

Mark C. Moench, Utah Bar No. 2284
Daniel E. Solander, Utah Bar No. 11467
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone No. (801) 220-4014
Facsimile No. (801) 220-3299
Email: daniel.solander@pacificorp.com

Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp,) by and through its Rocky Mountain Power) Division, for Approval of a Solicitation) Process for a Flexible Resource for the 2012-) 2017 Time Period, and for Approval of a) Significant Energy Resource Decision)))	DOCKET NO. 07-035-94____ Comments of PacifiCorp
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Concurrent with the filing of these comments, PacifiCorp dba Rocky Mountain Power has submitted a revised, final draft All Source Request for Proposal (RFP). The final draft RFP incorporates changes based on feedback from the Oregon Independent Evaluators (IEs) and other parties at the bidders and stakeholders RFP conferences held in Oregon on March 13, 2008 and in Utah on March 12, 2008, and opening comments received by the Oregon Public Utility Commission Staff (Oregon Staff) and the Industrial Customers of Northwest Utilities (ICNU), as well as stakeholders in Utah (Utah Committee of Consumer Services (CCS), Utah Division of Public Utilities (Division), and LS Power Associates, L.P. (LS Power)). The following comments outline the revisions PacifiCorp has made in the final draft RFP and address the comments in areas where changes have not been proposed at this time.

Revisions to the Final Draft RFP

1. *Title of the RFP:* In order to eliminate any confusion about the term of the RFP, PacifiCorp has deleted references to the years 2012-2017 and 2008 from the title of the

RFP. The All Source RFP is soliciting resources available for dispatch or scheduling by June 1, 2012, June 1, 2013, June 1, 2014, June 1, 2015 and/or June 1, 2016 (“Eligible Online Dates”). *See* RFP page 7.

2. *Resource Options:* PacifiCorp has revised the RFP to make it clear that capacity and energy resources being solicited pursuant to this RFP must be eligible to serve PacifiCorp’s entire system. PacifiCorp has modified the language which previously excluded coal resources unless legislative or technological developments materially eliminated carbon risk. Instead, the final draft RFP contains language that allows Bidders the opportunity to propose new or existing coal resources only if such proposals are consistent with multi-state legal and regulatory requirements regarding new and existing coal resources. *See, e.g.*, RFP page 7, 21, and 24. Because PacifiCorp is subject to recently adopted laws in Washington and California regarding CO₂ emissions standards, any coal-based proposal must comply with these standards. Additionally, Oregon Staff has raised questions about the ability of sellers to securitize risks related to greenhouse gas emissions and cites to the Oregon IEs’ recommendation that PacifiCorp state in the RFP that it will consider creative proposals by sellers to absorb the risk of regulatory costs associated with greenhouse gas emissions. *See* Oregon Staff Comments at 15. PacifiCorp has included such language in the RFP. As part of the bid evaluation process, PacifiCorp will take into account any existing legal or regulatory requirements regarding coal resources and CO₂ emissions standards, as well as its multi-state cost allocation protocol. Finally, the Division has raised the issue that the Company must demonstrate through its RFP evaluation and analysis that it has selected the

resource that is “least-cost, least-risk.”¹ Division Comments at 3. Therefore, PacifiCorp has revised the RFP to address these concerns. *See* RFP page 57.

3. *Geothermal and Biomass Exceptions:* In response to comments from Oregon Staff and the Division, PacifiCorp has created a new “exception” category for geothermal and biomass power purchase agreements to allow proposals for 10 MW instead of the previously stated minimum of 100 MW. *See* RFP pages 7, 10, 14, and 23.

4. *Self-Build Bids vs. Benchmark Resources:* In the 2012 RFP, benchmark resources were submitted by PacifiCorp. Based on feedback from bidders and questions regarding the fairness of the benchmark approach, PacifiCorp offered in this current RFP to simply become another bidder, submitting bids under which it would be the owner/operator (“self-build bids”) rather than submitting benchmark resources. *See* PacifiCorp Filing Letter dated February 15, 2008 at 5-6. PacifiCorp believed that this would encourage competition by third-party bidders and provide more comparability between company proposals and market proposals.² However, nearly all commenters objected to PacifiCorp becoming just another bidder, for various reasons. Although frankly surprised by the objections, PacifiCorp will nonetheless abandon its proposal to be treated as another bidder and instead submit a benchmark resource or resources.³ *See* RFP page 8 and RFP Attachment 1. PacifiCorp does want to respond to several of the objections, however.

¹ PacifiCorp notes that the appropriate standard should be “least cost, adjusted for risk.”

² The Oregon IEs also provided preliminary comments in support of this concept if certain conditions were met. *See* Accion Group presentation dated March 13, 2008 at 7. The Division cites PacifiCorp’s proposal as providing an opportunity to increase competition and provide a benefit to the RFP process. *See* Division Comments at 6-7.

³ PacifiCorp would note that none of those objecting to PacifiCorp becoming a bidder were, themselves, potential bidders. PacifiCorp will be interested in seeing whether potential bidders will now object if PacifiCorp submits a benchmark resource rather than self-build bids.

- One objection was that PacifiCorp’s self-build bids would not be subject to fixed price. While accurate, this is a necessary consequence of traditional cost-of-service regulation which only allows PacifiCorp to recover in rates its actual, prudently-incurred costs. As a result, if the actual costs of the project were *lower* than the “fixed price” offered during the RFP, PacifiCorp would not be entitled to seek recovery for the higher fixed price. *See, e.g.*, Order No. 06-446 at 13.
- CCS claims that a benchmark option is required under the Utah Energy Resource Procurement Act (Act) and that an own/operate bid would be prohibited by the Act. *See* CCS Comments at 2. PacifiCorp does not agree with CCS’s position and arguments. PacifiCorp first notes that CCS’s argument that the Act mandates a benchmark resource is premised upon interpreting the word “may” in the Act to mean “shall.” Second, if the Act, in fact, prohibits, PacifiCorp from proposing an own/operate option, then it is curious that the parties to the Utah settlement in the transaction by which MidAmerican acquired PacifiCorp, as well as the Utah Commission, approved General Commitment 39 which requires PacifiCorp to propose an own/operate option (which may be, but need not be, a benchmark resource) in all RFPs over 100 MW.
- Oregon Staff opposes the use of self-build bids as proposed by PacifiCorp finding no benefits, but identifying several disadvantages. Oregon Staff Comments at 10. Specifically, Oregon Staff concludes that PacifiCorp’s request for waiver of Guidelines 4 and 8 would not achieve the Commission’s objective of providing to the Oregon IE and Staff the detailed score for self-build bids in advance of market bids and would not provide bidders, intervenors and the public any information about the self-build bids. PacifiCorp believes that a process could readily be designed to accommodate these concerns.

5. *Timing of Submission of Benchmark Resources:* PacifiCorp agrees with the comments proposing that the Benchmark Resources should be submitted to the IEs one day in advance of other bids. PacifiCorp has added this language to the RFP. *See* RFP page 8 and 28.

6. *Blinding of Bids:* Following the blinding process used in the 2012 RFP, the IEs and the Division questioned whether the blinding process materially improved the evaluation process; or whether it was overly burdensome to both bidders and the IEs without any commensurate level of benefit. PacifiCorp originally proposed blinding based on its self-build option proposal; however, in light of the comments from the Division (at 4), and preliminary comments from the Oregon IEs during the March 13 presentation (at 10) recommending that the blinding process should be eliminated, PacifiCorp has removed the blinding requirements in the RFP from both the Intent to Bid process and the RFP response process. *See* RFP page 27. Conforming changes were also made to Attachments 4 and 20.

7. *Resource Need:* The RFP solicits up to 2,000 MW of resources. Parties requested clarification in this RFP as to how PacifiCorp would modify the 2,000 MW amount in the event a resource(s) is selected from the 2012 RFP. PacifiCorp specifically added language in the RFP indicating that the total resource need will be adjusted in the event a resource(s) is selected from the 2012 RFP. *See* RFP page 9. Oregon Staff and ICNU have both raised issues about whether the RFP solicits the right quantity of resources. *See* Oregon Staff Comments at 7-9 and ICNU Comments at 2-3. As Oregon Staff and ICNU correctly note, PacifiCorp is waiting for an acknowledgement order on its 2007 IRP in Oregon. Oregon Staff offers that based on PacifiCorp's updated load and resource balance and using the same planning margin and Front Office Transactions in the 2007 IRP preferred portfolio, PacifiCorp needs to acquire at most 1,119 MW of thermal resources in 2012,

increasing to 2,067 MW in 2016. *See Oregon Staff Comments* at 9 (noting additional reductions may also be appropriate). PacifiCorp believes that its RFP is aligned with this identified resource need and that its proposal to acquire “up to 2,000 MW” of cost-effective resources is consistent with its demonstrated need. Moreover, generation planning in the current environment requires that PacifiCorp recognize the following new conditions:

- Representatives of the states of Oregon and California, as well as other litigants, have demanded that PacifiCorp cease using approximately 160 MW of hydropower from the Klamath dams;
- Federal climate change legislation such as the Lieberman-Warner bill would require PacifiCorp to begin reducing CO₂ emissions by as early as 2012;
- Increases in the generation portfolio in the amount of non-dispatchable, intermittent resources such as wind will require that PacifiCorp maintain sufficient capacity reserves to serve peak load when those intermittent resources are not available or are available at lower than average output.

Recognition that the third condition is occurring, some variant of the second condition is likely, and the first is possible supports the prudence of conducting the proposed RFP to determine the cost of available resources in the 2012-2016 timeframe.

8. *Resource Alternatives and Resource Diversity:* PacifiCorp has revised the resource alternatives to allow for additional resource diversity in duration and fuel source. For power purchase agreements, tolling service agreements or qualifying facility proposals not backed by assets, bidders may propose a transaction *up to* a maximum term of five (5) years. *See RFP* pages 11, 14, 16, 22, and 23. PacifiCorp believes this addresses some of Oregon Staff’s concern about the lead time associated with front-office type transactions and provides for additional resource diversity in duration. As a result, Bidders have the

opportunity to propose short-term (less than 5 years) to long-term (greater than 5 years) transactions depending on the Resource Alternative and Bid Category proposed. PacifiCorp believes its final draft RFP satisfies Guideline 9(a) on resource diversity.

9. *Load Curtailment:* Oregon Staff requested that PacifiCorp modify the load curtailment exception to allow for the aggregation of load by a single supplier. Oregon Staff Comments at 15. PacifiCorp has clarified that load curtailment may be aggregated by a single supplier in order to meet the 25 MW minimum requirement. Any proposals for aggregated load curtailment are subject to the same conditions as individual load curtailment. See RFP pages 13 and 22.

10. *Schedule:* PacifiCorp has modified the time period to complete the evaluation process from 45 days to 60 days. See RFP page 24. The Division has also proposed that PacifiCorp develop a consistent policy for granting time extensions, if any, to bidders prior to bids being received. PacifiCorp supports this concept and will work with the IEs to develop a proposed time extension policy that can be applied in a consistent and fair manner to all bidders.

11. *Bid Fees:* Oregon Staff supports PacifiCorp's request that the Commission not apply Guideline 5 as it relates to bidders' fees for the RFP. Oregon Staff Comments at 11. However, Oregon Staff has requested feedback from the company and bidders on a "success fee" approach proposed by the Oregon IEs. PacifiCorp is open to considering a success fee approach but did not make any modifications to the RFP at this time pending further comment from the IEs, bidders and other interested parties on this issue. ICNU proposes using bid fees to defray some of the costs of the both the Oregon and Utah IEs. Although PacifiCorp does not believe that other Oregon stakeholders support this approach based on

the Commission's adoption of Oregon Guideline 5, if Oregon Staff and stakeholders support a deviation from Guideline 5, PacifiCorp would be willing to pursue this approach.

12. *Credit:* PacifiCorp has made several modifications to the credit sections in the RFP to address the concerns raised during the 2012 RFP and to clarify language in the RFP documents consistent with PacifiCorp's expectations. *See* RFP pages 29-30, Appendix B, and Attachment 21. PacifiCorp is still developing revised credit matrices for the Intermediate Load and Summer Purchases – Q3 Purchases Bid Categories and will submit the revised matrices shortly. The Division recommends that bidders be allowed to offer different prices for different security requirements to assess what the cost of security adds to the bid price. *See* Division Comments at 4. Part of the reason PacifiCorp has defined the credit assurance amounts up front in the RFP is because PacifiCorp expects bidders to determine the cost of security and price it into any bids. LS Power provides additional comments on the level of the credit requirements. *See* LS Power Comments at 2-4. PacifiCorp would like to address the example provided by LS Power. LS Power provides an illustrative example of PacifiCorp's proposed credit requirements, stating that the worst case security requirement could be \$120/MWh for every potential MWh delivered over a five year term for a non-asset-backed resource beginning in 2016, with the implication that replacement power prices would be above \$210/MWh on average for all on-peak summer hours for five years. LS Power Comments at 3. PacifiCorp's proposed credit requirements are based on potential power price movements using an 84% confidence level, which is not a worst case assumption. Worst case price movements would require a much higher confidence level and result in credit security requirements much higher than those stated in the RFP. Additionally, LS Power used a 5x16 product in its calculations rather than a 7x16 product as stated in Attachment 21 of the RFP. Using the correct delivery pattern results in a

replacement power price that is significantly less than replacement power price calculated by LS Power. PacifiCorp welcomes the opportunity to discuss in detail the estimate of replacement power prices with LS Power to improve the accuracy of the example they provided. PacifiCorp welcomes any additional feedback from the IEs on credit issues, including comments on the forms of commitment letters and the level of credit requirements.

13. *Transmission:* PacifiCorp has expanded its identification of potential delivery areas; however, it should be noted that the addition of potential transmission delivery points may result in potential transmission constraint implications which will need to be considered as part of any proposal. See RFP page 43 and Attachment 13. PacifiCorp agrees with the Division's recommendation that the IEs should meet with PacifiCorp Transmission to ensure a full understanding of transmission cost development and will facilitate this effort. PacifiCorp also directs bidders to PacifiCorp's OASIS site which has detailed and specific information about its transmission expansion plans (<http://www.oasis.pacificorp.com/oasis/ppw/main.htmlx>). In order to comply with the FERC Standards of Conduct imposed on Transmission Providers, the PacifiCorp RFP Team encourages Bidders to contact PacifiCorp Transmission directly with any transmission related questions or concerns.

14. *Term Sheets:* The Division requested that PacifiCorp document its practice of providing "term sheets" to bidders during the evaluation process. PacifiCorp has included this modification at page 47 of the RFP. As in the 2012 RFP, PacifiCorp intends to exchange input sheets with Bidders in order to ensure that all inputs entered into the price evaluation are validated by the bidders.

15. *Flexibility of Proposals and Indexing:* The Division suggests modifications to the Form 2 to allow Bidders to respond with pricing if specific milestones are identified.

PacifiCorp will consider including this modification following further discussion with the IEs on this issue. The Division also suggests reversing the percentages to allow for 60% indexed and 40% fixed pricing. At this time, PacifiCorp is not recommending this modification.

16. *Evaluation Process:* Oregon Staff requested that PacifiCorp respond to the Oregon IEs' request for clarification in defining "top performers" that proceed to the final short list. The Division has raised concerns about the price evaluation provisions. PacifiCorp has added language to provide further clarification in response to these concerns on pages 47-48 of the RFP. PacifiCorp has also updated the comparison metric table on page 51 of the RFP.

Conclusion

PacifiCorp understands the importance of developing a transparent and fair process consistent with the Commission's Guidelines and believes that the final draft RFP accomplishes these goals. PacifiCorp appreciates the comments provided by the parties to date and looks forward to receiving the IEs' assessment of the final draft RFP.

DATED: March 28, 2008

/s/ Mark C. Moench

Mark C. Moench
Senior Vice President & General
Counsel, Rocky Mountain Power

Counsel for PacifiCorp

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2008, I caused to be delivered a true and correct copy of the foregoing Comments of PacifiCorp to the following:

Via Hand Delivery:

Paul Proctor Assistant Attorney General Utah Committee of Consumer Services Heber M. Wells Bldg., Fifth Floor 160 East 300 South Salt Lake City, UT 84111 pproctor@utah.gov	Michael Ginsberg Patricia Schmid Assistant Attorney General Utah Division of Public Utilities Heber M. Wells Bldg., Fifth Floor 160 East 300 South Salt Lake City, UT 84111 mginsberg@utah.gov pschmid@utah.gov
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Via Overnight Delivery:

Gary A. Dodge Hatch James & Dodge 10 West Broadway, Suite 400 Salt Lake City, UT 84101 gdodge@hjdllaw.com	Edward L. Selgrade, Esq. Wayne Oliver 71 Leicester Road Belmont, MA 02478 eselgrade@verizon.net wayneoliver@aol.com
Joro Walker Steve Michel Utah Office Director Western Resource Advocates 425 East 100 South Salt Lake City, UT 84111 jwalker@westernresources.org smichel@westernresources.org	

Ariel Son
Coordinator, Administrative Services