

- 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 Lake Side Power Project )

DOCKET NO. 04-035-30

REPORT AND ORDER

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ISSUED: November 12, 2004

SHORT TITLE  
**PacifiCorp Lake Side Certificate Case**

SYNOPSIS

The Commission grants a certificate of public convenience and necessity authorizing PacifiCorp to construct a 534 megawatt natural gas-fired combined cycle combustion turbine electric generation plant for service in the summer of 2007 at the Geneva Steel site in Vineyard, Utah.

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#### **I. PROCEDURAL HISTORY**

On January 24, 2003, PacifiCorp ("Company") filed its 2003 Integrated Resource Plan ("IRP"). This filing was required under the Commission's Standards and Guidelines for Integrated Resource Planning for the Company 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 the Company 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 the Company’s 2003 IRP. After considering filed comments, the Commission, on May 30, 2003, issued an order acknowledging that the Company’s 2003 IRP and Action Plan conform to applicable guidelines.

On June 4, 2003, a *Stipulation Regarding Outside Evaluator for the Company’s RFP 2003-A* (“Stipulation”) was filed with the Commission in the open bidding requirements Docket No. 03-035-03. The Stipulation was signed by all of the original petitioners, except Tooele County, in addition to the Company, 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 the Company’s processing of its Request For Proposals (“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 RFP process. The Stipulation further states the guidelines are to be used for future supply-side solicitations contemplated by the Company’s 2003 IRP when the Company 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 the Company’s processing of the RFP 2003-A.

On October 30, 2003, the Company filed its update to the 2003 IRP.

On March 24, 2004, Desert Power filed Notice of Withdrawal of Support for Stipulation (dated June 4, 2003). On March 26, 2004, additional parties filed Notice of Withdrawal of Support for Stipulation (dated June 4, 2003), leaving the Company, Division, Committee, SLCAP and United States Executive Agencies still supporting the Stipulation.

On May 28, 2004, the Company filed an Application asking the Commission to grant a certificate of convenience and necessity authorizing the construction of a 534 megawatt resource addition, known as the Lake Side Power Project (“Lake Side”), at a site located at Geneva Steel in Vineyard, Utah County, Utah. The Company has entered into an asset purchase and sales agreement with Summit Vineyard, LLC (“Summit”) for the development and construction of the Lake Side Power Project for operation by the summer of 2007. Summit will develop the Lake Side Power Project and enter into an engineering, procurement and construction (EPC) contract with Siemens Westinghouse Power Corporation (“Siemens Power”) to build the resource. Once completed, the facility will be owned and operated by the Company. In addition, Siemens Power will provide service for the plant through a twelve-year long-term maintenance program service agreement with PacifiCorp. Approximately 470 megawatts will be produced by the combined cycle combustion turbine (“CCCT”) portion of the design, 45 megawatts from the ability to duct fire, and 19 megawatts via steam augmentation. The Application was supported by the testimony of Donald Furman, Senior Vice President, Regulation and External Affairs, on the bid evaluation process and selection of the resource addition; Richard Y. Ito, Vice President of U.S. Energy Risk Management, on the risk management evaluation of the final bids; Melissa Seymour, Manager of Planning and Financial Analysis, on the Company’s resource needs as identified in the 2003 IRP and the update to the 2003 IRP; Mark Tallman, Managing Director of Trading & Origination, on how the two finalist bids received for the 2007 resource compare to one another and to the Company’s next best alternative (“NBA”); Howard Friedman, a Principal with Navigant Consulting, Inc., (“Navigant”) on the RFP 2003-A process; and Bruce Williams, Treasurer of the Company, on financing the resource addition. Also on May 28, 2004, Siemens Power and Summit filed direct testimony supporting the Company’s application.

On June 17, 2004, the Commission issued a Notice of Scheduling Conference in the Lake Side docket, setting the conference for June 28, 2004. In response to a request by the Company, the Commission issued a Protective Order on June 21, 2004. On June 30, 2004, the Commission issued a Scheduling Order setting hearings for October 25-29, 2004.

On August 30, 2004, testimony was filed by Geneva Steel, LLC, Summit and Spring Canyon Energy, LLC ("Spring Canyon"). On September 9, 2004, Summit filed a motion to strike the testimony of Spring Canyon. On September 13, 2004, the Company also filed a motion to strike Spring Canyon's testimony. On September 13, 2004, the Commission issued a Second Scheduling Order. On September 27, 2004, direct testimony was filed by the Division and the UAE Intervention Group. On October 7, 2004, the Commission granted the motions of Summit and the Company to strike the testimony of Spring Canyon.

On October 15, 2004, the Division filed rebuttal testimony and the Commission issued an Amended Scheduling Order. On October 18, 2004, rebuttal testimony was filed by Summit and the Company. On October 21, 2004, surrebuttal testimony was filed by the Committee.

Hearings were held October 25 and 26, 2004, at which time testimony and evidence were received, and some witnesses cross-examined.

Parties to this case are the Company, Division, Committee and the following intervenors: Summit, Geneva Steel LLC, Siemens Power, Spring Canyon, Western Resource Advocates 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: the Company, Division, Committee, UAE Intervention Group, Summit, Geneva and Siemens Power.

## II. POSITION OF THE PARTIES

The Company states the present and future public convenience and necessity requires construction of the proposed resource addition. The Company explains it has experienced significant retail load growth over the past decade and its most recent IRP together with recent updates have identified a need for substantial new resources, particularly in the East portion of the Company's system. The Company states the Lake Side Power 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 testifies it is capable of funding the Lake Side Power Project through internally generated funds and the capital markets, citing its A3 and A senior secured debt rating by Moody's and Standard and Poor's respectively. The Company further states that without the Lake Side Power 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 customers in Utah, and potential adverse impacts on service reliability. The Company testifies the decision to acquire the Lake Side Power Project is consistent with the Company's 2003 IRP, the updates to the IRP and RFP 2003A. The Company testifies Action Item No. 2 of the 2003 IRP calls for approximately 570 megawatts of baseload resource; it is critical that the resource be available in the summer of 2007; the resource acquisition was the underlying purpose for establishing the 2007 baseload bid category in RFP 2003A; the RFP process was rigorous, neutral and fair; Navigant was engaged as an independent evaluator of the RFP process in accordance with the Stipulation in Docket No. 03-035-03 and finally the Lake Side Power Project was the best alternative of the bids received for the 2007 bid category.

Summit testifies it is a private organization that focuses primarily on the successful development and long term performance of electric power projects for others and its project proposal in this case has been built many times and is operational at multiple sites. Summit further testifies it has been involved in the independent power industry for a number of years; has experience with bidding processes in several states and jurisdictions; the necessary information to respond to the RFP was available publicly; the Company and its outside evaluator were diligent in responding when questions arose; and the RFP process was conducted in a fair and responsible manner. Summit further

testifies the Lake Side Power Project is proceeding on schedule and some necessary agreements and permits have been completed or received while the others are being processed and expected to be completed or received in a timely manner.

Siemens Power testifies it is a subsidiary of Siemens Corporation which is a subsidiary of Siemens AG, a global company headquartered in Munich, Germany, with \$84 billion in sales; it has participated with Summit on a contract basis in twelve projects over the past six years; it will be responsible for plant engineering, project management, start-up, and commissioning the 534 megawatt plant pursuant to the EPC contract with Summit; and after plant completion it will provide service through a twelve-year maintenance program service agreement.

The Division testifies that after reviewing the Company's application and testimony, and conducting an independent investigation, it finds the Lake Side Power Project meets the requirements for a Certificate of Convenience and Necessity and it recommends the certificate for this project be granted and the Company should inform the Commission when the necessary permits are in place. The Division testifies the need for additional resources is real; a shortage of capacity puts reliable service at a greater risk; when risks associated with the bids are taken into account, the Lake Side Power Project is a reasonable choice; the Division and its consultants find no evidence to refute Navigant's conclusion that the Company's RFP process was fair and equitable and the number of bids and the number of unique entities behind those bids indicate that the RFP process was competitive. The Division testifies the Lake Side Power Project provides benefits to Utah customers including: gas-fired generation's flexibility can be used to firm up proposed new wind generation plant; the plant is within the transmission-constrained Wasatch Front; it decreases environmental risk; its flexibility matches system peaking needs; it has much better efficiency than existing gas plants; and it reduces risk of electricity wholesale market purchases. The Division makes the following recommendations for improving the Company's RFP process: undertake a portfolio evaluation process; include a model power contract in the RFP; include broader and more detailed non-price criteria to distinguish bids; include credit assurance and quality in threshold criteria; allow more time for negotiations within the RFP schedule; and identify key factors, such as a debt equivalence

adjustment, influencing the evaluation of bids.

The Committee testifies the Company's projected system load will exceed resource capacity in 2007 and it supports the acquisition of cost-effective long-term resources, however, it did not undertake a detailed economic analysis comparing Lake Side to other resource alternatives. The Committee states it intends to fully investigate the prudence of the Company's selection of the Lake Side Power Project when cost recovery is requested in a future general rate case.

UAE states it has not retained an expert in this case and is not filing technical testimony or taking any position favoring or opposing the issuance of the certificate requested by the Company. UAE further states it submits policy testimony to explain its continuing concerns over the RFP process being utilized by the Company. UAE testifies it is a non-profit cooperative association whose membership includes nearly 50 of the largest energy consumers in Utah; it has not attempted to perform an analysis of the Company's RFP or the Company's review of the bids; after-the-fact prudence review is a very poor substitute for rigorous before-the-fact investigation and analysis in protecting the legitimate interests of ratepayers and the broader public interest; no one, including UAE, has suggested there is no need for additional power generation facilities within Utah; it believes the Commission sees its role and authority in certificate cases to be focused primarily upon a determination of need, leaving least-cost analysis and other prudence issues for a later time; the Company's RFP process has lost all outside credibility and few if any outside entities will spend the significant time or resources necessary to develop and propose alternatives to the Company's self-build or self own options in the future; it seeks assurance that the best, lowest-cost, long-term generation resources or contracts will be acquired to meet customers needs and a fair and understandable process is used in resource selection; it initially supported a stipulation regarding an outside evaluator (Docket No. 03-035-03), but has withdrawn that support; it perceives the RFP process to be fundamentally flawed and one that cannot be relied upon to ensure fair and unbiased results or lowest-cost resources for customers; it seeks resumption of the Commission rule-making process and/or legislation to mandate meaningful RFP procedures; it believes, from reading the Company's testimony, that another bid



was economically superior to the Summit bid, but was rejected because of the risk of a 2-4 month delay in project completion; that if the Company had moved in a more timely fashion, this risk presumably would not have disqualified the most economical project; the debt imputation issue should be carefully analyzed and a meaningful approach adopted based on actual, verifiable costs; while UAE agrees that credit risk is a relevant consideration, it fears it may have been used to ensure the turnkey project prevailed; the ability of a bidder to construct and operate a power plant should be based primarily on its track record of building and operating plants, not a credit rating; and it does not believe Navigant's role in the process was independent since the Company hired Navigant.

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

It is the statutory duty of PacifiCorp to provide adequate electric service in its franchise service territory [USC § 54 - 3 - 1]. When PacifiCorp proposes to construct certain facilities in order to perform this duty, state law requires PacifiCorp obtain a certificate from the Commission that present or future public convenience and necessity does or will require such construction [USC § 54 - 4 - 25]. This statute requires the utility seeking a certificate to state the proposed facility will not conflict with or adversely affect the operations of or constitute an extension into the service area of any existing certificated utility. Utilities are also required to provide the Commission with evidence of the receipt of the necessary permits for plant construction.

Additionally, in past cases where we have issued a certificate of convenience and necessity for electrical facilities, we have relied upon particular points of evidence including the following: inadequate generated and purchased power capability to meet expected peak demand, including sales for resale obligations and planning reserve, and therefore to provide reliable service; demand growth is likely to continue; adequate financial conditions exist to fund the investment; review of alternative actions shows no better alternative at the present time; and the location of facilities is compatible with environmental regulations.

Further, pursuant to statutory mandates,  in its Order dated June 18, 1992 in Docket No. 90-2035-01, the Commission requires that PacifiCorp engage in a public resource planning process to identify the least cost

alternative for the provision of energy services to its present and future ratepayers that is consistent with safe and reliable service, the fiscal requirements of a financially healthy utility, and the long-run public interest.  The purpose of this planning process is to select the optimal set of resources, given the expected combination of costs, risks and uncertainties, over the long-run.

These statutory mandates and case precedents guide us in our review of the evidence provided in this matter that construction of the Lake Side Power Project is required for present and future public convenience and necessity

#### **A. RESOURCE NEED: INTEGRATED RESOURCE PLAN**

The Company's 2003 IRP 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 construction of the Lake Side Power Project for operation in 2007 is required for public convenience and necessity and to ascertain its consistency with the implementation of the Company's least cost, least risk portfolio, "Diversified Portfolio I."  The Company testifies on the process it uses to determine the size, type and timing of resource additions or market purchases that together provide the lowest cost over the long-run given risks associated with uncertain future conditions and known fuel and power price volatility. The Company and Division witnesses additionally cite the Company's 2003 IRP Update which was filed for informational purposes on October 30, 2003 with the Commission.

The total system capacity deficiency in the summer of 2007 noted in 2003 IRP and cited by Company and Division witnesses is 1,579 megawatts assuming a 15% planning margin. This deficit grows persistently for the following 7 years. The Division testifies summer 2007 capacity deficiency is reduced to 790 megawatts when recent power purchase contracts and the Currant Creek power project are included in the analysis. The Division further testifies this updated deficit continues into the future. The Committee witness testifies the 2003 IRP load and resource balance adjusted for recently procured resources shows projected system load will exceed system resource capability in 2007. Further, the Committee states the preliminary IRP 2004 information shows a need to add baseload capacity in 2007.

The Company additionally provides its analysis of load and resource balance in the eastern portion of its integrated system. This analysis differs from 2003 IRP as it is based on the revised load forecasts used in the 2003 IRP 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 the Company system loads and resources and firm transmission rights. This analysis of resource need also shows capacity deficiency, although neither the Division nor the Committee relies completely upon or refutes it. This eastside deficiency is expected to be 1,634 megawatts in summer 2007 and increases to over 1,900 megawatts in 2009. When updated to include its recent resource additions, including Currant Creek, the Company testifies the expected 2007 summer capacity deficit is 847 megawatts.

The Company and Division also testify that the 534 megawatt, baseload, Lake Side Power Project is generally consistent with the approximately 570 megawatt baseload plant requirement identified in the 2003 IRP least cost, least risk, Diversified Portfolio I, and with implementation of the 2003 IRP Action Plan. However, the Division testifies the fuel choice of the plant, natural gas, is not consistent with Diversified Portfolio I. In the 2003 IRP, Diversified Portfolio I selects a coal plant for summer 2007. In its 2003 IRP Update, the Company explains the lead time it had assumed in 2003 IRP for completing the Hunter Unit 4 coal plant by summer 2007 was understated. With the revised lead time, Hunter Unit 4 cannot be completed by summer 2007. The 2003 IRP Update revises Diversified Portfolio I such that some action items related to the coal plant are moved out one year and the action items related to the baseload natural gas plant selected for summer 2008 are moved up one year.

Based on the foregoing, we conclude the Lake Side Power Project addresses a genuine need for additional resource in the summer of 2007 for demand that is likely to be sustained. Further, we find it consistent with the type, timing and size of generation facility identified in the Company's 2003 IRP least cost/least risk portfolio and with the fuel choice identified in its 2003 IRP Update. To assess whether better alternatives to the Lake Side Power Project exist, we turn to the results of the Company's baseload bid category in RFP 2003-A.

## **B. REQUEST FOR PROPOSAL PROCESS**

On June 6, 2003, the Company issued RFP 2003-A in which the Company solicited supply-side resources in super peak, peak and baseload bid categories. In the super peak bid category, the Company received no acceptable bids which were more economic than the market-based benchmark. In the peak bid category, the company determined there were no bids economically superior to the Company's self-build option, the Currant Creek Project, which was the subject of Docket No. 03-035-29. The Commission issued its Report and Order on March 5, 2004 in that docket granting a certificate of convenience and necessity to the Company authorizing it to build the Currant Creek project. A description of the RFP process can be found on pages 11 through 15 of that Report and Order. The results of the baseload bid category are the subject of this proceeding.

The minimum requirements outlined in the RFP for the baseload bid category included approximately 570 megawatts of capacity, available beginning June 2007, delivered in or to the eastern portion of the Company's system, meeting capacity and energy needs 24 hours a day, seven days a week, for up to 20 years. By July 22, 2003, some 53 indicative baseload bids were received, on a blinded basis, including 42 power purchase agreements, nine turnkey construction projects and two equipment leases.

The Company proposed three self-build options as NBAs in the RFP process. The first option was a phased construction of two gas-fired combustion turbines with duct firing, operating in simple cycle by June 2005, and converted to combined cycle operation by June 2007, with a total nameplate rating of 525 megawatts. This option, the Current Creek project, was the NBA used in the peak bid category, and ultimately selected. The second option was similar to the first, but constructed directly for combined cycle operation by June 2007. This was the Company's initial NBA in the baseload bid category, presumably for use in the event its NBA in the peak bid category was not selected. The third option was a combination of the first two, constructed at the same site to capture cost efficiencies, and resulted in a total nameplate rating of 1,050 megawatts. Assuming the first 525 megawatts of this option was selected in the peak bid category, the revised NBA relevant for the baseload bid category was the 525 megawatt expansion at the same site.

Each bid was valued by means of economic modeling, compared to the Company's initial self-build option or NBA, then scored using screening criteria related to pricing, dispatch ability and environmental attributes. The bids were then ranked based on their scores, leading to a selection of a baseload short list comprised of twenty bids from nine individual companies.

Bids in the baseload bid category were de-blinded and bidders contacted on August 22, 2003. Clarifying discussions were then held between the Company and short-listed bidders, leading to an updating of the economic valuation of the bids. Once the Company had decided on Currant Creek, the Company's initial NBA was changed to reflect an expansion at the Currant Creek site. The improved economics of this new NBA reduced the short list to only three bidders whose offers were economically superior to the NBA. Clarifying discussions and detailed negotiations then began between the Company and each of these three bidders. Additional risk analysis performed by the Company, as discussed later, resulted in the elimination of one of the three bidders.

Navigant was engaged as an outside consultant to independently evaluate the bids received in RFP 2003- A consistent with a June 4, 2003 Stipulation between the Company and various parties in Docket No. 03-035-03.  Navigant's role in the baseload bid category of this proceeding is the same as that which it had performed in the peak bid category in Docket No. 03-035-29, the Currant Creek proceeding. The tasks undertaken by Navigant include, among others, reviewing and validating the Company's NBA; reviewing the Company's approach to screening the bids; validating the modeling, scoring and ranking of the bids; and overseeing the negotiation process with short listed bidders.

Navigant concludes the Company executed a fair and consistent process throughout the RFP to identify the most cost effective resources for meeting its projected supply needs. Navigant testifies the RFP process as developed and implemented by the Company satisfy the primary criteria of equal opportunity, analytical objectivity, reasonableness and consistency, and was thereby managed by the Company in an effective manner.

The Stipulation also required Navigant submit detailed reports on the bid process  . At the time

Navigant filed its confidential *Final Report* during the Currant Creek docket, the Company was still in negotiations with the short-listed baseload bidders. Hence Navigant filed with the Commission a confidential document dated August 24, 2004 entitled *Final Report - Addendum*, providing a summary of the negotiations between the Company and the final two bidders in the baseload bid category. Navigant concludes the Company approached the negotiations with these two bidders in a consistent and reasonable manner, and came to a logical and reasoned conclusion identifying the resource which offered to customers the best balance of cost and risk. Navigant also filed with the Commission a public document dated September 8, 2004 entitled *Navigant Consulting's Final Report on PacifiCorp's RFP 2003-A*, providing a summary of the entire RFP process covering all three bid categories and describing Navigant's role as an independent evaluator of the RFP process.

The Division hired its own consultant to evaluate the Company's certificate application. Both the Division and its consultant testify they found no evidence to refute Navigant's conclusion that the solicitation and evaluation of baseload bids was fair and equitable. The Division's consultant also testifies the selection of the preferred resource was a reasonable decision given the parameters of the baseload bid category.

The witness for the UAE, who did not perform an analysis of the RFP process in this proceeding, is the only witness to criticize the process. UAE's witness provided written direct testimony but did not appear during the hearings. Several Company witnesses offered written testimony rebutting each of the criticisms made by UAE. Navigant, the Division and the winning bidder also rebutted the criticisms made by UAE regarding the independent role of Navigant as the outside evaluator and the fairness of the process. UAE waived cross-examination of these witnesses.

The Stipulation submitted on June 5, 2003 in Docket No. 03-035-03 requires the independent evaluator to make certain the Company evaluates its self-build options, the NBAs, in a manner that is reasonable, fair, unbiased and comparable to the extent practicable against the other bids. The un-rebutted testimonies of Company witnesses, of Navigant as the independent evaluator, of the Division, and the Division's consultant, Merrimack Energy, all state the RFP process was conducted in a fair and equitable manner. In addition, these witnesses testify the Lake Side Power

Project is a reasonable selection meeting the requirements of the baseload bid category, and so we find.

The Stipulation also requires the independent evaluator to submit detailed reports on whether the RFP process followed by the Company results in its self-build options being evaluated in a fair manner relative to the received bids. Three confidential reports regarding the evaluation of the NBAs, the process of screening the bids, and an initial final report were filed during the Currant Creek certificate proceeding, a time during which the Company was in negotiations with the three bidders on the short list in the baseload bid category. By filing its confidential addendum to the final report discussing the negotiations between the Company and the final two baseload bidders, and by filing its public final report describing the entire RFP process, in addition to the prior filing of the three confidential documents, mentioned above, we find that Navigant has complied with the Stipulation's reporting requirements.

Finally, the Stipulation requires the independent evaluator disclose to the Company and in a final report, for the past two years or in the future, any relationships with or work for the Company, its affiliates, actual bidders, and regulatory agencies in the states in which the Company operates. By providing to the Commission on September 14, 2004, a confidential list of Navigant's clients related to the Company's RFP, including a description of the job, the name of project manager, and the dates the job opened and, if applicable, closed, we find Navigant has complied with the Stipulation's disclosure requirement.

Both Navigant and Merrimack Energy offer recommendations to improve the RFP process. These recommendations address, among other issues, economic modeling, environmental risks, other non-price criteria related to scoring and ranking bids, credit and financing arrangements, costs of direct or inferred debt, descriptions of the NBAs, the time allotted for negotiations, and in general the components of and rules governing a competitive procurement process. We have opened Docket No. 03-035-05 whose subject is competitive bidding requirements. It is in this docket where we will deal with these issues.

### **C. RESOURCE ALTERNATIVES**

The Company testifies the Commission-acknowledged 2003 IRP called for approximately 570 megawatts of baseload resource in the summer of 2007. The Company then established the 2007 bid category for its RFP 2003-A to find the best alternative to meet this resource need. The Company, in accordance with the stipulation in Docket No. 03-035-03, hired Navigant as an outside evaluator of the RFP process. The Company testifies that an economic comparison of the bids received against the NBA resulted in three remaining competitive bids (213, 493 and 922). The Company rejected bid 922 because risk analysis done by its consultant, Black and Veach, shows the timetable for completion of a required 400 mile transmission line by summer 2007 is too optimistic and further clarification by the bidder indicated credit instruments offered were inadequate to cover the Company's exposure in case of non-performance.

The two remaining bids involved construction of a natural gas fired CCCT at the same site, with one (213) a tolling service agreement where the Company would supply the gas and the other (493, Summit) a turnkey project where the Company would take ownership. The Geneva Steel site for both of these bids is in proximity to end-use loads and the Company's 345 kV and 138 kV transmission systems. No party argued or provided evidence of more competitive alternatives than the last two (213 and 493). Most discussion in testimony dealt with the comparison of these two remaining alternatives and the NBA. The Company testifies the primary considerations in evaluating these two proposals included the availability of the resource by the summer of 2007 and economics.

The Company's economic evaluation considered credit risk, carbon dioxide liability and schedule risk. The Company and the Division witnesses present the results of the economic modeling done to compare bids and the NBA. In our view, they erroneously portray the analysis as the "present value revenue requirement" per unit of levelized contract capacity. Navigant and the Division explain that in the economic evaluation, each bid and NBA is dispatched against an electric power forward price curve producing a stream of revenues and costs for the contract term or asset life. In the event the bid passes straight to the Company any future carbon tax imposed, it, like the NBA, was assigned an additional \$8 per ton of emissions output cost. Bids that assume all potential carbon tax liability are not assigned the \$8/ton adder. The present value of the difference between revenues and costs is then divided by the real levelized



contract capacity to produce the metric of dollars per kilowatt-month. As opposed to “revenue requirement,” the higher this metric (revenues less costs), the greater the value of the bid. The Company testifies the NBA’s economic evaluation was \$2.86/kilowatt-month and the Lake Side Power Project’s economic evaluation was \$3.04/kilowatt-month while bid 213’s economic evaluation was a range of \$0.77/kilowatt-month to \$3.99/kilowatt-month, depending on risk assumptions regarding carbon dioxide liability, delays associated with default and assumptions regarding the impact of direct debt costs. The higher number for bid 213 results from excluding these risk assumptions.

The Company considered potential default impacts due to the poor credit rating of the bidder for bid 213. The Company testifies the 213 bidder is a non-investment grade entity with an unsecured debt rating of “Caa1” from Moody’s, while the Summit proposal (bid 493, the Lake Side Power Project) is guaranteed by an investment grade rated entity (Siemens Power) with an “A2” rating from Moody’s. The Company testifies that due to the credit concerns for bid 213, it was concerned about the bidder’s future financial capacity to make good on its commitment to absorb carbon dioxide risks and about its ability to deliver the required physical resource in 2007. The Company’s evaluations including delays for bid 213 result in economic value lower than Lake Side. Notwithstanding the credit risk, we additionally note the two values of bid 213 that were better than Lake Side appear to depend on the uncertain imposition of a carbon tax of at least \$8/ton on existing facilities no later than 2008. For example, the Company testifies if the carbon tax assumption is changed to about \$4/ton beginning in 2010, Lake Side at \$3.10/kilowatt-month is more economic than bid 213 at \$2.63/kilowatt-month. This means ratepayers would pay a premium for bid 213 if a lower and later carbon tax is imposed.

The Company testifies the Lake Side Power Project proposal represented the most prudent balance between cost and risk. At the hearing, no party opposed the granting of a certificate of convenience and necessary to the Company for the Lake Side Power Project, or challenged the Company’s selection of the Lake Side Power Project as the best alternative. Although UAE presents criticism of the RFP process, it testifies it is not taking a position on the issuance of the certificate, nor has it attempted to perform an analysis of the Company’s RFP or the Company’s review

of the bids. At the hearing, UAE waived all cross examination of witnesses. The Division hired an independent consultant to review the Company's RFP process who concludes that the selection of the preferred resource was a reasonable decision given the parameters of the process.

As the Division testifies, the Lake Side Power Project satisfies the requirements for the issuance of a Certificate of Convenience and Necessity. We conclude and find the Lake Side Power Project 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 Lake Side 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 the Company's May 28, 2004 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 12<sup>th</sup> day of November, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#41266