

February 26, 2018

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

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

Attention Filing Center:

Enclosed in the above-referenced docket is an electronic copy of the Joint Utilities' Reply Comments on Policy Issues.

Please contact this office with any questions.

Very truly yours,



Alisha Till
Legal Assistant

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 600

In the Matter of:

Rulemaking Regarding Allowances for
Diverse Ownership of Renewable Energy
Resources.

JOINT UTILITIES' REPLY COMMENTS ON
POLICY ISSUES

I. INTRODUCTION

1 Portland General Electric Company (PGE), PacifiCorp d/b/a Pacific Power (PacifiCorp),
2 and Idaho Power Company (Idaho Power) (collectively, Joint Utilities) submit these reply
3 comments to the Public Utility Commission of Oregon (Commission) in accordance with
4 Administrative Law Judge (ALJ) Grant's January 25, 2018 Notice and ALJ Moser's February 20,
5 2018 Ruling.

6 On February 14, 2018, the Joint Utilities, Staff, Renewable Northwest, Industrial
7 Customers of Northwest Utilities (ICNU), and the Northwest and Intermountain Power
8 Producers Coalition (NIPPC) submitted opening comments, and the Oregon Citizens' Utility
9 Board submitted opening comments two days later, on February 16, 2018. Through these
10 comments, the parties have presented the Commission with a stark choice about how the
11 Commission will fulfill the mandate in Senate Bill (SB) 1547 to adopt rules providing for the
12 evaluation of competitive bidding processes *that allow for* diverse ownership.¹ The
13 Commission can fulfill the legislative direction by adopting equitable rules that make competitive
14 bidding more transparent, as advocated by the Joint Utilities. Or the Commission can attempt to

¹ See 2016 Or. Laws, ch. 28, sec. 6, § 4(d) (amending ORS 469A.075 and requiring the Commission to adopt rules “[p]roviding for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity”).

1 combat a perceived utility self-build bias by adopting rules that make the competitive bidding
2 process so onerous and expensive for a utility-owned resource that the playing field is tilted in
3 favor of the independent power producers (IPPs), as recommended by Staff and intervenors.
4 The Joint Utilities urge the Commission to focus this proceeding on adopting evenhanded rules
5 that make the competitive bidding process more transparent, which will improve confidence in
6 the process—among bidders, the Commission, utilities, and stakeholders alike—and serve the
7 critical purpose of aiding in the selection of the least cost, least risk resource.

II. DISCUSSION

A. **The fundamental goal of competitive bidding is to acquire the least cost/least risk resource, not to avoid self-build bias.**

8 The primary purpose of the Commission’s competitive bidding framework is—and should
9 remain—ensuring that utilities acquire least cost/least risk resources to meet customer needs.
10 In developing and revising its competitive bidding guidelines (Guidelines), the Commission has
11 addressed a perceived utility self-build bias, but mitigating perceived bias has never been the
12 principal purpose of the Guidelines. Staff, CUB, Renewable Northwest and NIPPC, however, all
13 attempt to shift focus away from the overarching least cost/least risk goal, and their proposals
14 suggest giving primacy to protecting against a perceived utility self-build bias—even if doing so
15 may result in reduced competition and higher cost for customers.² Renewable Northwest goes

² Staff’s Opening Comments at 2 (“Staff believes that one of, if not the primary, reasons for proscribed competitive bidding requirements is the protection against any potential bias on behalf of an electric company towards utility-owned resource proposals.”); Renewable Northwest’s Opening Comments at 2 (“In our view, the existing competitive bidding guidelines and the Proposed Rules being contemplated in this rulemaking are primarily—but not solely—intended to address that bias in favor of utility-owned resources.”); CUB’s Opening Comments at 1 (“It is CUB’s understanding that the primary purpose of this rulemaking is to address a utility bias towards acquiring utility owned resources which is entrenched in the competitive bidding process.”); NIPPC’s Opening Comments at 4 (“In large part, the purpose and need for competitive bidding rules stems from the utilities’ bias to own resources.”).

1 even farther, claiming that the avoidance of utility bias is the primary purpose of the rules to be
2 adopted in this docket.³

3 The Joint Utilities fundamentally disagree with this position and dispute any contention
4 that guarding against self-build bias is an end in itself.⁴ While the Joint Utilities recognize that
5 the Commission has sought to adopt competitive bidding processes that will mitigate a
6 perceived self-build bias, the end goal of these efforts has been to ensure a process that will
7 result in the lowest cost resource.⁵ This goal is consistent with the Commission’s longstanding
8 and definitive policy of developing Guidelines that will facilitate the procurement of least-cost,
9 least-risk resources for the benefit of customers.⁶ Thus, as previously recognized by Staff, “**the**
10 **primary purpose of competitive bidding is not avoiding self-build bias” but rather “the**
11 **primary purpose of competitive bidding is identification of the resources with the best**
12 **combination of cost and risk.”**⁷ That goal is best achieved by adopting rules that establish
13 and ensure a process that is non-discriminatory, fair and transparent.

³ Renewable Northwest’s Opening Comments at 2.

⁴ The Joint Utilities also note that in many cases the lowest cost option is the utility build option. For example, when Idaho Power evaluated the results from its 2008 RFP for the Langley Gulch Power Plant, the next lowest cost bid exceeded Idaho Power’s benchmark by \$108 million. *In the Matter of Idaho Power Co. Gen. Rate Revision Application for Authority to include the Langley Power Plant Investment in Rate Base*, Docket No. UE 248, Direct Testimony of Lisa Grow, Idaho Power/200, Grow/7 (Mar. 9, 2012). Though the RFP did not strictly follow the Guidelines, the RFP resulted in the approximately 20 bidders submitting bids.

⁵ *In the Matter of Pub. Util. Comm’n of Or. an 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) (“We want to investigate whether these changes might help further ensure that the utility self-build bias does not result in the acquisition of higher cost utility-owned resources.”).

⁶ *In the Matter of an Investigation into Competitive Bidding by Investor-Owned Electric Utility Companies*, Docket No. UM 316, Order No. 91-1383 at 7 (Oct. 18, 1991) (“The purpose of Commission involvement in competitive bidding is to establish a fair bidding process and to determine whether a proposed project is consistent with the soliciting utility’s least-cost plan and complies with the bidding guidelines established by the Commission.”); *In the Matter of Pub. Util. Comm’n of Or. Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 14-149 at 16 (Apr. 30, 2014) (rejecting proposal for PPA-only RFP because it was “contrary to the goal underlying the IRP process that utilities obtain resources that are least risk and cost to ratepayers”).

⁷ *In the Matter of Troutdale Energy Center LLC*, Docket No. DR 46, Order No. 13-346, App. A at 14 (Sept. 20, 2013) (emphasis added).

1 The Commission has promoted fairness and transparency in the bidding process over
2 time through incremental changes to the Guidelines.⁸ For example in the most recent update to
3 the Guidelines, the Commission adopted a more granular analytical framework for comparing
4 the acquisition of a utility-owned resource to purchasing power from an IPP by explicitly
5 directing the Independent Evaluator (IE) to consider specific risk items for a utility-developed
6 resource.⁹ The Commission also adopted a requirement that the utilities seek acknowledgment
7 of their final shortlist of bidders,¹⁰ which it noted would improve transparency and provide a
8 more streamlined and defined process for bidders.¹¹ The most recent update to the Guidelines
9 was completed in 2014,¹² and to date, only one RFP has been completed under the current
10 Guidelines.¹³

11 Finally, the legislative mandate in SB 1547 requires the Commission to adopt rules that
12 *allow for* diverse ownership, but does not direct “diverse” resource procurement regardless of
13 cost. This mandate does not conflict with the fundamental purpose of competitive bidding—to

⁸ See Order No. 14-149.

⁹ *Id.* at 1-3, App. A at 4 (“the IE will evaluate the unique risks and advantages associated with the Benchmark Resource (if used), including an evaluation of the following issues: 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); reasonableness of forced outage rates; end effect values; environmental emissions costs; reasonableness of operation and maintenance costs; adequacy of capital additions costs; reasonableness of performance assumptions for output, heat rate, and power curve; and specificity of construction schedules or risk of construction delays.”)

¹⁰ Prior to Order No. 14-149, acknowledgement of the shortlist was discretionary. *In the Matter of an Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 06-446 at 14-15 (Aug. 10, 2006).

¹¹ Order No. 14-149 at 14.

¹² *Id.* at 1-2.

¹³ See, e.g., *In the Matter of PacifiCorp, dba Pac. Power Request for Proposals*, Docket No. UM 1845. It is worth noting that the final shortlist emerging from that proceeding included 200 MW of capacity from an independent power producer through a PPA. *In the Matter of PacifiCorp, dba Pac. Power Request for Proposals*, Docket No. UM 1845, PacifiCorp’s Request for Acknowledgement of Final Shortlist of Bidders in 2017R Request for Proposals at 19 (Feb. 16, 2018). Additionally, in PGE’s recent bilateral negotiations, all of the resources that PGE selected were PPAs (totaling 300 MW in capacity), even though PGE had also considered owned resources in the early phases of its solicitation. Although PGE requested a waiver of the Guidelines for its solicitation, PGE followed many of the Guidelines in its solicitation and negotiation process. Thus, as the Commission considers changes to the Guidelines in this proceeding, it should take note that in the only RFP conducted under the current Guidelines, a non-utility owned resource was selected to fulfill a portion of the capacity needs, suggesting that the current Guidelines do in fact allow for diverse ownership.

1 acquire least-cost, least-risk resources—and the Commission should not implement rules to
2 implement SB 1547 that would potentially undermine that purpose and reduce competition.
3 Thus, the Commission should carefully consider the potential cost implications associated with
4 these important policy decisions. While certain proposals may appear to be cost-neutral, they in
5 fact would create significant financial obstacles for a utility-owned project and place such
6 projects on unequal footing in comparison with an IPP project. For these reasons, the Joint
7 Utilities urge the Commission to continue to focus on adopting rules that promote fairness and
8 transparency in the process, to allow least-cost, least-risk resource procurement for the benefit
9 of utility customers.

B. The competitive bidding rules should be applied even-handedly to all RFPs, regardless of ownership structure.

10 In their opening comments, Staff, Renewable Northwest, CUB, ICNU, and NIPPC
11 indicate that exemptions from certain competitive bidding requirements are appropriate for a
12 resource solicitation in which utility ownership is prohibited.¹⁴ The Joint Utilities object to this
13 approach, which would create a chilling effect on utility participation in competitive solicitations.
14 Establishing different treatment for solicitations based on ownership structure will result in
15 procurement processes that are less competitive and therefore less likely to identify the least
16 cost/least risk resource.

17 Staff and NIPPC claim that, by allowing for exemptions for PPA-only solicitations, the
18 Draft Rules do not discourage or prohibit utility ownership.¹⁵ Indeed, Staff claims that the Draft
19 Rules “do not require or express a preference on whether or not this type of exemption should
20 be pursued, nor do they indicate whether or not a utility should seek utility-owned capacity or

¹⁴ Staff’s Opening Comments at 3; Renewable Northwest’s Opening Comments at 2; CUB’s Opening Comments at 2; ICNU’s Opening Comments at 1-2; NIPPC’s Opening Comments at 3.

¹⁵ Staff’s Opening Comments at 3 (“nothing in the draft proposed rules prohibits or discourages an electric company from developing an RFP that allowed for a contemplated utility ownership of resources.”); NIPPC’s Opening Comments at 8 (“Allowing certain exemptions does not mean that the Commission’s competitive bidding rules would be anti-utility ownership.”).

1 energy resources.”¹⁶ These parties ignore the practical impacts of the differing treatment. For
2 example, under the Draft Rules, an RFP that includes a utility ownership option would be
3 significantly more expensive and burdensome than a PPA-only RFP.¹⁷ NIPPC even goes so far
4 as to suggest that the burden will be shifted to the utility to demonstrate that the additional time
5 and expense of including a utility ownership option in an RFP is justified.¹⁸ Thus, by imposing
6 additional financial and administrative burdens on RFPs that allow for utility ownership, the Draft
7 Rules will, either intentionally or unintentionally, have the effect of discouraging utility
8 ownership—to the potential detriment of utility customers who may bear excessive costs due to
9 more limited resource options.

10 NIPPC points to two examples where a utility has requested a waiver or issued an RFP
11 outside of the Guidelines—PGE’s request for waiver to allow bilateral negotiations in Docket No.
12 UM 1892, and PacifiCorp’s recent solar RFP—to support its conclusion that strict adherence to
13 the Guidelines is unnecessary if utility ownership is prohibited.¹⁹ NIPPC argues that because
14 those two examples did not include an ownership option, different treatment is appropriate in
15 such solicitations. At least in the case of PGE’s bilateral negotiations, the premise of NIPPC’s
16 argument is wrong, because PGE’s solicitation *did* include ownership options. More
17 importantly, this argument ignores the fact that, in these cases, PGE and PacifiCorp determined
18 that strict adherence to the Guidelines was not feasible because of time limitations—not based
19 on a conviction that the Guidelines were unnecessary because utility ownership was prohibited.
20 Furthermore, if the circumstances of the RFP are so unique or time-sensitive that it appears

¹⁶ Staff’s Opening Comments at 3.

¹⁷ Under the Draft Rules, an RFP with a utility ownership option would be considerably more burdensome and expensive than a PPA-only RFP because of the required IE participation and expanded role for the IE, including independent bid review and scoring. *See In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources – Competitive Bidding Guidelines*, Docket No. AR 600, PGE’s Comments on the Staff Report at 8 (Jan. 16, 2018).

¹⁸ NIPPC’s Opening Comments at 8.

¹⁹ NIPPC’s Opening Comments at 4.

1 appropriate to forgo some or all of the competitive bidding rules, the Draft Rules contemplate
2 that a waiver or exception from the rules may be available.²⁰

3 ICNU and NIPPC make several specific recommendations for different treatment of a
4 PPA-only RFP, asserting that certain RFP requirements may not be appropriate if no utility
5 ownership option is included.²¹ The Joint Utilities disagree with the exemptions proposed by
6 ICNU and NIPPC. In any RFP—even if it is a PPA-only RFP—there will be bidders who will be
7 disappointed with the process and who will claim that the process was unfair. Ensuring that the
8 RFP includes elements that objectively demonstrate fair and evenhanded treatment of bids—
9 such as bid blinding or independent evaluation of site performance factors—can ensure bidder
10 confidence in the process and promote robust bidder participation, and thus provide value for
11 the utility, bidders, and customers.

C. An IE is valuable in all RFPs, regardless of ownership structure.

12 In the Joint Utilities' experience, an IE adds considerable value to any RFP, regardless
13 of the ownership structure of the entities advancing proposals. The IE typically brings significant
14 expertise in competitive bidding procedures on a national, regional and Oregon-specific basis,
15 and can therefore assist the utility in setting reasonable expectations and parameters. Early on
16 in the process, the IE provides useful context to help inform RFP design and threshold
17 requirements. Later in the process, the IE may provide a cross-check of the utility's bid scoring.

²⁰ Draft Rules, OAR 860-0XX-0010(2) (general waiver); OAR 860-0XX-0100(4) (compliance with rules not required in for emergency, time-limited opportunity, or alternative acquisition method acknowledged by the Commission in the company's IRP).

²¹ For example, ICNU indicates that for RFPs that prohibit utility ownership, no IE should be required and a shortened RFP review period may be appropriate—100 days if utility ownership option included; 60 days if utility ownership is prohibited. ICNU's Opening Comments at 2. ICNU also questions whether it is necessary to require a "third-party assessment of 'site specific critical performance factors,' such as wind and solar potential, when an RFP does not contain a self build option" because the utilities should be able to perform such assessments with in-house experts. ICNU's Opening Comments at 3. NIPPC recommends a broad exemption for bilateral contract negotiations, and also states that "[c]ertain 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." NIPPC's Opening Comments at 6, 11.

1 Ultimately, the IE helps to instill bidder confidence in the fairness of the process thereby
2 encouraging participation of the greatest number and range of offers—which is critical to the
3 utility’s ability to select the resource that is least cost/least risk. Indeed, Staff recognizes that
4 “the engagement of an IE could or likely results in a net savings for customers, due to improved
5 RFPs that increase competitiveness and result in lower bids.”²² The Joint Utilities agree, and
6 note that the potential for such savings, coupled with the benefits that the IE provides
7 throughout the RFP process justify the consistent use of an IE in all RFPs, regardless of
8 ownership structure.

9 Staff, Renewable Northwest, ICNU, and NIPPC all agree with the Joint Utilities’ view that
10 the IE adds value to an RFP.²³ Yet, these same parties conclude that because the participation
11 of an IE is so costly, it should not be required in RFPs where utility ownership is prohibited.²⁴
12 This position is, paradoxically, created by stakeholders’ own proposals. In its Draft Rules,
13 Staff—supported by Renewable Northwest, NIPPC and ICNU—proposes changes to the current
14 procedures that serve to broaden and lengthen the competitive bidding process.²⁵ Taken
15 together, these proposals would create a process that is time and resource-intensive, and
16 extraordinarily expensive.²⁶ Then, having advocated for this exhaustive (and exhausting)
17 process, these same stakeholders argue that, while it would be *helpful* to apply it to all resource
18 acquisitions, it is just too costly to do so for RFPs that prohibit utility ownership. In other words,

²² Staff’s Opening Comments at 4, n.9 (staff also notes that it is difficult to specifically quantify the “savings” in advance).

²³ Joint Utilities’ Opening Comments at 5-6; Staff’s Opening Comments at 4 (“in an ideal world Staff, the Commission, and electric companies would have the support of an IE on every RFP”); Renewable Northwest’s Opening Comments at 2; ICNU’s Opening Comments at 5; NIPPC’s Opening Comments at 8-9.

²⁴ Staff’s Opening Comments at 4; Renewable Northwest’s Opening Comments at 3; ICNU’s Opening Comments at 5; NIPPC’s Opening Comments at 9-10.

²⁵ The Joint Utilities expect that the overall duration for the competitive bidding process will be extended to approximately 18-22 months.

²⁶ See, e.g., Draft Rules, OAR 860-0XX-0450(5) (requiring that the IE independently score all bids if affiliate or utility ownership is an option, whereas the existing Guidelines require independent scoring for only a sample of bids; Draft Rules, OAR 860-0XX-0200(2) and (3) (adding additional process steps for IE selection); Draft Rules, OAR 860-0XX-0250(2) (adding a new docketed process between the IRP and the RFP that will significantly extend an already lengthy planning and procurement process).

1 stakeholders have manufactured the problem, and propose to solve it through unequal
2 treatment of RFPs where utility ownership is a possibility. The Joint Utilities recommend that
3 the Commission take a step back and consider whether there may be ways to avoid lengthening
4 the competitive bidding process, streamline the role of the IE, and reign in IE costs, instead of
5 applying the process in an unequal manner.

D. The Commission cannot legally compel utilities to offer their owned sites or resources to third-party bidders, and the Commission should not require an explanation if the utility declines to do so.

1. *The Commission has no authority to compel a utility to offer its property to third-party bidders.*

6 As explained in the Joint Utilities' opening comments, the legislature has not granted the
7 Commission authority to compel a utility to offer its property to a third-party bidder.²⁷ CUB
8 agrees that the proposition is "legally dubious," and no party has provided any legal precedent
9 suggesting that the Commission may have such power.²⁸

10 Staff has surprisingly departed (without any legal analysis or other explanation) from its
11 position in docket UM 1182, where it had deferred to the Oregon Department of Justice's
12 determination that "there are legal impediments to implementing" a regime where utilities are
13 compelled to make their property available to IPPs.²⁹ Indeed, the Commission has
14 unambiguously recognized the limits of its authority on this issue.³⁰ NIPPC urges the
15 Commission to revisit its prior decisions, expressing hope that the Commission's "views on its
16 own authority here may have evolved since 2006" and suggesting that perhaps the legal basis

²⁷ Joint Utilities' Opening Comments at 6-10.

²⁸ CUB's Opening Comments at 2; Staff's Opening Comments at 5 ("there may be legal implications to requiring that utility-owned property be made available to third parties"); NIPPC's Opening Comments at 13-14 (noting references to limits of Commission's legal authority in Order No. 06-446); ICNU's Opening Comments at 6 (taking no position).

²⁹ *In the Matter of an Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Staff's Reply Comments at 6-7 (Oct. 21, 2005).

³⁰ Order No. 06-446 at 5-6 (rejecting proposal to mandate third party access to benchmark resource sites).

1 for the Commission's concerns may no longer be relevant.³¹ Yet the only support NIPPC
2 provides for this request is a case in which the Commission declined to adopt a proposal that
3 PGE be required to allow third parties to submit bids for projects at the utility-owned Port
4 Westward site,³² and the Joint Utilities are unaware of any change in law that would cause the
5 Commission to depart from its previous statements regarding the limits of its legal authority.

2. *There are good reasons why a utility may not offer its site, and accordingly discretion about whether to offer the site must remain with the utility.*

6 Despite the Commission's lack of authority to compel a utility to offer its site, Staff states
7 that no party has presented a public policy rationale for limiting the use of utility-owned sites,
8 and accordingly Staff recommends that "all utility-owned sites utilized for benchmark resources
9 or utility-owned proposals be made available to other bidders."³³ Not only is this position
10 inconsistent with the Commission's and Staff's positions in the past, it ignores the very real legal
11 and practical impediments that utilities must consider before agreeing to make their property
12 available to third-parties. For instance, a utility might propose to build a benchmark resource on
13 a utility-owned site where other utility facilities are located. In this case the utility may have
14 legitimate operational or security concerns about allowing third parties to construct facilities in
15 that location. Or a utility might propose to use facilities in its benchmark bid that it cannot make
16 available to third-parties for contractual or other legal reasons. Thus, Staff's proposal is simply
17 not feasible.

18 Additionally, the Joint Utilities have significant concern about the proper valuation of a
19 site. Assuming the Commission had the authority of eminent domain, and could condemn land,
20 the value assigned in a condemnation proceeding may not reflect the value of the land to the
21 utility—and would likely not reflect the fact that the investment by the utility has been treated as

³¹ NIPPC's Opening Comments at 14.

³² NIPPC's Opening Comments at 14 (*citing In the Matter of Portland Gen. Elec. Co.*, Docket No. UM 1535, Order No. 11-371 at 6 (Sep. 27, 2011)).

³³ Staff's Opening Comments at 5.

1 plant held for future use, paid for by shareholders and with no return on the investment.
2 Allowing third parties access to such sites could create a disincentive for utilities to make
3 otherwise prudent investments in land for future development.

4 NIPPC argues that utility-owned facilities used in benchmark bids should be made
5 available to third-party bidders because such utility assets have been funded by customers.³⁴
6 Aside from the lack of any legal basis for this position, it is based on a flawed assumption. As
7 NIPPC well knows, utility property can be included in rates only after it is used and useful.
8 Assuming the property intended to be used for a benchmark resource is not already being used
9 to provide utility service, it would not be paid for by utility customers.³⁵

10 Staff also suggests that allowing access to utility-owned sites will improve competition,
11 resulting in more bids, better terms, and lower prices.³⁶ Setting aside the fact the utility may
12 have valid bases for declining to offer its site, it is not clear why Staff stops at utility-owned
13 property—by logical extension, competition would be further improved if all bidders had access
14 to each other’s sites. However, neither approach could be legally accomplished without a
15 legislative grant of eminent domain authority to the Commission and radical changes in the
16 overall approach to utility resource procurement. To the extent that stakeholders desire that the
17 legislature act to change the utility regulatory paradigm, the appropriate forum for comments
18 recommending such changes is the investigation that the Commission initiated in response to
19 SB 978—and not in this proceeding.

3. The Commission should reject NIPPC’s proposal that failure to offer an owned site should be deemed per se imprudent.

20 NIPPC further suggests that the Commission may exercise its broad ratemaking
21 authority to evaluate a utility’s failure to offer a site as part of its prudence review for the

³⁴ NIPPC’s Opening Comments at 13-15.

³⁵ ORS 757.355.

³⁶ Staff’s Opening Comments at 5.

1 resource.³⁷ Indeed, NIPPC recommends that the failure to offer owned sites should be deemed
2 per se imprudent.³⁸ NIPPC's proposal erroneously implies that the Commission has the legal
3 authority to compel utilities to make their property available. By creating a rebuttable
4 presumption regarding utility property, NIPPC would have the Commission do indirectly that
5 which it cannot do directly. Moreover, NIPPC would have the Commission *punish* the utility for
6 choosing to retain ownership of its property, which it is allowed to do under the law. The Joint
7 Utilities strongly oppose this punitive suggestion, as it fails to account for the various legitimate
8 reasons for which a utility may decline to offer its property to a third party.

4. The Commission should not require a utility to provide an explanation when it declines to offer its site to third-party bidders.

9 Renewable Northwest suggests that the proposed requirement that a utility provide an
10 explanation of its decision to not offer its property to third-party bidders is equivalent to
11 encouraging utilities to consider offering owned sites.³⁹ The Joint Utilities disagree. First, it is
12 not clear why the Commission would require a utility to provide an explanation for declining to
13 do something that it is not legally required to do. The Joint Utilities may, in their discretion, offer
14 to make their sites available when they believe it is appropriate, but they are not required to do
15 so. Because the Commission lacks the authority to compel such utility action, it should not
16 adopt a requirement that the utility provide an explanation for declining to take such action.
17 Second, the requirement to provide an explanation suggests that there will be consequences for
18 failing to provide an explanation satisfactory to the Commission. It is not clear what the
19 consequences may be, or the legal basis for imposing any such consequences.

20 Indeed, Renewable Northwest indicates that the biggest problem with the "explanation"
21 requirement is the lack of clarity about what information must be included in an explanation or

³⁷ NIPPC's Opening Comments at 14-15.

³⁸ NIPPC's Opening Comments at 15.

³⁹ Renewable Northwest's Opening Comments at 3-4.

1 the purpose for the explanation.⁴⁰ While the Joint Utilities disagree that an explanation should
2 be required, the Joint Utilities share Renewable Northwest's concern. The required contents
3 and purpose for an explanation is absent from the Draft Rules and has not been addressed in
4 workshops. For this reason, the Joint Utilities recommend that the Commission direct Staff to
5 eliminate this proposal from the Draft Rules.⁴¹

E. The Commission should exclude transmission activity from the competitive bidding requirements.

6 The Joint Utilities agree with Renewable Northwest and NIPPC that the acquisition of
7 transmission resources should not be subject to the competitive bidding rules emerging from
8 this docket.⁴² Renewable Northwest states that "adding a Commission overlay via the
9 competitive bidding rules at this time may overly complicate and delay an already complicated
10 and lengthy process and as a result may discourage the development of needed transmission
11 resources," and NIPPC notes this is not the right time or docket for such a proposal.⁴³ And over
12 the course of approximately six months of informal rulemaking process, no party offered a
13 specific proposal describing how or why transmission activity should be subject to competitive
14 bidding.

15 Now, for the first in its opening comments, CUB indicates that it would support requiring
16 transmission activity to be subject to competitive bidding requirements.⁴⁴ Yet, it is not clear how
17 this proposal might work in the Oregon, where there *is no RTO* and *there is no competitive*

⁴⁰ Renewable Northwest's Opening Comments at 4.

⁴¹ In addition to the serious flaws discussed above, the Joint Utilities believe any requirement that a utility provide an "explanation" when it declines to offer its property to third parties is outside the scope of this proceeding, as defined in the scoping order. *In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources – Competitive Bidding Guidelines*, Docket No. AR 600, Order No. 17-173 (May 16, 2017)

⁴² Renewable Northwest's Opening Comments at 4; NIPPC's Opening Comments at 15-16.

⁴³ Renewable Northwest's Opening Comments at 4; NIPPC's Opening Comments at 15-16.

⁴⁴ CUB's Opening Comments at 2-3. No other party affirmatively supports this proposal. Staff's Opening Comments at 5-6; Renewable Northwest's Opening Comments at 4; NIPPC's Opening Comments at 15-16; ICNU's Opening Comments at 6 (taking no position); Staff's Opening Comments at 5-6 (taking no position).

1 **market for transmission.**⁴⁵ CUB also makes the point that “all ratepayers would benefit from a
2 process that ensures transmission contracts are awarded to the most competitive bidder.”⁴⁶
3 This conclusion, however, is based on a fundamental misunderstanding of the market for
4 transmission in the Pacific Northwest, and the Joint Utilities question whether customers would
5 benefit from requiring the utility to participate in a mandatory RFP—paid for by customers—that
6 will not likely yield any bids, and thus provide no discernible benefits to customers.⁴⁷ The Joint
7 Utilities urge the Commission to direct Staff to specifically exclude transmission activity from
8 application of the competitive bidding rules.

III. CONCLUSION

9 As the Commission considers how it will fulfill the legislative mandate of SB 1547 to
10 adopt rules that allow for diverse ownership, the Joint Utilities urge the Commission to do so by
11 directing Staff to draft rules that will promote fairness and transparency in the process. The
12 alternative approach—adopting rules that provide for unequal treatment for utility-owned
13 resources—may chill utility participation in RFPs, reduce competition, and result in the
14 procurement of higher cost, riskier resources. Ultimately, customers would bear these
15 increased costs.

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⁴⁵ Joint Utilities’ Opening Comments at 13-15.

⁴⁶ CUB’s Opening Comments at 3

⁴⁷ Joint Utilities’ Opening Comments at 13-15.

1 The Joint Utilities respectfully submit these reply comments and look forward to
2 engaging with the Commissioners and other stakeholders at the March 6, 2018 Commissioner
3 Workshop.

Respectfully submitted this 26th day of February, 2018.



Lisa F. Rackner
Jocelyn Pease
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
Telephone: (503) 595-3922
dockets@mrg-law.com

David White
Portland General Electric Company

Dustin Till
PacifiCorp d/b/a Pacific Power

Lisa Nordstom
Idaho Power Company

Attorneys for Portland General Electric Company,
PacifiCorp d/b/a Pacific Power, and Idaho Power Company