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David F. White
Assistant General Counsel

March 18, 2013

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
550 Capitol Street NE, #215
PO Box 2148
Salem OR 97308-2148

**Re: UM 1182 - PHASE II – NORTHWEST AND INTERMOUNTAIN POWER
PRODUCERS COALITION PETITION FOR AN INVESTIGATION
REGARDING COMPETITIVE BIDDING**

Attention Filing Center:

Enclosed for filing in the captioned docket are an original and five copies of Portland General Electric Company's **REPOSE TO NIPPC'S MOTION FOR OFFICIAL NOTICE**.

This is being filed by electronic mail with the Filing Center. An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "D. F. White". The signature is written in a cursive, flowing style.

DAVID F. WHITE
Assistant General Counsel

DFW:smc
Enclosures
cc: UM 1182 Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1182

In the Matter of)	
NORTHWEST AND INTERMOUNTAIN)	RESPONSE OF PORTLAND
POWER PRODUCERS COALITION)	GENERAL ELECTRIC
)	COMPANY'S TO NIPPC'S
)	MOTION FOR OFFICIAL
Petition for an Investigation Regarding)	NOTICE
<u>Competitive Bidding</u>)	

Pursuant to OAR 860-001-420 and OAR 860-001-460, Portland General Electric Company (PGE) hereby files this response to the Motion for Official Notice of the Northwest and Intermountain Power Producers Coalition (NIPPC). For the reasons stated below, PGE requests that the Commission deny NIPPC's motion to take official notice of the Report of the Independent Evaluator, Accion Group (IE), 2012 Capacity and Energy Power Supply Resources RFP, (January 30, 2013) (the Final Report) in this proceeding, or in the alternative consider PGE's explanation and rebuttal.

NIPPC's Post-Hearing Brief contained extensive argument regarding one of the subjects of NIPPC's motion, the Final Report. NIPPC Post-Hearing Brief at 20-23. NIPPC's motion sought official notice of two "facts": PGE's direct testimony in its current general rate case (UE 262) regarding the method for determining capacity factors for Biglow Canyon; and the IE's Final Report on PGE's Renewable RFP. Because PGE's direct testimony did not introduce new issues or arguments into this docket, PGE does not object to NIPPC's request for official notice of the UE 262 direct testimony.

However, PGE objects to NIPPC's motion with respect to the IE's Final Report. The introduction of new evidence, facts, and arguments in the final round of briefing

raises issues of fundamental fairness and deprives parties of the opportunity to be heard. The Commission's official notice rule (OAR 860-001-460) is permissive, not mandatory. The Commission "may" take official notice but is not required to do so. PGE requests that the Commission exercise its discretion by rejecting NIPPC's attempt to introduce new facts and arguments at this final stage of Phase II. Alternatively, if the Commission agrees to take official notice of the IE's Final Report, PGE asks that the Commission consider its response and rebuttal provided below. *See* OAR 860-001-0460(2) ("A party may object to the fact noticed within 15 days of the hearing during which notice was given, the ALJ ruling, or the Commission order. The objecting party may explain or rebut the noticed fact").

NIPPC proposes the wrong standard for evaluating the IE's Final Report. NIPPC Post-Hearing Brief at 21. NIPPC's standard is based on the Commission's language describing the scope and goal of this Phase II ("a more comprehensive accounting and comparison of all of the relevant risks, including consideration of construction risk, operation and performance risks, and environmental regulatory risks"). UM 1182, Order No. 11-001 at 6. This standard applies not to any IE final reports issued at this time, but is an instruction to the parties about the issues the Commission wanted to see developed in this Phase II to determine whether Guideline 10(d) should be modified.

The IE in PGE's RFP was not operating under this instruction or under any evidence presented in UM 1182 upon which the Commission will base its not-yet-issued final order. The final order in Phase II may change Guideline 10(d), but the IE's Final Report is not subject to those yet-to-be-determined guidelines. The IE issued the Final Report under the existing Guideline 10(d), which is the appropriate standard.

NIPPC's claim that the IE's Final Report provides "no accounting" of the relevant risks is incorrect. NIPPC Post-Hearing Brief at 21. The IE correctly acknowledged that there may be differences in risk (i) between IPP and benchmark and other EPC and (ii) bids with and without cost guarantees or other features that provide fixed prices.

Of particular concern to the IE during the development of the evaluation methodology was the issue of comparing PPA bids to the Benchmark and other EPC bids that may have different risk profiles. A project without firm pricing guarantees for the construction of the facility has different exposure than a project with set capacity pricing for the term of the proposed agreement.

IE Final Report at 17.

Not only did the IE acknowledge the difference between utility ownership options and IPP bids, the IE worked to ensure that any differences in risk profiles were considered and appropriately reflected in the scoring for each bid. *Id.* at 18 ("The IE and the PGE evaluation team worked together during the RFP development and during the bid evaluation to ensure that any disparities in risk profiles between the types of resources were considered").

As to the possibility of "construction cost" risk, the IE correctly concluded that "these risks were accounted for in the design of the RFP since it required fixed pricing for most pre-in service costs of these plants." *Id.* at 17. NIPCC argues that EPC cost guarantees do not address possible cost over-runs due to change orders and latent defects. NIPPC Reply Brief at 22. Construction cost contingencies and management of the construction process to minimize change orders address the risk of cost over-runs associated with change orders. PGE/100, Outama-Bettis-Mody-Hager/21-22; PAC/100, Kusters/18. PGE's benchmark bids included construction cost contingencies. The PGE

evaluation team ensured that construction cost contingencies were included in the cost of all new build utility ownership bids. The risk associated with latent defects is addressed through manufacturer's guarantees, the cost of which is included in the bid price of the benchmark resource. PGE/100, Outama-Bettis-Mody-Hager/20-21.

The IE also appropriately considered the risk of cost variations during plant operation. Because the terms of the PPA permit IPPs to pass through these costs to the utility, the IE appropriately assessed that the risk profile was similar for PPAs and new build utility ownership bids. IE Final Report at 17.

NIPCC is critical of the IE's conclusion that the ongoing performance risks for IPP and utility ownership bids are similar because the heat rate guarantees in long term service agreements are similar to the heat rate guarantees in tolling service agreements. NIPPC Post-Hearing Brief at 22. NIPPC's principal argument is that the IE failed to consider "frequent maintenance shut-downs and capital upgrades that may be required under LTSAs." *Id.* at 22-23. NIPPC's argument is unpersuasive for several reasons.

First, the cost of capital upgrades that may be required under the LTSAs is already included in the bid prices for bids with LTSAs. Second, the price score as determined by PGE's RFP procedures includes the development of a full life cycle economic pro-forma with an estimated forced outage rate as well as scheduled outages in accordance with the terms of the LTSA. Therefore, the planned maintenance and capital upgrades that may be required under LTSAs have already been taken into consideration.

Finally, NIPPC's critique of the IE's Final Report in no way supports NIPPC's generic adder solution. Even assuming that NIPPC's criticisms of the Final Report are well founded, which they are not, at best it suggests the need for further accounting detail

when comparing competing bids. It offers no support for the application of generic adders as an appropriate amendment to Guideline 10(d).

For the reasons stated above, PGE requests that the Commission deny NIPPC's motion to take official notice of the Final Report, or in the alternative consider PGE's explanation and rebuttal.

DATED this 18th day of March, 2013

Respectfully Submitted,

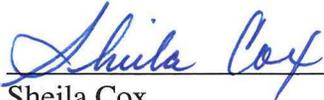


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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **PORTLAND GENERAL ELECTRIC COMPANY'S RESPONSE TO NIPPC'S MOTION FOR OFFICIAL NOTICE** to be served by electronic mail to those parties whose email addresses appear on the attached service list for OPUC Docket No. UM 1182.

Dated at Portland, Oregon, this 18th day of March, 2013.



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OPUC DOCKET # UM 1182**

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