Comments of the Independent Evaluator on PacifiCorp's Final Draft 2012 Request for Proposals (RFP) for Base Load Resources
March 2007

Docket No. 05-035-47

Merrimack Energy, as Independent Evaluator, has reviewed PacifiCorp's Final Draft RFP for Base Load Resources and has several comments. The comments pertain primarily to wording changes, organizational structure or clarification of information included in the RFP. Merrimack Energy believes that if the suggested changes are addressed, the RFP is reasonable, is consistent with industry standards and should be ready for issuance.

The following represents our comments on the Final Draft of the RFP

1. Page 5: There appears to be an inconsistency between paragraph 3 and 5 with regard to the number of benchmarks. Paragraph 3 states there are two benchmarks while paragraph 5 states there is one benchmark option for 2012 and two for 2014. This needs to be clarified. Also, PacifiCorp may want to indicate whether the two benchmark options for 2014 are mutually exclusive.

2. Page 5, Paragraph 4. There is a reference to a Table that appears to be missing.

3. Page 14: The lead-in sentence for both the PPA and TSA should contain the same language regarding indexing options.

4. Page 24: Schedule. We are concerned that the 60 days for Responses Due after issuance of the RFP may be too short. We would suggest using the original 75 days at a minimum. We would also recommend that PacifiCorp aggressively market the RFP and the upcoming RFP Bid Conference through press releases, submission of notices to trade presses and direct contacts with potential bidders. Given the long delay in the process, we would expect that bidders would be cautious about project development efforts based on the uncertainty of the process. We think aggressive marketing and sending the correct signals to the market along with allowing bidders additional time to respond would be useful for encouraging bids into the RFP.

5. Page 25: Number of bids. We are not certain that 5 hard copies of each bid are adequate given the Work Groups listed on Page 27. It would appear that either 7 or 8 bids would be necessary for the internal teams. In addition, the IE's should each receive a copy of each bid. We would suggest PacifiCorp review the number of bids required based on the submission of bids to each IE.

6. Page 26, Paragraph 1. The schedule will need to be revised if our recommendation in 3 above is accepted.

7. Page 28, Section G needs clarification. Based on our conference call with PacifiCorp over a month ago to discuss the Commission's intent in Commission's Suggested Modifications (issued December 21, 2006) regarding the application of indexing, it was our understanding that the Commission intended the Company to apply indexing to both Asset Purchase and Sales Agreements (APSA) and Power Purchase Agreements (PPA). The Company's write-up in this section appears to apply only to APSAs given the primary reference to capital cost indexing. There is only one reference to capacity price in this section, which would be applicable for a PPA. Also, there is also an error related to the timing of indexing. The RFP states that bidders will be allowed to index prices from the time of executing the contract with the Company. However, it is uncertain when the contract will actually be executed. In other RFP's, indexing begins on the base period date for establishing the pricing formulas or the time the bid is submitted. Establishing a fixed base period is the only way to manage the price risk, unless the bidder and Company agree on a pricing mechanism that begins on the date the contract is executed. In addition, Eligible Resource Alternative 10, Geothermal and/or Biomass Power Purchase Agreements, should be subject to the same indexing options as other PPAs.

   We have re-written this section as follows:

   "Each bid proposal must remain open for acceptance by the Company from the date of submittal through May 7, 2008, unless earlier released in writing by the Company. Bidders have the option of either submitting a proposal with a fixed capacity charge or capital cost (e.g. fixed for the term of the contract or escalated by a fixed amount) or index a portion of the capacity charge or capital cost to a variable index. Under the latter option, bidders must provide 60% of the capacity charge or the capital cost as a fixed price. However, bidders may index up to 40% of the total capital cost or capacity charge to the following two indices. A maximum of up to 25% of the capital costs or capacity charges may be indexed to the Consumer Price Index (CPI) and a maximum of up to 15% of the capital costs or capacity charges may be indexed to the Producer Price Index (PPI) – Metals and Metal Products. The Bidders will be allowed to index up to 40% of the capital costs or capacity charges from the time of bid submission (or contract execution if agreed to by the Company and Bidder) until the earlier of the time the bidder and/or the Company executes the Engineering, Procurement and Construction (EPC) contract or the bidder achieves project financing, provided that it is not longer than two years after the Agreement has been executed with the Company. Indexing for capital costs or capacity charges in only available for new Eligible Resources under the following Eligible Resource Alternatives: 3,4,5, and 9, and Eligible Resource Alternatives 1, 2 and 10 (to the extent such alternatives are asset backed by new construction). In addition, bidders are allowed to index the variable components to publicly available indices (i.e. inflation rates). Bidders who request a specific index for indexing any components of their price structure that differ from the indices identified above should contact the IEs with a formal request for a specific index. All short listed bids may be asked to provide their "best and final" prices including the benchmark team prior to the evaluation of the final shortlist."

8. Page 40: Section B. Under Fixed Costs both the first and second bullets should have the same sub-information. A re-write of the first bullet is provided as follows:

    - The Bidder-specified capacity charge payment ($/kw-month)
        - The capacity charge may include a combination of fixed and indexed pricing provided that the following minimum and maximum percentages and indices are submitted:
            - Minimum of 60% Fixed
            - Maximum of 25% Indexed to "Consumer Price Index"
            - Maximum of 15% Indexed to "Producer Price Index – Metals and Metal Products"

9. Page 49: The description of the non-price weighting factor is unclear and not consistent with the intent of the criteria. The second column of the Table on Page 49 indicates how bidders will receive a weighting factor for each of the three discrete percentages allocated. Information in the second column regarding the weightings indicates that the weightings will be based on the amount of information the bidder provides. However, it is typical in RFP processes that points or weights are allocated based on the quality of the proposal and the ability of the Bidder to demonstrate they can develop and operate the project as required with limited risk to the Buyer. The following represents a re-draft of the lead-in sentence and Table presented on Page 49.

    "The non-price criteria are identified below. Bids will be evaluated and scored in three discrete categories: (1) 100% of the percentage weight; (2) 50% of the percentage weight, or (3) 0% of the percentage weight. Bids will be evaluated based on their ability to demonstrate the proposal is thorough, comprehensive and provides limited risk to the buyer. Bids which have a demonstrated track record or are mature proposals will be more highly evaluated. The following Table lists the key non-price criteria and the basis for weighting for each criterion."

Non-Price	**Non-Price Weighting Factor**
Development Feasibility/Risk • Critical Path Schedule 0-5% • Engineering Design and Technology 0-2.5% • Fuel Supply and Transportation Strategy 0-2.5%	Up to 10% Bids will be evaluated based on the quality of their proposal, their responsiveness to the information requested and their ability to demonstrate that the project can be reasonably developed within the appropriate timeframe to meet the proposed in service date and with limited risk to the buyer. Bids which have achieved commercial operations will be awarded

	percentage weight consistent with the risk associated with each non-price category. For example, an existing project will be awarded 100% of the percentage weight associated with the Critical Path Schedule criteria.
Site Control and Permitting • Permits Required 0-5% • Access to Water Supply 0-2.5% • Rights of Ways 0-2.5%	Up to 10% Bids will be evaluated based on the quality of their proposal, their responsiveness to the information requested and demonstration of sufficient detail on the status of permitting, access to available water supply and site control. Bids which can demonstrate little or no risk associated with these criteria will be more highly evaluated.
Operational Viability/Risk Impacts • Environmental Compliance 0-5% • Environmental Impact 0-2.5% • O&M Plan 0-2.5%	Up to 10% Bids will be evaluated based on the quality of their proposal, their responsiveness to the information requested and demonstration of sufficient detail regarding the quality of their environmental compliance plan and O&M plan as well as the environmental impact of each proposal consistent with the proposed technology.

10. Form 1, Pricing Input Sheet is not included in the RFP. This Form is a key Form and should be reviewed before the RFP is issued.

11. The PPA and TSA forms are unchanged from the October 4th Draft RFP and do not reflect capacity charge indexing or the revised treatment for change in law risk for environmental retrofits. The only reference in the RFP to the latter change occurs on the last page (page 55) of the RFP and requires clarification to inform bidders adequately that they may propose a price re-opener in the event that an environmental change in law occurs and imposes new capital costs on the seller. Any such re-opener would be subject to Commission review and approval as indicated on page 55 and it would be appropriate to inform bidders that only prudent costs, in comparison to alternatives, would likely be passed through to the Company.

12. PacifiCorp has changed the rules for APSA, requiring that the EPC Contractor become a contract party to the APSA. We feel this change may reduce certain risks to the Company if the APSA seller (which might be a shell corporation) experiences credit problems. In addition, the change may avoid problems

associated with a mismatch of terms between the APSA and the EPC Contract (which the APSA seller controls). The down side may be that it requires developers to search out contractors earlier and get them to front load some effort in responding to the bid. On balance, we feel the changes are well-advised and should be endorsed.