, if the Commission determines that an IE is not necessary, nothing would be submitted for review outside the utility if it is not also provided to Staff. That is a departure from Guideline 8, which requires such information to be submitted to the Commission. At times when an IE is engaged, the requirement to share information directly with Commission Staff will save time in the review process and better allow Staff to assist the Commission in evaluating the competitive bidding process.

In conclusion, Staff supports the proposed rule language, but recommends the refinement for section (1) set forth above.

Staff Comments Regarding Proposed OAR 860-089-0400

Proposed OAR 860-089-0400 sets requirements for bid scoring and evaluation. It incorporates much of Competitive Bidding Guideline 9 and elements from Guideline 10 (a, f). The rule contains updates to conform to current practices, promote transparent, objective bid scoring and provide clarity for bidders as to what the utility system needs are. The rules further provide for additional analyses by the electric company to inform

selection of the shortlist. Staff supports the proposed rule and believes it will put bidders in a better position to develop proposals that meet system needs at the lowest cost possible and that it will allow stakeholders, the Commission, and the utility to better evaluate the results of that process.

The joint utilities offer constructive written comments on the proposed rule. First, the joint utilities propose the following changes to section (1):

(1) The purpose of this rule is to ~~ensure that the electric company engages in a~~ **promote transparency in the** bid-scoring process using objective scoring criteria and metrics.

Staff does not support these changes. The proposal converts the purpose statement to passive voice. The competitive bidding process is conducted by the electric company. The electric company develops the draft RFP, the scoring criteria and metrics. Therefore, the rule is, appropriately, directed at ensuring that the electric company engages in a transparent bid-scoring process.

The joint utilities propose the following changes to subsection (3)(b):

(3)(b) Non-price scores should, when practicable, primarily relate to resource characteristics identified in the electric company's most recent acknowledged IRP Action Plan or IRP Update and may be based on conformance to standard form contracts. **To the extent practicable,** ~~Non-price scoring criteria must~~ **should** be objective, clearly defined, and subject to self- scoring analysis by bidders.

The proposed changes include a change from “must” to “should”. In drafting rules, the word “should” does not indicate whether an action is required or merely authorized, and is therefore not an appropriate term for rulemaking.²³ Adding phrases such as “to the

²³ See Oregon Attorney General's Administrative Law Manual, Appendix B, Guide to Rule Writing at B-8 (July 2014).

extent practicable” make a rule difficult to enforce in a consistent manner as it introduces the opportunity for subjective judgment by the utility.

To the extent any additional flexibility is needed, Staff suggests the following alternative:

(3)(b) Non-price scores ~~must~~ should, when practicable, primarily relate to resource characteristics identified in the electric company's most recent acknowledged IRP Action Plan or IRP Update and may be based on conformance to standard form contracts. **Except as authorized by the Commission,** Non-price scoring criteria must be objective, clearly defined, and subject to self- scoring analysis by bidders.

The joint utilities propose deleting subsection (3)(c):

~~(3)(c) Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements.~~

Regarding the proposed deletion of subsection (3)(c), the joint utilities comment that the language is effectively circular, and will lower the number of bids. On the contrary, Staff is concerned that using minimum bidder requirements as a scoring criterion may artificially inflate the number of viable bids. Staff does not support the proposed deletion.

The joint utilities propose the following deletion from subsection (3)(d):

~~(3)(d) Scoring criteria may not be based on renewal or ownership options, except insofar as these options affect costs, revenues, benefits or prices.~~
Any criteria based on renewal or ownership options must be explained in sufficient detail in the draft RFP to allow for public comment and Commission review of the justification for the proposed criteria.

Staff does not support the proposed deletion. This rule is intended to limit the arbitrary use of incentives for ownership or renewal options, in criteria that does not affect costs, revenues, benefits or prices. Such criteria would not benefit customers.

The joint utilities propose the following changes to subsection (5)(a):

(5)(a) The electric company must use a qualified and independent third-party expert to review site-specific critical performance factors for ~~wind and solar~~**variable** resources on the initial shortlist before modeling the effects of such resources.

Regarding subsection (5)(a), if “wind and solar” are changed to “variable”, the term “variable” should be defined in OAR 869-089-0020. Staff does not support the proposed change without this additional revision.

The joint utilities propose the following changes to subsection (5)(b):

(5)(b) In addition, the electric company must conduct, and consider the results in selecting a final short list, a sensitivity analysis of its bid rankings that demonstrates the degree to which the rankings are sensitive to:

(A) Changes in non-price scores; and

(B) Changes in assumptions used to compare bids or portfolios of bids, such as assumptions used to extend shorter bids for comparison with longer bids, or assumptions used to compare smaller bids or portfolios with larger ones. ~~For example, the electric company may assume that shorter bids will continue to be available with the same characteristics after the bid term rather than adding “generic fill” assumptions to the end of these bids to extend them for comparison with others.~~

Regarding subsection (5)(b), the example in the proposed rules is helpful, particularly to those who engage in competitive bidding in future years, without the benefit of engaging in the informal rule development process. Among stakeholders, there is a valid concern that the generic fill methodology puts shorter term bids at a relative disadvantage and it is a commonly used practice in competitive bidding processes.²⁴ Requiring a sensitivity analysis will better inform the process.

The joint utilities propose the following changes to section (6):

(6) The electric company must ~~provide the IE and Commission Staff with full access to~~**make** its production cost and risk models and sensitivity analyses **available for review by the IE**. ~~When the IE and Commission Staff concur that appropriate protections for protected information are in place, the electric company must provide access to such information to non-bidding interested parties that request the information in the final short list acknowledgment proceeding.~~

Regarding subsection (6), the joint utilities propose scaling back access to production cost and risk models and sensitivity analyses in three ways. First, the joint utilities propose only making such information available for *review* by the IE. Staff finds that the IE may need to make use of the models and analyses to perform its duties, not just review the utility's work. In addition, the IE may not be located near the utility, which creates an accessibility issue under the proposed changes that may in additional expense and delay associated with the IE's travel.

Second, the joint utilities propose no access to Staff, which will prevent Staff from effectively monitoring the process, including the IE's work, and assisting the Commission.

²⁴ See NIPCC comments at <https://edocs.puc.state.or.us/efdocs/HAC/ar600hac164636.pdf>.

Third, the joint utilities propose no access to any other non-bidding interested parties. The process for short-list acknowledgment was expanded under Order No. 14-149 to promote transparency and allow parties and bidders to raise concerns with the bidding process. Staff believes any concerns about proprietary models can be appropriately managed by the utility that chooses to acquire such models, without the need for modification to this rule.

For the foregoing reasons, Staff supports retaining the proposed rule language, with the recommended changes to subsection (3)(b) provided above.

Staff Comments on Proposed OAR 860-089-0450—Independent Evaluator Duties

Proposed OAR 860-089-0450 sets forth requirements to ensure that the IE oversee the competitive bidding process to ensure that it is conducted fairly, transparently, and properly. It incorporates much of Competitive Bidding Guideline 5, Guideline 10, Guideline 11, and Guideline 13, as set forth in Order No. 14-149. Beyond the Competitive Bidding Guidelines, the proposed rules contains updates to better enable the IE and the Commission to document the process and demonstrate the manner in which it is conducted. First, the proposed rule requires that the IE must provide Commission Staff with notes of all communication between the IE and the electric company and any related third party.

Second, the proposed rule provides for additional processes in the case of an RFP allowing for benchmark or affiliate ownership, to best identify the scope of the bids the IE will independently score. Third, before the electric company requests acknowledgement of the final short list, the IE must review the electric company's sensitivity analysis of the bid rankings and provide a written assessment to Commission Staff. Fourth, prior to the IE and electric company reconciling their scores for a benchmark resource, they must both report their scores to Commission Staff. And finally, in the IE's closing report an evaluation of competitive bidding processes for the

goals of selecting for least cost, least risk resources and allowing for the opportunity for diverse ownership is required.

The joint utilities provided written edits with constructive comments and suggested edits.

The joint utilities propose these edits to section (5):

(5) If the RFP allows bidding by the issuing electric company or an affiliate of the company, or includes resource ownership options for the electric company, the IE must independently score the affiliate bids and bids with ownership characteristics or options, if any, and all or a sample of the remaining bids as the IE, in consultation with Commission Staff, finds appropriate to determine whether the company's selections for the initial and final shortlists are reasonable. When the IE does not score all bids, and while a request for acknowledgment of a final shortlist is pending before the Commission, as provided in OAR 860-089-0500, a participant in the acknowledgment proceeding may request that the Commission direct the IE to score all remaining bids or a broader sample. **The Commission may grant such a request upon a determination that good cause exists to require the IE to score all remaining bids or a broader sample.**

Staff does not support the joint utilities' proposed additions. Staff sees no need to limit the Commission's discretion as to whether and when it may request a broader score by the IE. As to the joint utilities' concern that the proposed rule will promote baseless requests by a participant²⁵, Staff recommends these changes:

(5) If the RFP allows bidding by the issuing electric company or an affiliate of the company, or includes resource ownership options for the electric company, the IE must independently score the affiliate bids and bids with ownership characteristics or options, if any, and all or a sample of the

²⁵ See Attachment 1 to Joint Utilities' Rulemaking Comments at Pg. 15: <https://edocs.puc.state.or.us/efdocs/HAC/ar600hac162652.pdf>.

remaining bids as the IE, in consultation with Commission Staff, finds appropriate to determine whether the company's selections for the initial and final shortlists are reasonable. When the IE does not score all bids, and while a request for acknowledgment of a final shortlist is pending before the Commission, as provided in OAR 860-089-0500, a participant in the acknowledgment proceeding may request, **for good cause**, that the Commission direct the IE to score all remaining bids or a broader sample.

The joint utilities propose these edits to section (6):

(6) The IE must also evaluate the unique risks and advantages associated with any company-owned resources (including but not limited to the electric company's benchmark), and may apply the same evaluation to third-party bids **to the extent applicable**, including an evaluation of the following issues:

- (a) Construction cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs);
- (b) Reasonableness of forced outage rates;
- (c) End effect values;
- (d) Environmental emissions costs;
- (e) Reasonableness of operation and maintenance costs;
- (f) Adequacy of capital additions costs;
- (g) Reasonableness of performance assumptions for output, heat rate, and power curve; and
- (h) Specificity of construction schedules or risk of construction delays.

Staff does not support this insertion as it appears redundant of the permissive term "may" in the same sentence.

The joint utilities propose these edits to section (7):

(7) The IE must review the reasonableness of any score submitted by the electric company for a benchmark resource. Once the electric company and the IE have both scored and evaluated the competing bids and any benchmark resource, the IE and the electric company must compare results and attempt to reconcile and resolve any scoring differences. If the electric company and IE are unable to do so, the IE must explain the differences in its closing report to the Commission. ~~The electric company and the IE must both report their scores to Commission Staff before any reconciliation.~~

Staff does not support the joint utility deletions. The intention of the proposed rule is to increase transparency in the bidding process. Without informing Staff of such information, Staff's ability to monitor the process and assist the Commission is limited.

The joint utilities propose these edits to section (9):

(9) The IE must prepare a closing report for the Commission after the electric company has selected its final shortlist. The IE's closing report must include an evaluation of the applicable competitive bidding processes in selecting for the least-cost, least-risk acquisition of resources ~~and allowing for the opportunity for diverse ownership.~~

Staff does not support this deletion. The joint utilities state in written comments that the IE cannot provide a meaningful evaluation without additional criteria or metrics to apply.²⁶ Staff does not agree. The IE is a professional, with the capacity to address the issue in its closing report.

For the foregoing reasons, Staff supports retaining the proposed rule language, while also proposing language for section (5) based on the joint utilities' concerns.

²⁶ See Attachment 1 to Joint Utilities' Rulemaking Comments Pg. 16: <https://edocs.puc.state.or.us/efdocs/HAC/ar600hac162652.pdf>.

Staff Comments on Proposed OAR 860-089-0500—Final Short List

Acknowledgement and Result Publication

Proposed OAR 860-089-0500 sets forth requirements for what an electric utility's request for short list acknowledgment must include, as well to what legal force and effect Commission acknowledgement of an electric company final short list entails. It incorporates a portion of Guideline 11 and much of Competitive Bidding Guideline 13, as set forth in Order No. 14-149. The proposed rule specifies the minimum components of the request for acknowledgement that must be included by the electric company: the IE closing report, the final shortlist of responsive bids, all sensitivity analyses, and a discussion of the consistency between the final shortlist and the company's last acknowledged IRP. The proposed rule requires a non-confidential filing providing the average bid score and the average price of a resource on its final shortlist. The electric company must also provide information to a bidder about the bidder's score following all contract execution from an RFP, or in the even the RFP was cancelled.

The proposed rule provides appropriate clarity for the electric company's final short list acknowledgment process. The additional language requiring result publication and electric company response to bidders encourages transparency of the competitive bidding processes, and better inform bidders responding to future RFPs. Improvements on the level of transparency in competitive bidding will serve the statutory goal of allowing for the opportunity for diverse ownership of resources and the underlying goal of the Commission to minimize long-term costs.

The joint utilities provided written edits with constructive comments and suggested edits. The joint utilities propose these edits to section (3):

- (3) The Commission will ~~generally~~ issue a decision on the request for acknowledgment within 60 days of receipt of the electric company's filing.

Staff does not support joint utilities' proposed deletions. Removing the qualifier of "generally" from this section limits the Commission's discretion to act. Staff sees no

need for the Commission to limit its discretion in this manner. The joint utilities do not cite any instances in which the Commission has not reviewed a shortlist acknowledgment request in a manner appropriate to the circumstances.

The joint utilities propose deleting section (4):

~~(4) The electric company must make a non-confidential filing in the RFP docket providing the average bid score and the average price of a resource on its final shortlist.~~

Staff does not support joint utilities' proposed deletion. The joint utilities equate disclosure of average bids and average prices with specific bids and specific prices. Staff supports the proposed rule to improve transparency and promote competition, which generally leads to reduced prices for customers. However, it is possible a small pool of bids may make it difficult to protect specific bids from disclosure. Staff recommends the following language:

(4) The electric company must make a non-confidential filing in the RFP docket providing the average bid score and the average price of a resource on its final shortlist. **In the event a final shortlist consist of one or two bids, Commission may confirm whether or not and the manner in which this disclosure must be filed with its acknowledgment decision.**

The joint utilities propose these edits to section (5):

(5) Following execution of all contracts resulting from an RFP or cancellation of the RFP, the electric company must provide ~~information~~**feedback**, on request, to a bidder about the bidder's bid score, **which does not compromise other bidder's scores or bid information.**

Staff does not support the edits. The joint utilities' proposed change of "feedback" replacing "information" may be limiting. Feedback is commonly defined as the transmission of evaluative or corrective information. A bidder may have more general questions, which would not be included in feedback. For this reason, the proposed term, "information" is appropriately general. The joint utilities further propose a clarification that bidder information does not compromise other bidders' scores or information. The rule requires information regarding a bidder to be shared with a bidder. Clarification is not necessary.

In conclusion, Staff supports the proposed rule language, but recommends the refinement for section (4) set forth above.

Staff Comments on Proposed OAR 860-089-0550—Protected Information

Proposed OAR 860-089-0550 defines the requirements and process for an electric company to request a protective order to make available protected information that it is required to be shared. It incorporates much of Competitive Bidding Guideline 12, as set forth in Order No. 14-149. Consistent with Guideline 12, the proposed rule states that information shared under the terms of a protective order may be used in RFP review and approval, final shortlist acknowledgement and cost recovery proceedings.

The joint utilities provided written edits with constructive comments and suggested edits. The joint utilities propose this edit:

The electric company may request a protective order be issued under OAR 860-001-0080 in order to make available protected information required to be shared under this Division. Such protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any benchmark resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, Commission Staff, and the IE ~~and non-bidding parties~~, as appropriate under the terms of the protective

order. Information shared under the terms of a protective order issued under this rule may be used in RFP review and approval, final shortlist acknowledgement and cost-recovery proceedings.

Staff does not support the joint utilities' edit. The joint utilities' proposed deletion would prohibit non-bidding parties from receiving protected information. Such a result goes beyond what their comments suggest.²⁷ Such a restriction would be a step backward from Order No. 14-149²⁸ and severely limit the transparency of the process. As set forth in the proposed rule, the utility may request a protective order that restricts access in appropriate circumstances. Access would be as appropriate under the terms of the protected order.

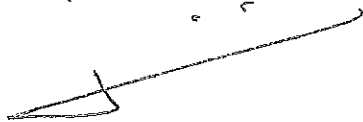
In conclusion, Staff supports retaining the proposed rule language, without any changes.

III. Conclusion

For the foregoing reasons, Staff respectfully requests that the proposed permanent rules in Docket AR 600 be adopted as proposed with the revisions requested in Staff Final comments herein.

This concludes Staff's Final Comments.

Dated at Salem, Oregon, this 15th of June 2018.



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²⁷ See Attachment 1 to Joint Utilities' Rulemaking Comments at Pg. 18:
<https://edocs.puc.state.or.us/efdocs/HAC/ar600hac162652.pdf>.

²⁸ UM 1182, Order No. 14-149, April 30, 2014, pg. 19.