DEPARTMENT OF PUBLIC SERVICE REGULATION

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MONTANA

IN THE MATTER OF the Public Service Commission's Request for Comments Regarding Implementation of HB 597	)))	REGULATORY DIVISION DOCKET NO. 2021.01.007

OPENING COMMENTS OF THE NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION REGARDING IMPLEMENTATION OF HB 597

The Northwest & Intermountain Power Producers Coalition ("NIPPC") provides these comments pursuant to the Notice of Opportunity to Comment dated January 19, 2021, wherein the Montana Public Service Commission (the "Commission") requested comments "regarding changes that should be made to existing Commission administrative rules to implement the provisions of HB 597, excluding the hearings examiner provisions," and provided a preliminary rules proposal.[1] In these comments, NIPPC focuses on proposed rule 38.5.8212, titled Resource Procurement (the "Proposed Rule"), which NIPPC understands to supersede Admin. R. Mont. 38.5.2010, titled Competitive Resource Solicitations (the "CRS Rule"), and implement HB 597 Sections 1 and 10.[2]

While NIPPC has a number of suggestions to further improve the Commission's Proposed Rule, NIPPC emphasizes its appreciation of Commission Staff's efforts in launching this proceeding with such a thoughtful proposal. NIPPC agrees that now is an appropriate time

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1 Notice of Opportunity to Comment at 1.

2 H.B. 597 sec. 1, 10, 66th Leg., Reg. Sess. (Mont. 2019), 2019 Mont. Laws 1858, 1861, ch. 449 sec. 1, 10 (codified as §§ 69-3-1202, -1207, M.C.A.).

for the Commission to update its CRS Rule, not only because of the passage of HB 597 but also because of the time passed and experience gained since the rule's adoption in 1992.[3] As Montana's investor-owned utilities look to procure significant amounts of new resources, it is imperative that the Commission be prepared to utilize the full extent of its statutory authority to uphold the public interest.

HB 597 recognized, among other things, that the state's policy is "to encourage utilities to acquire resources *using a competitive solicitation process*."[4] In NIPPC's view, this policy is inseparable from and intrinsic to the state's policy, as modified by HB 597, to "require[] efficient rates."[5] In other words, HB 597 made explicit what was already implicit: processes that increase the efficiency of rates are to be encouraged, if not outright mandated.[6] While the Commission should pursue HB 597's directives, including encouraging the use of requests for proposals ("RFPs"), NIPPC recommends that the Commission look at *why* competitive resource solicitations increase the efficiency of rates and do all in its power to encourage the use of competitive solicitations in those circumstances.

Specifically, the Commission should consider how cost-of-service regulated utilities have economic incentives to build and own resources but *not* to buy power from independent power producers ("IPPs") via power purchase agreements ("PPAs"). Resource development always entails some amount of risk, but PPAs impose less risk on ratepayers. Ratepayers are substantially less likely to pay for cost overruns, for instance, when an IPP is responsible for

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3 *Compare* Admin. R. Mont. 38.5.2010 (2020), *with* 24 Mont. Admin. Reg. 2764, 2772-73 (Dec. 24, 1992) (showing no changes).

4 H.B. 597 sec. 10 (emphasis added).

5 § 69-3-1202(1)(a), M.C.A.

6 H.B. 597 sec. 10 (replacing the word *encourages* with *requires*).

avoiding and mitigating such overruns. Yet despite these higher risks to ratepayers, many utilities continue to prefer to build and own resources themselves. This preference can raise a further challenge for ratepayers when utility-owned resources end up as stranded assets when economic, technological, and regulatory changes outpace the depreciation schedule of an asset.

Customers will not be protected against this type of utility bias unless the Commission acknowledges that equating cost-plus utility-owned bids and competitive bids with fixed prices and contract terms for performance is not viable. It is difficult to compare the unique advantages and disadvantages of the different ownership structures on an accurate head-to-head basis, especially when the utility has a consistent economic incentive to select its own self-built resource. To analogize, it is an apples-to-oranges comparison where the utility is financially compelled to insist that it is the "better" fruit. As a consequence, customers pay more costs and assume more risks than they would with a broader diversity of ownership.

NIPPC believes that the best way to fully protect customers and ensure the lowest cost and least risk generation costs would be to: 1) find it imprudent for utilities to own new generation unless they can demonstrate that the market has failed, or there is some unique and valuable opportunity for ratepayers, which can only be realized through utility ownership; or, alternatively, 2) cap utility ownership at a specific percentage.

To the extent the Commission does not impose such limitations, NIPPC proposes the second-best solution: significant revisions of the Commission's CRS Rule that will increase the prospects for greater diversity of resource ownership. Among NIPPC's recommendations are:

- Allow utilities the opportunity to earn a rate of return on non-utility resources procured in an RFP to the extent that the added costs of such a return are outweighed by the cost savings associated with procuring lower-cost PPAs;

- Mandate bid adders to bids for utility-owned generation to properly account for cost and performance contingencies that IPP bidders must already incorporate in their bids;
- Require a "market first" approach;[7]
- When the utility could own a generation asset at the completion of the RFP, require a two stage RFP with the price scores of the ownership options made available prior to the final bidding for the PPA options, which may attempt to "beat" the utility-ownership score; and
- Cap the costs included in rates for utility owned generation at the cost included in the bid used for comparative analysis in the RFP.

NIPPC recognizes that it is asking for a significant expansion and revision of the Commission's Proposed Rule. Montana utilities, however, are planning to make billions of dollars of new investment in generation in the near future.[8] Ratepayers deserve to know that any utility owned generation is acquired at the least cost and risk. They also need to see the utilities' plans tested against IPPs who are prepared to compete to build and operate power resources at their own risk. It is not possible to achieve the least cost and risk resources if there is not a fair procurement process and if the utilities end up owning most or all of the new generation that is built to serve load and comply with environmental requirements.

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[7] As detailed below, a "market first" approach could apply as easily to long-term tolling agreements and PPAs for capacity resources as for shorter term market purchases that have long characterized Montana utilities' resource mix.

[8] *E.g.,* NorthWestern Energy, *2020 Supplement to the 2019 Electricity Supply Resource Procurement Plan* at 42 fig 34 (Dec. 2020) (showing every studied portfolio for one Montana utility requiring investments in new resources ranging from $1.36 billion in fixed costs with $1.05 in estimated variable costs to $10.16 billion in fixed costs with $2.32 in estimated variable costs).

In addition to the recommendations above, NIPPC also provides comments on the current text of the Proposed Rule. NIPPC is generally supportive of the Proposed Rule language insofar as it conforms to established best practices, although NIPPC recommends expanding the Proposed Rule as discussed above. NIPPC recommends specific revisions to the current text where the Proposed Rule appears to diverge from best practices. In particular, NIPPC emphasizes clarifying the process for stakeholder review and engagement, which is an important aspect of any competitive solicitation process. The Proposed Rule begins to address this component, but there is more that can and should be done. This clarity is helpful not only for the utility but also for other stakeholders and the public generally, as a robust stakeholder process fosters trust that both the process and result are fair and just. Such clarity is particularly crucial now, as market changes are leading to significant resource retirements and new resource acquisitions.

I. NIPPC'S INTEREST IN COMPETITIVE RESOURCE PROCUREMENT

NIPPC is a membership-based advocacy group representing electricity market participants in the Pacific Northwest, including Montana. NIPPC has a diverse membership including independent power producers and developers, electricity service suppliers, transmission companies, marketers, storage providers, and others. NIPPC is committed to fair and open-access transmission service, cost effective power sales, consumer choice in energy supply, and fair, competitive power markets.

RFPs are essential to the functioning of a fair, competitive power market. Some of NIPPC's members are among those entities that would participate in an RFP, if and when a fair RFP were to be conducted. NIPPC welcomes the Commission's attention to RFPs in the

Proposed Rule and looks forward to engaging further with the Commission and interested stakeholders on this matter.

II. COMMENTS ON THE PROPOSED RULE

NIPPC generally supports the adoption of the Proposed Rule but recommends that the Commission go further to require efficient rates by, among other things, encouraging the use of competitive resource solicitations. NIPPC recognizes the Commission's authority to act was less clear in 1992, when the CRS Rule was adopted, than it is now. NIPPC provides a brief reminder of the 1992 proceeding and subsequent legislative changes as context for why the Commission can and should adopt significant changes to its existing rules. After contextualizing the current rule and need for change, NIPPC proposes adopting some combination of practices to neutralize the utility build bias. Finally, NIPPC evaluates the plain text of the Proposed Rule and suggests provision-by-provision revisions to further confirm with established best practices.

A. The Legislature has Encouraged the Commission to Act

The Commission adopted the CRS Rule, in its current form, in 1992.[9] The CRS Rule is a component of the Commission's least cost planning process, which itself originated as early as October 1988, following a controversy involving the rate basing of Colstrip Unit 3 and Unit 4.[10] Relevant then, as now, was the question of how much consumers must pay for power. An advisory committee formed to, among other things, "establish[] the appropriate role of

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9 *Compare* Admin. R. Mont. 38.5.2010 (2020), *with* 24 Mont. Admin. Reg. 2764, 2772-73 (Dec. 24, 1992) (showing no changes).

10 Energy and Telecomm. 2017-2018 Interim Comm., *Least-Cost Integrated Resource and Electricity Supply Resource Planning* at 3 (2018), https://leg.mt.gov/content/Committees/Interim/2017-2018/Energy-and-Telecommunications/Meetings/Jan-2018/Exhibits/final-irp-program-review.pdf.

competitive bidding in planning."[11] The Committee issued a report on October 1, 1990, and the Commission formally launched proceedings to discuss a rulemaking.[12]

The 1992 proceeding began on October 1, 1990, when the Commission issued a Notice of Inquiry seeking comments from stakeholders on least-cost planning and RFPs.[13] Following the receipt of stakeholder comments, on February 13, 1991, the Commission issued draft guidelines on least-cost planning for further review and comment.[14] On October 24, 1991, the Commission circulated draft rules for stakeholder comment, which were discussed, revised, and formally issued for adoption on August 17, 1992.[15]

The Commission should consider the significantly changed circumstances that exist today. In 1992, the utilities had little experience with competitive solicitations, and the Commission's authority to mandate competition was somewhat murky. The Commission noted when adopting the rules that it had responded to commenters by making the rule language "less prescriptive."[16] The rule adoption indicates that some commenters found the proposed rules "too restrictive" and thought "[t]he utility should not have to justify to the Commission why a competitive solicitation is not necessary."[17] At least one commenter felt that the Commission

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11 Energy and Telecomm. 2017-2018 Interim Comm., *Least-Cost Integrated Resource and Electricity Supply Resource Planning* at 3.

12 Energy and Telecomm. 2017-2018 Interim Comm., *Least-Cost Integrated Resource and Electricity Supply Resource Planning* at 4-5.

13 *In re Consideration of Integrated Least Cost Planning and Competitive Resource Acquisition*, Mont. Docket No. 90.8.49, Notice of Inquiry at 1 (Oct. 1, 1990).

14 Mont. Docket No. 90.8.49, Notice of Commission Action, Notice of Opportunity to Comment, and Notice of Informal Conference at 1-2 (Feb. 13, 1991).

15 Mont. Docket No. 90.8.49, Memorandum re Draft Rules for least cost planning at 1 (Oct. 24, 1991); 16 Mont. Admin. Reg. 1846 (Aug. 27, 1992).

16 24 Mont. Admin. Reg. 2764, 2773 (Dec. 24, 1992).

17 24 Mont. Admin. Reg. 2764, 2772 (Dec. 24, 1992).

lacked legal authority to "order the utility to initiate a competitive solicitation," as initially proposed.[18] Other comments reveal that competitive solicitations were viewed as something the utilities needed to "gain experience" with and to "explore and consider."[19]

These circumstances have changed significantly. First, in addition to authorizing successive phases of restructuring of the power sector in the state,[20] the legislature has significantly clarified the Commission's authority over both least-cost planning and competitive solicitations, most recently in 2019 but also through enacting laws to promote effective utility planning, most notably in 1993, 2003, and 2007.[21] Second, over nearly 30 years, the knowledge of competitive solicitations and their benefits to ratepayers and the industry at large have become well-known and understood, as discussed further below. Third, the proliferation in the past decade and a half of affordable new electric generation and storage technologies has created a deeper potential supply of cost-effective independent resources. In short, the Commission has the authority and opportunity it needs to refine the CRS Rule to deliver known benefits to ratepayers.

NIPPC acknowledges there was significant discussion in 2011 and 2012 regarding revising the Commission's least-cost planning rules.[22] At that time, the Commission secured

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18 Mont. Docket No. 90.8.49, Memorandum re September 28 Comments on LCP Rules at 3 (Oct. 7, 1992) (noting one stakeholder felt the language was unconstitutional).

19 Mont. Docket No. 90.8.49, Response Comments of District XI Human Resource Council at 4 (July 10, 1991); Mont. Docket No. 90.8.49, Comments of The Montana Power Company at 12 (June 3, 1991).

20 S.B. 390, 55th Leg. Reg. Sess. (Mont. 1997), *repealed in part and amended in part by* H.B. 25, 60th Leg. Reg. Sess. (Mont. 2007).

21 *See generally* Energy and Telecomm. 2017-2018 Interim Comm., *Least-Cost Integrated Resource and Electricity Supply Resource Planning* at 6, 10-11.

22 *See generally in re Inquiry by the Montana Public Service Commission, Graceful Systems, LLC and Bench Mark Heuristics, LLC into Best Practices for Electricity Resource Planning*, Docket N2012.5.56.

support from the National Association of Regulatory Utility Commissioners to obtain a formal report on best practices and other states' models.[23] The Commission also facilitated stakeholders' comments, some of whom noted concerns with the current process and options for improvement, such as retaining an independent evaluator or facilitating more comments on a solicitation. After considerable discussion, the Commission did not move forward to update the CRS Rule as the NARUC-funded consultants had recommended. While some commenters at the time argued that the added process would be burdensome and invite litigation, NIPPC notes that other states in the region have adopted these measures because they have found that the benefits outweigh the costs and that firm timelines and, in certain circumstances, expedited procedures can ensure the benefits outweigh the costs.

NIPPC also notes that the consultants hired in 2011 and 2012 are not the only external experts to have provided recommendations. For instance, the Regulatory Assistance Project ("RAP") provided recommendations to the Montana State Legislature's Energy and Telecommunications 2017-2018 Interim Committee, including a recommendation to:

> Require competitive bidding for resources wherever possible to get the least cost option. Utility affiliate participation should be discouraged. If a utility affiliate does participate, rules for the code of conduct should be established and an independent entity should conduct the entire competitive bidding process to ensure fairness and consumer protection.[24]

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23 Docket N2012.5.56, Final Report at 1-3 (Sept. 24, 2012).

24 Regulatory Assistance Project, *Recommendation on Legislation to Strengthen Montana's Current Integrated Resource Plans*, Address Before the Energy and Telecomm. Interim Committee (May 2018), *in* Energy and Telecommunications*, Meetings,* https://leg.mt.gov/committees/interim/etic/ (click "May 17-18, 2018" and "RAP Recommendations").

NIPPC agrees with the above recommendation. NIPPC also agrees with another RAP recommendation: design planning processes, including RFPs, so as to promote stakeholder engagement.[25]

As noted above, the Legislature gave its most recent guidance to the Commission in 2019. Specifically, the Montana State Legislature enacted HB 597, which clarifies that it is "the policy of the state to encourage utilities to acquire resources *using a competitive solicitation process*."[26] The law took effect on July 1, 2020.[27] NIPPC asserts that the Commission should refine or supplement the CRS Rule to encourage the use of RFPs whenever utilities seek Commission approval to acquire (and rate-base) resources, regardless of whether the Commission approval occurs before, during, or after the actual procurement (e.g., in a post-acquisition prudence review).

Regarding Commission pre-approvals, HB 597 specifically obligates NorthWestern Energy ("NWE")[28] to conduct an RFP, except in two limited circumstances.[29] Further, HB 597

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25 Regulatory Assistance Project, *Recommendation on Legislation to Strengthen Montana's Current Integrated Resource Plans,* Address Before the Energy and Telecomm. Interim Committee (May 2018).

26 H.B. 597 sec. 10 (emphasis added).

27 H.B. 597 sec. 20.

28 The obligation applies to any utility "that intends to seek approval by the commission pursuant to 69-8-421 for the acquisition, construction, or purchase of an electricity supply resource." H.B. 597 sec. 1(1). The cited provision in turn applies only to a utility "that removed its generation assets from its rate base pursuant to this chapter prior to October 1, 2007". § 69-8-421(1), M.C.A. NWE is one utility subject to § 69-8-421, M.C.A. *See, e.g.,* Energy and Telecomm. 2017-2018 Interim Comm., *Least-Cost Integrated Resource and Electricity Supply Resource Planning* at 11. It is NIPPC's understanding that NWE is the *only* utility subject to this chapter.

29 H.B. 597 sec. 1(1). The two exceptions to the obligation are: 1) when the acquisition is "intended solely to meet the short-term operational needs of the utility for a period of less than 12 months;" and 2) when the acquisition is of an "opportunity resource," which the legislature defined as "an electricity supply resource necessary to meet a need

obligates NWE to submit information about a proposed RFP to the Commission.[30] The Commission may, but is not required to, accept public comments on the utility's filing.[31] NIPPC recommends that the Commission revise its rules to clarify the process for the Commission and interested stakeholders to engage in evaluating both a proposed RFP and RFP results. NIPPC acknowledges NWE's recent RFP activity and urges the Commission to apply these recommendations as a lens to consider how such activity could be improved.

B. The Commission Should Invite and Evaluate Other Innovative RFP Policies

In addition to the best practices outlined above, NIPPC encourages the Commission to think broadly and boldly about reforming its CRS Rule. Fundamentally, any process for RFPs must be designed to recognize and address anti-competitive pressures. For example, utilities under cost-of-service regulation exhibit a "utility build bias" because shareholders profit from utility ownership but not third-party ownership.[32] This bias, an unsurprising outcome of the utility's own fiduciary duty to maximize the return to investors, imposes unnecessary risk on ratepayers associated with utility construction and ownership of resources. In revising its competitive procurement process in 2011, the Oregon Public Utility Commission recognized:

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demonstrated in a plan in accordance with 69-3-1204(2)(a)(iv) that is either new or existing and that remains unknown as to its availability for purchase until an opportunity to purchase arises." H.B. 597 sec. 1(5)-(6). The "opportunity resource" exception has provided NWE its cardinal opportunity to obligate its customers to substantial acquisition adjustments.

30 H.B. 597 sec. 1(2).

31 H.B. 597 sec. 1(3).

32 *See* Harvey Averch and Leland Johnson, Behavior of the Firm under Regulatory Constraint, 52 *American Economic Review* 1052, 1053-1069 (Dec. 1962). This seminal economics article identified the theoretical basis of this bias. Economics literature has continued to evaluate the circumstances that give rise to it. Its effect is often referred to as the Averch-Johnson effect.

> If a utility is faced with the choice of building a generating plant or entering into a PPA—and there is no difference in cost between the two options—the utility will likely choose to build the plant because of the opportunity to earn a return on its investment.
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> …
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> Under cost of service regulation, a utility's "profit" is the opportunity to earn a return on the rate base and by purchasing a PPA in lieu of building a power plant, it is foregoing the potential to earn some amount of profit.[33]

The traditional approach to protecting ratepayers from utility bias has been to adopt RFP rules and conduct prudence reviews. Unless a utility is grossly negligent at the time in which the resource decision was made, most utility commissions are reluctant to disallow costs or engage in hindsight review. The prudence review process is insufficient; it does not protect ratepayers against most cost overruns and risks of utility ownership. Aggressively protecting customers from utility mistakes after they have been made can have other unintended negative consequences for captive customers because, if the prudence disallowance is significant enough to cause financial harm, then ratepayers may ultimately pay for the higher costs of capital. While providing some protections to ratepayers, the current approach has failed to provide appropriate incentives to prevent the utilities from taking actions that benefit shareholders over captive ratepayers. The occasional prudence disallowance can too easily simply become a "cost of doing the business" for utilities intent on owning generating assets.

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[33] *In re Investigation regarding performance-based ratemaking mechanisms to address potential build-vs.-buy bias*, Or. Docket No. UM 1276, Order No. 11-001 at 2, 5 (Jan. 3, 2011) (internal quotation omitted).

To address the inherent conflict of interest between shareholder and customer interests with respect to acquiring generating assets, NIPPC proposes several actions that adopted in some combination would substantially improve resource acquisition in Montana.

1. Offer a Return on Equity on PPAs

One possible way to address this bias is by enabling utility shareholders, in circumscribed instances, to profit from non-ownership, such as by allowing utilities to enjoy a return on equity on power purchase agreements ("PPAs").[34] The primary and sometimes exclusive goal of a return on PPAs should be the elimination of the bias toward utility ownership rather than merely layering on top of otherwise least-cost power supply contracts an additional source of profit. Conversely, an inappropriately implemented return on PPAs could be used too early in a competitive solicitation, effectively screening out otherwise competitive PPAs. This outcome would be the opposite of the policy's intent. Accordingly, this policy must be crafted

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[34] Examples of this approach exist in Washington as well as in Arkansas and Michigan. *In re Matter of Puget Sound Energy, For Approval of a Power Purchase Agreement for Acquisition of Coal Transition Power*, Wash. Docket No. UE-121373, Order No. 3 (January 9, 2013), available at https://www.utc.wa.gov/_layouts/15/CasesPublicWebsite/GetDocument.ashx?docID=501&year=2012&docketNumber=121373; Chelan County Public Utility District No. 1, *2017 Annual Report* at 20 (2017) (a summary of the PPA in Chelan PUD's 2017 annual report), available at https://www.chelanpud.org/docs/default-source/default-document-library/financial-report-2017-web.pdf; *In re Matter of Petition of Entergy Arkansas, Inc. for a Declaratory Order regarding a Purchase Power Agreement for a Renewable Resource*, APSC Docket No. 15-014-U, Order No. 5, (Sept. 24, 2015), available at http://www.apscservices.info/pdf/15/15-014-u_104_1.pdf; *In re Matter of Petition of Entergy Arkansas, Inc. for a Declaratory Order regarding a Purchase Power Agreement for a Renewable Resource*, APSC Docket No. 17-041-U, Order No. 4 (Jun. 18, 2018), available at http://www.apscservices.info/pdf/17/17-041-U_85_1.pdf; *In re Matter of Application of Consumers Energy Company for approval of its integrated resource plan,* Mich. PSC Case No. U-20165, Order Approving Settlement Agreement (Jun. 7, 2019), available at https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000005HSSrAAO.

deliberatively with a focused objective of eliminating the bias toward utility ownership. The intent of this policy is not to create a windfall for IPPs but rather to create an incentive to address the need for a utility to earn a return for investors and to reduce the bias against relying on PPAs. Such a policy could be crafted using performance-based ratemaking principles in order to review a generation supply portfolio as a whole and ensure that savings ultimately accrue to consumers. Maintaining a disciplined focus on this objective will ensure that consumers benefit by removing the utility's bias toward placing owned assets in its rate base.

With those caveats, NIPPC urges the Commission, under its current authority, to consider adopting this kind of regulatory tool. Should the Commission respond favorably, NIPPC is prepared to propose more detailed ways to craft this tool appropriately and to engage with other stakeholders in doing so.

2. Mandate Bid Adders for Utility Bids to Reflect Risks in Non-Utility Bids

As a second approach, NIPPC recommends requiring that utility bids incorporate adders to properly account for cost and performance contingencies that IPP bidders must already incorporate in their bids. For example, three potential bid adders could address the risks of: 1) cost overruns; 2) heat rate or solar panel degradation; 3) wind capacity factor overestimation errors; 4) changes in forced outage rates over time; 5) utility over estimating of terminal value for utility owned projects; 6) environmental and regulatory risks; 7) increases in fixed operations and maintenance costs over time; 8) increased capital additions over the life of the resource; and 9) risks of construction delays.[35] These risks, respectively, reflect that, for utility-owned

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[35] NIPPC provides these examples for illustrative purposes. If the Commission considers this approach, NIPPC could provide more specific and extensive suggestions.

resources, ratepayers may be asked to bear additional costs to construct or operate a resource, or that the resource may ultimately provide less value to ratepayers than expected. These risks, many of them associated with stranded assets, are particularly acute at present as the generating resource mix shifts nationwide. By contrast, a prudent IPP must incorporate the potential cost(s) associated with these risks into its fixed price RFP bid for a PPA structure. Without mandatory bid adders, a "cost-plus" utility-owned generation bid could easily ignore the full magnitude of these risks during RFP evaluation and later pass actual cost increases onto ratepayers.

NIPPC recommends that bid adders be incorporated into the Commission's rules, and that the Commission should require the third-party administrator, as part of the analysis to create an RFP's shortlist, to apply each adder to the price evaluation of any bid that would result in utility ownership after commissioning the plant. NIPPC's proposal reasonably recognizes that, under unique circumstances, a particular bid adder may not be applicable to a particular utility ownership bid. For example, if the utility were to properly reflect future increases in heat rate (a measure of the efficiency of a thermal generator) in its proposal, then a heat rate adder may not be needed. NIPPC proposes that the utility bear the burden of demonstrating to the Commission (after opportunity for comment by the third-party administrator, independent monitor, Commission Staff, and non-bidding stakeholders) that the utility ownership proposal properly takes into account the potential cost increase addressed by the particular bid adder.

3. Require a Market First Approach

As a third approach, NIPPC recommends a broader requirement that utilities go to the market first to meet their long-term power requirements prior to building or owning any new generation. The Commission would oversee competitive procurements where IPPs would compete against one another to ensure that ratepayers obtain the best deal. This could be

accomplished by prohibiting an electric company from including in its rates the cost of a major resource *unless* the electric company must acquire the major resource to maintain the reliability of the electrical company's electrical system and that reliability cannot be maintained by procuring electricity from a major resource that is not owned by the electric company, by increasing the capacity of a major resource that is owned by the electric company or through an unusual below-market opportunity, as identified by the Commission by rule or order.

NIPPC understands that HB 597 requires competitive procurements in general, subject to these two exceptions for NWE, specifically in regard to pre-acquisition approvals. NIPPC urges the Commission to adopt similar broad requirements for all long-term power procurements, subject to any exceptions required under current law.

4. A Two Step Bidding Process

As a fourth approach, NIPPC proposes a two-step bidding process. First, all ownership bids will be evaluated. The best ownership score will be announced to the bidders. Next, bids for PPAs should be provided with an opportunity to beat the ownership score.

NIPPC derived this proposal from its familiarity with bidding processes that occur in other situations where one of the bidders has an inherent conflict of interest. In other areas of the law, such as bankruptcy and corporate acquisitions, a "conflict-of-interest proposal" like that of a utility owned bid here requires special treatment. Both bankruptcy and company purchases/mergers include situations in which there is a risk that management or owners may have divided loyalties, which are explicitly recognized and formally protected against. This is accomplished by requiring the conflict-of-interest bid be submitted first and then put out to be bid against competitive bids.

There are obvious conflicts when an entity with special knowledge (e.g., a majority shareholder or management) wants to purchase or merge with a public corporation. A way "to sanitize" the transaction from its inherent conflict between members of management that have had a conflict of interest with shareholders is to include a "go shop" clause. First, the insider transaction can be fully negotiated between the members and the public corporation to a definitive agreement and conditionally approved by the board. Once the "target" opportunity is made clear, then it is fully disclosed and there is a limited time period in which other offers have the opportunity to beat the target. If there are no better deals, then the insider's target offer can be accepted.

Bankruptcy proceedings use the concept of a "stalking horse offer," which can militate against potential conflicts of interest. When a company is bankrupt, a common approach is to have an auction and sell to the highest bidder. The stalking horse offer is when a debtor tests the market in advance of an auction. For various reasons, the debtor company often thinks it can get a better outcome by privately negotiating a transaction with a strategic or selected bidder, who may have a conflict of interest. If a stalking horse offer is negotiated, then other parties are encouraged to submit more favorable bids.

Similar measures can be taken in the utility competitive bidding approach, in which there could be a similar two stage bidding process in which the utility owned generation options provide the price to beat for power purchase agreement bids. The first stage of the RFP should have only utility owned generation options. After the determination of the lowest cost utility owned generation bid, the utility would then publish to all bidders the lowest cost price, including both a price score represented as a levelized price per year for different PPA or tolling

agreement terms and any applicable non-price scores. That price is the standard to beat by non-utility owned generation bidders.[36]

This process can protect ratepayers and help obtain the least cost/risk generation because the utility will not know the price of the competing PPA bids at the time the utility owned bids are scored, thus making the bidding process more fair and transparent. As there will likely be multiple PPA bids, non-utility ownership bids will still have an incentive to propose the lowest cost. While non-price factors should be minimized, the total bid score will be based on both price and non-price factors to achieve the lowest cost and risk option. Finally, the utility will still engage in a negotiation process with the bidders on the short list, which will help ensure the legitimacy of all bids.

5. Impose a Cost Cap on Utility Owned Generation

Finally, the Commission's competitive bidding process could reduce ratepayer exposure to cost overruns on utility owned generation with the simple addition of a cost cap. Exorbitant cost overruns reflect the precise problem that effective competitive bidding rules should address.

Additionally, the risk differentials between utility owned generation and PPAs are not now clearly accounted for in the Commission's process, which leads to ranking and selection skewed in favor of utility ownership. Unlike utilities, generators selling power under a PPA must manage their own risks throughout the term of the contract and account for those risks in the initial PPA price. The fact that risk is not otherwise addressed or accounted for in the RFP fails to include all risks of performance or non-performance in the RFP bid price. By

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[36] To allow for a quick schedule to ensure that utility owned option bids do not become stale, PPA bidders will need to have completed most aspects of their bids, and then have a short period of time (about two weeks) to submit their bids.

implementing a cost-cap, the Commission can at least mitigate some of this unfair advantage by providing greater risk to the utility that ratepayers will not cover the costs, if the utility selects an owned asset that ends up being more expensive. Doing so would also encourage the utility to more accurately ensure that the costs of utility owned generation bids are not underestimated. Overall, this would incent more robust participation, which inevitably leads to lower priced bids.

Accordingly, NIPPC proposes the costs included in rates for utility ownership options, including equipment procurement, construction supervision, internal and external legal, finance and accounting expense, construction bids and all similar items, shall be capped at the cost included in the bid used for comparative analysis in the RFP.[37]

NIPPC's proposal is generally consistent with the principles behind the Commission's existing CRS Rule and proposed competitive bidding rules. Those seek to protect against unfair advantage through the RFP process, but lack specific requirements or procedural mechanisms to do so. Providing a cost cap would create a procedural mechanism to ferret out unfair advantage. A cost cap would help the Commission influence utility performance to the benefit of both ratepayers and utilities.

C. The Proposed Rule is a Good Start but Needs to be Refined

In this section, NIPPC provides final comments on the text of the Proposed Rule.

38.5.8212 Resource Procurement
(1) A utility's Resource procurement process shall consider the Assessments and other information in its most recent Resource Plan and Action Plan, as modified in response to any comments of the commission or as a result of changes to input assumptions, including, but not limited to:

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37 NIPPC does not support a disallowance that would harm the financial integrity of the utility. That being said, NIPPC believes a cost cap that limits recovery to a utility's RFP bid price rather than its actual build price would provide adequate incentive to manage construction costs.

(a) The Services and Needs Assessment, prepared pursuant to ARM 38.5.8206;
(b) The Resource Alternatives Assessment, prepared pursuant to ARM 38.5.8207; and
(c) The Services and Resources Integration, prepared pursuant to ARM 38.5.8208.

NIPPC supports this provision as written.

(2) A utility shall obtain and consider input and recommendations from a technical advisory committee regarding planned procurement processes.

NIPPC generally supports this provision. However, NIPPC would recommend further supplementing this provision with requiring utilities to engage with stakeholders prior to filing draft RFPs. NIPPC considers requiring such engagement to be a best practice.[38]

(3) To encourage utilities to acquire Resources using competitive solicitation processes, as required in 69-3-1202(1)(b), MCA, there is a rebuttable presumption that procurement of a Power Resource that is not a qualifying facility and that is larger than 10 MW and imposes Cost commitments on a utility for 3 or more years is not in the public interest if it has not been selected through a competitive solicitation process. A utility has the burden of overcoming the rebuttable presumption in proceedings conducted pursuant to 69-3-301 through -310, MCA, or 69-8-421, MCA.

NIPPC generally supports this provision. NIPPC considers requiring a regulated utility to conduct the specified RFP process prior to acquiring or constructing any resource above a certain size and resource length to be a best practice.[39]

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[38] Utah Admin. Code R746-420-1(3) (requiring a pre-issuance bidders' conference open to any interested person at least 15 days prior to filing); Or. Admin. R. 860-089-0200(1), -0250(1) (requiring a regulated utility, prior to filing an RFP, to: 1) "solicit input from … interested persons regarding potential [independent evaluator ("IE")] candidates"; 2) "consult with the IE in preparing the RFP;" and 3) "conduct bidder and stakeholder workshops"); *see also* Wash. Admin. Code 480-107-015(1) ("strongly encourag[ing] a utility to consult with commission staff and other interested stakeholders during the development of an RFP and the associated evaluation rubric").

[39] Utah Admin. Code R746-420-1(3) (requiring a pre-issuance bidders' conference open to any interested person at least 15 days prior to filing); Or. Admin. R. 860-089-0200(1), -0250(1) (requiring a regulated utility, prior to filing an RFP, to: 1) "solicit input from … interested persons regarding potential [independent evaluator ("IE")] candidates"; 2) "consult with the IE in preparing the RFP;" and 3) "conduct bidder and stakeholder workshops"); *see also* Wash. Admin. Code 480-107-015(1) ("strongly encourag[ing] a

However, while NIPPC understands HB 597 envisions some exceptions to when NorthWestern Energy must conduct an RFP prior to seeking pre-approval of a resource acquisition, NIPPC recommends adopting a mandate for RFPs rather than a rebuttable presumption.

If the Commission adopts a mandate as recommended, NIPPC would support changing the time period from three years to five years. The Commission's rules should be flexible enough to allow for cost-effective near-term market purchases outside of a formal competitive process. Such market purchases can be crucial to enable utilities to pursue least-cost bids, particularly when the least-cost bid is a long-lead time resource that, while least-cost over the long-term horizon, cannot come online early enough to meet a capacity need in the early years. Other states provide examples on allowing near-term market purchases.[40]

The Proposed Rule should clearly identify specific exceptions to acquiring resources through a competitive solicitation process.

(4) The cost-effectiveness of an opportunity resource not identified and selected through a competitive solicitation process for which a utility requests approval pursuant to 69-8-421, MCA, shall be based on avoided costs applicable to qualifying facilities under the Public Utility Regulatory Policies Act as determined by the commission pursuant to 69-3-601 et seq., MCA, applied on a non-discriminatory basis.

NIPPC supports this provision as written.

(5) Competitive solicitations with short-list negotiations are the preferred procurement method for Power Resources. Utilities should consider the usefulness of competitive solicitations for Demand-Side and Distribution-Side Resources.

NIPPC supports this provision as written.

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utility to consult with commission staff and other interested stakeholders during the development of an RFP and the associated evaluation rubric").

40 *E.g.*, Or. Admin. R. 860-089-0100.

(6) A utility shall design Resource solicitations based on the Services and Needs Assessment conducted pursuant to ARM 38.5.8206 and any commission comments on a utility's Resource Plan. Competitive solicitations shall treat similarly situated bidders similarly and fairly, use understandable processes, and result in decisions and outcomes that are transparent and understandable by stakeholders. To serve as an adequate foundation for a utility demonstration that the selection and procurement of a particular Resource is in the public interest, the competitive solicitation shall:

(a) clearly define the Resources, products, and services the utility needs and clearly communicate those needs to potential bidders. Multiple solicitations and/or solicitations for multiple Resources, products, and services may be necessary to obtain information sufficient for prudent analyses and decision-making;

(b) establish bid evaluation and bidder qualification standards and criteria that will be used to select from among offers and clearly communicate these standards and criteria to potential bidders. Once bids are received, a utility shall apply bid evaluation and bidder qualification standards and criteria fairly and consistently and allow all bidders to respond to any substantive revisions to the standards and criteria;

(c) use a systematic rating methodology that objectively ranks bids with respect to price and non-price attributes, relying on information and analyses from a utility's most recent Resource Plan and, in particular, the Assessments prepared pursuant to ARM 38.5.8206, 38.5.8207, and 38.5.8208, and allow all bidders to respond to any substantive revisions to the methodology requiring additional information from bidders;

(d) establish a shortlist of offers from bidders with which the utility will pursue contract negotiations. A utility shall complete due diligence regarding bid qualifications, bidder credit worthiness and experience and project feasibility before selecting an offer for the shortlist. A utility shall not indicate to a bidder that its offer is being considered for the shortlist while performing initial due diligence. If a utility allows one or more bidders on the short list to refresh or supplement their bids in any way, it shall allow all bidders on the short list to do so;

NIPPC generally supports this provision. However, NIPPC would additionally recommend that the Proposed Rule:

- Provide greater specificity in regard to RFP contents. NIPPC considers this a best practice and cites illustrative rule language from Utah, Oregon and Washington.[41] For

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41 Utah Admin. Code R746-420-3(5), (7); *see also* Or. Admin. R. 860-089-0250(3) ("At a minimum, the draft RFP must include: (a) Any minimum bidder requirements for credit and capability; (b) Standard form contracts to be used in acquisition of resources; (c) Bid evaluation and scoring criteria that are consistent with section (2) of this rule and with OAR 860-089-0400; (d) Language to allow bidders to negotiate mutually agreeable final contract terms that are different from the standard form contracts; (e) Description of how

example, NIPPC recommends that the Commission state that an RFP must include standard form contracts and language allowing bidders to negotiate mutually agreeable final contract terms that are different from the standard form contracts.

- Require that the Commission approve or acknowledge as reasonable the utility's final resource selection or the final resource short list.

(7) A utility shall not reassign or "flip" supply contracts to an additional third party(ies) after the original bid activity and during the evaluation of bids. A utility shall notify the commission before reassigning any fully executed contract;

NIPPC supports this provision as written.

(8) During competitive solicitation and resource acquisition processes, a utility shall not publicly disclose specific information related to particular bids, including price, before the utility completes its resource acquisition process and has signed contracts with the selected bidder(s);

NIPPC generally supports this provision but recommends explicitly providing that the utility must confidentially disclose information to any independent monitor as well as interested non-bidders.

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the electric company will share information about bid scores, including what information about the bid scores and bid ranking may be provided to bidders and when and how it will be provided; (f) Bid evaluation and scoring criteria for selection of the initial shortlist of bidders and for selection of the final shortlist of bidders consistent with the requirements of OAR 860-089-0400. (g) The alignment of the electric company's resource need addressed by the RFP with an identified need in an acknowledged [Integrated Resource Plan] or subsequently identified need or change in circumstances with good cause shown; and (h) The impact of any applicable multi-state regulation on RFP development, including the requirements imposed by other states for the RFP process"); Wash. Admin. Code 480-107-025.

(9) A utility shall not provide any information to an affiliate with respect to the Services and Needs Assessment, bid evaluation criteria, bidder qualification criteria, due diligence, or any other relevant resource procurement information unless the same information is simultaneously provided to all other prospective bidders.

NIPPC generally supports this provision but recommends additional protections against affiliate abuses, including but not limited to:

- Requiring the utility to inquire and determine whether a bidder is an affiliate or will contract with any affiliate.[42]
- Requiring that any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.[43]
- Requiring that the utility and any third-party administrator or independent monitor not disclose the listed information to personnel involved in developing the utility's bid or to any subsidiary or affiliate until the information is publicly available.[44]

(10) A utility shall notify the commission of the utility's intent to issue a request for proposals to acquire Resources at least ninety days in advance of the availability of a draft request for proposals. Upon notification of a utility's intent to issue a request for proposals, the commission will open a docket for purposes of accepting public comment on the draft request for proposals.

NIPPC generally supports this provision. However, NIPPC recommends requiring the utility to engage with stakeholders, including potentially an independent monitor, prior to filing.

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42 Utah Admin. Code R746-420-3(3)(d).
43 Or. Admin. R. 860-089-300(1)(b).
44 Wash. Admin. Code 480-107-024(3).

NIPPC considers this a best practice.[45] In addition, NIPPC recommends enabling non-bidding parties to evaluate confidential material for purposes of reviewing the RFP. This is another best practice.[46]

(11) A complete draft of a utility's request for proposals shall be submitted to the commission in the docket opened under ARM 38.5.8212(10). A utility shall state whether it intends to request approval of Resources selected through the request for proposals, provide a description of the competitive solicitation process it intends to use, and provide proof that the solicitation is open to participation by qualifying small power production facilities defined in 69-3-601, MCA, and other utilities and suppliers that own Resources or intend to construct Resources.

NIPPC supports this provision as written.

(12) The commission shall provide notice to the public of the receipt of the draft request for proposals and provide 45 days for interested persons to file written comments on the draft request for proposals.

NIPPC generally supports this provision but recommends that the Commission: 1) provide additional time to review and comment on the RFP; and 2) provide interested persons discovery rights.

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45 Utah Admin. Code R746-420-1(3) (requiring a pre-issuance bidders' conference open to any interested person at least 15 days prior to filing); Or. Admin. R. 860-089-0200(1), -0250(1) (requiring a regulated utility, prior to filing an RFP, to: 1) "solicit input from … interested persons regarding potential [independent evaluator ("IE")] candidates"; 2) "consult with the IE in preparing the RFP;" and 3) "conduct bidder and stakeholder workshops"); *see also* Wash. Admin. Code 480-107-015(1) ("strongly encourage[ing] a utility to consult with commission staff and other interested stakeholders during the development of an RFP and the associated evaluation rubric").

46 *See* Utah Admin. Code R746-1-603 (Treatment of Confidential and Highly Confidential Information) and *Application of Rocky Mountain Power for Approval of Solicitation Process for 2020 All Source Request for Proposals*, Utah Commission Docket No. 20-035-05 (numerous confidentiality signature pages filed for non-bidding parties); Or. Admin. R. 860-089-0550 (explaining a utility may request a protective order prior to sharing information but non-bidding parties are among those who may qualify under the terms of the protective order).

(13) The commission shall certify the competitive solicitation as complying with the criteria outlined in these rules.

NIPPC generally supports this provision, which NIPPC understands to mean that the Commission will conclude the draft RFP proceeding opened pursuant to subsection 10 above by issuing a decision. NIPPC considers requiring Commission approval of an RFP prior to issuance—which NIPPC understands to be a determination that the proposed RFP is reasonable and in the public interest—to be a best practice.[47]

However, NIPPC recommends two modifications. First, NIPPC recommends revising the provision to clarify that the Commission may decline to certify a noncompliant RFP, in which case the Commission should issue guidance to the utility on the noncompliance.

Second, NIPPC recommends such decision not conclude the Commission's review. For instance, the rules should recognize that an independent monitor may identify discrepancies in the process and may prepare a closing report, both of which would be useful for the Commission and stakeholders to consider and review. NIPPC recommends either requiring a regulated utility to obtain commission approval of the RFP's short list or resource acquisition, or otherwise specifying that any resource acquisition remains subject to the commission's prudence review regardless of RFP approval. NIPPC considers this to be a best practice.[48]

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47 Utah Code 54-17-201(2); Utah Admin. Code R746-420-1(1); Or. Admin. R. 860-089-0250(1); Wash. Admin. Code 480-107-009(2), -017.

48 Utah Code 54-17-302; Utah Admin. Code R746-430-2 (requiring commission approval of a resource acquisition after an RFP, subject to further prudence review); Or. Admin. R. 860-089-0500(2) (requiring commission acknowledgement of the RFP shortlist); Wash. Admin. Code 480-107-145(1) (indicating RFP resources are subject to the same prudence review in a general rate case as other resources).

(14) A third-party administrator should be used to open, consider, and evaluate the offers received in the solicitation.

NIPPC generally supports this provision. However, NIPPC recommends three modifications. First, NIPPC recommends changing "should" to "must," at minimum for circumstances in which the RFP could result in the ownership of an electricity supply resource by the utility. Second, NIPPC recommends clarifying the selection process for the third-party administrator. To the extent a utility may select a third-party administrator, NIPPC recommends requiring the utility to accept and consider stakeholder comments prior to selection.

Finally, NIPPC recommends identifying the roles and functions of both the third-party administrator and, when applicable, the independent monitor. Utah, for example, requires Independent Evaluators to:

- Facilitate and monitor communications between the soliciting utility and bidders;
- Review and validate the assumptions and calculations of any Benchmark Option;
- Analyze the Benchmark Option for reasonableness and consistency with the solicitation process;
- Analyze, operate and validate all important models, modeling techniques, assumptions and inputs utilized by the soliciting utility in the solicitation process, including the evaluation of bids;
- Receive and "blind" bid responses;
- Provide input to the soliciting utility on:
    - the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the

Solicitation Process is fair, reasonable and in the public interest in preparing a solicitation and in evaluating bids;

- the development of initial screening and evaluation criteria that take into consideration the assumptions included in the soliciting utility's most recent IRP, any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option;
- whether a bidder has met the criteria specified in any RFQ and whether to reject or accept non-conforming RFQ responses;
- whether and when data and information should be distributed to bidders because it is necessary to facilitate a fair and reasonable competitive bidding process or has been reasonably requested by bidders;
- negotiation of proposed contracts with successful bidders; and
- other matters as appropriate in performing the duties of the Independent Evaluator under the Act and Commission rules, or as directed by the Commission;

- Ensure that all bids are treated in a fair and non-discriminatory manner;
- Monitor, observe, validate and offer feedback to the utility, the Commission, and the independent monitor on all aspects of the Solicitation and Solicitation Process, including:
  - content of the Solicitation;
  - evaluation and ranking of bid responses;
  - creation of a short list(s) of bidders for more detailed analysis and negotiation;
  - post-Bid discussions and negotiations with, and evaluations of, short list bidders; and
  - negotiation of proposed contracts with successful bidders;

- Offer feedback to the utility on possible adjustments to the scope or nature of the Solicitation or requested resources in light of bid responses;
- Solicit additional information on bids necessary for screening and evaluation purposes;
- Advise the Commission at all stages of the process of any unresolved disputes or other issues or concerns that could affect the integrity or outcome of the solicitation process;
- Analyze and attempt to mediate disputes that arise in the solicitation process with the soliciting utility and/or bidders, and present recommendations for resolution of unresolved disputes to the Commission;
- Participate in and testify at Commission hearings on approval of the Solicitation and Solicitation Process and/or approval of a significant energy resource decision;
- Coordinate as appropriate and as directed by the Commission with staff or evaluators designated by regulatory authorities from other states served by the soliciting utility;
- Perform such other evaluations and tasks as the Commission may direct; and
- At the request of the Commission and subject to the existence or negotiation of appropriate contractual arrangements, participate in the evaluation of a request for an Order to Proceed and testify at any Commission hearings regarding the same.[49]

(15) The consumer counsel shall notify the commission as soon as practicable after a utility's submission of a draft competitive solicitation if the consumer counsel intends to retain an independent monitor. The commission will charge a fee to the utility to pay any costs related to the independent monitor retained by the consumer counsel.

NIPPC generally supports this provision. However, NIPPC would recommend requiring such notification to occur via a filing in the Commission's draft RFP docket. In addition, NIPPC

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[49] Utah Admin. Code R746-420-6; *see also* Or. Admin. R. 860-089-0450; Wash. Admin. Code 480-107-023.

would recommend changing the proposed text "after a utility's submission of" to "after a utility's notice of intent to file." In addition, NIPPC recommends confirming in the rules the independent monitor's authority and functions, as noted above. Again, NIPPC considers this a best practice.[50]

NIPPC understands HB 597 provides the Consumer Counsel with discretion in deciding to select and retain an independent monitor. Other states sometimes simply mandate the use of an independent monitor.[51] NIPPC encourages the Consumer Counsel to retain an independent monitor whenever the regulated utility or an affiliate may ultimately own or control the procured resource. In addition, NIPPC encourages the Consumer Counsel to invite stakeholder engagement when selecting an independent monitor, which could be accomplished by inviting comments in the notification required by this provision.

(16) To the extent a utility does not use competitive solicitations to acquire Resources it should thoroughly document the exercise of its judgment in evaluating Resource options and making a selection, including the decision not to use competitive solicitations.

NIPPC generally supports this provision.

III. CONCLUSION

NIPPC appreciates this opportunity to comment and looks forward to engaging further in the Commission's rulemaking(s) to implement HB 597 and encourage competitive resource solicitations.

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50 Utah Code 54-17-203(1) (requiring the use of an IE); Utah Admin. Code R746-420-6 (specifying the IE's functions); Or. Admin. R. 860-089-0200(3), -0450; Wash. Admin. Code 480-107-023.

51 Utah Code 54-17-203(1) (requiring the use of an IE); Utah Admin. Code R746-420-5 (requiring the utility to pay the IE) and -6 (specifying the IE's functions); Or. Admin. R. 860-089-0200(3), -0450; Wash. Admin. Code 480-107-023.

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Respectfully submitted,

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