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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp, by and through its Rocky Mountain Power Division, for Approval of a Solicitation Process for a Flexible Resource for the 2012-2017 Time Period, and for Approval of a Significant Energy Resource Decision	DOCKET NO. 07-035-94 **INITIAL COMMENTS AND RECOMMENDATIONS OF THE UTAH ASSOCIATION OF ENERGY USERS ON PACIFICORP'S DRAFT 2008 RFP**

The Utah Association of Energy Users ("UAE") submits the following initial comments and recommendations on PacifiCorp's February 2008 draft of its proposed 2008 RFP ("RFP"). PacifiCorp's draft RFP attempts to address many of the concerns raised by UAE in previous RFPs and appears to make a reasonable attempt to incorporate lessons learned from the recent RFP process. Concerns persist, however, and UAE invites comments from the IE, other parties and market participants on the extent to which problems and concerns identified in prior RFPs have been adequately addressed in this RFP.

UAE's initial comments and concerns regarding the draft 2008 RFP are as follows:

1. ***Comparability of Utility Bids and Third Party Bids.*** Under Commission rules, "[a]ll bids must be considered and evaluated against the Benchmark Option on a fair and comparable basis," R746-420-3(8)(i), and "[a]ll aspects of a Solicitation and Solicitation Process must be fair, reasonable and in the public interest," R746-420-3(a)(a). In order for the RFP process to satisfy these rules and produce a result that is in the public interest, all resource options must, to the greatest extent possible, be made directly comparable and put on an even footing for all evaluation and scoring purposes. PacifiCorp does not propose to use a benchmark in this RFP, but it does intend to submit bids. Notably, PacifiCorp intends to have its self-build projects treated differently than other bids for ratemaking purposes. (RFP, page 27). Thus, PacifiCorp expects certain costs and risks that other bidders will be expected to bear to be borne by ratepayers if a company bid is selected (e.g., increases in construction costs, debt or equity costs, operation and maintenance costs, fuel costs, etc.). This ratepayer risk must be factored into any resource decisions.

Competitive bidders may require a return on their equity that is higher than PacifiCorp's authorized return, in part because of the greater risks that competitive bidders will face. A cost-of-service based return on equity may well be lower than competitive returns because many risks are shifted to utility ratepayers with a utility-built project. The higher return on equity expected by competitive bidders will be included in their bids. For the evaluation process to be fair and reasonable from a ratepayer perspective, that portion of the "risk premium" that will be shifted to ratepayers under a utility bid (particularly in the event of pre-approval of cost recovery) must be incorporated into the evaluation process. UAE, the IE and others have addressed this concern in the past. UAE would like to see a means developed for identification and quantification of the value of this "risk premium" borne by ratepayers with a utility-built resource. To date, however, nobody has offered a clear means for doing so. Rather, the primary focus has been on changing bidding requirements and options in an attempt to create a more even playing field.

UAE continues to have significant concerns over this issue, and encourages the IE and others to explore and recommend the best means of ensuring fairness and comparability, from the perspective of both market participants and rate payers, in the RFP process.

2. ***Coal Resources.*** (RFP pages 7, 22 and throughout). The RFP categorically excludes coal resources from consideration notwithstanding the fact that the most recent publicly-vetted IRP process identified coal resources as among the most cost effective. UAE believes that coal resources have been eliminated as options by PacifiCorp primarily because of perceived risks stemming largely from expectations and requirements of commissions and stakeholders in other states.

UAE disagrees with the categorical exclusion of coal resources. UAE submits that the risks associated with coal resources have been adequately evaluated in the IRP process. Indeed, the IRP identified and evaluated a number of possible cost and risk implications of carbon regulation. Similarly, UAE submits that the Commission can reasonably evaluate the risks of coal resources in this RFP process. Rather than exclude this entire category of resources from consideration, UAE submits that, as a condition to resource pre-approval, PacifiCorp should be required to invite and evaluate all potential resource bids, regardless of fuel source. Only then can the utility and the Commission adequately evaluate all relevant costs and risk tradeoffs associated with available resources and determine that any particular resource is in the public interest.

3. ***PPA/TSA Resources***. (RFP pages 10, 11, 13 & 14). Chart 1 on pages 10 and 11 (Sections 1 and 2) and pages 13 and 14 state that a PPA or TSA "not backed by assets" will have a maximum term of 5 years. This limitation was not included in the 2012 RFP approved by the Commission in April 2007, and PacifiCorp has not established that it is reasonable. The RFP explains this restriction in a footnote to Appendix A, as follows:

> For Power Purchase Agreements and Tolling Service Agreements to be backed by its respective physical asset, the agreements by their terms must put that physical resource behind the agreement, which would include, but not be limited to, the following: allowing the Company meaningful and actual exercise of step-in rights and a second lien (behind only the project lenders) on the assets and the special purpose entity equity, limiting the amount of leverage on the project by way of a cap on the debt to equity ratio, and other financial covenants for the life of the Power Purchase Agreements or Tolling Service Agreements.

It is not clear to UAE whether this requirement or the 5-year restriction on a PPA or TSA that is not "asset-backed" is reasonable, particularly for a bidder with strong credit. PacifiCorp should be required to provide an adequate explanation for these requirements/limitations or they should be removed. Also, UAE invites comments from the IE and market participants on this issue.

4. ***Load Curtailment*** (Page 21). The draft RFP requires that the "fuel source type" must be specified for each category of bids and exceptions. This requirement makes no sense, however, with respect to a load curtailment bid, which will not consist of a fuel source but rather curtailment of usage.

5. ***Blinding of Intent to Bid Forms***. (Page 24 and throughout). Intent to bid forms submitted by potential bidders are not blinded. It is not clear why these forms are not blinded or whether they should be. UAE invites comments from the IE and potential bidders on this issue.

6. ***Credit.*** (Page 28 and throughout). RFP credit requirements have caused significant problems for potential bidders in the past, and have contributed to a shortage of qualifying bids. As a ratepayer group, UAE strongly supports adequate credit requirements. On the other hand, UAE believes that the credit requirements should be commercially reasonable and no more onerous that those commonly used in the utility and other industries. UAE invites the IE and potential bidders to identify any remaining issues with the credit requirements and the credit matrix, and to recommend appropriate revisions.

7. ***Reservation of Rights*** (Page 32). PacifiCorp "reserves the right, without qualification and in its sole discretion, to reject any or all bids, and to terminate this RFP in whole or in part at any time." UAE does not believe that the Company should be permitted to retain discretion this broad to terminate the RFP without PSC input or approval. Such a reservation of rights makes sense in an RFP where the Commission is not involved and pre-approval is not expected. However, given the extensive time and efforts required of the PSC and other parties in the statutory RFP process, UAE submits that a proposal to terminate an RFP and reject all bids should require, at a minimum, the filing of a detailed explanation with the Commission and an opportunity for the Commission to provide appropriate reactions and guidance.

8. ***CO2 Costs.*** (Page 38). UAE does not believe that it is reasonable or in ratepayers' best interests to require the utility (and thus its ratepayers) to bear all risks of CO_2 costs under all circumstances. If a bidder places a lower value on CO_2 risk than does the Company or the Commission and is able to provide adequate security for that risk, the bidder should be allowed to bear at least a portion of the CO_2 risk, and its bid should be credited accordingly.

9. ***Pro Forma Contracts and Other Attachments.*** Concerns have been expressed in the past over the one-sided nature of draft pro forma contracts attached to RFPs. UAE continues to rely largely on the IE and potential bidders for comments and suggestions on the appendices and attachments to the RFP, including the credit matrix, pro forma contracts, specifications, etc. UAE invites the IE and potential bidders to provide specific proposed additions, deletions and changes to all such documents as appropriate.

UAE appreciates the opportunity to provide these initial comments. UAE remains a strong supporter of this statutory RFP process and believes it provides the best means of assuring a diverse portfolio of future resource options that will include the optimum mix of low cost, low risk and reliable resources for all Utah ratepayers.

Dated this 21st day of March, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 21st day of March, 2008, to the following:

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