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*Attorney for Rocky Mountain Power*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of PacifiCorp )  
for Approval of a 2009 Request for Proposals )  
for Flexible Resource )  
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DOCKET NO. 05-035-47

**ROCKY MOUNTAIN POWER'S**  
**MOTION TO AMEND ITS 2012**  
**REQUEST FOR PROPOSALS AND**  
**REQUEST FOR EXPEDITED**  
**TREATMENT**

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Pursuant to Utah Code Ann. §54-17-201(2), Commission Rules R746-100-3(D) and R746-420-3, PacifiCorp, by and through its Rocky Mountain Power division (“Rocky Mountain Power” or the “Company”), hereby moves the Public Service Commission of Utah (“Commission”) for an order authorizing the Company to amend its 2012 request for proposals for base load resources that was filed March 26, 2007 and approved by the Commission April 4, 2007.

The Company’s motion requests Commission authorization to amend the 2012 request for proposals with respect to the following: (1) to modify the schedule in Section 2, whereby the proposal response date would change from June 19, 2007 to January 18, 2008, permitting new and existing bidders an opportunity to submit new bids or refresh their existing bids; (2) to eliminate the upfront request for qualifications procedure and instead, require submission of an

intent to bid form; to modify the qualification requirements so that new bidders will be required to submit qualification appendices with their bids and existing bidders will only need to update qualification appendices if information has changed; and to only require bidders (new and existing) to post acceptable commitment letters or letters of credit within ten business days following notification of their selection to the initial shortlist; and (3) to update the 2012 benchmark resources by including resources located at the existing Lake Side site and/or existing Currant Creek site.

In support of this Motion, the Company states as follows:

**I.**  
**BRIEF STATEMENT OF FACTUAL BACKGROUND**

1. On April 4, 2007, the Commission issued its Approval of the Company's 2012 Request for Proposals for Base Load Resources that was filed by the Company March 26, 2007 ("RFP").

2. Section 1(B) of the RFP indicates a need for up to 1,700 MW of cost-effective base load resources for acquisition by the Company and delivery in 2012, 2013 and/or 2014. The Company issued the RFP to the marketplace on April 5, 2007. Pursuant to the RFP, bidders were required to submit their bids in response to the RFP on or before June 19, 2007, which was extended to June 29, 2007.<sup>1</sup>

3. Since that time, the Company, in connection with oversight and input from the independent evaluator ("IE") and the Division of Public Utilities ("Division"), has been evaluating the bids and has been working with the IE and the Division to ensure that all bids comply with the terms and requirements established in the RFP. In conjunction, the company instituted a voluntary, strict code of conduct regarding the sharing of information between the

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<sup>1</sup> To avoid confusion, the company will refer to June 19, 2007 as the response date as this is the date that appears in the RFP.

evaluation and benchmark teams to help ensure fairness in the RFP process. Attached as Exhibit A are affidavits from the Senior Vice President, Commercial and Trading for PacifiCorp Energy, and the Vice President, Resource Development and Construction for PacifiCorp Energy each stating that they are informed and believe that the bid evaluation and benchmark teams have adhered to the code of conduct.

4. During this same time period, there has been a significant change in circumstances that compels the Company to file a motion requesting an amendment to the RFP to ensure that the process remains fair and reasonable, and meets the public interest criteria set forth in the Energy Resource Procurement Act, including, that the process and schedule will ultimately result in the acquisition, production, and delivery of low risk and reliable electricity at the lowest reasonable cost to retail customers.

5. The Company filed a motion September 28, 2007 with the Commission requesting additional protective measures pursuant to paragraph 1(D) of the Protective Order that was issued in this docket October 13, 2006. The motion requests additional protective measures with respect to the designation of certain information as non-public information. Upon the Commission granting the Company's motion for additional protective measures, the Company will submit, under seal, a Memorandum in Support of Rocky Mountain Power's Motion To Amend Its 2012 Request for Proposals (the "Supporting Memorandum"). The Supporting Memorandum contains a more thorough description of the significant change in circumstance that forms the basis for this Motion. However, the Company submits that it would not be appropriate to provide this information publicly as the Company does not want to jeopardize the integrity of the RFP process, which forms the basis for the need to submit the Supporting Memorandum under seal as requested in the motion for additional protective measures.

**II.**  
**PROPOSED AMENDMENTS TO THE RFP**

As noted above, the Company is requesting to amend RFP with respect to: (1) modifying the proposal response date, thus permitting new and existing bidders an opportunity to submit new bids or refresh their existing bids; (2) eliminating the request for qualifications procedure and modifying the qualification requirements; and (3) permitting the inclusion of Company benchmarks at the Currant Creek site and/or the Lake Side site.

**A. Modification of Schedule and Proposal Response Date.**

1. The first area in which the Company is requesting modification of the RFP is with respect to the schedule contained in Section 2 of the RFP. The current schedule in the RFP called for bidders to provide proposals on or before June 19, 2007. The Company is requesting approval to amend the RFP to permit new and existing bidders to submit proposals by January 18, 2008. This amendment will provide new and existing bidders sufficient time to prepare, revise, and update their proposals. The amendment to the schedule will also permit the Company an opportunity to prepare, submit, and lock down, with the IEs, the updated 2012 benchmark resources in advance of bidder's responses. The amendment will modify and update Section 2 in the RFP by replacing the response due date of June 19, 2007 with January 18, 2008. The proposed amendment to the RFP is attached to this motion as Exhibit B.

2. As a result of amending the schedule in Section 2 of the RFP, two corresponding amendments will also be required. First, Section 2B(G), Effectiveness of Bids, provides that bidders are required to maintain their proposals open for acceptance by the Company from the date of the original submittal of June 19, 2007 through June 15, 2008, unless earlier released in writing by the Company or if the bidder's proposal does not make the short list. If the response due date is modified, there should be a corresponding modification to the Effectiveness of Bids

date. As such, the Company requests that the Effectiveness of Bids date be changed from June 15, 2008 to January 9, 2009.

3. Second, the RFP requires bidders to submit an Officer Certification Form located in Appendix E of the RFP. The form certifies that all the statements and representations made in the bidder's proposal are true to the best of the bidder's knowledge, and that the bidder agrees to be bound by the representations, terms, and conditions contained in the RFP. The Officer Certification Form is required to be firm and remain in full force and effect until the later of June 15, 2008, or that date, which is 300 days after the proposal due date. As such, if the response due date is modified, there should also be a corresponding change to the date associated with the full force and effect of the Officer Certification Form. The Company proposes replacing June 15, 2008 with January 9, 2009, to properly reflect the amendment to the proposal response deadline.

4. The Company is proposing the above-referenced amendments to the schedule and proposal response date in furtherance of the intent of the Energy Resource Procurement Act, which is to ensure the solicitation process is fair, reasonable, and in the public interest. The Company submits that by opening the bid process to new bidders and permitting existing bidders an opportunity to refresh their bids, all parties are treated equally and given a fair opportunity to participate, thus preserving the competitive nature of the bidding process. The Company also represents that it has adhered to its strict code of conduct regarding the sharing of information between the benchmark and evaluation teams (*see* Exhibit A). By amending the proposal response date and making the other amendments identified herein, the Company is hoping to yield a more robust pool of bidders, which will hopefully further the likelihood of the Company

acquiring, producing, and delivering low risk and reliable electricity at the lowest reasonable cost to its retail customers.

**B. Modification of Request for Qualifications Bid Forms.**

1. In addition to modifying the proposal response dates to permit the acceptance of new bids and to permit existing bidders to refresh their bids, the Company proposes to eliminate the need for a new request for qualification process. Rather, the Company proposes to have existing bidders update their qualification information only if there has been a change to what was previously submitted and to have new bidders provide their qualification information with their bids. Furthermore, the Company proposes to delay the requirement of providing satisfactory commitment letters and/or letters of credit at the time bids are submitted, instead requiring the credit instruments to be provided within ten business days of notification that the bidder has been selected to the initial shortlist. The bidders who have already met this qualification will have the option of withdrawing their letter of credit and/or commitment letters until the bid is short listed.

2. Under the proposed amendment, existing bidders will be required to submit updates to the request for qualifications Appendices A and B to the extent the original information submitted has changed or otherwise needs to be updated. Whereas, new bidders will be required to provide the information set forth in the request for qualification Appendices A and B, with their bid submissions consistent with the updated schedule in Section 2 of the amended RFP. (*See Exhibit B.*)

3. The proposed amendment will also delay the qualification requirements with respect to the timing of when bidders are required to post acceptable credit instruments. The Company proposes that the requirement that bidders post acceptable commitment letter(s) and/or

letters of credit at the time of their bid submission be eliminated for both new and existing bidders. Instead, the Company proposes that the bidders be required to post an acceptable credit instrument within ten business days after a bidder is notified that it has been selected for the initial shortlist.

4. The Company is also proposing that bidders submit an intent to bid form as the mechanism for obtaining a bid number for each proposed bid submission. (*See Exhibit B.*)

5. The Company is proposing the above-referenced amendments to the request for qualification bid forms in an effort to increase the pool of bidders. The Company submits that by delaying the qualification requirements, it will encourage more parties to bid and it will hopefully result in a more robust pool of bidders for selection to the initial short list. The Company is hopeful that these modifications will increase the likelihood of the Company acquiring, producing, and delivering low risk and reliable electricity at the lowest reasonable cost to its retail customers.

### **C. Updating the 2012 Benchmark Resources.**

1. The Company also requests an amendment to the RFP to update the benchmark resources for 2012.

2. In the RFP, the Company submitted and locked down three benchmark resources June 15, 2007. These benchmark resources included: (i) the 2012 benchmark, 340MW Intermountain Power Project 3 (“IPP 3”), and (ii) (a) the 2014 benchmark 500MW IGCC Jim Bridger, or (b) 527MW Jim Bridger 5 super critical pulverized coal plant.

3. The RFP also listed two eligible resource alternative categories that allow existing and new bidders to develop projects on the Company’s two existing generation sites at Currant Creek or Lake Side. Accordingly, bidders have the option of proposing an asset purchase and

sale agreement on the Currant Creek or Lake Side sites and/or an engineering, procurement and construction contract at the Currant Creek site.

4. Since the Company's submission of IPP 3 as a 2012 benchmark resource, actions and statements have been made by Intermountain Power Agency and the Los Angeles Department of Water and Power indicating that they would no longer support the development of IPP 3.

5. On July 18, 2007, the Company sent notices of intent to sue to the Intermountain Power Agency and the Los Angeles Department of Water and Power, claiming that both entities breached contracts and otherwise violated the law as their public statements and actions indicated that they would no longer support the development of IPP 3, which puts at risk the timeliness and viability of the construction of this 2012 benchmark.

6. In addition, there have been other significant changes in circumstances since the submission of the RFP to market that have compelled the Company to file this Motion. As indicated above, following the issuance of an order providing additional protective measures for non-public information, the Company will submit a more thorough description of the significant change in circumstances that compels the Company to file this motion requesting an amendment to the RFP. The Company also represents that it has adhered to its strict code of conduct regarding the sharing of information between the benchmark and evaluation teams, and the information submitted in the supporting memorandum in support of this motion has not been shared with the benchmark team. (*See Exhibit A*).

7. As a result, the Company is requesting to amend the RFP to update the benchmark resources by including resource expansions at the Currant Creek site and/or Lake Side site. (*See Exhibit B*.)



8. The Company submits that by including these viable resource expansions in the RFP it will provide a more robust selection of available resources, it will better ensure that the retail customers have the appropriate level of resources available to cost-effectively serve load in the time frame required, and it will ensure that there is a resource hedge for customers and shareholders if bidders provide resource prices that exceed cost based resources.

### **III. CONCLUSION**

Based upon the foregoing, including the Supporting Memorandum, the Company submits that consistent with the public interest criteria set forth in the Energy Resource Procurement Act, amendment of the RFP is appropriate.

Accordingly, the Company respectfully requests that the Commission issue an order approving the proposed amendment to the RFP attached hereto as Exhibit B, consistent with the following:

- 1) Amending the proposal response due date from June 19, 2007 to January 18, 2008, permitting current bidders to refresh their bids and to open the RFP to additional bidders through January 18, 2008.
- 2) Amending the Effectiveness of Bids date to replace June 15, 2008 with January 9, 2009.
- 3) Amending the Officer Certification Form, Appendix E, to replace June 15, 2008 with January 9, 2009.
- 4) Amending the RFP by eliminating the request for qualification process and adding an intent to bid form for all bidders to submit.
- 5) Amending the RFP by: (a) requiring new bidders to submit request for qualification Appendices A and B with their proposal; (b) requiring existing bidders to submit updates to their request for qualification Appendices A and B to the extent the original information has changed or otherwise needs to be updated; and (c) requiring new and existing bidders to post an acceptable commitment letter and/or letter of credit within ten business days of being notified of their selection to the initial short list.

- 6) Amending the RFP to update the 2012 benchmark resources by including, in addition to IPP 3, resource expansions at the Currant Creek site and/or the Lake Side site.

DATED this \_\_\_\_ day of October 2007.

Respectfully submitted,

ROCKY MOUNTAIN POWER

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## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_ day of October 2007, I caused to be e-mailed a true and correct copy of the foregoing Rocky Mountain Power's Motion to Amend its 2012 Request for Proposals and Request for Expedited Treatment, as follows.

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