

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of )  
PacifiCorp for a Certificate of )  
Convenience and Necessity Authorizing )  
Construction of the Currant Creek )  
Power Project )

DOCKET NO. 03-035-29

REPORT AND ORDER

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ISSUED: March 5, 2004

SHORT TITLE

**PacifiCorp Currant Creek Certificate Case**

SYNOPSIS

The Commission grants a certificate of public convenience and necessity authorizing PacifiCorp to construct a staged 280 megawatt natural gas-fired simple cycle combustion turbine for service in the summer of 2005 with conversion to a 525-megawatt combined cycle combustion turbine in 2006 at the Currant Creek plant site.

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**APPENDIX I. STIPULATION REGARDING OUTSIDE EVALUATOR FOR PACIFICORP'S RFP 2003-A**

**APPEARANCES:**

Edward A. Hunter, For PacifiCorp  
John M. Eriksson &

Jennifer E. Horan  
Attorney at Law  
Stoel Rives

Michael L. Ginsberg & Patricia E. Schmid  
Assistant Attorneys General " Division of Public Utilities

Reed T. Warnick  
Assistant Attorney General " Committee of Consumer Services

Gary A. Dodge  
Attorney at Law  
Hatch, James & Dodge " UAE Intervention Group

Stephen F. Mecham  
Attorney at Law  
Callister Nebeker & McCullough " Spring Canyon Energy

James A. Holtkamp & Robert M. Pomeroy, Jr.  
Attorneys at Law " Calpine Corporation

Steven S. Michel  
Attorney at Law " Western Resource Advocates

## I. PROCEDURAL HISTORY

On January 24, 2003, PacifiCorp (“Company”) filed its Integrated Resource Plan 2003 (“IRP 2003”). This filing was required under the Commission’s Standards and Guidelines for Integrated Resource Planning for PacifiCorp established in Docket No. 90-2035-01.

On March 6, 2003, the following parties filed a joint request asking the Commission to adopt open bidding requirements for competitive acquisition by PacifiCorp of electric generating resources and affiliate transaction requirements for certain investor owned utilities: Utah Association of Energy Users (“UAE”), IHC Health Services, Hexcel Corporation, S F Phosphates, Swift & Company-Utah, American Pacific Corporation, May Foundry and Machine, American Foundry Society Utah Chapter, Tesoro Refining and Marketing Company, U S Executive Agencies, Tooele County, Grantsville City, US Magnesium LLC and Desert Power. The Commission opened Docket No. 03-035-03 for this request. On March 11, 2003, the Commission issued a Notice of Proposed Scheduling Order and also set a scheduling conference for March 18, 2003. On March 20, 2003, the Commission issued a Scheduling Order setting three

technical conferences and a further scheduling conference.

On April 18, 2003, pursuant to an April 9, 2003 Commission Notice, a technical conference was held on PacifiCorp's IRP 2003. After considering filed comments, the Commission, on May 30, 2003, issued an order acknowledging that PacifiCorp's IRP 2003 and Action Plan conform to applicable guidelines.

On June 4, 2003, a Stipulation Regarding Outside Evaluator for PacifiCorp's RFP 2003-A (Appendix I) ("Stipulation") was filed with the Commission. The Stipulation was signed by all of the original petitioners, except Tooele County, in the open bidding requirements Docket No. 03-035-03 in addition to PacifiCorp, the Division of Public Utilities ("Division"), the Committee of Consumer Services ("Committee") and Salt Lake Community Action Program ("SLCAP"). The Stipulation states parties intend to hold additional discussions regarding development of open bidding and/or affiliate rules, and the Commission will be notified to the extent further technical conferences or proceedings are requested. In the Stipulation, parties agree to guidelines for evaluating PacifiCorp's processing of its RFP 2003-A for east-side resources. The Stipulation provides for and specifies the duties of an outside evaluator and the criteria to be used in evaluating the Request For Proposals ("RFP") process. The Stipulation further states the guidelines are to be used for future supply-side solicitations contemplated by the Company's 2003 Integrated Resource Plan when PacifiCorp considers a self-build option or allows an affiliate to bid. The Stipulation states the parties' agreement that no further Commission action is necessary with respect to establishing guidelines or requirements for PacifiCorp's processing of the 2003-A RFP.

On August 1, 2003, Navigant, the independent evaluator selected pursuant to the Stipulation, filed its report, Review and Audit of PacifiCorp's Next Best Alternative dated July 22, 2003. This was the first process report from the independent evaluator, as required by the Stipulation.

On October 30, 2003, PacifiCorp filed its update to the IRP 2003, resulting in a revised load and resource balance, concluding that resource requirements in the Eastern control area, which includes Utah, are accelerated.

On November 3, 2003, PacifiCorp filed an Application asking the Commission to grant a certificate of convenience and necessity authorizing the construction of a 525 megawatt (“MW”) resource addition, known as the Currant Creek Power Project (“Currant Creek”), adjacent to the Company’s Mona Substation in Juab County, Utah. Phase one of the Currant Creek Power Project consists of two natural gas-fired simple cycle combustion turbine (“SCCT”) generators, each with a nominal 140 MW capacity, for a total of 280 MW with planned commercial operation by June 2005. In the second phase of the project planned for completion by March 2006, the plant is converted to a combined-cycle combustion turbine (“CCCT”) with a total capacity of 525 MW and a total estimated installed cost of \$343 million. The Application was supported by the testimony of J. Rand Thurgood, Managing Director of Resource Development and Project Management, on the selection, timing and cost of the resource addition; Jon Cassity, Manager Resource Planning (testimony later adopted by Melissa Seymour, Manager of Planning and Financial Analysis), on the Company’s load and resource balance and the need for additional resources; Mark Tallman, Managing Director of Trading & Origination, on how bids received in response to the Company’s RFP 2003-A compare to the cost of the Currant Creek Project; and Bruce Williams, Treasurer of PacifiCorp, on financing the resource addition. A Motion for Entry of Protective Order was also filed by PacifiCorp on this date.

On November 3, 2003, the Commission issued a Notice of Scheduling Conference in the Currant Creek docket, setting the conference for November 12, 2003. At the conference, parties indicated they were unable to reach agreement on a schedule. On November 12, 2003, the Commission issued the Protective Order. On November 14, 2003, the Commission issued a Scheduling Order setting a Technical Conference on November 24, 2003. At the conference, PacifiCorp discussed the goals of the RFP and the status of bid categories. Navigant discussed its role and responsibilities in the RFP process followed by a question and answer session. Parties met to discuss scheduling on December 1, 2003. No agreed schedule was reached.

On November 10, 2003, Navigant filed its report, Review and Audit of PacifiCorp’ Screening Review Process dated November 7, 2003. This was the second process report from the independent evaluator as required by the

## Stipulation.

Pursuant to the December 2, 2003 Notice by the Commission, a scheduling conference in the Currant Creek docket was held on December 9, 2003. Parties were still unable to reach an agreed upon schedule. On December 16, 2003, the Commission issued a Third Scheduling Order providing for direct testimony from the Division, Committee and intervenors on February 4, 2004, Rebuttal on February 11, 2004 and Hearings on February 18-19, 2004.

On January 29, 2004, Spring Canyon Energy LLC (“Spring Canyon Energy”) filed with the Commission a motion to compel PacifiCorp to respond to data requests and to continue the hearing schedule in the Currant Creek docket for two weeks. On January 30, 2004, PacifiCorp filed a response to Spring Canyon Energy’s motion and also filed its own motion to compel Spring Canyon Energy to respond to PacifiCorp’s data requests. On February 2, 2004, the Commission held a hearing on Spring Canyon Energy’s motion. The Commission, in a bench ruling, denied Spring Canyon Energy’s motion, kept the scheduled hearing and testimony dates and shortened discovery turnaround to four days. We further set February 6, 2004 to hear PacifiCorp’s motion. The Commission ruled that Counsel will have access to all the complete documents and that expert witnesses or designated employees will have access to redacted versions subject to the protective order.

On February 11, 2004, Navigant filed its Final Report on PacifiCorp’s RFP 2003-A in Docket No. 03-035-03. This was the detailed report by the independent evaluator regarding all aspects of the RFP process and its conclusions and recommendations as required by the Stipulation.

Following a February 13, 2004 notice, the Commission held a scheduling conference in the Currant Creek docket on February 17, 2004. After hearing from the parties, the Commission determined that the original schedule would not allow sufficient time and added to the schedule, hearings on February 20, 25, 26, and 27, 2004. Hearings were held February 18, 19, 20, 25, 26, 27 and March 1, 2004, at which time testimony and evidence were received, and witnesses cross-examined.

Parties to this case are PacifiCorp, the Division, Committee and the following intervenors: Utah Energy Office, Spring Canyon Energy, Calpine Corporation (“Calpine”), Deseret Generation & Transmission, Utah Association of Counties, Western Resource Advocates, US Magnesium LLC and the UAE Intervention Group which includes: UAE, Alliant Aerospace Propulsion Company, American Pacific Corporation, Central Valley Water Reclamation District, ChevronTexaco ERTC, Hexcel Corporation, IHC Health Services, S F Phosphates, Swift & Company-Utah and Tesoro Refining and Marketing Company. Testimony was presented by the following parties: PacifiCorp, Division, Committee, Spring Canyon Energy, UAE Intervention Group and Calpine.

## **II. POSITION OF THE PARTIES**

PacifiCorp states that the present and future public convenience and necessity requires construction of the proposed resource addition. The Company explains that the past decade of retail load growth in Utah in conjunction with declining resources require the addition of new resources. The Company has determined that the phased construction of a 525-MW plant consisting of two natural gas-fired generating units at the Carrant Creek location is the most cost effective alternative available to meet the Company’s needs for a daily dispatchable resource by the summer of 2005. The Company testifies it is finalizing a contract with Stone & Webster for plant construction, has obtained or will obtain all necessary permits, such as air quality, to both construct and operate the plant, and is fully capable of properly financing the project. The Company states that the Carrant Creek Project will not conflict with, adversely affect the operations of, or constitute an extension into the territory of any existing certificated fixed public utility providing retail electric service to the public. The Company further states that without the Carrant Creek Project, the Company and its customers would be exposed to the volatility in the wholesale power market, high transmission costs associated with delivering power to Utah customers and potential adverse impacts on service reliability.

Based upon its analysis of the Application, the Division recommends issuance of the certificate of convenience and necessity conditioned by receipt of evidence that all required permits have been secured. The Division testifies the RFP bid process was fair, Carrant Creek is the most economic alternative and the economics of the Carrant

Creek project are so superior that changes to the bidding or evaluation processes would not alter the relative ranking of the alternatives. The Division accepts that the Company needs additional capacity identified through the IRP process and states that Currant Creek is consistent with those identified needs. The Division represents that PacifiCorp has the capability to finance the Currant Creek project. The Division indicated it found no evidence to refute Navigant's conclusions that the RFP process was fair and consistent and managed in a manner that led to unassailable results. The Division believes the risk to ratepayers of building the first phase of the Currant Creek project is \$5 million which represents the incremental cost of building Currant Creek as a phased project. The Division recommends using a forum to discuss ways to improve the RFP process.

The Committee testifies to a system capacity deficiency in the summer of 2005. From its analysis, the Committee concludes that because of perceived problems with the modeling used to evaluate bids, together with other problems with the RFP and bid evaluation process, it is impossible to determine that Currant Creek is the most economical resource available. The Committee recommends a separate docket be opened to consider a number of recommendations it makes to improve the RFP and bid evaluation process going forward. The Committee testifies it would have difficulty finding fault with a Commission order to grant the certificate for Currant Creek if the Commission concludes that there is not a reasonable way to acquire adequate resources to meet summer 2005 needs, or that the cost of acquiring those resources would put customers at risk of high prices.

Spring Canyon Energy testifies it concurs with the need for new generation resources based on its own independent study of PacifiCorp's forecasted demand/load growth. It believes the Spring Canyon project is lower cost than PacifiCorp's Currant Creek project. Spring Canyon Energy states the bid evaluation process was unfair as its bids were not evaluated properly and that PacifiCorp did not negotiate in good faith. Spring Canyon Energy recommends the Commission deny a certificate to PacifiCorp, and instead award Spring Canyon Energy the 2005 peak bid. It states that if the Commission accepts that the resource deficit is 1,000 MW, then both Currant Creek and Spring Canyon projects should be built.

The UAE Intervention Group testifies the RFP process was not demonstrated to be fair or reasonable. It testifies that PacifiCorp's evaluation process is fundamentally flawed because of an inappropriate comparison of peaking bids to Currant Creek and a failure to evaluate combinations of peaking and baseload alternatives to Currant Creek. It recommends reopening the bid process for the peak bid category with the condition that bids meet the summer of 2005 resource needs. If the RFP 2003-A peak category is not re-bid, it recommends that a combination of peaking, base load and super-peaking bids be evaluated against the Company's next best alternative (NBA) which is the Currant Creek Project.

Calpine recommends the Commission allow the RFP process for the base load bid category to continue unaffected by the decision in this proceeding. Calpine further recommends that the base load RFP process should be concluded before approval of any subsequent phases of development at Currant Creek

### **III. DISCUSSION, FINDINGS AND CONCLUSIONS**

#### **A. NEED**

It is the statutory duty of PacifiCorp to provide adequate electric service in its franchise service territory [USC 54-3-1]. To this end, and as required by this Commission in Docket No. 90-2035-01, the Company engages in a public resource planning process. The purpose of this planning process is to identify the optimal set of resources, given the expected combination of costs, risks and uncertainties, over the long-run to provide safe and reliable electric service for customers. The Company's Integrated Resource Plan 2003 filed January 24, 2003 and acknowledged by this Commission on May 30, 2003, is the primary source cited by witnesses as the basis upon which to determine the need for the Currant Creek resource in 2005. We are well aware of the time spent, a full two year process, by the Company, regulators and interested parties, in the development of IRP 2003. Further, we note the positive reception the IRP process and final report generated. The Company also relies upon its IRP 2003 Update, filed October 30, 2003, although the Committee points out that this is an information filing only and not the result of public review and Commission acknowledgment.



The capacity deficiency in the summer of 2005 noted in IRP 2003 and cited by Company and Committee witnesses is 1,283 megawatts assuming a 15% planning margin. This deficit grows persistently for the next 10 years. The Division testifies that even under the more conservative assumption of a 10% planning margin, IRP 2003 shows a capacity deficiency exceeding 800 megawatts over the next five years, increasing to over 1,700 megawatts in 2009.

PacifiCorp additionally provides its analysis of load and resource balance in the eastern portion of its integrated system. This analysis differs from IRP 2003. It is based on the revised load forecasts used in the IRP 2003 Update, uses a calculation of operating reserve and an estimate of forced plant outage in place of a target planning margin, and is based on a subset of PacifiCorp system loads and resources and firm transmission rights. Although neither the Division nor the Committee relies upon or refutes this analysis of resource need, it too shows capacity deficiency. This deficiency is expected to be 1,049 megawatts in summer 2005 and increases to over 1,900 megawatts in 2009.

Spring Canyon Energy relies upon its own studies of load growth to support the conclusions reached by PacifiCorp that there is a genuine need for additional resource. Neither UAE Intervention Group nor Calpine support or refute the timing or magnitude of capacity deficiency.

We find the magnitude of deficiency considerable, and as the Division testifies, we realize this is not new. The Company's reliance on the wholesale market for meeting this need since the time it filed its IRP "RAMPP-5" in 1997, has placed the Company and its customers at considerable risk of the high cost for purchases or reduced reliability. We commend the Company for changing its planning strategy, for producing a viable plan and for moving forward on filling the capacity deficit created by past planning policy and business decisions.

The Company and Division also testify, and we so find, that Currant Creek is generally consistent with the IRP 2003 least cost portfolio, "Diversified Portfolio I" which identifies both long-term and short-term firm capacity additions. The type, size and timing of resources requested by the Company in its Request for Proposals ("RFP 2003-

A”) follows directly from the IRP 2003 Action Plan to implement Diversified Portfolio I long-term firm capacity resource additions. This includes a request for 225 megawatts of super peak hour resource and 200 megawatts of peak hour resource. The Company testifies that the configuration and size of Currant Creek, a staged 280 megawatt simple cycle to 420 megawatt combined cycle combustion turbine with 105 megawatt duct firing for a total of 525 MW, is the economic choice for its next best alternative given higher gas price expectations and greater combined cycle equipment flexibility than assumed in IRP 2003 and given higher peak demand expected in its IRP 2003 Update.

Several witnesses express concern that bids in the peak bid category of RFP 2003-A are measured against a cost based resource that is typically characterized as a baseload unit, that is, a resource that operates economically for most hours of the year rather than just for peak hours of demand. However, the record shows that this configuration is an appropriate design when gas prices are high and when the equipment can effectively dispatch daily. No party presented evidence that the gas price assumptions used by PacifiCorp are unreasonable nor disputed the ability of combined-cycle equipment to provide cost-effective peaking capacity. Navigant testifies that ten bids in the 2005 category are based on combined cycle technology and that two include duct firing and PacifiCorp testifies that four of these made the short list. Indeed, Spring Canyon Energy witnesses testify that they did not consider bidding a simple cycle combustion turbine because a combined-cycle facility has a much better heat rate and a much lower cost to the rate payer. Further, they state that the only reason for considering a simple-cycle facility is to meet an online date not possible for a combined-cycle facility. Calpine testifies that an economic way to provide peaking power in 2005 is to stage construction of a combined cycle by starting with a simple cycle in the first year. In fact, no party in this case testifies that a simple cycle combustion turbine without staged conversion to combined cycle is least cost to fill the need identified in IRP 2003 for the resource added in 2005.

Based on the foregoing, we conclude that the Currant Creek power project addresses a genuine need for additional resource in the summer of 2005. Further, we find reasonable, the type and size of generation facility proposed to address the projected need identified in IRP 2003.

## **B. RFP PROCESS**

On June 4, 2003, the Stipulation Regarding Outside Evaluator For PacifiCorp's RFP 2003-A was submitted to the Commission (Appendix I). This Stipulation describes the role, duties and process of an outside evaluator with respect to implementing and administering the Company's RFP to obtain generation resources located in the East control area. On June 6, 2003, the Company issued RFP 2003-A, in which resources were sought in super peak, peak and baseload bid categories. In addition to delivery into the Company's East control area, the most important resource characteristics were date of delivery and dispatchability.

In the super peak bid category, the Company requested a firm resource of approximately 225 MWs, with delivery beginning in the summer of 2004 through the summer of 2007, dispatchable daily during specific hours. In the peak bid category, approximately 200 MWs were requested, with delivery beginning in June 2005 for up to twenty years, and also dispatchable daily. In the baseload category, approximately 570 MWs were requested, with delivery beginning in June 2007 for up to twenty years.

As detailed in the RFP, the bids were to be compared on an economic basis against the Company's Next Best Alternatives ("NBA"). For the super peak bid category, the NBA was assumed to be forward market purchases delivered to the Company's East control area. In the peak and baseload bid categories, the Company's proposal to build the Currant Creek plant served as the NBA. The Company provided Navigant with the detailed information regarding its Currant Creek proposal, and Navigant began its review of the Company's proposal on June 19, 2003. This review concluded with a July 22, 2003 report, "Navigant Consulting Inc.'s Review and Audit Of PacifiCorp's Next Best Alternative," submitted to the Commission on August 1, 2003, as set forth in the Stipulation.

Thirty seven entities responded to the RFP, submitting ninety four specific proposals (termed indicative "blind" bids, as the identity of the bidder was unknown to the Company), plus some subsequent offers that were variations of original offers. Differences among the bids included types of bidding companies, contract duration, MW commitments, heat rates, delivery points, fuel sources, equipment configurations, and pricing. On July 22, 2003 the bids

were received by Navigant, and subsequently PacifiCorp began screening the bids. This involved identifying the bid category to which an offer belonged, then documenting the price and terms of the offers, resulting in a financial valuation of the offers by means of models. Bids were then scored and ranked on three criteria: price, dispatchability, and environmental characteristics. Navigant's review of the Company's screening process concluded with a November 7, 2003 report, "Navigant Consulting Inc.'s Review and Audit Of PacifiCorp's Screening Review Process for RFP 2003-A," submitted to the Commission on November 10, 2003, as set forth in the Stipulation.

Following the scoring and ranking of offers, a preliminary short list of bidders was identified. The identity of these bidders was then made known to the Company, and clarifying discussions were undertaken with these bidders to arrive at their definitive proposals. Once clarified, the economic valuation of these definitive proposals were again modeled, and a final short list of bidders was derived in order to identify with whom the Company would enter into more detailed negotiations.

Thirteen specific proposals were submitted in the super peak bid category, all of which were some form of a purchase power agreement. There were six bids short-listed in the super peak bid category. None was found to be attractive, primarily due to economics and transmission or point of delivery issues.

Twenty eight specific proposals were submitted in the peak bid category. Of these, seventeen were power purchase agreements, involving a pricing structure based on power/gas spread options. Eight of the bids involved turnkey offers, in which an entity constructs a facility which is then transferred to the Company at the date of commercial operation. Two bids involved the sale of equipment for use at a site of the Company's choosing, and one bid was a lease arrangement.

Ten bids from five entities were short-listed in the peak bid category. Clarifying discussions were then held with these five bidders. As a result of subsequent discussions, no offer was found to be more economic than the Company's NBA. However, with no viable offers forthcoming in the super peak bid category, and greater expected need than initially requested, the Company wished to explore further the opportunity of obtaining resources from the

peak bid category. A new NBA was determined consisting of forward market purchases for two years followed by an expansion at Currant Creek. The Company resumed discussion with three of the entities who had made the short-list in the peak bid category. Another round of clarifying discussions were held with these three bidders, offers were revised and compared to the new NBA. None of these offers was found to be economically superior to the Company's new NBA, and discussions in the peak bid category ceased.

Fifty three specific proposals were initially submitted in the baseload bid category, eleven of which were found to be more economic than the Company's NBA for this category. Clarification discussions were held with bidders, resulting in twenty offers from eight entities. Assuming that the Currant Creek proposal in the peak bid category were built by summer of 2005, an expansion of Currant Creek by summer of 2007 was developed as a new baseload NBA against which these offers were then compared. This identified three entities with whom the Company began detailed discussions. Discussions with two entities remain on-going as of February, 2003.

The Company complied with the June 5, 2003 Stipulation between the Company and signatory parties to use an outside evaluator to oversee the entire RFP process to ensure that the Company's approach to evaluating offers was fair, consistent and reasonable. In the July 22, 2003 report on its review and audit of the Company's NBA, Navigant concluded that Currant Creek as the NBA appears to be a viable project and consistent with the RFP, the expected cost assumptions are fair and reasonable, and the modeling is sound. In the November 7, 2003 report on its review and audit of the Company's screening review process, Navigant concluded the process to be consistently applied to all proposals, bidders were given a fair, equal and ample opportunity to present their proposals, and the assumptions, modeling, and treatment of the proposals were reasonable. In its February 11, 2004 final report, Navigant concluded that the RFP process satisfied the primary criteria of equal opportunity, analytical objectivity, reasonableness, and objectivity. These criteria are essentially the requirements outlined in the July 5, 2003 Stipulation. Navigant stated it "unequivocally supports the RFP process as having been managed in an effective manner with results that are unassailable." The conclusions made by Navigant are also supported by the Division. Navigant also testifies that during the entire time it

was involved in the 2003 RFP, its focus was satisfying the requirements as laid out in the Stipulation.

### **C. ALTERNATIVES**

Based on the record in this case, we examine five alternative courses of action proposed by parties for PacifiCorp to meet the resource deficiency intended to be filled by the 2005 summer peak bid category of the 2003-A RFP: 1) Rely exclusively on wholesale market power purchases, 2) Re-bid the peak bid category of the 2003-A RFP, 3) Re-analyze the bids already received, 4) Restart negotiations with bidders, or 5) Proceed with building a new resource. We discuss each alternative in turn.

#### *Rely exclusively on wholesale market power purchases*

Although the Company testifies that firm transmission might be available to help meet the 2005 summer needs, it has been unable to acquire firm power purchases sufficient to meet the expected deficiency. There are risks to relying exclusively on the wholesale market, including the risk of high prices, inadequate supplies or transmission capacity for delivery. No definitive evidence is presented to demonstrate the availability of adequate power supplies at the time and location needed and at reasonable prices. We know from experience that the cost of market exposure is real. In 2001, PacifiCorp stated that Utah's share of the cost of market exposure was \$102 million for the four summer months alone. We approved a stipulation that allowed the Company to collect a portion of this cost from ratepayers. This alternative is also inconsistent with IRP-2003 conclusions that the least cost/risk strategy is to fill a portion of the capacity deficit with long-term firm capacity rather than exclusively with short-term firm purchases. We conclude that this alternative is unacceptable.

#### *Re-bid the peak bid category of the 2003-A RFP*

Based on its view that the bid process was unfair due to an inappropriate comparison of peaking bids to the NBA and a failure to evaluate combinations of peaking and baseload alternatives to the NBA, the UAE Intervention Group recommends that the peak bid category of the 2003-A RFP be re-bid.

We accept that there are multiple ways of accomplishing the bid evaluation task. We are not persuaded by the testimony that a superior outcome would result from a different method. Arguments presented are not accompanied by definitive evidence that clearly shows an alternative method is superior. We are persuaded by the Company, Division and Navigant testimony that the RFP process and evaluation methods are fair and reasonable for the task of screening for competitive bids. The same process and evaluation tools are being used in the 2007 bid category without apparent issue. Calpine testifies that a re-bid of the 2007 bid category is a bad idea because it is unfair to previous bidders who have incurred costs, because confidential information about the earlier bids is now known to PacifiCorp and because it would take eight to twelve months to complete. These concerns apply as well to the 2005 peak bid category.

A re-bid would delay the ability for any alternative to meet the summer 2005 need resulting in risk of higher cost and less reliability. Navigant testifies that the RFP in this case had to be submitted to the Oregon Commission for approval. A revision to the RFP for a re-bid would need to be submitted to Oregon to determine whether a re-bid must be approved by that jurisdiction. Additional time would be needed to resolve this issue and to obtain any additional Oregon approval. Navigant testifies, based on its experience with RFP's, a re-bid of the peak bid category would take from six to ten months to complete and would not preclude the type of process dissatisfaction present in the current bid. Navigant lists the steps needed in a re-bid: get Commission guidance on a revised solicitation, prepare the revised RFP, issue the RFP, hold explanatory sessions with bidders, allow time for bidders to prepare and submit bids, review and model bids, screen, rank and short list bids, clarify bids and complete negotiations.

Based on evidence in the case, this length of delay would not leave sufficient time for plant construction to meet the 2005 summer resource needs. The Company testified its Currant Creek project would not be an alternative in a re-bid, since the estimated cancellation costs incurred due to the additional delay would preclude expanding the risk the Company is willing to take. We conclude that the significant re-bid delay would reduce the possibility of finding a reasonable alternative to meet the 2005 summer needs. Because of this and the other concerns discussed, we find the re-bid alternative unacceptable.

*Re-analyze the bids already received*

The UAE Intervention Group recommends that if no re-bid is desired, then existing bids should be re-analyzed using combinations of bids to make a better comparison against the Company's next best alternative of a simple cycle combustion turbine phased into a combined cycle combustion turbine plant. The Company testified that the number of combinations in a re-analysis of existing bids is significant and would be impractical. Any permutation of re-analyzed bids that might show an attractive combination would still require negotiations with multiple bidders to reach final agreements. As evidenced by the time being expended to negotiate a potential agreement with Calpine, this could take a lengthy period of time. We conclude that re-analyzing the bids would cause additional delay, would not preclude bidder dissatisfaction and is unnecessary for the purposes of this case.

*Restart negotiations with bidders*

Spring Canyon testifies PacifiCorp was unwilling to negotiate with them. They believe negotiations can and should resume. PacifiCorp testifies that negotiations can take many months as evidenced by the four months of negotiating with Calpine in the base load bid category, which is still on-going. Given the estimated construction times on the record, restarting negotiations with the short listed parties in the peak bid category is likely to preclude completion of a new plant in time to meet the 2005 summer capacity requirements. We are also concerned that restarting negotiations after a bidder's best and final offer is made and found to be uneconomic would be unfair to other bidders and impair the credibility of the process. We conclude that this alternative is unacceptable.

*Proceed with building a new resource*

Spring Canyon Energy testifies that its build bid, if evaluated using its approach, would be lower overall cost than the Company's Currant Creek Project. The Company, Navigant and the Division dispute this claim. They contend that Spring Canyon Energy's bids were fairly evaluated with the overall cost being substantially more than Currant Creek. As we have previously stated, we are not convinced that any alternative evaluation is superior to that used by the



Company. Spring Canyon Energy's evaluation relies on terms that were never formally bid in writing to the Company. Spring Canyon Energy testifies it thought negotiations started after announcement of the short list, while Navigant and the Company stated this was not the process spelled out previously. Because of this, Spring Canyon Energy did not put forth a specific bid regarding plant residual value ownership at the end of the contract term before being eliminated from the RFP process. PacifiCorp testifies that Spring Canyon Energy's bids reflected an unwillingness to accept the risk of law changes, interest rates or terminal value, which together with other aspects of its bids, made it not competitive. Spring Canyon Energy was one of only two bidders to provide testimony in this case, and the only one of thirty seven who complained about the process.

The Division testifies that the value of bids must be taken into account from the ratepayers' perspective. This means that any power purchase agreement with a term less than the useful life of the associated plant, to be competitive, must be priced to account for this difference. We agree: it is a long standing ratemaking principle to match costs with benefits. Calpine's competitive bid in the base load category of the 2003-A RFP took this into account since Calpine testifies its bid with a twenty year power purchase agreement was competitive with the Company's NBA. PacifiCorp acknowledges that they continue to negotiate with Calpine in this bid category. This demonstrates that a power purchase agreement can be competitive.

The Company's Currant Creek resource addition is fully described on the record. PacifiCorp testifies that it has received a building permit from Juab County and that it fully expects to receive other necessary permits to both construct and operate the Currant Creek plant and that it is fully capable of properly financing the project. The Division agrees that the Company has the ability to finance the Currant Creek Project and other parties do not dispute this. The Division testifies of many benefits to Utah customers of the Currant Creek Project including cycling ability to meet peak hour needs and reduced water cost risk due to the air-cooled design. The Company testifies that the Currant Creek Project is the lowest overall cost and most likely to meet the necessary time requirements. Navigant, the independent RFP and bid evaluator hired pursuant to the requirements of the June 4, 2003 Stipulation, testifies that the Currant Creek Project is the best alternative in the peak bid category. The Division, after its own review, supports Navigant's

conclusions.

We conclude that review of the alternative actions discussed above, shows no better alternative at the present time than proceeding with building a new resource. We further conclude and find that the Currant Creek resource addition as proposed by the Company is required by the public convenience and necessity, and that a certificate to that effect should be issued.

#### **IV. ORDER**

Wherefore, pursuant to our discussion, findings and conclusions made herein, we order:

1. The Certificate of Public Convenience and Necessity is granted
2. The Company will file with the Commission all permits required for construction and operation of the Currant Creek resource addition as soon as possible following receipt thereof, or will timely file an explanation of the reasons for and consequences of delay.

This Report and Order constitutes final agency action on PacifiCorp's November 3, 2003, Application. Pursuant to U.C.A. §63-46b-13, an aggrieved party may file, within 30 days after the date of this Report and Order, a written request for rehearing/reconsideration by the Commission. Pursuant to U.C.A. §54-7-15, failure to file such a request precludes judicial review of the Report and Order. If the Commission fails to issue an order within 20 days after the filing of such request, the request shall be considered denied. Judicial review of this Report and Order may be sought pursuant to the Utah Administrative Procedures Act (U.C.A. §§63-46b-1 et seq.).

DATED at Salt Lake City, Utah, this 5th day of March, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#3685

**APPENDIX I: STIPULATION REGARDING OUTSIDE EVALUATOR FOR PACIFICORP'S RFP 2003-A**

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF UTAH**

<p>In the Matter of the Request for Agency Action to Adopt Open Bidding Requirements for Competitive Acquisition by PacifiCorp of Electric Generating Resources and Affiliate Transaction Requirements for Certain Investor Owned Utilities</p>	<p>DOCKET NO. 03-035-03</p> <p><b>STIPULATION REGARDING OUTSIDE EVALUATOR FOR PACIFICORP'S RFP 2003-A</b></p>
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This Stipulation (“Stipulation”) is entered into by and among the parties whose signatures appear on the signature pages hereof (collectively referred to as the “Parties”).

**I. INTRODUCTION**

On March 6, 2003, a Request for Agency Action was filed by the Petitioners identified in that Request (“Petitioners”). Since that time, Petitioners, PacifiCorp, the Division of Public Utilities (“Division”), the Committee of Consumer Services (“Committee”), and other Parties have met on a number of occasions to discuss, among other things, proposed requirements regarding PacifiCorp’s process for obtaining and evaluating competitive bids for the supply of generation resources. As a result of those discussions, the Parties have reached the agreement set forth in this Stipulation

relating to PacifiCorp's impending RFP 2003-A (and potentially to subsequent RFPs, as specified below), which will be filed by PacifiCorp with the Utah Public Service Commission ("Commission") for informational purposes. The Parties intend to hold additional discussions regarding development of open bidding and/or affiliate rules, and the Commission will be notified to the extent further technical conferences or proceedings are requested.

## **II. TERMS OF STIPULATION**

**1.** The Parties hereby agree that the guidelines set forth herein will be used in connection with an evaluation of PacifiCorp's processing of its RFP 2003-A ("RFP") for east-side resources, and for future requests for proposals as more specifically described below. The Parties also agree that this Stipulation is in the public interest and, under the present circumstances, the roles, duties and process for the Outside Evaluator described herein is adequate for the RFP and that no further Commission action is necessary with respect to establishing requirements or guidelines for PacifiCorp's processing of the 2003-A RFP.

**2. ROLES OF THE OUTSIDE EVALUATOR.** The primary roles of an independent consultant (Outside Evaluator) should be (1) to make certain that, if PacifiCorp is considering a self-build option or if an affiliate may bid, PacifiCorp does not give any advantage to its affiliate and that it evaluates its own build option in a manner that is reasonable, fair, unbiased and comparable to the extent practicable ("Fair Manner"), against the other bids, and (2) to submit detailed reports on whether the process followed by the Company adequately meets these objectives.

**3. CONFLICTS.** PacifiCorp will require the Outside Evaluator promptly to disclose to PacifiCorp, and submit in its final report described below, a conflict of interest statement disclosing any past (within the past 2-years), current or anticipated future relationships with or work for PacifiCorp, any PacifiCorp affiliate, any actual bidders, and any public utility regulatory agency in any of the states served by PacifiCorp. The disclosure should specify the date, nature, and scope of any such relationship or work.

**4. DUTIES OF THE OUTSIDE EVALUATOR.** The Outside Evaluator should be required to fulfill at least the following functions:

A. Serve as a liaison between PacifiCorp and RFP participants.

i. Communicate questions, comments and complaints from RFP participants to PacifiCorp (on a

confidential basis, when requested or appropriate), and responses from PacifiCorp that are not simultaneously made available by PacifiCorp to all bidders through PacifiCorp's RFP website.

- ii. Deliver reasonably requested clarifications, documents or information necessary for bidders to prepare a bid.

B. Validate the Company's self-build proposal (Next Best Alternative, or NBA).

- i. Confirm receipt of detailed information regarding the NBA on or before the date that the Company reviews or evaluates bidder responses, and validate any subsequent material change in the cost of the Company's NBA.
- ii. Validate the consistency and reasonableness of the NBA assumptions and calculations.
- iii. Confirm that the Company's NBA includes all resource-related information requested of bidders.
- iv. Confirm the technical feasibility of the NBA, its consistency with the RFP, and the treatment of the NBA with other bid responses in a Fair Manner.

C. Receive and "blind" all bid responses (to the extent such responses are not adequately pre-"blinded").

D. Confirm that all bids have been treated and analyzed in a Fair Manner, including compliance with the criteria identified below.

E. Monitor and offer feedback as requested by PacifiCorp on all aspects of the RFP process, including:

- i. Evaluation and ranking of responses.
- ii. Selection of "short list" candidates.
- iii. The implications and advisability of making adjustments to the bid process or the scope or nature of requested resources in light of bid responses.

iv. Post-bid discussions, negotiations and evaluations.

v. Negotiation of contracts.

F. Advise PacifiCorp promptly of any issues or concerns that might affect the integrity or outcome of the RFP process.

G. Provide PacifiCorp two “process” reports as early as practical during the RFP process and a detailed final report as soon as practical following completion of the RFP process, as follows:

i. A process report detailing validation of the NBA.

ii. A process report detailing PacifiCorp’s screening evaluation of bids.

iii. A detailed final report regarding all aspects of the RFP process and the Outside Evaluator’s involvement, observations, conclusions and recommendations.

PacifiCorp will promptly submit under confidentiality protections each of such reports to the Commission, the Division and the Committee (collectively, the “Regulators”). A non-confidential version of the final report shall also be submitted to the Regulators and made available to interested parties.

H. Provide further regulatory feedback as requested.

i. Provide information to PacifiCorp as necessary for PacifiCorp to respond to reasonable questions or requests for information from Regulators regarding the reports submitted by the Outside Evaluator.

ii. Provide information to PacifiCorp as necessary for PacifiCorp to respond to data requests, and

iii. appear to testify in regulatory proceedings as requested by Regulators.

**5. CRITERIA FOR EVALUATION.** In evaluating and preparing reports on the RFP process, the Outside

Evaluator should include, at a minimum, an analysis of whether, and the extent to which:

- A. The NBA was considered and evaluated along with all other bids in a Fair Manner.
- B. Environmental screening factors and weights were applied consistently and in a Fair Manner to all bid responses and the NBA.
- C. Credit requirements, liquidated damage provisions, warranties and other similar requirements affected the bid evaluations and the outcome of the RFP process.
- D. All reasonably available data and information necessary in order for a potential bidder to submit a bid was provided to potential bidders.
- E. All data, information and models relevant to the RFP process were made available to the Outside Evaluator in order to permit full and timely testing and verification of assumptions, models, inputs, outputs and results.
- F. Confidentiality claims and concerns between the Outside Evaluator and the Company were resolved in a manner that preserved confidentiality as necessary, yet permitted dissemination and consideration of all information reasonably necessary for an open bidding process to be conducted in a Fair Manner and a thorough validation.
- G. Evaluations were performed in a Fair Manner.
- H. The reasons and bases for evaluating and ranking bids, selecting winning proposals, and not selecting other proposals were fully identified by PacifiCorp, and are detailed in the Outside Evaluator's report.

**6. FUTURE RFPS.** The Parties agree that unless superceded either by a subsequent stipulation of the parties or by the issuance of an order of the Commission on request for proposal/open bidding standards, these guidelines (as they

may be amended or supplemented by agreement of the Parties or order of the Commission) should also be used in connection with future supply-side solicitations contemplated by the Company's 2003 IRP where PacifiCorp is considering a self-build option or if an affiliate may bid. In addition, the following requirements should apply to such future requests for proposals:

- A. An Outside Evaluator should examine and provide comments to PacifiCorp on the draft request for proposal prior to formal issuance. The Outside Evaluator should also validate whether environmental screening factors are consistent with industry standards, explain industry standards, and ensure that information provided by PacifiCorp to prospective bidders is reasonable and adequate in order for such bidders to submit a bid.
- B. If affiliates are permitted to bid, the Outside Evaluator should ensure and verify that the affiliates receive no advantages, preferences, or information not provided to all other bidders. Dated this 4th day of June, 2003.

PACIFICORP

/s/ D. Douglas Larsen  
Vice President, Regulation  
PacifiCorp

DIVISION OF PUBLIC UTILITIES

/s/ Patricia E. Schmid  
Assistant Attorney General

COMMITTEE OF CONSUMER SERVICES

/s/ Dan Gimble  
Chief of Technical Staff  
Committee of Consumer Services

PETITIONERS:

Gary Dodge, Attorney for Petitioners  
Other than Desert Power, U.S. Executive Agencies  
Tooele County and Grantsville City

/s/ Gary Dodge

Steven J. Christiansen, Attorney for



Desert Power, L.P.

/s/ Steven J. Christiansen

Major Robert C. Cottrell Jr., Attorney for  
U.S. Executive Agencies

/s/ Robert C. Cottrell Jr.

Ronald L. Elton, Attorney for  
Grantsville City

/s/ Ronald L. Elton

SALT LAKE COMMUNITY ACTION PROGRAM

/s/ Cathy Hoskins

Executive Director  
Salt Lake Community Action Program