

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 1856

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC
6 COMPANY,

7 Energy Storage Proposals and Revised
8 Energy Storage Potential Evaluation.

STAFF'S REPLY BRIEF

9 **I. INTRODUCTION**

10 This reply brief addresses the issues raised in the opening briefs of Portland General
11 Electric Company (PGE) and the Northwest Intermountain Power Producers Coalition (NIPPC).
12 The single remaining issue in this docket is whether PGE's request for proposal (RFP) process
13 should allow third party ownership options for the minimum 17 MW energy storage system
14 (ESS) currently proposed to be sited on PGE property adjacent to the Coffee Creek substation
15 (Coffee Creek or Project).¹ In this reply brief, Staff discusses the competitive bidding
16 requirements applicable to the energy storage projects proposed in this docket; Staff's reasoning
17 for highlighting the Commission's pending AR 600 rulemaking, plus an outstanding requirement
18 by PGE relating to Coffee Creek; and Commission precedent on the issue of competitive bidding
19 within the context of third party access to utility-owned sites.

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24 ¹ The partial stipulation in this docket was entered into between Portland General Electric (PGE), Staff of the Public
25 Utility Commission of Oregon (Staff), the Oregon Citizens' Utility Board (CUB), the Alliance of Western Energy
26 Consumers (AWEC), Renewable Northwest (RNW), and Northwest and Intermountain Power Producers Coalition
(NIPPC). Community Renewable Energy Association (CREA) and the Oregon Department of Energy (ODOE) are
also parties to this docket, but did not attend the settlement conference. The partial stipulation was circulated to
CREA and ODOE for review, and although they declined to join the stipulation, both parties have indicated that
they do not object to the partial stipulation. Both the stipulation and supporting joint testimony were filed on May
22, 2018 for Commission review.

1 **II. DISCUSSION**

2 **1. Applicable Competitive Bidding Requirements**

3 The competitive bidding requirements adopted by the Commission in Order No. 16-504
4 apply to the Coffee Creek Project, as well as to PGE’s other storage projects modified by the
5 partial stipulation. House Bill (HB) 2193 (2015), the legislation requiring PGE to submit
6 proposals for one or more qualifying energy storage systems that have the capacity to store at
7 least 5 MWh of energy, provides that the Commission may require an electric company to
8 develop an energy storage system “in accordance with *any* competitive bidding guidelines
9 prescribed by the commission.”² In response to this legislative delegation, the Commission
10 adopted minimum standards for competitive bidding of HB 2193 storage projects in December
11 of 2016.³ It appears that the Commission adopted these storage-specific competitive bidding
12 guidelines because it concluded that the energy storage projects contemplated under HB 2193
13 would likely be too small to trigger the competitive bidding threshold for Major Resource
14 acquisitions (a resource with durations greater than five years and quantities greater than 100
15 MW) under the Commission’s existing Competitive Bidding Guidelines.⁴ Therefore, the
16 Commission adopted the following “minimum standards” to be used in this docket:

17 *1. An electric company may award a contract for a project without*
18 *competition if it determines and presents justification that only a*
19 *single vendor or contractor is capable of meeting the requirements*
of the project.

20 *2. Where the requirements for sole source procurement are unmet,*
21 *electric companies must use a competitive process to award*
contracts.

22 *a. The electric companies will bear the burden of*
23 *demonstrating that they followed a fair, competitive*

24 ² HB 2193 (2015), Section 3(4) (emphasis added).

25 ³ *In the Matter of Public Utility Commission of Oregon, Implementing Energy Storage Program Guidelines*
26 *Pursuant to House Bill 2193, Docket No. UM 1751, Order No. 16-504 at 10 (Dec. 28, 2016).*

⁴ *Id.* (“The energy storage procurements contemplated under this program would not meet the threshold for the
guidelines for major resource acquisitions in docket UM 1182.”).

1 *solicitation process to identify all vendors with the requisite*
2 *expertise, experience, and capability to install viable*
3 *projects.*

4 *b. The electric companies must give the Commission and*
5 *stakeholders the opportunity to review the electric*
6 *companies' Request for Proposal (RFP) design and offer*
7 *nonbinding input.*

8 *c. The electric companies must summarize and report to the*
9 *Commission their solicitation process and scoring*
10 *approach. The report should be included with the formal*
11 *project proposal submitted to the Commission, or, if*
12 *bidding occurs after Commission authorization, at a*
13 *special public meeting to follow.*⁵

14 At this point in time, the competitive bidding requirements listed above are all that apply
15 to the Coffee Creek Project. However, in its opening brief, Staff raised the issue of the pending
16 administrative rulemaking in AR 600 that could affect, if not partially resolve, the litigated issue
17 in this docket.

18 **2. AR 600 Rulemaking and PGE Requirement in the Partial Stipulation**

19 Staff brought two issues to the Commission's attention in its opening brief: (1) to note the
20 potential intersection of this storage docket with a parallel proceeding, AR 600-Rulemaking
21 Regarding Allowances for Diverse Ownership of Renewable Energy Resources, that may affect,
22 if not partially resolve, the subject of this litigation, and (2) to highlight the important fact that
23 Coffee Creek is not the conclusive location for the ESS Project to be sited; rather, the partial
24 stipulation requires new supporting evidence to be provided by PGE before it may proceed.

25 Regarding the first issue, if the proposed rules in AR 600 are adopted as currently filed,
26 Coffee Creek could be subject to the new competitive bidding requirements. Under the proposed
27 rules, an electric company is subject to the competitive bidding requirements "when it seeks to
28 acquire energy storage resources or contracts for a storage resource greater than 25 megawatt

⁵ *Id.*

1 hours and with a duration of more than five years.”⁶ The Coffee Creek Project will likely equate
2 to approximately 68 MWh⁷, triggering the proposed 25 MWh threshold for competitive bidding
3 of energy storage systems. However, the proposed rules do not require an electric company to
4 allow third party access to its property—a legal issue that is discussed in Section 3.—but the
5 proposed rules do encourage electric companies to make elements secured by the electric
6 company, such as sites, transmission, or fuel arrangements, available for use in third party bids
7 that may or may not be owned by third parties after construction.⁸ As a result, PGE’s skepticism
8 regarding the Commission’s legal authority to require third party ownership options for the
9 Project on PGE-owned land may be valid, but *only if* the Project is indeed sited at the Coffee
10 Creek substation location.

11 Staff’s second point in its opening brief is that the Coffee Creek substation location is not
12 a certainty. Thus, the assumption made in PGE’s opening brief that the ESS “would be located
13 on utility-owned property that directly connects with the Coffee Creek substation”⁹ is concerning
14 because it presents the Coffee Creek site as if it were an established fact. By contrast, the filed
15 partial stipulation expressly requires PGE, before it can proceed with the Project, to present an
16 analysis and evidence demonstrating that Coffee Creek is indeed the best location to site the
17 large energy storage system:

18 To be able to proceed with this project, PGE must first present an
19 analysis to Staff, supported by adequate evidence, that Coffee
20 Creek is the best site for the ESS based on the universe of available
substation sites within PGE’s system. In the event that Staff does
not agree that adequate evidence has been provided, the Parties

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22 ⁶ *In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources*,
Docket No. AR 600, Notice of Proposed Rulemaking Hearing with Statement of Need and Fiscal Impact and
Proposed Rules filed with the Secretary of State at 7 (Apr. 19, 2018) (see proposed OAR 860-089-0100, section (3)).

23 ⁷ PGE/100, Riehl-Brown/13 (in PGE’s application, Coffee Creek was proposed as an energy storage system of “17–
24 20 MW (68–80 MWh).”).

25 ⁸ *In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources*,
Docket No. AR 600, Notice of Proposed Rulemaking Hearing with Statement of Need and Fiscal Impact and
Proposed Rules filed with the Secretary of State at 7 (Apr. 19, 2018) (see proposed OAR 860-089-0300, section (2)-
26 (3)).

⁹ PGE’s Opening Brief at 7.

1 agree that the Commission should determine whether PGE can
2 move forward with the project.¹⁰

3 Notably, PGE has not yet submitted this analysis or the supporting evidence, and further,
4 the Commission has not yet found that the Coffee Creek project meets the three legal
5 requirements set out in HB 2193 for approval of projects¹¹, therefore, the site location should not
6 be construed as a forgone conclusion. This point matters because other sites on PGE's system
7 exist that could make the access to utility-owned property concern irrelevant.¹² In its reply
8 testimony and individual section of joint testimony, Staff questioned whether the Coffee Creek
9 site was in fact the best value for customers to locate a substation-sited ESS out of the dozens of
10 other choices¹³ available to PGE.¹⁴ The reassurance reached in the partial stipulation that PGE
11 could not move forward without providing additional supporting evidence on this issue allowed
12 Staff to support the Project.¹⁵

13 In sum, there is an issue of timing at play. Staff highlighted the potential overlap
14 between this docket and the AR 600 rulemaking because the public comment period in AR 600
15 has closed¹⁶ and the target date for a Commission decision appears to precede the date for an
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18 ¹⁰ Partial Stipulation at 7 (paragraph 24); Joint Testimony/100, Murtaugh-Wiggins-Jenks-Fitch Fleishman-
19 Yourkowski/12; PGE's Opening Brief at 14 ("PGE agreed to provide additional information to support the choice of
20 location at the Coffee Creek substation."). The purpose of this requirement is to alleviate Staff's concern that PGE
21 did not provide evidence of why Coffee Creek presented the best opportunity for piloting an ESS, including why this
22 particular location was selected over all other possible locations with seemingly equal or better learning
23 opportunities. See Joint Testimony/100, Murtaugh-Wiggins-Jenks-Fitch Fleishman-Yourkowski/21.

24 ¹¹ See Oregon Laws 2015, chapter 312, section 3(3)(a)(A)-(C) ("The commission shall . . . evaluate each proposal to
25 determine whether the proposal: (A) Is consistent with the guidelines adopted under subsection (1) of this section;
26 (B) Reasonably balances the value for ratepayers and utility operations that is potentially derived from the
application of energy storage system technology and the costs of construction, operation and maintenance of energy
storage systems; and (C) Is in the public interest.).

¹² See AWEC-NIPPC/300, Fitch-Fleischmann/2; NIPPC Opening Brief at 2.

¹³ Staff/100, Wiggins/23 ("The PGE network has over 150 substations . . .").

¹⁴ Staff/100, Wiggins/21-23; Joint Testimony/100, Murtaugh-Wiggins-Jenks-Fitch Fleishman-Yourkowski/21.

¹⁵ Joint Testimony/100, Murtaugh-Wiggins-Jenks-Fitch Fleishman-Yourkowski/21.

¹⁶ The public comment period closed on June 15, 2018.

1 order in this storage docket.¹⁷ Should the AR 600 rules be adopted prior to a final order in this
2 docket, or prior to PGE’s issuance of its RFP, the new competitive bidding rules could apply to
3 Coffee Creek.¹⁸

4 **3. Commission Precedent on Third Party Access to Utility Sites**

5 The Coffee Creek Project involves an energy storage system proposed to be located on
6 PGE-owned property adjacent to the existing Coffee Creek substation¹⁹ with a minimum battery
7 size requirement of 17 MW²⁰ and a 10-year asset life²¹. In its opening brief, PGE raises a valid
8 point with regard to third party access to utility-owned sites. This issue arose in UM 1182, the
9 docket establishing the majority of today’s competitive bidding requirements for Major Resource
10 acquisitions. Staff considered whether the Commission has the legal authority to require a utility
11 to offer its site locations for development by independent power producers and recommended, as
12 matter of policy, that the Commission: “encourage the electric utilities to offer their [site
13 locations] for third party development.”²² Subsequently, in its order resolving the outstanding
14 issues in the 2006 *Investigation Regarding Competitive Bidding*, the Commission declined to
15 adopt a requirement that a utility offer its site locations for development by independent power
16 producers.²³ The Commission explained that “a utility could allow a resource to be built upon a
17 particular named piece of property. However, that is a decision to be made by the utility,”²⁴ and
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19 ¹⁷ In Order No. 18-015 (Jan. 17, 2018), the Commission adopted Staff’s recommendation to open a formal
20 rulemaking with direction that the anticipated time frame for resolution be 150 days. One hundred and fifty days
21 from January 17 is approximately June 16, 2018. The target date for a Commission order in UM 1856 is August 15,
22 2018.

23 ¹⁸ See *Delehant v. Board on Police Standards and Training*, 317 Or. 273, 278-79 (1993).

24 ¹⁹ PGE/100, Riehl-Brown/13.

25 ²⁰ Partial Stipulation at 7 (figure is as modified by the stipulation).

26 ²¹ *Id.* at 3 (figure is as modified by the stipulation).

²² *In the Matter of Public Utility Commission of Oregon, Investigation Regarding Competitive Bidding*, Docket No.
UM 1182, Staff’s Reply Comments at 7 (Oct. 21, 2005).

²³ *In the Matter of Public Utility Commission of Oregon, Investigation Regarding Competitive Bidding*, Docket No.
UM 1182, Order No. 06-446 at 5 (Aug. 10, 2006).

²⁴ *Id.* at 5-6.

1 stated that a utility is “encouraged to offer its site for third party development,” which had been
2 done by certain utilities in other circumstances.²⁵

3 The Commission again addressed this issue in UM 1535, *PGE’s RFP for Capacity*
4 *Resources*, in the context of third party access to PGE’s Port Westward site, explaining that
5 whether the Commission can require PGE to make its sites available to prospective bidders is a
6 legal question. The Commission declined to take up the legal issue, but confirmed its former
7 policy position that “[w]hether to make its site available is a PGE management decision subject
8 to prudence review by the Commission,” and specifically emphasized that “proof of prudent
9 decision making is the key to future cost recovery.”²⁶ More recently, the Commission provided
10 policy guidance on the same issue during the informal phase of AR 600 by directing Staff to
11 revise the draft rule language to provide “clear encouragement to electric companies to make
12 these benchmark elements available to third party bidders as part of an RFP.”²⁷

13 Staff agrees that the legal issue need not be taken up in this docket, but akin to the
14 Commission’s position in UM 1535, PGE’s decision to exclude third party ownership options
15 from the RFP for the Coffee Creek Project should be appropriately scrutinized in the prudence
16 review for the Project, especially when evidence in the record suggests that PGE’s annual cost
17 estimates for Coffee Creek may be significantly inflated.²⁸

18 III. CONCLUSION

19 A partial stipulation was filed on May 22, 2018 settling all issues in this docket except for
20 one: whether PGE should allow third party ownership options in the RFP that it will issue for its
21 proposed Coffee Creek energy storage project. Currently, only the storage-specific competitive
22 bidding requirements adopted in Order No. 16-504 apply to the Coffee Creek Project because it

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24 ²⁵ *Id.* at 6 (emphasis added).

25 ²⁶ *In the Matter of Portland General Electric Company, Request for Proposals for Capacity Resources*, Docket No.
26 UM 1535, Order No. 11-371 at 6 (Sept. 27, 2011).

²⁷ *In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources*,
26 Docket No. AR 600, Order No. 18-087 at 1 (Mar. 19, 2018).

²⁸ Contrast ICNU-NIPPC/200, Crotzer/6-8 with PGE/Exhibit 101, Riehl-Brown/79.

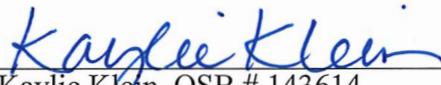
1 is too small to trigger the Commission’s existing competitive bidding requirements for Major
2 Resources. However, it is worth highlighting that the outcome of the Commission’s pending AR
3 600 rulemaking could affect the litigated issue in this docket. Specifically, if the proposed rules
4 in AR 600 are adopted, the Coffee Creek Project would trigger the 25 MWh threshold for
5 competitive bidding of energy storage projects.

6 Coffee Creek is currently proposed to be sited on PGE-owned property, and consistent
7 with Commission precedent, the proposed AR 600 rules “encourage,” but do not require, electric
8 companies to allow a third party to access their property. Nonetheless, the third party access
9 issue is not definitively foreclosed in this docket because the location of the Coffee Creek project
10 is not certain. Pursuant to the terms of the partial stipulation, PGE must provide analysis and
11 evidence that supports the location choice before moving forward. Should PGE be unable to
12 produce supporting evidence that Coffee Creek is the best location for the substation-sited
13 storage project, the Commission could take a number of actions, including declining to approve
14 the Project or directing the stipulating parties to identify an alternative substation location that
15 might not present the same obstacles as the Coffee Creek site. However, should PGE be allowed
16 to move forward with the Coffee Creek site and continue to maintain its position to not allow
17 third party ownership options in its RFP for this Project, Staff recommends that PGE’s decision
18 be appropriately scrutinized during the prudence review phase of the Project.

19 DATED this 11th day of July 2018.

20 Respectfully submitted,

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26 Of Attorneys for Staff of the Public Utility
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