

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2371

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,2025 All-source Request for Proposals.

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED WITH MODIFICATION**

This order memorializes our decision, made and effective at our July 8, 2025 Regular Public Meeting, to adopt Staff's recommendation in this matter with the modification to direct PGE to file a modified protective order in this docket no later than Friday, July 11, 2025. The Staff Report with the recommendation is attached as Appendix A.

We recognize concerns raised that our determining that OAR 860-001-0540 applies only in contested cases could frustrate stakeholders' ability to obtain information needed to effectively participate in hybrid proceedings until discovery rules are put in place in docket AR 669. We expect the utilities to continue to provide requested information in these processes to facilitate robust participation by stakeholders.

In addition, we are frustrated by PGE's failure to work with the Northwest & Intermountain Power Producers Coalition (NIPPC) to produce any information related to docket UE 427, particularly given the Commission's clear statement in that proceeding that it could serve as a case study in future Commission proceedings. Due to the proximity of the July 22 public meeting in this matter, we direct PGE to file a modified protective order, as discussed above, and expect it to produce as much of the requested information as possible as quickly as possible. Disputes should be limited to specific areas of concern.

Made, entered, and effective Jul 09 2025.



**Letha Tawney**  
Chair



**Les Perkins**  
Commissioner



**Karin Power**  
Commissioner

ITEM NO. RA1

**PUBLIC UTILITY COMMISSION OF OREGON  
ADMINISTRATIVE HEARINGS DIVISION REPORT  
PUBLIC MEETING DATE: July 8, 2025**

**REGULAR** \_\_\_\_ **CONSENT** \_\_\_\_ **RULEMAKING** \_\_\_\_ **EFFECTIVE DATE** N/A

**DATE:** June 30, 2025

**TO:** Public Utility Commission

**FROM:** Katharine Mapes, Administrative Law Judge

**THROUGH:** Alison Lackey, Chief Administrative Law Judge **SIGNED**

**SUBJECT:** ADMINISTRATIVE HEARINGS DIVISION:  
Docket No. UM 2371  
Request for Certification of April 21, 2025 ALJ Ruling

**RECOMMENDATION:**

The Administrative Hearings Division (AHD) recommends that the Commission:

- 1) Find that OAR 860-001-0540 applies only in contested cases.
- 2) Direct Staff and AHD to address discovery in hybrid cases under the open rulemaking, AR 669, Rulemaking to Amend Integrated Resource Plan Guidelines and Competitive Bidding Rules.
- 3) Use its discretion to require production of requested documents under ORS 756.090(1).

**DISCUSSION:**

Issue

Do the Commission's discovery rules provide for discovery in other than contested cases?

Applicable Law or Rule

ORS 756.090(1) provides in full that:

The Public Utility Commission may require by rule, or by order or subpoena to be served on any public utility or telecommunications utility the maintaining within this state or the production within this state at such

UM 2371  
Page 2

time and place as the commission may designate, of any books, accounts, papers or records kept by such public utility or telecommunications utility in any office or place within or without this state, or verified copies in lieu thereof, if the commission so orders, in order that an examination thereof may be made by the commission or under direction of the commission

The Commission has adopted discovery rules, beginning with OAR 860-001-0500, entitled “Discovery in Contested Case Proceedings.” OAR 860-001-0540 is entitled “Data Requests” and provides in relevant part that “[a] party may submit data requests to any other party.”

### Analysis

#### *Background*

On May 5, 2025, the Northwest & Intermountain Power Producers Coalition (NIPPC) filed a motion for certification of my April 21, 2025, ruling denying NIPPC’s March 12, 2025 motion to compel discovery responses. That ruling denied the motion to compel on the ground that this is an other than contested case and the Commission’s discovery rules do not contemplate motions to compel in other than contested cases.

On May 20, 2025, several entities and coalitions<sup>1</sup> filed comments in support of NIPPC’s motion to for certification. Portland General Electric Company (PGE) filed comments in opposition. On May 27, 2025, NIPPC filed a reply to PGE.

#### *NIPPC’s Position*

In its Motion for Certification, NIPPC argues that the ruling under review is legally invalid, as well as problematic from a policy perspective.

As an initial matter, it cites to ORS 756.090(1), which is quoted in full above. NIPPC points out that there is no language in this statute limiting the Commission’s power to contested cases.

---

<sup>1</sup> Comments were filed by the Alliance of Western Energy Consumers (AWEC); jointly by Renewable Energy Coalition (the Coalition), Community Renewable Energy Association (CREA), and Oregon Solar + Storage Industry Association (OSSIA); and jointly by Renewable Northwest (RNW), Oregon Citizens’ Utility Board (CUB), the Green Energy Institute at Lewis & Clark Law School (GEI), Sierra Club, and NW Energy Coalition (NWECC).

UM 2371  
Page 3

NIPPC further discusses rule OAR 860-001-0540, which provides that “[a] party may submit data requests to any other party, subject to the discovery rules in the [Oregon Rules of Civil Procedure (“ORCP”)]” and notes that nothing in the language of this rule limits its applicability to contested cases. It acknowledges that it was adopted in the Contested Case and Declaratory Ruling group but argues that that group involves multiple rules that are commonly applied to both contested and non-contested proceedings. It also notes that the Commission commonly specifies that rules apply to contested cases only and could have done so with OAR 860-001-0540.

If, NIPPC reasons, OAR 860-001-0540 is available in other than contested cases, the rule states expressly that the ORCP applies, and the ORCP allows for motions to compel. Therefore, there is no need to seek recourse to OAR 860-001-0500, a rule that by its terms does apply to contested cases.

NIPPC also cites to OAR-860-001-0420, which generally allows submission of motions to the Commission and which could provide for a reasonable avenue for a motion to compel.

NIPPC next argues that parties have routinely engaged in discovery in other than contested cases and that the ruling under review disrupts this long-standing practice. NIPPC argues that “[t]he Administrative Procedures Act provides that it is unlawful for an agency to exercise its discretion in a manner that is ‘inconsistent with ... prior agency practice, if the inconsistency is not explained by the agency.’”<sup>2</sup>

Next, NIPPC argues that the rule is contrary to the public interest because parties rely on discovery to develop high-quality advocacy which the Commission then relies on in its orders. Further, restricting discovery to contested cases places additional burdens on Staff and leaves the Commission with a less developed record on which to base its decision.

Finally, NIPPC argues that its data requests are reasonably tailored to seek relevant material. NIPPC seeks responses to Data Requests 001 and 002 to PGE. Data Request 001 asks PGE to provide the unredacted versions of material Docket No. UE 427 regarding PGE’s request to recover costs associated with its investment in Clearwater Wind following the project’s selection in PGE’s 2021 RFP. In that docket, the Commission issued Order No. 25-075, finding PGE’s investment in Clearwater Wind was prudent notwithstanding “issues with PGE’s RFP process” leading to the selection of the project, determining PGE’s “process was deficient”, and concluding “[t]his docket

---

<sup>2</sup> NIPPC Motion at 18 (*citing Gordon v. Bd. of Parole and Post-Prison Supervision*, 175 P3d 461, 468-69 (Or 2007)).

UM 2371  
Page 4

may be relevant as a case study” in future RFP proceedings.<sup>3</sup> Data Request 002 asks PGE to provide Independent Evaluator (“IE”) Reports from PGE’s two most recent RFP dockets (Docket Nos. UM 2166 and UM 2274) – reports that discuss the “fair[ness], transparen[cy], and prop[riety]” of the RFP process.<sup>4</sup>

### *PGE’s Position*

PGE first responds to NIPPC’s arguments regarding ORS 756.090. It first states that NIPPC did not preserve this argument by raising it in its Motion to Compel or the response and thus it should be disregarded here. It second states that NIPPC is attempting to use ORS 756.090 in a novel and unprecedented way. It finally characterizes the rule as “a general rule that a utility must keep records and that the Commission may require a utility to furnish records to the Commission.”<sup>5</sup> This type of rule, it says, is ubiquitous in American utility regulation and should not be read as a backdoor method to compel discovery—it requires that records be maintained for inspection by the Commission, not by intervenors.

Next, PGE argues that the ALJ correctly ruled that OAR 860-001-0540 is a subset of the rules that defines discovery procedures in contested cases. This, it states, is consistent with the Commission’s notice of rights in contested cases, which states that parties “may obtain discovery from other parties through depositions, subpoenas, and data requests,” showing data requests are a subset of discovery. It also notes that OAR 860-001-0500, the procedure to compel discovery, unambiguously only applies in contested cases.

PGE additionally argues that this is not a departure from long-standing Commission practice. It notes that “NIPPC does not cite a single time the Commission has expressly stated discovery is allowed in other than contested cases. Rather, NIPPC cited a string of non-contested case proceedings in which parties have voluntarily responded to information requests to support its proposition.”<sup>6</sup>

Accordingly, PGE contends NIPPC’s citation to *Gordon* is misplaced. That case, it states, applies when an agency “exercised its discretion in a manner ‘inconsistent with

---

<sup>3</sup> *In the Matter of Portland General Electric Company, Renewable Resource Automatic Adjustment Clause*, Docket No. UE 427, Order No. 25-075 at 9-10, 14 (Feb. 21, 2025). Note that the full quote from the Order observes that “[t]his docket may be relevant as a case study that informs how we respond to proposals to change RFP rules in our generic proceedings[.]” If the docket “may be relevant” to generic RFP proceedings, it is even more be relevant to PGE-specific RFP proceedings.

<sup>4</sup> OAR 860-089-0450(1).

<sup>5</sup> PGE Response at 6-7.

<sup>6</sup> PGE Response at 9.

UM 2371  
Page 5

an *agency rule*, an *officially stated agency position*, or a prior agency practice' and did not adequately explain the inconsistency."<sup>7</sup> PGE argues that NIPPC has not demonstrated that there is an agency rule, officially stated agency position, or prior agency practice that the ruling was inconsistent with. It also argues that the statute cited by *Gordon*, ORS 183.482, is a portion of the APA that only applies to *contested* cases.

Next, it argues that the ALJ ruling does not result in a substantial detriment to the public interest. It states that parties work collaboratively in other than contested cases, and that the only advocacy that NIPPC or any other intervenors have in this proceeding is in the form of comments. It argues that when adopting the Internal Operating Guidelines, the Commission had full faith that Staff could handle the responsibility of RFP proceedings.<sup>8</sup> It further notes that there is an independent evaluator in RFP proceedings who oversees the process and reports directly to the Commission.

Finally, PGE argues that the data requests in question are not reasonably calculated to lead to the discovery of admissible evidence. It first argues that because the ALJ did not reach that issue, it should not be ruled on by the Commission in this certification proceeding. Second, it states that the proper forum to address the issues NIPCC raises in its brief was in the prior RFP design, acknowledgment, and cost-recovery proceedings. It argues that "[t]he Commission should not expand each RFP proceeding to open the door for parties to relitigate prior RFP proceedings and decisions, which could be the outcome if all prior documents are required to be provided in each subsequent RFP design docket."<sup>9</sup>

### *Other Comments*

Three other participants and groups of participants filed comments in support of NIPPC's request for certification. First, AWEC notes that in hybrid proceedings such as this RFP, intervenors must be granted party status to "receiv[e] copies of filings made by others and to be eligible to sign a protective order to seek access to confidential information."<sup>10</sup> NIPPC is seeking confidential information; and, AWEC states, "[t]o allow intervenors to obtain party status with the intention of receiving confidential information, only to be denied such information at the discretion of the utility and then be unable to compel such information under Commission order is illogical."<sup>11</sup>

---

<sup>7</sup> *Gordon*, 343 Or at 633 (citing ORS 183.482(8)(b)(B)).

<sup>8</sup> PGE Response at 12 (citing UM 2055, Order 20-386 at 25-26 (Oct. 27, 2020) ("Commission Staff is primarily responsible for the processing of RFP filings."))

<sup>9</sup> PGE Response at 15.

<sup>10</sup> AWEC Response at 2.

<sup>11</sup> AWEC Response at 2.

UM 2371  
Page 6

Next, AWEC notes that the Commission is currently undertaking a rulemaking to modernize the RFP process with the explicit intention to “[i]mprove visibility into alignment between RFP decisions and IRP analysis/findings” and “[s]upport more thorough scrutiny of subjective decisions within the RFP processes.”<sup>12</sup> Without receipt of relevant evidence, AWEC states, intervenors cannot properly review a utility’s filing and provide adequate feedback.

REC, CREA, and OSSIA (collectively, the Trade Groups) jointly filed comments in support of NIPPC. First, they argue, as NIPPC does, that ORS 756.090 allows the Commission to require documents of a utility in any proceeding. Second, the Trade Groups state that they frequently submit data requests in other than contested case proceedings, and their discovery practice has a practical and positive impact on Commission decisions. Third, they state, different utilities respond more or less completely to voluntary data requests, leading to an inequity between different utilities and the likelihood that it “will embolden a utility like PGE to continue in its approach of providing no or incomplete information.”<sup>13</sup> Finally, they argue that this rule would harm less-resourced stakeholders that primarily have the resources to intervene in other than contested cases while encouraging more-resourced stakeholders to push more proceedings to become contested cases.

RNW, CUB, GEI, the Sierra Club, and NWEA (collectively, the Joint Parties) also filed a response in support of NIPPC. First, they argue that an inability to compel discovery responses in other than contested cases will result in substantial detriment to the public interest. They note that the fact that IRPs/CEPs and RFPs are classed as other than contested has no impact on their importance and state that they are the *key* dockets for HB 2021 compliance. Without intervenors asking discovery requests in those proceedings, they argue, the records are likely to be incomplete at the close of the proceeding. They also argue that it will overburden Staff.

Finally, the Joint Parties argue that the Commission’s rules do not limit discovery to contested cases. They argue, as NIPPC does, that the plain language of the rule on data requests allows for discovery in other than contested cases, and also argue that ORS 756.090 grants broad authority to order record production.

*OAR 860-001-0540*

---

<sup>12</sup> Docket No. UM 2348, Order No. 25-111, Appen. A at 54 (Mar. 24, 2025).

<sup>13</sup> Trade Groups Response at 3.

UM 2371  
Page 7

Participants in the proceeding have different views about whether OAR 860-001-0540 applies in other than contested proceedings. AHD believes that the best reading of the rules is that it does not. Our overarching rule on discovery is OAR 860-001-0500, and that is specific by its terms that it applies only in contested cases. OAR 860-001-0540, dealing with data requests, is one of a number of rules that follows OAR 860-001-0500 and lays out our rules for specific methods of discovery. To distinguish, we have referred to requests for information served in other than contested cases as “information requests” rather than “data requests.” While participants may elide this distinction, we note that no participant in this proceeding has cited a case where we have addressed whether that administrative rule applies outside of a contested case process; instead, parties have generally participated voluntarily in a discovery-type process in other than contested cases. Accordingly, even if the *Gordon* case applies in this other than contested proceeding, we do not believe that there is a settled agency practice or policy that is being changed through denial of discovery pursuant to OAR 860-001-0540.

*ORS 756.090(1)*

Participants argue that ORS 756.090(1), which is quoted above in its entirety, allows us to broadly compel production of documents from public utilities. ORS 756.090(1) allows the Commission to inspect documents from any public utility in the state. AHD agrees that the Commission has the authority to use ORS 756.090(1) to require utilities to produce documents at its discretion, including documents requested by parties in other than contested cases. There are no standards governing when or how the Commission must order production of documents, so it is committed to the Commission’s discretion. We note that the Commission has not delegated this authority to the Administrative Law Judge in other than contested cases.

*Recommendations*

As an initial matter, AHD recommends that the Commission uphold my earlier determination that OAR 860-001-0540 applies only in contested cases.

Given this, AHD also recommends that the Commission consider the question of discovery in hybrid proceedings in a rulemaking process. The Internal Operating Guidelines state that hybrid proceedings “use a unique hybrid process” to “help balance the need for an informal process while providing participants with certain rights to help facilitate their participation and access to information.”<sup>14</sup> These are complicated proceedings with numerous participants. Stakeholders—as many commented here—have relied on the ability to ask questions of the companies in these proceedings and have used information gained from the companies to inform their comments and ensure the Commission has a fully developed record. The Commission currently has an open

---

<sup>14</sup> IOGs at 27.



UM 2371  
Page 8

proceeding to modernize the IRP and RFP rules in Docket AR 669. This would be an appropriate rulemaking in which to consider whether and to what extent discovery rights are appropriate in hybrid proceedings, without requiring a full-scale rulemaking to address discovery rights in all other than contested proceedings.

Second, the Commission should consider whether it wants to use its authority under ORS 756.090(1) to order production of the documents in question. As noted above, there are no standards included in the statute as to when and under what circumstances the Commission must order production, so the question is committed to the Commission's discretion.

On the one hand, AHD believes that the information in question is relevant in this proceeding (the question of relevance was briefed in detail before the ALJ). NIPPC seeks responses to Data Requests 001 and 002 to PGE. Data Request 001 asks PGE to provide the unredacted versions of material from Docket No. UE 427 regarding PGE's request to recover costs associated with its investment in Clearwater Wind following the project's selection in PGE's 2021 RFP. Data Request 002 asks PGE to provide Independent Evaluator reports from PGE's two most recent RFP dockets (Docket Nos. UM 2166 and UM 2274).

As to Data Request 001, NIPPC correctly quotes the Commission's order in UE 427 where the Commission stated that, while it was not adopting NewSun Energy's proposals to change its RFP oversight process in that docket, UE 427 "may be relevant as a case study that informs how [it] respond[s] to proposals to change RFP rules in our generic proceedings."<sup>15</sup> Thus, AHD disagrees with PGE that "the proper forum to address the issues NIPCC raises in its brief was in the prior RFP design, acknowledgment, and cost-recovery proceedings."<sup>16</sup> To the contrary, the Commission explicitly invited parties to address them in future proceedings. While it did not name this proceeding, specifically, it is considering here the design of PGE's RFP and thus issues of fairness and transparency will come to the forefront here.

As to Data Request 002, the IE reports, NIPPC notes that "[t]he core duty of the IE is to 'oversee the competitive bidding process to ensure that it is conducted fairly, transparently, and properly.'"<sup>17</sup> The Commission found procedural infirmities in at least one of those prior RFPs and, again, noted that it could be a case study for future RFPs. Access to the IE reports that examine specifically the fairness and transparency of those RFPs could directly bear on the fairness and transparency of this RFP. Further,

---

<sup>15</sup> Order No. 025-075 at 14.

<sup>16</sup> PGE Response at 15.

<sup>17</sup> NIPPC Motion at 15 (quoting OAR 860-089-0450(1)).

UM 2371  
Page 9

this information would likely be produced subject to a modified protective order and not be made publicly available.

On the other hand, under the Commission's current hybrid processes, the Commission has entrusted to Staff the responsibility to develop a record for Commission review, and Staff already has the ability to request the information sought by NIPPC. The Commission could thus conclude that it need not order production of documents under ORS 756.090(1), an extraordinary remedy outside the bounds of the Commission's normal procedures.

However, due to the relevance of this information in this proceeding and the fact that the Commission does not currently have rules in place to address discovery in hybrid proceedings, I recommend that the Commission direct the information in question to be produced in this limited instance.

**PROPOSED COMMISSION MOTION:**

1. AHD and Staff are directed address discovery rights in hybrid proceedings under the open rulemaking, AR 669, Rulemaking to Amend Integrated Resource Plan Guidelines and Competitive Bidding Rules.
2. PGE is directed to produce the information requested by NIPPC in its Data Requests 001 and 002.