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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of a Request for Proposals for a Flexible Resource	<u>DOCKET NO. 05-035-47</u> COMMENTS AND RECOMMENDATIONS OF THE UTAH ASSOCIATION OF ENERGY USERS ON PACIFICORP'S DRAFT 2012 RFP
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The Utah Association of Energy Users (“UAE”) submits the following comments and recommendations regarding PacifiCorp’s Draft 2012 RFP (“RFP”).

Background

For many years, UAE has devoted significant time, energy and resources to improving the process by which PacifiCorp acquires long-term resources to serve its Utah customers. These efforts, along with similar efforts by others, including this Commission, led to the passage of Senate Bill 26, codified at Utah Code §§ 54-17-101, et seq., the hiring of a truly “independent” independent evaluator and significant progress on draft rules to implement SB 26. Hopefully, they will also now lead to a meaningful and productive RFP process. This RFP will be the first

actual use of the SB 26 process and may lead to the acquisition of thousands of megawatts of new capacity and associated energy.

Senate Bill 26 permits pre-approval of PacifiCorp's recovery of certain resource costs. This process shifts significant risks from the utility to ratepayers. In exchange, the Commission and the independent evaluator ("IE") must carefully and aggressively oversee and guide the RFP process and resource selections. The Commission's role in this RFP is thus far more critical and involved than in the past. UAE remains committed to lending its strong support to the process with the fervent hope that the result will be a portfolio of future resource options that will reflect the optimum mix of low cost, low risk and reliability.

Over the past several years, PacifiCorp has without exception selected a self-build or self-own option in RFPs for major new resources. Therefore, significant protections must be incorporated into this RFP in order to convince a potentially skeptical market that bidders will be treated fairly and will have a reasonable chance of being selected. In an effort to further the objectives identified above, UAE provides the following initial comments, questions and recommendations on PacifiCorp's draft 2012 RFP.

Executive Summary

PacifiCorp's draft RFP is an improvement over the draft 2009 RFP submitted last year. UAE recognizes and appreciates that PacifiCorp has attempted to respond to many of the comments and concerns raised by UAE and others regarding the 2009 RFP. UAE's primary goal in submitting comments on this draft 2012 RFP is the creation of a document that will maximize the potential of receiving a healthy diversity of competing resource alternatives and portfolios of

resources for analysis, comparison and approval by this Commission. UAE believes that, with a few major changes in focus and a number of other changes, the draft 2012 RFP may help lead to the achievement of that goal. UAE's detailed comments and recommendations on the draft 2012 RFP are listed in the next section. Also, attached hereto is a copy of a portion of PacifiCorp's draft RFP, with certain proposed changes and comments shown in redlined format. UAE has not attached any of the exhibits or attachments to the RFP. However, conforming changes should be made in all such documents as well.

The focus of this RFP should be in soliciting both long- and short-term resources designed to meet PacifiCorp's projected loads in and after 2012. Given the long lead-time for major coal resources, it is unrealistic to expect that many resources could meet a 2012 in-service date. Even a 2013 in-service date is questionable. These timing constraints should not be permitted to dictate the selection of sub-optimal resources. Rather, the RFP should solicit a wide range of possible resource options that can be online anytime in the 2012 - 2014 time frame, as well as shorter-term "bridge" options that will provide the necessary comfort to permit the timely consideration and selection of the optimal portfolio of long-term resources.

With these goals in mind, UAE offers the following detailed comments on the draft RFP:

Detailed Comments

1. ***RFP Title.*** (Page 1 and throughout) UAE recommends changing the title of the RFP from "RFP 2012" to either simply "RFP" or "RFP 2012-2014." The title "2012 RFP" places undue emphasis on the 2012 timeframe and may discourage bids from developers of longer-term projects, such as traditional or IGCC coal resources.

2. **IRP.** (Page 1 and throughout) Although SB 26 has provided a framework for a direct connection between the Company's IRP process and its RFP process, that connection, unfortunately, does not exist in this case. The 2004 IRP action plan was not acknowledged by this Commission and bears little resemblance to the benchmark resources used in this RFP. The Company's 2004 IRP update, which caused a major (and welcomed) shift in resource emphasis, has not been acknowledged or commented upon by this Commission. The 2006 IRP is months away from finalization or filing. Thus, for this RFP at least, the Commission is left without the desired linkage between Commission input on an acknowledged IRP and an RFP as contemplated by SB 26. This missing linkage makes the process of approving this RFP and selecting resources resulting from this RFP even more critical and complicated. Moreover, to avoid confusion, references in the RFP to the IRP should be limited to providing references to useful information.

3. **Resource Needs.** (Page 2) One of the most troubling consequences of the lack of Commission acknowledgement or guidance on an operative IRP is uncertainty over the utility's projected resource deficit in the 2012 - 2104 timeframe. UAE members, like all utility customers, require adequate and reliable electric service. That being said, overbuilding of expensive baseload resources leads to higher costs and economic impacts and inefficiencies. As UAE has consistently expressed in the utility's IRP process, UAE disagrees with the use of a 15% planning margin -- that luxury is simply too expensive for Utah ratepayers to bear. UAE also has serious concerns about the lack of a fully-vetted IRP process, the use of unverified IRP models, the Company's load growth projections and inadequate reliance on customer-based

alternatives, including demand side programs, interruptible contracts and combined heat and power. Also, UAE strongly supports expansion of critical transmission capability that will permit the import of lower cost power from surrounding states. UAE does not doubt the Company's need for additional baseload resources in the next decade and it supports this RFP process. However, UAE questions the level of projected needs and does not support the construction or acquisition of 1700 MW or more of baseload resources by 2014.

4. **Benchmarks.** (Pages 2 and throughout). The benchmarks used in the RFP, and particularly the specified timing of the benchmark resources, are problematic. There is no credible scenario under which the Hunter 4 project can be completed by the summer of 2012. Even completion of the IPP project by 2012 is doubtful. Moreover, by relegating the IGCC benchmark to only the 2014 time frame, that resource option will not receive proper evaluation. UAE submits that the benchmark resources should not be identified by year, but rather as a pool of possible resources for the 2012-2014 time period, each of which will be evaluated as possible Company-built alternatives and compared to all other resource options identified through the RFP process. In addition, UAE remains concerned that PacifiCorp has not adequately evaluated the potential difficulties in securing all of the environmental permits and regulatory support from other jurisdictions, particularly the Northwest, to meet these delivery dates.

5. **Bridge Resources.** (Page 2 and throughout). As UAE argued in its comments on the 2004 IRP Update, this RFP should result in maximum flexibility to permit the Company and Commission to timely select from among all potential resource options and portfolios of options.

It is highly unlikely that the Company or any bidders can meet a 2012, or even a 2013, on-line date for a new coal resource. It must be expected that serious difficulties and time delays will be encountered in securing necessary environmental permits and regulatory support from PacifiCorp's other states. It is imperative that a meaningful and thorough analysis and comparison be performed in this RFP of all cost and risk tradeoffs for all alternative technologies.

This RFP should solicit any and all types and combinations of resources that might be available to help satisfy the Company's long-term needs, including supercritical coal, IGCC, and other resources. To facilitate meaningful and timely consideration of all such resources, the Company must actively solicit resource options that will permit it to meet projected needs prior to 2014 on a short-term basis, thus "bridging" the reasonably projected resource deficit in the 2012 - 2013 timeframe. Only in this manner can the Commission do a timely and complete analysis of the optimal mix of long-term resources. Moreover, the Company agreed, as part of the MidAmerican acquisition process, to evaluate bridge resources in order to permit a timely and meaningful evaluation of all coal resources in a manner that will permit this Commission to understand the tradeoffs and risks of each technology. It is simply unacceptable for the Commission and the Company's ratepayers to be placed in a position of accepting a sub-optimal resource simply because of timing issues. The RFP should thus be broadened specifically to solicit shorter-term bridge resources to permit reasonably projected resource deficits to be satisfied, while also permitting a full, timely and adequate analysis of all long-term resource options.

These issues were addressed in the first progress report provided in June 2006 by the IE for this RFP, Merrimack Energy Group. The report addressed activities related to the resource process and comments made by stakeholders at technical conferences. The IE noted that the timing for capacity, the type of capacity to be solicited, and the role of bridging resources were key factors for several parties. In addition, the IE affirmed that with planning uncertainty, particularly in the case of new technology like the IGCC, flexibility is an important tool to manage risk and select best resource options. UAE submits that a more flexible process and a more diverse portfolio, where shorter-term assets could drop off and new technologies could be assessed, would be beneficial to Utah consumers.

6. ***Front Office Transactions.*** (Pages 1-2). In its IRP process, the Company in the past has presumed continued availability of approximately 700 MW of cost-effective east side resources in the form of front office transactions or market opportunities. Several IRP participants requested that PacifiCorp test, rather than simply assume, the cost-effectiveness of these assumed resources. The Company's response to these requests has caused confusion in both the IRP and RFP processes. It is still not clear exactly how these presumed front office transactions are reflected in the RFP. Moreover, references in the RFP to front office transactions are confusing. In the event that the front office transactions portfolio is not selected, which is expected, there is no evaluation of the level of FOTs that would still be required to fill in gaps in the resource stack. UAE submits that this confusion should be eliminated. The Company intends to use only baseload resources as benchmarks for the RFP. Presumably, however, a reasonable level of market opportunity purchases will continue to be assumed for

planning and operating purposes in the future, as they have in the past. Otherwise, PacifiCorp's system will be seriously overbuilt, at significant unnecessary cost to ratepayers.

7. ***Coal Resource Timing Risks.*** (Page 2 and throughout). In his First Progress Report, the IE discussed the tremendous uncertainty associated with long lead-time coal-based resources and proposed several options for addressing such uncertainties in an effort to encourage coal-based bids. UAE appreciates the IE's efforts and comments in this regard. It appears that PacifiCorp attempted to incorporate some of the IE's suggestions in its RFP, but the RFP does not go far enough in creating an environment conducive to receipt of a meaningful diversity of coal-based resource options. UAE hopes that potential bidders will provide comments on how this goal can best be accomplished. UAE also expects and invites the IE to make specific recommendations in this regard. Also, the RFP should specifically incorporate options that may make potential IGCC bids more likely.

8. ***Level of IE Involvement.*** (Page 1 and throughout). It is critical to create market confidence that this RFP process will be fair and even handed and that the Company benchmarks are not predetermined winners. The active involvement of the IE in this regard is critical. The IE must be very actively involved in all aspects of the process that may affect potential bidders or determine the outcome. For example, the IE should be involved in determining whether one or more bidder's fees should be paid, whether a bid should be rejected as nonresponsive, whether bid fees should be refunded, the nature of and cure period for deficient bids, whether to ask a bidder to revise its proposal or update prices, whether the

models adequately place all bids and benchmarks on an equal footing, etc. In addition, the IE should carefully evaluate and monitor transmission expansion requirements and evaluation of dispatch so that these cost assumptions cannot be manipulated to benefit the utility and to prejudice bidders.

9. ***Bid Fees.*** (Pages 15-16). UAE fears that a requirement that each individual bid must pay a separate bid fee may discourage alternative or creative proposals. Bid fees should be used solely to eliminate non-serious bidders and to help defray evaluation costs. They must not become an impediment to creative or alternative proposals. UAE submits that each bidder should be expected to submit only one bid fee, subject to possible determination by the IE that additional bid fees may be appropriate depending upon the nature and breadth of resources proposed.

10. ***Credit Requirements.*** (Page 6 and throughout). UAE has consistently opposed the use of oppressive credit or security requirements that may chill bidding or eliminate legitimate bidders. The IE's First Progress Report addresses this contentious issue and offers some suggestions. The IE specifically noted that there is no "industry standard" for credit requirements, and that developers have raised concerns that self-build options provide the same risk to the utility that a third-party project does and this risk should be included to achieve fairness in the bidding process. In order to prevent contentious credit requirements from being used to disqualify legitimate bids, UAE recommends that credit requirements should not be used in the shortlisting process, but rather should be evaluated later on during

negotiations. This will allow for a wider examination of resources and may avoid elimination of economic options. UAE hopes that potential bidders will further address perceived problems with the proposed credit requirements, and it invites the IE to offer specific suggestions on how best to reconcile competing concerns in an effort to facilitate broad-based market responses to this RFP.

11. ***Debt Imputation.*** (Pages 20-21). Most of the debt imputation discussion should be stricken from the RFP. It appears designed primarily to discourage or prevent competition from PPAs. The debt imputation issue is complex. This Commission has previously rejected PacifiCorp's debt imputation position in the Qualifying Facility context. In addition, this issue has not been resolved in any meaningful way by any state commission. So far, there have been only a few cases that even addressed the issue of not just *how*, but *whether* debt equivalency should be considered. UAE believes that PacifiCorp's proposed debt imputation requirements go far beyond those used by most utilities in the country, would impose unfair and unreasonable requirements on PPA bidders, and would likely chill, if not outright prevent, most PPA bids. Perhaps debt imputation, along with a host of other competing considerations, can properly be considered by the Commission in ultimately approving a portfolio of resource options, but it should not be used by the Company in evaluating pricing or ranking bids.

12. ***Bid Revisions.*** (Page 30). While there are complexities and timing considerations inherent in a complicated evaluation like that required for this RFP, the RFP

should nevertheless be as flexible as possible to permit bidders to refresh, update or revise their proposals as needed, particularly if errors or omissions are discovered, so long as it will not unreasonably hinder or delay the evaluation.

This issue is emphasized by the IE in his comments, i.e., because competitive bidding for baseload coal resources is subject to several challenges not faced by natural gas resources, it is especially difficult for an IPP to compete because it has to provide a fixed bid price at a time when resources such as steel and other raw materials have great price volatility. For these reasons, the IE recommends several options for creating a more competitive bid revision process. These options should be incorporated into the RFP.

13. **CO2 Costs.** (Page 26). The RFP's discussion of CO2 costs is both confusing and troubling. Essentially, PacifiCorp proposes to impute CO2 costs to a bid even if the bidder is willing to assume that risk. Bidders who place a lower value on the CO2 risk that the Company should be free to assume that risk rather than imposing PacifiCorp's value. To the extent a bidder is prepared to assume the risk of CO2 costs and can provide sufficient credit or security for that assumed liability, it should be permitted to do so.

In addition, consistent with its comments made in the Revised Action Plan process, UAE continues to question PacifiCorp's use of a 100% risk of CO2 taxes by 2012.

14. **Bid Evaluation Models.** (Pages 30-33). UAE has continuing concerns about the use of bid evaluation models that have never been thoroughly or properly analyzed, vetted or validated by anyone outside of the Company. UAE hopes and trusts that the IE will be permitted

and expected to spend whatever effort may reasonably be required to ensure that the evaluation models are fair and appropriate and will lead to the selection of the optimal resources from the perspective of customers. Other Commission staffs have noted in their comments on the Revised Action Plan that the modeling process is not transparent, that models remain unavailable to Commission staffs, and that making models available to others would give the process more credibility and improve the value of the findings. The lack of access to the models continues to eliminate the level of transparency needed. Recently in a case before the Colorado Commission, utilities allowed third parties to have access to company models in order to run sensitivities needed for proper evaluation. That type of broader access to models in Utah would serve the ratepayers and other stakeholders in a more optimal manner.

15. ***Pro Forma Contracts; Exhibits and Attachments.*** (Pages 18, 33 and throughout). As a practical matter, UAE is not in a position to provide meaningful comments on the numerous pro forma contracts and other attachments to the RFP. To UAE's knowledge, the Commission has never reviewed or approved any of the pro forma contracts and they have never been subjected to the discipline of arms-length negotiations. Absent the same, it is reasonable to expect numerous areas of disagreement and negotiation. Any credible counterparty will almost certainly object to some of the terms of the pro forma agreements. However, requiring each bidder to identify up front every proposed change to all of the pro forma agreements is unreasonable. Rather, bidders should be asked to identify significant areas of disagreement with the pro forma contracts that may materially affect cost or risk to PacifiCorp and its ratepayers. Beyond that, contract negotiations should be deferred

until the winning bidders have been selected. UAE hopes that potential bidders may provide comments on the reasonable level of specificity that should be required on the proforma contracts in responding to the bid. UAE also hopes and anticipates that the IE will review the proposed contracts in greater detail and provide input on a reasonable level of scrutiny that should be required up front by bidders.

16. **Weighting.** (Pages 31-33). UAE questions whether a 10% weighting is appropriate for proposed contract changes. UAE recognizes that PacifiCorp eliminated the binary weighting to which UAE objected in the 2009 RFP. UAE still has concerns, however, about a subjective 10% weighting for this issue. Any penalty for proposed contract changes should be limited to areas where significant risks or costs will be shifted to ratepayers.

17. **Comparability of Bids and Benchmarks.** For the RFP process to produce the desired result, all bids and benchmarks must be made directly comparable and put on an even footing. To the extent any bids may result in reduced risk to PacifiCorp and its ratepayers as compared to Benchmark options (for which ratepayers are at risk), these differences in risk must be reflected in the analysis and scoring, whether as an additional cost to the Benchmark options or as a reduced cost to bidders willing to accept such risks. Such risks may include construction cost risks, risks of increased debt or equity cost, risks of increased maintenance costs or capital additions, fuel cost risks, risks of equipment failure, etc. It does not appear from the RFP that the Company proposes to incorporate and reflect these differences in risk in its evaluation. To be fair to ratepayers, however, the value of a counterparty assuming risk

that the Company and its ratepayers would otherwise bear must be reflected in the evaluation process.

UAE appreciates the opportunity to participate in the RFP process and looks forward to continued involvement.

Dated this 16th day of August, 2006.

Hatch, James & Dodge

/s/ _____
Gary A. Dodge,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by email this ____ day of August, 2006, to the following:

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