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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of) DOCKET NO. 05-035-47
PacifiCorp for Approval of a 2009 Request) MEMORANDUM IN RE:
for Proposals for Flexible Resource) PACIFICORP’S NOVEMBER 1, 2006
) REVISED DRAFT 2012 REQUEST
) FOR PROPOSALS

The Utah Committee of Consumer Services appreciates the Commission’s willingness to consider the Committee’s viewpoint of specific issues raised by PacifiCorp’s November 1, 2006 Request for Proposals – Base Load Resources. The Committee requests that the Commission consider these comments and, under the Energy Resource Procurement Act, Utah Code 54-17-101 *et seq.*, approve a proposed solicitation process that incorporates the Committee’s recommendations.

I. INTRODUCTION.

The Energy Resource Procurement Act is the intended process by which the Commission reviews the prudence, public convenience and necessity, and public interest of an electric utility's acquisition or construction of a significant energy resource through competitive bidding. *Utah Code §§54-4-25(7), 54-17-201(2)(c)(ii), 54-17-302(3)(c).* Compliance with the Act substitutes for traditional ratemaking procedures whereby the utility requests approval of a solicitation process for a resource that does not yet exist, to fill a need that is only projected. The solicitation process that PacifiCorp has designed in the November 2006 RFP is intended to obtain such pre-approved inclusion of the resulting resource costs in retail rates. *Utah Code §54-17-303(1)(a).* The Act requires that the Commission base its public interest finding upon evidence of what is expected to happen over the next five and one-half years.

Approval of the November 2006 RFP solicitation process requires more than a determination that its commercial terms are reasonable, i.e. that appropriate screening criteria are used, benchmark options are fully described, bid and benchmark evaluation methods are disclosed and fair, and an independent evaluator participates. *Utah Code §54-17-202(1).* Because the end result of the solicitation and resource selection process is pre-approved cost recovery for an expensive, long-lived, significant energy resource yet to be built, the Act requires strict adherence to provisions for Commission oversight. Also, because the solicitation process portends the specific resource to be approved for

acquisition or construction under the Act's Part 3, the Act demands exercise of the Commission's general jurisdiction to supervise "all of the business" of an electric utility. *Utah Code §§54-4-1 and 54-4-25(7), requiring consolidation of an action under the Energy Resource Procurement Act with one to obtain a certificate of public convenience and necessity.*

II. CONTROLLING AUTHORITY.

To provide sufficient evidence upon which the Commission can base its approval or rejection of the solicitation process [Utah Code §54-17-201(2)(f)], or approval, disapproval or conditioned approval of the selected resource [Utah Code §54-17-302(5)], the Act requires the Commission to consider specific information and circumstances that govern whether a request for proposal or the selected resource is in fact in the public interest. These statutory provision state as follows:

Requirements for solicitation, Utah Code §54-17-202(2).

(2) If an affected electrical utility is subject to regulation in more than one state regarding the acquisition, construction, or cost recovery of a significant energy resource, in making the rules required by Subsection (1), the commission may consider the impact of the multistate regulation including requirements imposed by other states as to:

- (a) the solicitation process;
- (b) cost recovery of resources; and
- (c) methods by which the affected electrical utility may be able to mitigate the potential for cost disallowances.

Review of integrated resource plan action plans, Utah Code §54-17-301.

(1) An affected electrical utility shall file with the commission any action plan developed as part of the affected electrical utility's integrated resource plan to

enable the commission to review and provide guidance to the affected electrical utility.

(2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules providing a process for its review of an action plan.

(b) The rules required under Subsection (2)(a) shall provide sufficient flexibility to permit changes in an action plan between the periodic filings of the affected electrical utility's integrated resource plan.¹

Cost recovery, Utah Code §54-17-303(1)(a).

(1) (a) Except as otherwise provided in this section, if the commission approves a significant energy resource decision under Section 54-17-302, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:

- (i) relevant to the proceeding;
- (ii) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource; and
- (iii) up to the projected costs specified in the commission's order issued under Section 54-17-302.

The Act provides that the multi-state regulation issues are to be addressed as the Commission considers the solicitation process. *Utah Code §54-17-202*. The IRP review arguably applies to the Act's Part 2 and Part 3. The first two statutes assume that the Commission will define the scope of the statutes, and their implication for a request for proposal, by adopting administrative rules. However, those rules are not yet adopted. Furthermore, as described in greater detail below, there are obvious differences and disagreements between the process and positions taking shape in Oregon as it considers the November 2006 RFP and its link to the 2004 IRP. Therefore, it is imperative that any

¹ While the Energy Resource Procurement Act does not require that the IRP be acknowledged or approved, the Oregon Public Utility Commission's guidelines on competitive bidding compares the alignment of an RFP with the utility's "acknowledged" IRP. Guideline No. 7, Oregon PUC Order No. 04-446, August 10, 2006, Docket UM 1182. Utah Code §54-17-301 presumes that PacifiCorp's in place integrated resource plan, including the associated action plan, filed with the Commission, will inform the significant resource solicitation process.

Commission order approving the proposed solicitation process requires that PacifiCorp address on an on-going basis, the issues expressly raised in these statutes, and the implications these issues present to the Commission's public interest determination.

III. BACKGROUND.

No matter the nature of the energy resource need or how it is to be filled, given the events and circumstances of the RFP's development², the Commission must at this point in the solicitation process, address the "state's share" of the acquisition or construction costs of the total resources PacifiCorp intends as system resources to be acquired by the November 2006 RFP. The approved solicitation process must in all respects provide for the scrutiny, analysis and monitoring of the solicitation, screening, evaluation and selection process for strict adherence to the Act, a process that is a substitute for traditional ratemaking when the utility's actual commercial practices and the completed construction or transaction could otherwise be reviewed.

Since July 2005, PacifiCorp has submitted four versions of an RFP, each meant to acquire sufficient resources identified in the company's integrated resource plan as necessary to meet its demand and energy requirements in an economic and reliable

²In the four or five days immediately preceding the November 3, 2006 hearing, it became apparent that the IRP from which the RFP submitted to the Commission originated, was subject to widely varying interpretation and application in Oregon and Utah. Between October 4th and October 27th, the RFP intended to serve the same need and rooted in the 2004 IRP for purposes of the Energy Resource Procurement Act in Utah, and aligned with the 2004 IRP for purposes of the Oregon Competitive Bidding Guidelines, was materially altered:

October 4, 2006 - 1340 MW to 2290 MW from pulverized coal (possibly 250 MW of which was an IGCC plant), coming on line and therefore in retail rates in 2012, 2013, and 2014, assuming a 15% planning reserve margin and eliminating front office transactions;

October 27, 2006 - 840 MW to 915 MW from one pulverized coal plant and a preference for the balance as an IGCC plant, on line in 2012 and 2013, assuming a 12% planning reserve margin, and reinstating front office transactions.

manner. The November 1, 2006 version filed with the Commission is substantially similar in its commercial terms and conditions to the July 11, 2006 and October 4, 2006 versions from which it evolved. The commercial terms in each version substantially comply with Utah Code §54-17-202(1). PacifiCorp has not, however, addressed the disparity and potential for conflict between the proceedings in Utah and those in Oregon, as they relate to the controlling statutes cited above.

Oregon parties' comments upon the selection of an independent Oregon IE pointedly describe the conflict between Utah's and Oregon's policy and process for considering the November 2006 RFP and the underlying 2004 IRP. Parties argued that it is reasonable that Oregon retain an IE to serve its needs for PacifiCorp's 2012 RFP, given the magnitude of the investment that will be undertaken through this process, issues related to multi-state allocation of resources, and differential treatment of the company's 2004 IRP by the Oregon and Utah Commissions. *In the Matter of PacifiCorp Draft 2012 Request for Proposals*, UM 1208, Public Utility Commission of Oregon, Order: Selection Process for Oregon Independent Evaluator Approved; Conditional RFP Approval Option Established, September 26, 2006. Among the objections and multi-state allocation issues identified by Oregon parties were:

1. The potential for serious conflicts between Oregon and Utah regarding the proper direction of PacifiCorp's resource acquisition, including conflicting IE

reports and analysis of a State's resource preferences; and, use of conflicting IE reports in a state or multi-state allocation proceeding.

2. The Oregon Commission declined to acknowledge a pulverized coal base load plant to deliver energy to Utah in 2011, in the 2004 IRP.

3. The Oregon Commission was encouraged by one party to "select an independent evaluator whose sole mission is to see that Oregon's policy concerns are advanced."

4. Oregon and Utah do not have the same energy needs or policy goals, including divergent load growth, different treatment of PacifiCorp's integrated resource plan, and contrasting regulatory environments: Utah's Energy Resource Procurement Act is a pre-approval process; Oregon's is not.

5. The Oregon Commission's cited Order allows for a rehearing of the conditional RFP approval, provides for further public hearing and if necessary, amendments to the RFP in the event that the Oregon IE identifies significant flaws to the RFP design, or if the IE's findings cause other parties or staff to identify significant flaws.

6. PacifiCorp insists in both Oregon and Utah that "short delays in the RFP schedule could reduce or eliminate resource options to meet 2012, and even 2013, resource needs. The company notes that a reduction of options may increase the cost/risk profile of the resources procured through the RFP." One Oregon party

encourages the Oregon Commission to consider the RFP in a deliberate manner, and not rushed to accommodate another party's schedule.

7. PacifiCorp is requesting approval of an RFP tailored to Oregon's needs. Any conditional approval is subject to the Oregon IE assessment, and other parties' comments on the IE assessment, and if necessary, further public hearing in January 2007.

PacifiCorp does not meaningfully address in either the Utah or Oregon proceedings, the impact that the controversy over the relationship between the 2004 IRP and the November 2006 RFP may have upon the Commission's application of the controlling authority cited above. In the case of Utah, since the Commission orders with respect to the November 2006 RFP will likely result in the assured inclusion into retail rates of the costs to construct or acquire "up to 2000 MW" in 2012 and 2013,³ those orders must be supported by substantial evidence of every significant element in the rate making components that PacifiCorp claims in its application under Part 2 and Part 3 of the Procurement Act. *See Utah Department of Business Regulation v. Public Service Commission, 614 P.2d 1242, 1250 (Utah 1980) "this finding [that a rate is just and reasonable] must be supported by substantial evidence concerning every significant element in the rate making components (expense or investment) which is claimed by the applicant as the basis to justify a rate adjustment."*

³ PacifiCorp acknowledged at the November 3, 2006 hearing that the November 2006 RFP is intended to solicit bids to fill the entire of its resource needs identified in applicable integrated resource plans, which the Utah Division of Public Utilities determined to be approximately 2,000 MW.

The Act does not suspend PacifiCorp's on-going obligation to provide the economic and other information from which the Commission may precisely analyze and determine rates. See *Utah Code §54-3-22 and Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d at 1247. The Committee contends that the Commission can properly approve the November 2006 RFP under Part 2 of the Procurement Act, only if the Order implements each requirement of Utah Code 54-17-202(2), 301 and 303(1)(a).⁴

II. RECOMMENDATION.

The Committee recommends that the Commission approve the solicitation process of the November 2006 RFP, subject to and conditioned upon the following:

a. PacifiCorp's justification for modifying the size, timing and magnitude of the RFP from the October 4th to the November 1st version, should be the subject of ongoing scrutiny as the solicitation process continues. In particular, the Commission should determine if the changes to the RFP advance or detract from the Act's goal to acquire or construct generation resources that at the lowest reasonable cost will meet the

⁴ PacifiCorp contends that the November 2006 RFP follows the 2004 IRP, and in Oregon, the company contends "[t]he redesign of the RFP largely resolves the main issue raised in opposition to the approval of this RFP, which is whether the resource need reflected within it is consistent with PacifiCorp's acknowledged 2004 IRP." *PacifiCorp's Supplemental Comments, October 25, 2006, Oregon PUC Docket UM 1208*. On November 9, 2006, the parties to the Oregon docket within which the RFP is being considered, filed comments upon the November 2006 RFP and except for PacifiCorp, again found the RFP deficient in light of the 2004 IRP. The Committee believes that the Oregon parties' recommendations are worthy of the Commission's careful consideration under Utah Code §54-17-202(2), pertaining to multi-state regulation and cost recovery for significant energy resources. For example, these comments address many of the concerns that the Committee raised at the hearing and in this memorandum pertaining to front office transactions and planning reserve margins in relation to the benchmarks against which all bids will be evaluated. *Utah Code §54-17-102(2)*. These comments are found at: <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=12698>.

utility's load in a reliable manner with due consideration for environmental and economic consequences. *Utah Code §54-17-102(3)*.

b. Upon issuance by any utility regulatory commission of an order upon PacifiCorp's application to approve the solicitation process of the November 2006 RFP, PacifiCorp should be required to file with Commission, the Division and the Committee, such evidence as the Commission directs, from which the Commission may determine the impact of the order and multi-state regulation of PacifiCorp as to cost recovery of the resources to be acquired from the solicitation, and PacifiCorp's proposed methods by which PacifiCorp intends to mitigate the Utah ratepayer impact of cost disallowances or cost allocations that differ from the Commission approved methods described in the December 14, 2004 Report and Order, Docket 02-035-04, *In the Matter of the Application of PacifiCorp for the Investigation of Inter-jurisdictional Issues*.

c. The Committee's recommendation b. should apply when PacifiCorp identifies a final short list from which resources shall be selected.

d. PacifiCorp should be required to file with the Commission, the Division and the Committee, all draft and final reports, evaluations or recommendations prepared by the Oregon IE.

e. As and when directed by the Commission, following PacifiCorp's filing of the PacifiCorp Integrated Resource Plan 2006, which the Commission should direct be filed no later than January 31, 2007, PacifiCorp should be required to file in this Docket,

a supplement to the Application that identifies the impact of the IRP 2006 upon any material term or condition of the approved November 2006 RFP, including but not limited to: impacts of the IRP 2006 upon PacifiCorp's load and resource balance; fuel type, size, operating characteristics, and timing of benchmarks and eligible resource alternatives in the November 2006 RFP; fuel price forecasts; carbon or other environmental tax assumptions; planning reserve margins; and the need for and amount of front office transactions. In particular, PacifiCorp should be required to file in this Docket, an analysis of the difference between the 2006 IRP and the 2004 IRP pertaining to front office transactions and planning reserve margins, and an analysis of the impact such difference has upon the evaluation of bids received.

f. Within ten days of completing the initial screening of bids responding to the November 2006 RFP, PacifiCorp should be required to file with the Commission, the Division and the Committee, such evidence as the Commission directs, to enable the Commission to determine that the November 2006 RFP conforms to the resource needs identified in the IRP 2006.

g. Within ten days of completing the initial screening of bids responding to the November 2006 RFP, PacifiCorp should be required to file with the Commission, the Division and the Committee, an analysis of the impact of the November 2006 RFP upon PacifiCorp's compliance with the Washington State Energy Independence Act (2006 Initiative 937), Title 19, Chapter 19.____, Revised Code of Washington. In particular,

PacifiCorp should address whether the RFP will impact the company's compliance with the minimum percent KW usage that must be supplied by renewable resources, and impact the minimum percent of revenue requirement to be invested in incremental cost of renewable resources, and the impact of the Energy Independence Act upon multistate cost recovery for significant energy resources sought in the November 2006 RFP.

h. Given that the Oregon Commission does not pre-approve cost recovery, PacifiCorp should file with this Commission as a part of its application under Part 3 of the Act, such evidence as the Commission directs addressing the impact of an order granting approval of PacifiCorp's selected resource upon the Oregon proceedings, in particular addressing that the resource is to be located in the east control area, and whether the benchmark resource, if selected, conforms to Oregon orders respecting the RFP.

The Committee recommends that the Commission expressly reserve the right to review and reconsider the order approving the solicitation process, in light of the information and evidence that PacifiCorp supplies as required.

DATED this 13th day of November 2006.

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For Utah Committee of Consumer Services

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November 2006, I caused to be e-mailed a true and correct copy of the foregoing Motion to:

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