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May 12, 2016

## *Via Electronic Filing*

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

Re: In the Matter of PORTLAND GENERAL ELECTRIC CO.  
Petition for Partial Waiver of Competitive  
Bidding Guidelines and Approval of Request for Proposals (RFP) Schedule  
**Docket No. UM 1773**

Dear Filing Center:

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

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

Sincerely,

/s/ Jesse O. Gorsuch  
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1773**

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	COMMENTS OF THE INDUSTRIAL
COMPANY,	)	CUSTOMERS OF NORTHWEST
	)	UTILITIES
Petition for Partial Waiver of Competitive	)	
Bidding Guidelines and Approval of Request for	)	
<u>Proposals (RFP) Schedule.</u>	)	

**I. INTRODUCTION**

The Industrial Customers of Northwest Utilities (“ICNU”) files these comments on Portland General Electric Company’s (“PGE” or the “Company”) Petition for a Partial Waiver of Competitive Bidding Guidelines and Approval of RFP Schedule (“Petition”).

The Company’s Petition is flawed and should be denied. As ICNU interprets it, PGE’s Petition requests that the Commission sanction the Company’s resource procurement strategy up front to the extent possible, so that it will have an easier time justifying the prudence of its actions in a later ratemaking proceeding. The Commission should not accept this invitation.

Under the competitive bidding guidelines, the Commission cannot approve PGE’s request for proposals (“RFP”) because it is inconsistent with the Company’s most recently acknowledged integrated resource plan (“IRP”).

Moreover, the Commission should not sanction in any way additional RPS resource acquisitions until it has fully evaluated the implications of the Company likely exceeding the four percent incremental cost cap in ORS 469A.100(1).

Finally, the Company has provided no compelling justification for its decision to issue an RFP. As with PacifiCorp,<sup>1/</sup> PGE’s justification for acquiring new RPS resources in the near-term is not based in any way on resource need, but rather, on speculative long-term benefits. This raises serious generational inequity issues and materially increases customer risk by ensuring higher-than-necessary costs in the near-term without any guarantee of long-term cost savings. This is not a prudent resource procurement strategy.

## II. BACKGROUND

PGE’s Petition seeks a partial waiver of two of the Commission’s competitive bidding guidelines.<sup>2/</sup> First, it seeks a waiver of the selection process for the independent evaluator (“IE”).<sup>3/</sup> Second, it requests waiver of the 60-day comment period prior to Commission approval of an RFP.<sup>4/</sup> In place of these guidelines, the Company proposes to use the IE it used in its last two RFPs, and to allow for public comment at a special public meeting sometime between when PGE submits its draft RFP on May 23, 2016, and the requested date for Commission approval of the RFP, nine days later, on June 1, 2016.<sup>5/</sup> PGE also requests that the Commission rule on its Petition by June 1, 2016.<sup>6/</sup>

The Company’s justification for requesting a waiver of these two guidelines is that they are too time-consuming to allow PGE to execute its strategy of procuring 175 average

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<sup>1/</sup> See *Re Northwest and Intermountain Power Producers Coalition Petition for Temporary Rulemaking and Investigation into PacifiCorp’s 2016 Requests for Proposal*, Docket Nos. UM 1771 & AR 598, ICNU Comments (May 2, 2016).

<sup>2/</sup> *Re Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 06-446 (Aug. 10, 2006), *as modified by*, Order No. 14-149 (Apr. 30, 2014).

<sup>3/</sup> PGE Petition at 8-9.

<sup>4/</sup> *Id.* at 9-10.

<sup>5/</sup> *Id.* at 7-10.

<sup>6/</sup> *Id.* at 7.

megawatts (“aMW”) of new renewable generation by the end of 2016 so that it can take full advantage of the most recent extension of the production tax credit (“PTC”).<sup>7/</sup> The Company also cites recent changes to Oregon law in Senate Bill (“SB”) 1547 that relate to the banking of renewable energy certificates (“RECs”).<sup>8/</sup> The Company claims that acquiring 175 aMWs of RPS-compliant generation in the near term has a net present value revenue requirement (“NPVRR”) benefit of \$185-\$235 million.<sup>9/</sup> Beyond disclosing certain high-level assumptions it made, however, the Company provides no detail or workpapers to support these calculations.<sup>10/</sup>

PacifiCorp also has issued two RFPs seeking new RPS-compliant resources and RECs for reasons identical to PGE’s.<sup>11/</sup> In Docket Nos. UM 1771 and AR 598, the Northwest and Intermountain Power Producers Coalition (“NIPPC”) filed a petition requesting that the Commission issue temporary rules to block PacifiCorp’s RFPs and open an investigation into the utility’s RPS compliance strategy. ICNU filed comments on NIPPC’s petition. Because many of the issues ICNU addressed in those comments are applicable to PGE as well, ICNU attaches them here for reference. The attached comments contain additional background and argument that ICNU does not repeat here.

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<sup>7/</sup> *Id.* at 5-6.

<sup>8/</sup> *Id.* at 5.

<sup>9/</sup> *Id.* at 5, Lindsay Affidavit at 2.

<sup>10/</sup> *Id.*, Lindsay Affidavit at 2-3. In fact, PGE is unable to use the PTCs it currently has, as its tax liability requires it to carry these PTCs forward. *See* Docket No. UE 283, ICNU/100, Mullins/14-15. This makes it likely that PTCs generated from any wind resources it acquires pursuant to the RFP would also be unusable during the period it calculated the NPVRR benefit. Yet, the Company specifically touts the tax credit benefits in its NPVRR analysis. PGE Petition at 5. ICNU, therefore, questions whether PGE included the assumption that it would not be able to use PTCs during the period that these resources supposedly provide an NPVRR benefit.

<sup>11/</sup> PacifiCorp’s RFPs are available at: <http://www.pacificorp.com/sup/rfps.html>

Over the past two years, PGE has added well over \$1 billion to its rate base.<sup>12/</sup> Adding another 175 aMWs of renewable energy likely would require well over \$1 billion more in capital investment.<sup>13/</sup> This is on top of non-traditional rate base additions PGE is also currently requesting, or likely will request soon, including rate basing a portion of its power costs by purchasing non-operating working interests in natural gas wells,<sup>14/</sup> and expanding its operations into the electric vehicle infrastructure industry pursuant to Section 20 of SB 1547. PGE's resource strategy appears more focused on increasing investor returns than providing least-cost, least-risk resources and safe and reliable service to customers.

### III. COMMENTS

PGE's Petition raises both procedural and substantive issues. Procedurally, the Company requests a ruling on its Petition the same day that it seeks approval of its RFP, June 1, 2016.<sup>15/</sup> In other words, the Commission's ruling on the Company's requested waiver of the 60-day commenting period and its decision to select unilaterally an IE would come *after* PGE has already selected the IE and after its modified commenting period of less than nine days has already passed. Thus, adherence to the Company's proposed schedule would constitute a *de facto* approval of its waiver requests. At the least, the Commission's decision on whether it is

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<sup>12/</sup> This includes \$525 million for Tucannon River Wind Farm, \$311 million for Port Westward 2, and \$514 million for the Carty Generating Station. In Order No. 15-356, the Commission authorized the inclusion of Carty in rates upon its operational date. Problems with Carty's contractor, which PGE selected pursuant to an RFP process that had the same IE it proposes to use here, have delayed Carty's on-line date and increased its cost, such that customers could be required to pay as much as \$655 million for Carty.

<sup>13/</sup> At \$525 million, Tucannon produces 98 aMWs. Docket No. UE 283, PGE/400, Pope-Lobdell/11, n. 1 (Feb. 13, 2014).

<sup>14/</sup> Docket No. UE 308, PGE 2017 Annual Power Cost Update.

<sup>15/</sup> PGE Petition at 7.

appropriate to waive the 60-day commenting period should come before that commenting period begins, rather than after it has expired.

Substantively, while PGE seeks a waiver of the 60-day commenting period, it appears that it still requests that the Commission approve its RFP.<sup>16/</sup> It is not, however, clear how this is possible. In determining whether to approve an RFP, the Commission evaluates: (1) the alignment of the utility's RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process.<sup>17/</sup> Approval signifies that "the RFP meets these criteria."<sup>18/</sup> PGE's most recently acknowledged IRP, however, did not include any new supply-side resources, including RPS-compliant resources, in its action plan.<sup>19/</sup> Even its most recent IRP update, filed on December 2, 2015, did not forecast the acquisition of a new RPS resource until 2024.<sup>20/</sup> Thus, the Company's RFP clearly is not consistent with its IRP and, therefore, should not be approved.

It also may not be consistent with Oregon law. According to the Company's most recent renewable portfolio standard implementation plan ("RPIP"), PGE is near or at the four percent incremental cost cap.<sup>21/</sup> Under ORS 469A.100(1):

Electric utilities are not required to comply with a renewable portfolio standard during a compliance year to the extent that the incremental cost of compliance, the cost of unbundled renewable energy certificates and the cost of alternative compliance payments

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<sup>16/</sup>

*Id.*

<sup>17/</sup>

Order No. 06-446 at 9 (Guideline 7).

<sup>18/</sup>

*Id.*

<sup>19/</sup>

PGE 2013 IRP at 7.

<sup>20/</sup>

PGE 2013 IRP Update at 47 (Dec. 2, 2015).

<sup>21/</sup>

Docket No. UM 1755, PGE 2016 Renewable Portfolio Standard Implementation Plan, Attach A at 1 (Dec. 31, 2015).

under ORS 469A.180 exceeds four percent of the utility's annual revenue requirement for the compliance year.

PGE may have already reached this 4% cap and, at the very least, is extremely close to reaching it.<sup>22/</sup> Yet, not once in the Company's Petition does it mention this important customer protection, let alone analyze the possibility that its RFP will cause it to breach the cap.

As with PacifiCorp, the timing of PGE's RFP denies the Commission and stakeholders the ability to review the implications of the Company's RPS compliance strategy post-SB 1547 before it executes on that strategy. PGE will file a new RPIP in July in which it should more fully analyze issues associated with the 4% incremental cost cap.<sup>23/</sup> Broader issues of RPS compliance will undoubtedly be evaluated in the Company's upcoming IRP. Both of these proceedings, however, likely will come too late to impact this RFP. Thus, if PGE is to make major new resource decisions without giving the Commission the opportunity first, at a minimum, to evaluate the impact of the 4% incremental cost cap, then the Commission should ensure that customers are held harmless for the costs of generation acquired under the RFP that exceed the 4% cap.

The Company's requested waiver of the 60-day comment period while still seeking approval of its RFP, in fact, suggests that it is attempting to mitigate its risk as much as possible by seeking whatever Commission support for its resource procurement strategy that it can obtain at this time. While the Commission has been clear that RFP approval is not a prudence determination,<sup>24/</sup> undoubtedly resources acquired pursuant to a Commission-approved

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<sup>22/</sup> *Id.* Note that the scenarios PGE analyzed in this attachment do not include a low gas price scenario, which is the scenario it is actually experiencing today.

<sup>23/</sup> Docket No. UM 1755, Order No. 16-157 (Apr. 22, 2016).

<sup>24/</sup> Order No. 06-446 at 9-10.

RFP are more likely to survive a prudence challenge in a later ratemaking proceeding than resources that were acquired outside of the Commission’s established process.

The Commission should not give PGE this support for its proposed RFP. Guideline 2.a of the competitive bidding guidelines provides an exemption from the requirement to issue an RFP when there is “a time-limited resource opportunity of unique value to customers.”<sup>25/</sup> This is, in fact, the basis for the Company’s Petition.<sup>26/</sup> Yet, instead of seeking a complete exemption from the competitive bidding guidelines, the Company selects the ones it wants relief from and those that it still wants to apply. This suggests that it is uncomfortable proceeding without any Commission guidance on its resource procurement strategy, as Guideline 2.a authorizes.

And for good reason. Like PacifiCorp, the Company’s claim that there is a “time-limited resource opportunity of unique value to customers” is due primarily to the upcoming phase-out of PTCs.<sup>27/</sup> PGE also alludes to the creation of so-called “golden RECs” by SB 1547.<sup>28/</sup> But there is nothing “unique” about the expiration of PTCs. PTCs have been systematically renewed every time they have expired or been on the verge of expiration.<sup>29/</sup> Because the Company does not need new RPS-compliant generation until 2025,<sup>30/</sup> it is questionable at best to assume that these or other tax incentives will not be in place again in the future. Furthermore, if PTCs offer such a “time-limited” opportunity of “unique value” to

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<sup>25/</sup> *Id.* at 4 (Guideline 2.a).

<sup>26/</sup> PGE Petition at 10. The Company cites Guideline 2.c, which provides for a Commission waiver on a case-by-case basis.

<sup>27/</sup> *Id.*

<sup>28/</sup> *Id.* at 5; Docket Nos. UM 1771 & AR 598, PacifiCorp Opposition to NIPPC Petition at 1 (May 6, 2016).

<sup>29/</sup> Docket Nos. UM 1771 & AR 598, ICNU Comments at 5.

<sup>30/</sup> PGE Petition at 4.



customers, then one wonders why PGE stated in its most recent RPIP – which was filed *after* the PTC extension – that it intended to comply with the RPS through 2021 “with primarily bundled RECs from existing resources.”<sup>31/</sup> If the ability to capture PTCs were the driving force behind the Company’s RFP, PGE should have at least raised the possibility of an RFP in its RPIP.

Nor, from ICNU’s perspective, do SB 1547’s “golden RECs” provide anything of “value” to customers. The Company claims that the ability to “sustain and build” its REC bank provides risk protection against weather variances and other circumstances.<sup>32/</sup> The Company does not attempt to quantify the benefits of this alleged risk mitigation, however. Meanwhile, a large REC balance carries its own risks. Customers will assume definite and quantifiable costs as the Company builds its REC bank, and while ICNU agrees that PGE should maintain some REC balance, every REC the Company does not use for RPS compliance is a REC for which customers unnecessarily paid. Moreover, customers do not earn interest or realize any other financial benefit from RECs that are banked for many years. That is why ICNU does not see a material distinction between RECs that can be banked forever and RECs that can be banked for five years – if the Company’s REC balance is lasting longer than five years, then that balance is too high.

As support for its Petition, PGE cites a previous Commission order granting Idaho Power a partial exemption from the competitive bidding guidelines.<sup>33/</sup> The significant distinctions between that case and PGE’s Petition, however, demonstrate that the Company’s

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<sup>31/</sup> Docket No. UM 1755, PGE RPIP at 1 (Dec. 31, 2015). Congress extended the PTC on December 18, 2015 in the Consolidated Appropriations Act of 2016.

<sup>32/</sup> PGE Petition at 5.

<sup>33/</sup> *Id.* at 10-11 (citing *Petition for Partial Waiver of Competitive Bidding Guidelines*, Docket No. UM 1433, Order No. 09-290 (July 27, 2009)).

Petition is flawed and its relief should not be granted. First, at the time it filed its petition, Idaho Power's most recently acknowledged IRP included the addition of 150 MW of wind in 2012, only three years later than the date it filed its petition seeking a waiver of the guidelines.<sup>34/</sup> By contrast, PGE's 2013 IRP included no such forecast of need, and its Petition states that it does not need a new RPS-compliant resource until 2025 – nine years from now.<sup>35/</sup> Further, the Company is seeking well over three times the amount of generation Idaho Power sought.<sup>36/</sup> In addition, Idaho Power had received a specific offer to enter into a power purchase agreement (“PPA”) with a third-party developer at extremely favorable terms.<sup>37/</sup> In fact, Idaho Power was not even going to propose a self-build option and limited the RFP to PPAs.<sup>38/</sup> Here, PGE has not suggested that it has any concrete offers that provide definitive benefits to customers and, instead, relies on the speculative long-term benefits of its ability to capture the PTC.<sup>39/</sup> Moreover, while PGE will not submit a benchmark resource, in addition to PPAs the Company will also solicit “Build-own-Transfer and/or Development Asset Sale structures or variations on these structures.”<sup>40/</sup> Finally, in its petition, Idaho Power sought a full waiver of Guideline 7, meaning that it not only requested exemption of the 60-day comment period prior to RFP approval, but also the approval itself.<sup>41/</sup> PGE, on the other hand, is seeking an exemption from

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<sup>34/</sup> Docket No. UM 1433, Idaho Power Petition at 1 (June 2, 2009).

<sup>35/</sup> PGE Petition at 4.

<sup>36/</sup> *Id.* at 5. ICNU calculates that 175 aMWs of wind is the approximate equivalent of 500 MWs of nameplate capacity.

<sup>37/</sup> Idaho Power Petition at 2.

<sup>38/</sup> *Id.* at 5.

<sup>39/</sup> PGE Petition at 3-5.

<sup>40/</sup> PGE Petition at 6. ICNU understands these structures to be similar to what the Company used for Carty, in which the Company hired a third-party contractor to build the plant, and then transfer ownership to PGE, allowing it to rate base the asset.

<sup>41/</sup> Idaho Power Petition at 9.

the 60-day comment period, but still wants the Commission to approve its RFP.<sup>42/</sup> These distinctions demonstrate when “a time-limited resource opportunity of unique value to customers” actually exists and when this exemption is being invoked to justify an otherwise imprudent resource procurement strategy.

The policy questions that both PGE’s and PacifiCorp’s proposed acquisitions of new RPS resources raise for the Commission are whether it is possible to meet customers’ best interests by procuring new generation long before it is needed and, if so, under what circumstances. ICNU is reluctant to argue that customers could never benefit from generation acquired earlier than necessary, but whatever the circumstances are that produce that benefit, they are not present here. The Company’s estimate of a NPVRR benefit of between \$185 million and \$235 million from acquiring 175 aMWs of RPS generation in the near term is dependent upon assumptions – such as the definite and final expiration of PTCs, and future technological innovations – that are inherently unknowable, particularly when they are forecast almost a decade out.<sup>43/</sup> ICNU, for one, would prefer to pay for generation when it is needed, even if it turns out that this strategy ended up costing customers a bit more. At least under this scenario, customers know that they are paying for a product they are actually using. This is the least-risk strategy PGE can employ with respect to its RPS compliance. It may also turn out to be the least-cost strategy. PGE’s strategy, on the other hand, cannot claim to be either with any certainty.

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<sup>42/</sup> PGE Petition at 7.  
<sup>43/</sup> *Id.*, Lindsay Affidavit at 2.

#### IV. CONCLUSION

The Commission should not grant the relief requested in PGE's Petition. Indeed, that relief is beside the point. PGE's RFP is not consistent with its most recently acknowledged IRP and, therefore, it should not be approved whether stakeholders are given 60 days to comment on it or not. Moreover, the Commission should not sanction in any way a resource procurement strategy that has a high probability of causing the Company to exceed the incremental 4% cost cap without first evaluating the implications of this for the Company and its customers. This is particularly the case when the Company is seeking to acquire generation that is not needed for many years. For these reasons, ICNU recommends that the Commission deny the relief PGE requests in its Petition and not approve the Company's RFP when it is presented.

Dated this 12th day of May, 2016.

Respectfully submitted,

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*/s/ Tyler C. Pepple*

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Of Attorneys for the Industrial Customers of  
Northwest Utilities

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1771**

**AR 598**

In the Matter of	)	
	)	
Northwest and Intermountain Power Producers Coalition	)	COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES
	)	
Petition for Temporary Rulemaking and Investigation into PacifiCorp’s 2016 Requests for Proposal	)	
	)	
_____	)	

**I. INTRODUCTION**

The Industrial Customers of Northwest Utilities (“ICNU”) submits these Comments on the Northwest and Intermountain Power Producers Coalition’s (“NIPPC”) Petition for a Temporary Rulemaking and Investigation into PacifiCorp’s 2016 Requests for Proposal (“Petition”). ICNU neither supports nor opposes NIPPC’s requested relief in its Petition, but does agree with a number of the issues NIPPC raises. Fundamentally, ICNU considers PacifiCorp’s renewable requests for proposals (“RFPs”) to be imprudent, and if they result in the acquisition of new resources or the purchase of additional renewable energy credits (“RECs”), customers should not bear those costs.

**II. BACKGROUND**

PacifiCorp has recently issued two renewable RFPs, one “seeking cost-competitive bids for renewable energy resources that can be used to meet state renewable portfolio standard (RPS) requirements under the applicable laws and regulations of California,

Oregon, and/or Washington,” and another for the purchase of RECs to meet the same states’ RPS requirements.<sup>1/</sup> Issued on April 11, 2016, the RFPs implement the strategy the Company identified less than two weeks earlier in its 2015 integrated resource plan (“IRP”) update in Docket No. LC 62. PacifiCorp submitted this IRP update for informational purposes only and did not seek Commission acknowledgement of its action plan.<sup>2/</sup> The update also was not subject to the rigorous stakeholder process associated with its 2015 IRP. Despite the fact that this update shows that the Company does not need RECs for Oregon’s RPS compliance until at least 2025,<sup>3/</sup> the Company stated that it could meet future RPS obligations beyond 2025 by purchasing RECs in the near term, and that it had identified “time-sensitive renewable resource acquisition opportunities.”<sup>4/</sup>

By “time-sensitive,” PacifiCorp appeared to be referring to the gradual phase-out of production tax credits (“PTCs”) beginning in 2017.<sup>5/</sup> With respect to its REC purchase strategy, recent passage of Senate Bill (“SB”) 1547 changes the state’s REC banking provisions such that currently banked RECs and RECs generated from qualifying resources purchased or built before 2022 can be banked indefinitely.<sup>6/</sup> All other RECs have a 5-year life.<sup>7/</sup> Thus, the primary justifications for the Company pursuing the renewable RFPs are that they allow PacifiCorp to acquire RECs it can bank forever and enable it to take advantage of PTCs before

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<sup>1/</sup> The 2016R Renewable RFP and the 2016 REC RFP are available at:  
<http://www.pacificorp.com/sup/rfps.html>.

<sup>2/</sup> Docket No. LC 62, 2015 IRP Update, PacifiCorp Cover Letter (Mar. 31, 2016).

<sup>3/</sup> *Id.* at 54.

<sup>4/</sup> *Id.* at 54-55.

<sup>5/</sup> *Id.* at 55.

<sup>6/</sup> SB 1547 § 7.

<sup>7/</sup> *Id.*

they are currently set to expire.<sup>8/</sup> SB 1547 also requires 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.”<sup>9/</sup>

### III. COMMENTS

NIPPC’s Petition requests that the Commission implement a rule “that prevents a utility from owning or having an ownership interest in renewable energy generating resources, other than PURPA contracts and currently owned resources, until the Commission adopts permanent competitive bidding rules.”<sup>10/</sup> It also requests that the Commission open an investigation into the Company’s renewable RFPs to ensure that they adhere to the Commission’s existing competitive bidding guidelines and to review the Company’s approach to RPS implementation.<sup>11/</sup>

ICNU does not oppose NIPPC’s requests in its Petition, although it notes that PacifiCorp has already agreed to refile its 2016 Renewable Portfolio Implementation Plan in July of this year in order to address issues of SB 1547 compliance.<sup>12/</sup> This proceeding could serve as a forum for addressing the Company’s approach to RPS implementation going forward.

Additionally, ICNU agrees with NIPPC that PacifiCorp’s issuance of the renewable RFPs is imprudent and has the potential to harm customers. A temporary rulemaking that delays resource procurement under these RFPs at least until the Commission issues final competitive bidding rules could help protect customer interests. If the Commission declines to

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<sup>8/</sup> See 2016R RFP; 2016 REC RFP; 2015 IRP Update at 55.

<sup>9/</sup> SB 1547 § 6(4)(d).

<sup>10/</sup> NIPPC Petition at 12.

<sup>11/</sup> NIPPC Petition at 14.

<sup>12/</sup> Docket No. UM 1754, Order No. 16-158 (Apr. 22, 2016).

adopt the requested temporary rules, however, ICNU recognizes that it, as well as other parties, will retain the opportunity to evaluate the prudence of PacifiCorp's actions when it seeks recovery of any costs resulting from the renewable RFPs and to advocate its position to the Commission at that time. Nevertheless, ICNU does prefer that the Company adhere to a prudent resource procurement strategy in the first place.

To the extent ICNU disagrees with NIPPC's position in its Petition, it is in the implication that the only problem with PacifiCorp's renewable RFPs is that they appear to be predetermined to result in utility resource ownership. NIPPC still agrees that "the Company should acquire new renewable power in the near to mid-term to comply with the requirements of SB 1547."<sup>13/</sup> For ICNU, on the other hand, the imprudence of PacifiCorp's renewable RFPs is primarily due to the fact that the Company does not need new renewable energy to comply with Oregon's RPS until at least 2025. Customers should not have to pay for generation they do not need.

Furthermore, the Company's justifications for acquiring RPS resources nearly a decade early are not compelling. For one, ICNU does not consider SB 1547's distinction between RECs with unlimited lives and those that are time-restricted to five years to be material enough to justify the purchase of unneeded RECs. If PacifiCorp is banking RECs for more than five years, then it has too many RECs. Yet, the Company appears to be using SB 1547's changes to REC banking as a justification to build up massive balances in its REC bank in the near term in order to use those RECs for RPS compliance many years from now.<sup>14/</sup> Essentially,

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<sup>13/</sup> NIPPC Petition at 1-2.

<sup>14/</sup> 2015 IRP Update at 54 (identifying the addition of 19 million RECs over the next ten years to meet future RPS obligations).



the Company is asking customers to overpay for their power today in order to receive speculative benefits a decade or more into the future. Not only does this create severe generational inequity, but it also imposes substantial risk on customers by asking them to take a leap of faith that the certainty of higher-than-necessary costs today will lead to cost savings in the distant future. This is a particularly risky course of action in the current environment of rapid technological change in the energy industry. PacifiCorp's strategy essentially assumes that everything will look the same in 2025 and beyond as it does today.

Nor is PacifiCorp's reliance on the gradual phase-out of PTCs beginning in 2017 sufficient to justify the construction of unneeded generation. PTCs were first created by the Energy Policy Act of 1992, and since then have expired or been on the verge of expiration ten times, including the most recent instance.<sup>15/</sup> Every time they get renewed. There is no reason to believe this time will be different, especially since, even if they are allowed to expire, PacifiCorp has nearly a decade to wait to see if they are reauthorized. Furthermore, if PacifiCorp truly believes it should act in accordance with the current PTC expiration schedule, then it is odd that it has suddenly felt the urgency of the situation. For instance, PTCs were scheduled to expire at the end of 2013 under the American Taxpayer Relief Act ("ATRA"),<sup>16/</sup> yet the Company's 2013 IRP, filed on April 30th of that year, did not declare any urgent need to build RPS resources. Indeed, it did not propose to build or acquire any wind until 2024, despite the fact that the Company's current "time-sensitive" strategy presumably would have been equally viable in its 2013 IRP.<sup>17/</sup>

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<sup>15/</sup> See <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43453.pdf>.

<sup>16/</sup> *Id.* at 5. The ATRA also authorized PTCs for facilities that began construction before the expiration date.

<sup>17/</sup> 2013 IRP at 11.

These circumstances make it difficult to get past the supposition that PacifiCorp has timed its renewable RFP in order to evade the requirements that would normally be present in a formal IRP process, such as the requirement to update its avoided costs,<sup>18/</sup> as well as to ensure ownership of more renewable resources before the Commission issues the competitive bidding rules required by SB 1547. Indeed, at a recent workshop hosted by Commission Staff to discuss SB 1547's implementation timeline, PacifiCorp's representative recommended delaying this rulemaking.<sup>19/</sup>

Finally, and most concerning from Oregon's perspective, is that, while the Company does not need the renewable generation or RECs it is seeking through its RFPs, it has identified the purpose of those RFPs to be compliance with Oregon's (as well as California's and Washington's) RPS. Under the Company's existing inter-jurisdictional cost allocation methodology, as well as the updated methodology the Commission is currently considering,<sup>20/</sup> the costs of resources built to comply with state-specific requirements are situs assigned to those states. This suggests that the Company will seek to impose on its Oregon customers a disproportionate share (or even all) of the costs of any unneeded resources it acquires through its renewable RFPs.

Fundamentally, it is not a good deal for the Company or anyone else to pay for something they do not need, regardless of how much it is discounted. The Company suggests that the current availability of PTCs would generate \$102 million in customer savings over 10

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<sup>18/</sup> OAR 860-029-0040(4).

<sup>19/</sup> This workshop, held on April 21, 2016, was not part of a formal docket.

<sup>20/</sup> See Docket No. UM 1050.

years for a 100 MW wind facility.<sup>21/</sup> But that “savings” is only relative to a 100 MW wind plant that does not claim PTCs. It is not cheaper for PacifiCorp to build a 100 MW wind plant that has access to PTCs over the next ten years than it is for the Company to build no wind plant at all. The only reason one might pursue this course of action is if they thought someone else would reimburse them for the cost plus a return on the investment. That is why, at baseline, the prudence of a resource acquisition must depend at least in part, if not primarily, on need, not solely on the existence of manufactured incentives such as REC banking provisions, particularly when those incentives provide only speculative benefits years into the future. Incidentally, refraining from building unneeded generation, whether emission free or not, is also the most environmentally responsible action the Company can take.

For these reasons, ICNU believes PacifiCorp’s renewable RFPs are imprudent. If the Commission prefers, it can, as NIPPC proposes, take action now to prevent the Company from pursuing these RFPs. Alternatively, ICNU plans to pursue its right at the proper time to advocate for the disallowance of any costs associated with these RFPs in customer rates.

#### **IV. CONCLUSION**

ICNU agrees with NIPPC that PacifiCorp should not acquire new renewable energy under its 2016 renewable RFPs and supports any Commission action that protects customers from imprudently incurred costs. Such action could be in the form of the relief NIPPC requests; however, the Commission should recognize that the primary problem with the Company’s RFPs is not that they are skewed toward utility ownership – though, to be clear,

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<sup>21/</sup> 2015 IRP Update at 55.

ICNU is concerned by this also – but that they seek generation and RECs that are not needed and, if allowed in rates, will unnecessarily increase costs for customers.

Dated this 2nd day of May, 2016.

Respectfully submitted,

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