BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

Docket No. AR 669

Rulemaking to Amend Integrated Resource Plan Guidelines and Competitive Bidding Rules.	NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION PRE-HEARING COMMENTS

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I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition ("NIPPC") hereby submits these comments to the Public Utility Commission of Oregon (the "Commission" or "OPUC") on the Proposed Rules.[1] NIPPC strongly supports many of the proposed revisions to the competitive bidding rules in OAR 860-089, but recommends a few additional and material changes without which requests for proposals ("RFPs") will not establish a fair, objective, and transparent competitive bidding process. Additionally, NIPPC supports Staff's rules that give stakeholders discovery rights in hybrid proceedings such as RFPs and integrated resource plans ("IRP") but recommends the legal standard for information requests be clarified.

II. COMMENTS

A. The Utilities Should Be Required to Make At Least Benchmark Bid Elements/Utility-Owned Assets and Transmission Rights Available to Third-Party Bidders and Disclose those Assets in the IRP or IRP Update

NIPPC continues to recommend that the Commission should require the utility to make at least benchmark bid elements/utility-owned assets[2] and transmission rights available to all third-party bidders. Further, the utility should be required to identify what assets it plans to use for a benchmark resource or what utility-owned assets will be used by a utility-owned bid and what transmission rights would be available for third-party bidders when it files the IRP or IRP Update. Staff and the Commission have asked for more information on the feasibility of sharing benchmark assets/utility-owned assets with third-party bidders and when information on the

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1 Corrected Notice of Proposed Rulemaking Hearing with Statement of Need and Fiscal Impact and Proposed Rules (Oct. 9, 2025) (hereinafter "Proposed Rules").

2 If a bidder proposes a build-transfer agreement using a utility-owned asset, such as a utility's land, then all third-party bidders should be allowed to use that utility-owned asset. Utility-owned asset refers to any utility-owned asset used for a utility-ownership bid.

planned use of those benchmark/utility-owned assets and transmission rights should be shared with stakeholders and bidders.[3] NIPPC is providing more information in these comments to hopefully address Staff and the Commission's questions and concerns.

NIPPC notes that the utilities have historically actively resisted making their assets broadly available for the benefit of ratepayers. Instead, the utilities have demonstrated a pattern of prioritizing ownership over least cost and least risk acquisitions. One way in which they have done this is to use utility assets to acquire what may be higher cost or more risky generation simply because the asset will be owned by the utility. This pattern will not change without firm direction from the Commission and the rules directly requiring it. If the rules do not directly require something or policy is only to encourage something, then the utilities will likely not do it voluntarily and it will be difficult for Staff to require the utilities to do it.

In order to be effective, the new rules must make specific decisions regarding which assets will be made available and when the utilities must provide that information, and NIPPC's comments make specific recommendations in both respects. However, to zoom out, what is really needed in Oregon is a change in approach by the utilities that can only occur if the Commission prioritizes robust competition and directs the utilities to focus on utilizing their systems efficiently and effectively—built and maintained on the basis of having captive ratepayers—to benefit ratepayers regardless of resource ownership. The Commission's historic

[3] *See* Staff's Presentation Workshop #3 at 16-17 (Aug. 5, 2025); *see also* September 16, 2025 Public Meeting, available at: https://oregonpuc.granicus.com/player/clip/1544?view_id=2&redirect=true.

practice of "encouragement" has not worked, and the utilities need to be directed to change course if the Commission wants to effectuate that outcome.[4]

The incremental steps put forward in the Staff proposed rules are positive, but, like the incremental approaches that the Commission has tried in the past, are likely to once again fail to change actual utility practices. Staff's incremental changes related to making utility-owned assets available to third-party bidders in specific RFPs has been inadequate to address the persistent and recurring problem of ratepayer-funded utility assets being the deciding factor in RFPs selecting utility-owned resource bids. Simply put: the Commission is the regulator, and when the regulated entity is not willing to do what the regulator wants, then the Commission must require rather than encourage the results it wants. That is the fundamental purpose of the Commission's oversight—to ensure that monopoly utilities act in the best interest of their captive customers who have no choice but to rely on the utilities for electric service. Unless changes are adopted to the rules, then this issue will continue to arise again and again in utility RFPs.

The utilities have focused on why they cannot do what the Commission wants rather than how they can overcome any legitimate obstacles. In NIPPC's view, the utilities could have been providing information on what they believe is necessary to implement a process where benchmark/utility-owned assets and transmission rights are made available to all bidders, but they have not. For example, Portland General Electric Company ("PGE") has raised generalized and vague objections late in its last RFP, which are difficult to rebut without more detailed and specific information and impossible to resolve under the time constraints of an individual RFP

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4 *See* NIPPC Comments on Second Draft Proposed Rules at 6-8 (July 16, 2025); *see also In re Commission Investigation into Integrated Resource Plan (IRP) and Request for Proposal (RFP) Modernization*, Docket No. UM 2348, NIPPC's Comments on Workshop #3 at 6-8 (Jan. 10, 2025).

proceeding.[5] Moreover, it is difficult for the Commission to make an informed decision in the RFP process especially if the Commission does not have all the information or receives it too late in the process.

In order to conform with the spirit of the Commission's general direction and policy encouragement, the utilities should have been clarifying what information they need to make the availability of their assets to third-party bidders work, how they have co-owned projects in the past, what type of agreements are necessary, etc. This has simply not occurred. While NIPPC will attempt to address some of Staff and the Commission's questions and concerns, NIPPC believes the Commission should move beyond seeking coherent and well explained objections from the utilities (which the utilities, in any event, have not provided), and instead require them to provide cooperative solutions to make Staff's proposal work.

NIPPC believes that the only real way to make progress is for the Commission to require the utilities to make assets available to bidders, which would require the utilities to clearly identify any potential concerns, and explain how they would need to be solved. In the environment of limited transmission, fewer prime locations, and the retirement of utility thermal assets that will open up new interconnection capacity, RFPs as they have been run recently simply cannot and will not establish a fair, objective, and transparent competitive bidding process to obtain the least cost and least risk resources. Use of utility-owned assets is also a way to ensure we use existing resources in the most efficient and effective manner in a region of increasing scarcity. The Commission's decision on making utility-owned assets available to third-party bidders may be the most important action the Commission can take to ensure that

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5 *In re PGE 2025 All-Source Request for Proposals*, Docket No. UM 2371, PGE's Appendix L to 2025 Draft RFP (July 18, 2025).

PacifiCorp and PGE are able to meet their House Bill 2021 compliance requirements, without exceeding the law's cost cap, and address the region's resource adequacy concerns in the most cost-effective manner.

1. It is Feasible for a Utility to Make At Least its Benchmark/Utility-Owned Assets and Transmission Rights Available to Third-Party Bidders

Staff has previously requested more information on the feasibility of a utility sharing its benchmark/utility-owned assets and transmission rights with third-party bidders. Some utility-owned assets that could be made available to third-party bidders include: location/site and any development rights or associated nearby land at the location; easements; interconnection facilities, access to interconnection facilities, or retiring interconnection assets; transmission rights at a specific location; and more. It is important to note a utility may not "own" many of these assets, but it instead may hold a right to use the asset (i.e., lease to land, right to interconnect on Bonneville Power Administration's system, site certificate, etc.), and that right to use the asset should be shared with third-party bidders. At this time, NIPPC is not recommending all utility assets be required to be made available in every single RFP, but only utility-owned assets a benchmark or utility-owned bid plans to use and excess transmission rights the utility holds. While NIPPC's prior comments and the proposed rules focus on "benchmark" resources, the rules should not just be limited to that limited definition of "a resource identified in an electric company's response to its own request for proposals."[6] For example and as NIPPC has stated in the past, if there is a utility-owned asset that will be made available for a non-benchmark build transfer agreement bid, then that should also be made available for a power purchase agreement bid.

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6 *See* OAR 860-089-0020(1) (definition of "benchmark resource").

Transmission rights should be easy for a utility to make available because it can determine how much of its transmission capacity is reserved or not. Utility site locations will require not just the specific land, but interconnection rights, common easements, use of utility easements or nearby land, etc. Use of utility-owned assets will also require coordination from the utility whether it is for scheduling, servicing, security, or emergency response. Additionally, a utility should not be required to revise a utility-owned asset to make a different resource feasible. For example, if a utility is making its land available but the land rights are not suitable for a specific resource technology (e.g., the land is suitable for wind but not solar), then the utility should not be required to negotiate different land rights for it. However, the utility may need to be willing to agree to a negative covenant so that the utility will not announce that the transmission is no longer available or build a second wind facility near the site that it has made available. If the utility retained ownership, it would not build another wind facility that would reduce its own capacity value; however, a third-party developer would need some sort of contractual assurances that the utility will not harm the third party's capacity value.

In the 2025 RFP, PGE has offered that developers could use some transmission rights at various variable energy resources point of receipts, but this offer was limited to the circumstance that a developer could find BPA transmission available—which may have negated the value of the offer because it appeared that there was no such BPA transmission available. Ultimately, PGE's offer to allow competitive bidders to use PGE's transmission rights when its existing generation was not using the transmission appears to have been simply a tactic to justify PGE using those existing transmission rights for its own benchmark resource and make those benchmark "bids" more economic. Without competition, a benchmark bid will likely be more expensive because it will not need to keep forecasted costs down in order to "beat" a third-party

bid. In addition, utility-owned projects are more likely to experience more cost overruns or lower performance, making them more expensive compared to third-party projects. Additionally, PGE's offer gave no indication that it would be willing to enter into a negative covenant to not revoke the access to its transmission, which would be necessary to prevent making the non-PGE resource uneconomic.

In PGE's 2025 RFP, PGE raised several concerns about the feasibility of making utility-owned assets available to third-party bidders—all of which could have been resolved with more time and a willingness by (or a requirement that) PGE to do so. For example, PGE raised concerns including: security risks with multiple-entity operation related to "roving patrols, secured entry onto property, detection and monitoring (such as thermal cameras and fence detection), and established coordination between PGE security and local law enforcement" and difficulty in establishing supplemental interconnection agreements to allow operations of a new resource under an existing interconnection agreement and ability to manage the new resource independently of the existing resource.[7]

While some of PGE's concerns may be valid, they are not insurmountable, and utilities have not attempted to present solutions to those concerns that would still allow third-party bidders to use utility-owned assets. While the utilities have expressed these concerns about sharing utility-owned assets, the utilities have partnered with other entities before to share land or facilities in order to develop projects. For example, PGE has co-owned many projects including Wheatridge Renewable Energy Facility,[8] Pelton Round Butte hydro facility (co-

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7 Docket No. UM 2371, PGE's Appendix L to 2025 Draft RFP.

8 *NextEra Energy Resources and Portland General Electric celebrate first-in-the-nation combined clean energy facilities* (Sept. 28, 2022), available at:

operated),[9] Clearwater Wind Energy Center (operated by developer),[10] Colstrip power plant,[11] and more. Other utilities have been able or are required to co-develop assets. For example, the New Jersey Board of Public Utilities solicited an RFP for transmission projects to connect offshore wind, and a winning bid was a partnership between Jersey Central Power & Light (utility) and Mid-Atlantic Offshore Development (an independent developer) to construct a new "Larrabee" 500 kV substation and related facilities using the utility's existing site.[12]

In 2022, the Public Utilities Commission of Hawaii ("HI PUC") adopted an order mandating that, if the utility's bid in an RFP relies on a company-owned substation or land, then other bidders must be given the opportunity to develop on that site as well.[13]

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https://portlandgeneral.com/news/2022-09-28-nextera-energy-resources-and-portland-general-electric-celebrate.

9 *The Confederated Tribes of Warm Springs & Portland General Electric*, available at: https://assets.ctfassets.net/416ywc1laqmd/7wVPIHNbmdB6xeTSUrTipO/10019a7b77f7261e64a904503e5c37ce/PGE_CTWS_Partnership_2024.pdf.

10 *See Harnessing wind from Big Sky Country*, available at: https://portlandgeneral.com/about/who-we-are/innovative-energy/clearwater and *PGE's 2024 resources at a glance*, available at: https://portlandgeneral.com/about/who-we-are/how-we-generate-energy/energy-sources.

11 PGE will be a co-owner at least until the end of 2025 and has agreed to pay off its share of Colstrip's construction costs by 2025. Will Gehrke, *PGE Agrees to Early Colstrip Closure – Future of Plant Remains Uncertain* (Sept. 23, 2021), available at: https://oregoncub.org/news/blog/pge-agrees-to-early-colstrip-closure-future-of-plant-remains-uncertain/2419/.

12 *See In re Declaring Transmission to Support Offshore Wind a Public Policy of the State of New Jersey*, New Jersey Board of Public Utilities Docket No. QO20100630, Order on the State Agreement Approach (SAA) – Project Scope Modifications and Cost Adjustments (Dec. 18, 2024), available at: publicaccess.bpu.state.nj.us.

13 *In re Instituting a Proceeding to Investigate Integrated Grid Planning*, HI PUC Docket No. 2018-0165, Order No. 38481, Appendix at Section III(A)(2) (June 30, 2022), available at: https://www.hawaiianelectric.com/documents/clean_energy_hawaii/integrated_grid_planning/20220630_puc_order_38481.pdf.

Additionally, if the utility has concerns about operation of a facility, then the utility could allow the third-party to own and develop a project on the same site, but require the utility to operate and maintain the facility to reduce operation concerns. For example, with the Trojan nuclear power plant, there were many owners including PGE, PacifiCorp, and Eugene Water and Electric Board, but PGE operated the facility.[14]

There are several examples of a utility making its assets available to third-party bidders. In a recent Washington RFP, Puget Sound Energy made its transmission rights held across Bonneville Power Administration's system available to third-party bidders.[15] PGE itself agreed to make a specific amount of transmission available to third-party bidders in its last RFP.[16]

In the end, NIPPC does not disagree that there may be hurdles to overcome, but a willing utility can and has overcome those hurdles. In fact, co-ownership is remarkably easy and consistent with historic practice that it is difficult to understand why there should be any concerns associated with it. Generally, the language in the draft rules will not result in utilities actively engaging in a constructive manner to overcome these hurdles. Some utilities may, but most utilities will not engage constructively. Further, it will continue RFPs down a path of litigation over whether assets should be made available rather than how they are made available.

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14 Craig Wollner, *Trojan Nuclear Power Plant*, OREGON ENCYCLOPEDIA, available at: https://www.oregonencyclopedia.org/articles/trojan_nuclear_power_plant/.

15 *See* Puget Sound Energy 2024 Voluntary RFP at 11 and Exhibit F (July 1, 2024), available at: https://www.pse.com/en/pages/energy-supply/acquiring-energy/2024-Voluntary-All-Source-RFP.

16 Docket No. UM 2371, PGE's Appendix L to 2025 Draft RFP at 2.

2. The Utility Should List Assets Utilized by the Benchmark or Utility-Owned Bids and Transmission Rights Available for Use by Third-Party Bidders in the IRP or IRP Update

Generally, NIPPC recommends the utility identify what assets it plans to use for a benchmark resource or what utility-owned assets a utility-owned bid will use and what transmission rights would be available for third-party bids when it files the IRP or IRP Update. The IRP or IRP Update is when notice is given about a utility's resource needs. This is also likely when the utility will begin planning what benchmark resources it would bid into the RFP or what utility-owned assets will be used by utility-owned bids.

Bidders need enough notice of the potential benchmark/utility-owned assets or transmission rights that will be made available to all bidders in order to effectively design a bid. As we have seen in PGE's 2023 RFP, notifying bidders after the draft RFP is filed about use of utility-owned assets is too late. In PGE's 2023 RFP, the Commission adopted Staff's creative proposal to allow straw bids that used PGE's assets.[17] However, PGE received only one straw bid and noted it "did not perform competitively from a price perspective compared to the expected benefit to customers."[18] NIPPC believes that bidders did not receive adequate notice to develop straw bids using the utility-owned assets. If PGE had provided this information regarding utility-assets that would be made available before bids were due, then NIPPC believes PGE would have received more straw bids and more competitive bids.

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17 *In re PGE 2023 All-Source Request for Proposals*, Request for Partial Waiver of Competitive Bidding Rules, Docket No. UM 2274, Order No. 24-011, Appendix A at 34 (Jan. 12, 2024).

18 Docket No. UM 2274, PGE Request for Acknowledgment of Final Shortlist at 22 (Sept. 17, 2024).

The same thing is likely to happen in PGE's 2025 RFP because of late notice and Bonneville Power Administration's transmission pause. In PGE's 2025 RFP, the Commission elected not to make more utility-owned assets such as the land at the PGE variable energy resources or transmission rights at PGE's fossil fuel locations available to all bidders in part because information on PGE's objections was provided too late in the process.[19] PGE did not provide notice of what assets its benchmark bids planned to use until July 18, 2025, just four days before the Public Meeting on July 22, 2025. At the very least, PGE should have provided this information when it filed the draft RFP. If information was provided earlier in the process, then stakeholders could have asked discovery on the issue, stakeholders and PGE could have debated the legitimacy of making these assets available to third-party bidders, and then the Commission could have made a well-informed decision. That still likely would not have been enough time for bidders to effectively design bids to use all of the utility-owned assets that could have been made available to bidders.

While this RFP is still ongoing, it is unlikely that third-party bidders will be able to take advantage of utility-owned assets, and PGE's benchmark or utility-owned bids seem likely to win the RFP. PGE's benchmarks that will take advantage of PGE's existing transmission rights and other utility owned assets are likely to not be subject to any meaningful price competition that would have occurred if third parties were able to use PGE's transmission and assets. While NIPPC is not certain what the project size or costs would be, if PGE's benchmark was a 400 MW solar plus storage project with a range of costs of $400-$500 million, and this lack of competition increases project costs by only 10% (i.e., a third-party bid could develop a project

[19] *See* Commissioner discussion at July 22, 2025 Public Meeting, available at: https://oregonpuc.granicus.com/player/clip/1521?view_id=2&redirect=true.

10% lower), then that would result in an additional $40-50 million cost to ratepayers, which is unlikely to be disallowed in a rate case. Thus, the practical effect in only the last RFP of the Commission not requiring PGE to use its assets to benefit ratepayers could easily increase ratepayer costs by tens of millions of dollars. In a time of rising retail rates and the potential to reach the House Bill 2021 cost cap, the Commission should use every available tool to ensure that the monopoly utilities serving retail customers drive costs down.

While notice when the draft RFP is filed may be sufficient for some utility-owned assets, it is likely not sufficient for most utility-owned assets, and it is better policy to require the utility to file this information with the IRP or IRP Update. This is especially true if the utility will not fully cooperate and provide a complete proposal for use of the utility-owned assets or transmission rights when it files the draft RFP. For example, if the utility only files rudimentary information on assets to be used by the benchmark/utility-owned bid or the extent of its transmission rights that could potentially be used by bidders when it files the draft RFP and stakeholders have to advocate for more information throughout the review of the draft RFP, then when the Commission or Staff requires the utility to provide more information when the RFP is approved, it will be too late in the process once again.

There were Commissioner questions on the practical implications of providing this information at the IRP stage instead of the RFP. Whether this information is provided during the IRP or RFP, it will need to be analyzed by stakeholders and a decision made by the Commission. It makes more practical sense to address this issue during the IRP when there is more time to analyze information and have a back and forth on which assets will be made available. This would be one additional decision the Commission would need to make in the IRP and order any changes like it would with any other issue. This decision can be done at the RFP stage, but

practical experience has shown with an unwilling utility it will likely be too late to effectively use the utility-owned assets and provide the Commission with enough information to make an informed decision. It may be impossible to analyze every utility-owned asset the utility plans to use for utility-owned bids in the RFP at the IRP stage, but where possible utility-owned assets should be identified in the IRP or IRP Update. Any assets the utility knows it will use or plans to use should be included in the IRP or IRP Update.

Notice at the RFP stage may be insufficient if there will be litigation about the resources made available and bidders do not have confidence the Commission will require all feasible assets to be made available. It would be better to require the notice at the IRP stage and have the Commission finalize the decision before the RFP. The Commission could also disallow a benchmark from using any utility-owned assets it did not disclose in the IRP or IRP Update. Thus, NIPPC recommends the utility be required to identify what utility-owned assets it plans to use for a benchmark resource or utility-owned bid or what transmission rights would be available for third-party bids when it files the IRP or IRP Update.

B. The Rules on Information Requests Should Be Adopted, But the Legal Standard Related to Information Requests Should Be Clarified

Staff has proposed new discovery rules in the form of information requests in new proposed rule OAR 860-001-0205. These rules are based on the discovery and data request rules in OAR 860-001-0500 and -0540 that apply to contested case proceedings. The Commission should adopt Staff's proposed information request rules, but the legal standard that applies to these information requests should be clarified. NIPPC recommends that the current legal standards that apply to OAR 860-001-0500 and -0540 should also apply to these new proposed

information request rules. The Commission should clarify in the order adopting the rules that the existing legal standards will apply here too.

Legal standards related to discovery and data requests from OAR 860-001-0500 and -0540 already exist in the form of Administrative Law Judge ("ALJ") rulings, Commission orders, case law, and more. It would be more efficient and simpler to hold that any legal standards to the contested case discovery rules also apply to these new proposed rules. Providing this clarity would also reduce and eliminate potential disputes because both the utilities and intervenors would be able to rely upon past precedent to provide guidance regarding what information must be and does not need to be provided. In the event that there are disputes that must be resolved by an ALJ conference or motion to compel, then the costs of litigation in terms of preparing for conferences or drafting motions will be reduced, and the Commission's burden in resolving disputes will be reduced because the Commission will not need to establish new standards.

There are several limitations on discovery in contested case proceedings. The first limitation relates to the needs of the case and parties. The discovery rules for contested case proceedings state:

- "Discovery must be commensurate with the needs of the case, the resources available to the parties, and the importance of the issues to which the discovery relates."[20]

The proposed rules on this standard for information requests state:

- "Any person who meets the requirements of this rule may request information that is commensurate with the need to provide relevant comment on a pending filing subject to this rule, and that is also commensurate with the resources available to

[20] OAR 860-001-0500(1).

> the requester and the recipient and the importance of the issues to which the request relates."[21]

The main difference between these two standards is that the request must be commensurate with the "need to provide relevant comment on a pending filing" versus "needs of the case". NIPPC recommends that the Commission conclude that these legal standards are functionally equivalent. However, if there is intended to be a material difference, then clarification from the Commission on what the difference between these standards means would be helpful. For example, it would be helpful to clarify that information related to an IRP or RFP that stakeholders have typically requested to understand information, make recommendations, and inform the Commission would still qualify as "commensurate with the need to provide relevant comment on a pending filing" would be beneficial.

NIPPC interprets the standards the resources available to the "parties" versus "requester and recipient", and the importance of the issues to which the "discovery relates" versus "request relates" to be nearly identical, but recommends that this be confirmed. NIPPC is not opposed to replacement of "parties" with "requester and recipient", but does not believe this language is needed. Stakeholders often intervene in IRP and RFP proceedings, and, if discovery is limited to those with party status, then there may not be a reason to make this change. Replacement of "discovery" with "request" appears to be an appropriate revision to be consistent with the recommended rule language that provides rights to request information rather than formal discovery.

The second limitation relates to burdens to produce information. The discovery rules for contested case proceedings state:

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[21] Proposed Rules at OAR 860-001-0205(3).

- "Discovery that is unreasonably cumulative, duplicative, burdensome, or overly broad is not allowed."[22]

The proposed rules on this standard for information requests state:

- "Information requests that are unreasonably cumulative, duplicative, burdensome, or overly broad are not allowed."[23]

These two standards are almost identical. Clarification from the Commission here that any case law or precedent describing this legal standard for contested case proceedings and discovery (unreasonably cumulative, duplicative, burdensome, or overly broad) would also apply to the proposed rules for information requests would be beneficial.

A third limitation relates to privileged material. The discovery rules for contested case proceedings state:

- "Privileged material is not discoverable except as provided under the Oregon Rules of Evidence."[24]

The proposed rules on this standard for information requests state:

- "Privileged material is not required to be disclosed except when disclosure is consistent with the Oregon Evidence Code, ORS 40.225 to 40.295."[25]

Previously the proposed rules were missing the exception in the contested case proceeding rules related to information under the Oregon Rules of Evidence. NIPPC had recommended the exception be formally incorporated, which it was. Without the exception, it is possible that relevant information that must be provided in a contested case proceeding would not be available in IRP and RFP proceedings. An example of an exception to privileged information could be if a

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22 OAR 860-001-0500(2).
23 Proposed Rules at OAR 860-001-0205(3)(c).
24 OAR 860-001-0500(3).
25 Proposed Rules at OAR 860-001-0205(4)(a).

utility used legal services to illegally use a developer's confidential information to design a benchmark bid in an RFP.

However, NIPPC is not certain what the difference between "provided under the Oregon Rules of Evidence" compared to "when disclosure is consistent with the Oregon Evidence Code, ORS 40.225 to 40.295." This is the type of ambiguity that will lead to litigation. The Commission should either use the same language, or, in its order, explain exactly why the change was made and what it means in terms of what information will or will not be disclosed.

Discovery disputes consume significant time and resources for all parties and often distract from the substantive policy issues that the Commission is seeking to resolve. Providing clear, consistent legal standards in advance will minimize unnecessary motion practice, reduce delays, and allow both utilities and stakeholders to focus on the merits rather than procedural disagreements. Clarity at the outset of the rulemaking process will also lessen the burden on Staff and the Commission by avoiding repetitive disputes that could otherwise be resolved through explicit guidance

Using these already established legal standards or clarifying any differences in the legal standards in a Commission order will reduce confusion among stakeholders, Staff, and the Commission. It will also reduce Commission and Staff workload because new standards will not need to be created. The Commission should clarify in the order adopting the new rules that the legal standards that apply to contested case discovery rules and motions to compel also apply to the information request rules for hybrid proceedings or the Commission should clarify any differences in the standards in an order adopting new rules.

C. NIPPC Supports Proposed Rules that Prohibit a Utility's Benchmark Team from Having Access to Current or Previous Highly Confidential Bidder Information

In the Proposed Rules, Staff proposes to limit a utility's benchmark team from having access to current or previous highly confidential bidder information for three years.[26] Specifically, the Proposed Rules state:

> Any individual who participates or has participated in the development of ~~the~~an RFP or the evaluation or scoring of bids on behalf of the electric company within the past three years may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.[27]

Staff also proposes the following revisions to the disclosure requirements:

> (A) With the filing of a draft RFP for approval under OAR 860-089-0250, the electric company must disclose the current and past roles within the past five years of all company employees engaged with development or submission of a benchmark or affiliate bid and whether or not each employee had or has access to confidential information that was not available to interested persons either generally or under the terms of a protective order in any prior RFP or IRP filed in Oregon by the electric company within the past five years.
>
> (B) If the Commission approves the draft RFP, the electric company must file an update of the disclosure required under paragraph (A) within seven calendar days and file an additional update every three months thereafter until the completion of the RFP. "Completion of the RFP" for purposes of this requirement means either the RFP has been withdrawn or negotiations are complete.[28]

NIPPC fully supports these Proposed Rules. Previously, NIPPC has expressed concerns over utility benchmark team unfair access to previous confidential or highly confidential bidder information. NIPPC noted this eroded bidder confidence in the RFP process, could have resulted in an unfair advantage to utility benchmark bids, and could have led to illegal theft of trade

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26 Proposed Rules at OAR 860-089-0300(1)(b).
27 Proposed Rules at OAR 860-089-0300(1)(b).
28 Proposed Rules at OAR 860-089-0300(1)(b)(A)-(B).

secrets and/or a tortious misappropriation of trade secrets. Staff originally only recommended to require a utility to disclose the current and past roles for all company employees on the benchmark team, whether those employees have had access to highly confidential bidder information, and updated quarterly disclosures.[29] While this is an important way to monitor whether utility employees may have had access to highly confidential bidder information, NIPPC did not believe this sufficiently addressed the concerns noted above.

Three years should be sufficient to cover commercially sensitive bidder information from a utility's previous RFP and prevent the utility benchmark team from unfairly accessing previous confidential or highly confidential bidder information. While NIPPC recommended the prohibition cover the term of a protective order (typically five years), three years should be sufficient and strikes a good balance during rapidly changing regulatory and legal changes in the industry. Further, three years strikes a good balance with the utilities' concerns related to staffing capabilities.

The Proposed Rules will help increase a bidder's confidence that the RFP is transparent and fair and utility benchmark bids do not have an unfair informational advantage over third-party competitive bids. It will also ensure there is more participation in the RFPs, which will result in the least cost and least risk resources. Thus, NIPPC fully supports the Proposed Rules related to utility benchmark team access to confidential and highly confidential bidder information.

III. CONCLUSION

NIPPC appreciates the opportunity to comment on the proposed changes to the

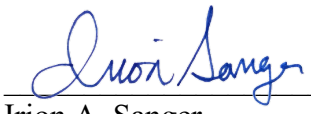
[29] Staff's Workshop 1 Materials, Proposed Rules at OAR 860-089-0300(1)(b)(A)-(B) (June 11, 2025).

competitive bidding rules in the Proposed Rules.

Dated this 20th day of October 2025.

Respectfully submitted,

Sanger Greene, PC



Irion A. Sanger
Ellie Hardwick
Sanger Greene, PC
4031 SE Hawthorne Blvd.
Portland, OR 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Richardson Adams, PLLC

Gregory M. Adams (OSB No.101779)
515 N. 27th Street
Boise, Idaho 83702
Telephone: (208) 938-2236
Fax: (208) 938-7904
greg@richardsonadams.com

Of Attorneys for Northwest & Intermountain Power Producers Coalition