

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of)
PACIFICORP for a Certificate of)
Convenience and Necessity Authorizing) Docket No. 04-035-30
Construction of the Lake Side)
Power Project)

REBUTTAL TESTIMONY OF DONALD N. FURMAN

October 15, 2004

1 **Q. Please state your name.**

2 A. My name is Donald N. Furman

3 **Q. Did you previously offer testimony in this proceeding?**

4 A. Yes, I filed testimony in the Company's direct case.

5 **Purpose and Summary of Testimony**

6 **Q. What is the purpose of your rebuttal testimony?**

7 A. The purpose of my testimony is to respond to a number of allegations and
8 assertions made by Mr. Roger Weir, who has filed testimony on behalf of the
9 Utah Association of Energy Users Intervention Group ("UAE") in this
10 proceeding. Specifically, I will comment on Mr. Weir's testimony dealing with:
11 (1) the extent of PacifiCorp's control over the timing of its Integrated Resource
12 Plan (IRP) and Request for Proposal (RFP) processes; (2) the credibility of the
13 Company's bid evaluation process; (3) the alleged PacifiCorp preference for
14 building rather than purchasing new generating resources; and (4) credit
15 worthiness issues.

16 **General Comments**

17 **Q. What are your general comments about Mr. Weir's testimony?**

18 A. Mr. Weir presents UAE's concerns with the resource procurement procedures
19 used by PacifiCorp in selecting the Lake Side plant. However, in the absence of
20 any substantive analysis or review of the facts in this proceeding, his comments
21 quickly degenerate into an attack on the integrity of PacifiCorp's business
22 practices based on assertions that are simply not true. My testimony will focus on
23 correcting these misstatements.

1 **Q. Did Mr. Weir attempt to perform any analysis of PacifiCorp’s RFP or review**
2 **the bids in this proceeding?**

3 A. No. Mr. Weir points out that since the Commission’s view of its proper role and
4 authority in this proceeding appears to differ from his perception of that role, he
5 “sees little value in participating actively in this docket”. Apparently, however,
6 “not participating actively” does not preclude Mr. Weir from asking the
7 Commission to consider opinions that are not supported by factual review or
8 analysis.

9 **Q. In the absence of any factual review or analysis, do you believe Mr. Weir is**
10 **qualified to offer a credible opinion on the resource procurement issues that**
11 **are the substance of this proceeding?**

12 A. No. There is nothing in his education or experience to suggest that Mr. Weir is
13 knowledgeable, much less an expert, on the complex issues surrounding the
14 competitive acquisition of resources by a public utility. In fact, in its “Motion For
15 Leave to File Direct Testimony”, UAE admits that it has not retained an expert in
16 this case and is not filing technical testimony.

17 **Control Over Timing of IRP and RFP processes**

18 **Q. Mr. Weir alleges that PacifiCorp controls all significant timing decisions in**
19 **pursuit of new resources and can manipulate this timing to ensure a desired**
20 **outcome in the resource procurement process. Do you agree?**

21 A. No. The fact is that both the IRP and the RFP are multi-jurisdictional public
22 processes. Participating parties can and do request that PacifiCorp extend these
23 processes to allow time for greater analysis, public scrutiny and input. For

1 example, during the last IRP cycle, Utah parties, including UAE, requested and
2 received delays in order to have additional time to review key issues. Mr. Weir
3 also ignores the fact that negotiating complex long-term transactions takes time,
4 especially when the negotiations are focused on overcoming the severe credit
5 problems posed by the other contracting party.

6 **Q. Do you find it ironic that Mr. Weir accuses PacifiCorp of intentionally**
7 **delaying the timing of the IRP and RFP processes to suit its own purposes?**

8 A. Yes, there does seem to be a contradiction. UAE advocates strongly for public
9 processes and open bidding, but now attempts to use these processes to suggest
10 that the Company leaves things to the last minute and thus is somehow imprudent.
11 The truth is that the Company is doing its best to balance the need for public input
12 and the need for timely resource acquisitions.

13 **Q. What is the real story of the timing of key decision points in the resource**
14 **acquisition process?**

15 A. PacifiCorp fully supports the public input process for both its IRP and its RFPs.
16 This input process takes time, and given the large number of participants, the
17 complexity of the issues and the stakes at risk, it often takes more time than was
18 initially anticipated. While the public input process is complex and involved, load
19 growth has also accelerated in recent years, which in turn has accelerated the need
20 for new resources. These two factors have worked together to collapse the time
21 available for making resource decisions.

22 **Q. Do the issues you have just described indicate that PacifiCorp is practicing**
23 **“blackout blackmail” in its recent resource procurement decisions?**

1 A. No, most definitely not. It does mean that we need to work harder to expedite the
2 IRP and RFP public processes and to forecast the timing of the need for new
3 resource additions. In the final analysis, however, both of these moving parts are
4 not within the full control of PacifiCorp and there can never be a guarantee that
5 timing issues will not play a role in future resource procurement decisions.

6 **Credibility of the Bid Process**

7 **Q. Do you share Mr. Weir’s concern that PacifiCorp “has lost all outside**
8 **credibility” and that few if any outside entities will spend the time and**
9 **resources required to prepare bids for future Company RFPs?**

10 A. No, there is no evidence that the opinions portrayed by Mr. Weir as facts in this
11 case are shared by the independent power generation industry at large, or that the
12 Company’s ability to competitively source future resources has in any way been
13 impaired. As the IPP industry continues its recovery from the energy crisis and
14 the collapse of Enron, we expect future RFPs to produce well-priced, attractive
15 bids, and that the Company will enter into long-term contracts as a result of those
16 bids.

17 **Q. As additional evidence that the Company’s bid evaluation process is not**
18 **credible, Mr. Weir goes on to say that PacifiCorp or its affiliate has “won”**
19 **every single RFP contest in the last several years. Do you agree with this**
20 **statement?**

21 A. No, this is a misrepresentation of the facts. A logical conclusion from Mr. Weir’s
22 testimony is that in order for a bid selection process to meet his definition of
23 credibility, it must result in the selection of a power purchase agreement from an

1 independently financed IPP. If the bid award results in an asset to be owned by
2 PacifiCorp and/or the selection of a supplier without independent financing, then
3 the selection process is inherently suspect and the winning bidder must be
4 considered a de facto affiliate of PacifiCorp.

5 **Q. What is your response to Mr. Weir’s assertion that the engagement of**
6 **Navigant, the independent evaluator, by PacifiCorp casts further doubt on**
7 **the credibility of the bid evaluation process because Navigant is “clearly not**
8 **independent”?**

9 A. Mr. Weir offers no evidence that Navigant’s independence has in any way been
10 compromised. No other party to this proceeding challenges Navigant’s
11 independence. The fact is that if Navigant wishes to be considered for the role of
12 independent evaluator in other utility resource procurement proceedings
13 throughout the country, it can ill-afford to be branded as being biased in favor of
14 utilities.

15 **Q. Have other parties in this proceeding offered an opinion about the**
16 **independence of Navigant Consulting in its role as independent evaluator?**

17 A. Yes. Mr. Wayne Oliver, a consultant engaged by the DPU to assess whether the
18 bid selection process led to selection of the best alternative, had this to say about
19 Navigant: “I am also guided by the conclusions reached by Navigant Consulting
20 as the Outside Evaluator. . . the objectivity and credibility of any outside or
21 independent evaluator is at stake in these processes and as a result their opinions
22 and conclusions are important considerations.” (Page 9, lines 6-11) Obviously,

1 Navigant’s alleged lack of independence was not clear to Mr. Oliver, who unlike
2 UAE, has no axe to grind in this proceeding.

3 **Q. Does PacifiCorp oppose the engagement of the independent evaluator by the**
4 **Commission?**

5 A. No, the Company would not oppose that approach if it were favored by the
6 Commission in future proceedings.

7 **Q. Did Mr. Weir cite any other examples where it alleged the Company had**
8 **manipulated the bid selection process?**

9 A. Yes. Mr. Weir alleges that the Company used inferred debt to reduce the value of
10 PPA options compared to turnkey options. Curiously, Mr. Weir admits that this
11 issue was extensively discussed, “but not yet resolved to UAE’s understanding or
12 satisfaction”. Company witnesses Bruce Williams and Dr. William Avera will
13 discuss direct and inferred debt at greater length in their rebuttal testimony.

14 **Build vs. Purchase**

15 **Q. PacifiCorp has repeatedly affirmed that it has no bias in favor of self-**
16 **constructed or owned facilities. The idea that the Company is not biased in**
17 **favor of asset ownership has Mr. Weir “bemused”, “amazed” and close to the**
18 **point of laughter. What is your response?**

19 A. Mr. Weir offers no substantive comments on the many impacts that rate base
20 additions and power purchase contracts might have on utility earnings.
21 Mr. Weir’s only argument is to dismiss and ridicule the Company’s arguments
22 and to recite the mantra that PacifiCorp is addicted to capital spending. His
23 testimony adds nothing of consequence to the debate.

1 **Q. Claiming that “the facts speak for themselves”, Mr. Weir cites several**
2 **examples that allegedly demonstrate the Company’s preference for owning**
3 **generating resources rather than purchasing power. How do you respond?**

4 A. I would agree that facts often speak for themselves. First, Mr. Weir alleges that
5 Scottish Power’s CEO has admitted that its earnings goals can be achieved
6 because of new facilities it will construct or own in Utah. However, when
7 questioned about the source of his information in a discovery request, Mr. Weir
8 could only refer to a report wherein Ian Russell, CEO of Scottish Power, refers to
9 the construction of new power plants and transmission projects to serve annual
10 load growth projected in Utah over the next few years. Nowhere does Mr. Russell
11 claim that these rate base additions are required to meet earnings goals. Next,
12 Mr. Weir alleges that “every single time the utility has faced a decision on a new
13 significant long-term generating resource in the past several years, it has selected
14 either itself or its affiliate to construct and/or own the facility.” Again, this
15 supposed “fact” is a misrepresentation. Neither PacifiCorp nor one of its affiliates
16 was the successful bidder in this proceeding.

17 **Q. Do you stand by your previous statements that PacifiCorp has no preference**
18 **for ownership of generating assets?**

19 A. Yes. I stated in my direct testimony that the Company has no predetermined
20 notion or bias towards any type of resource, whether self-build, turnkey or PPA.
21 That statement is true and I stand by it. The reality is that acquiring resources
22 through capital additions and through power purchases each have their risks and
23 rewards. However, in every resource decision, the Company’s goal is to acquire

1 the resource with the best combination of low cost and low risk for the benefit of
2 its customers. By adhering to that principle, the Company minimizes the risk of
3 disallowance in subsequent rate proceedings. Again, I hope that the Commission
4 will see through Mr. Weir's effort to use ridicule and hyperbole to mask his
5 complete lack of substantive analysis.

6 **Credit Issues**

7 **Q. Mr. Weir acknowledges that credit is a relevant consideration, but expresses**
8 **fear that “it may have been used here . . . to ensure that the turnkey project**
9 **prevailed”. What is your response?**

10 A. Once again, Mr. Weir offers nothing but an allegation with no evidence to
11 substantiate it. The Company has offered testimony by qualified experts to
12 support the credit analysis that supported its decision to select the Lakeside
13 project. Mr. Weir offers nothing of substance in rebuttal.

14 **Q. Mr. Weir notes that Bidder 213 has successfully built a lot of plants in the**
15 **past and that this fact alone suggests that credit standards used by**
16 **PacifiCorp to disqualify Bidder 213 may have been unreasonable. He goes**
17 **on to say that the ability of Bidder 213 to construct and operate a power**
18 **plant should be based primarily on its track record of building and operating**
19 **plants, not a credit rating”. How do you respond?**

20 A. This statement is absurd and flies in the face of standard practice across the utility
21 industry as well as the industrialized world. The electric industry is replete with
22 examples of companies who did not carefully evaluate the credit of their counter-
23 parties on an on-going basis. Enron had a great track record prior to its financial

1 collapse, and succeeded in fooling not only the credit rating agencies but also
2 most of Wall Street. But when its financial condition became known, no prudent
3 utility would continue to do business with Enron based on its historic
4 performance. I agree with comments made by Paul Patterson, principal of
5 independent consulting firm Glenrock Associates of New York, who is quoted in
6 an October 4, 2004 Barron's article as stating, "It's incumbent upon utility
7 managers to make sure that any third-party contract to provide power is with a
8 company with good credit. It's fine for somebody to say he's giving you a
9 cheaper price, but that doesn't do much good if he's not around in the future to
10 honor it." Company Witness Richard Ito, discusses the credit issues further in his
11 rebuttal testimony.

12 **Conclusion**

13 **Q. What do you conclude about Mr. Weir's testimony in general and specifically**
14 **his allegations that PacifiCorp's bid evaluation process in this proceeding**
15 **lacks credibility?**

16 A. Mr. Weir is attempting to create misperceptions through the use of innuendo,
17 ridicule and misinformation. His testimony is inaccurate and inflammatory, and it
18 adds nothing to the substantive record in this proceeding.

19 **Q. Does this conclude your rebuttal testimony?**

20 A. Yes.