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April 27, 2021

Public Utility Commission of Oregon
Attention: Filing Center
P.O. Box 1088
Salem, OR 97308-1088

Re: Informal Rulemaking Process, AR 641 – Joint Electric Utilities’ Comments regarding redline to existing rules on confidentiality provided by NIPPC

Portland General Electric Company, Idaho Power Company, and PacifiCorp (collectively, the Joint Electric Utilities) respectfully submits these comments urging the Commission to not adopt the proposed changes submitted by NIPPC to Division 001 rules on confidentiality for multiple reasons. First, the language does not belong within Division 001, which is intended to provide direction on how to identify and deliver confidential information. Second, the language is unnecessary given that Division 89 rules already address confidential information within RFP proceedings. Finally, NIPPC’s proposed language could compromise the integrity of an RFP process.

The two pieces of language proposed by NIPPC do not belong in Division 001 rules. The Division 001 rules on confidential information provide guidance to utilities and intervening parties for how to treat confidential information generally. That is - how to identify it, where to send it, what format to use, etc. It is not intended to provide for specific treatment to certain parties within a particular proceeding. Additionally, the first portion of the language submitted by NIPPC has been placed within a rule (860-001-0070) where it contradicts the language directly above it. Rule 860-001-0070 begins by clarifying that it “does not apply to information designated as confidential under a protective order” and yet NIPPC’s proposed language specifically requests access to “confidential information by signing the appropriate protective order.” The language proposed is also confusing because utilities issue RFPs for a number of commercial and vendor solicitations. The intention of NIPPC’s language appears to apply to the rule in an IRP context, however, as written it could be interpreted to apply to any context in which a utility issues an RFP. Furthermore, it is unnecessary to deviate from the intended simple and broad application of Division 001 rules on confidential information in order to address IRP related RFP proceedings when access to protected information within an RFP process is already covered within Division 89 rules.

NIPPC’s proposed language to Division 001 appears to be an attempt to override the ability to include certain terms within a protective order for an RFP proceeding, before a proceeding even begins. Rule 860-089-0400 (6) states that “[w]hen the IE and Commission concur that appropriate protections for protected information are in place, the electric company must provide access to such information to non-bidding interested parties that request the information in the final short list acknowledgment proceeding.” Later, Rule 860-089-0550 states that “[p]rotected information may then be provided to the Commission, the IE, and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in RFP review and approval, final shortlist acknowledgement, and

cost-recovery proceedings.” The language provided allows the Commission to consider what terms appropriately belong within a protective order for each RFP proceeding and does not preclude non-bidders from accessing certain information. This language provides for a better approach to RFP proceedings because each RFP event is its own unique set of circumstances. The Commission should have the flexibility and discretion to match the appropriateness of the terms of a protective order with the circumstances of the event. NIPPC’s language diminishes the Commission’s discretion and flexibility, and therefore should not be added to any portion of the Oregon Administrative Rules.

In addition to being out of scope for Division 001, the language itself as it relates to an RFP event is overly vague and could allow the integrity of an RFP process to be compromised. Allowing *any* non-bidder to obtain access to confidential information within a competitive process could undercut the competitiveness of that solicitation. As written, this language would allow any commercial vendor, developer and/or trade organization (whose purpose is to further the business and commercial insight of its members) that are not active in the RFP process to obtain sensitive confidential information on their competitors without the Commission first considering the circumstances of the event. This muddies the line between access provided to serve the public interest and access obtained for potential private gain. If there is a public interest reason to allow access to confidential information to all non-bidders during a specific RFP process, this can be determined by the Commission during that RFP process at the time that a protective order is issued.

In conclusion, we urge the Commission not to adopt NIPPC’s proposed language to Division 001 rules. Division 001 rules are being updated to refresh the languages given new technology and new ways to conduct business, not to address the access of confidential information within an RFP process. Access to protected confidential information within RFP proceedings is already covered within Division 89 and allows necessary flexibility for each RFP event. And finally, NIPPCs language could allow for the integrity of an RFP process to be called into question. Given these reasons, we believe the Commission should maintain the rule on confidentiality within an RFP process as stated in Division 89 and make no changes to Division 001.

Sincerely,

\s\ Jaki Ferchland

Jaki Ferchland
Manager, Revenue Requirement

Filed on behalf of Portland General Electric, Idaho
Power Company, and PacifiCorp