

*Report of the Utah Independent Evaluator  
Regarding PacifiCorp's All Source  
Request for Proposals*

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## **Table of Contents**

Executive Summary	2
I. Introduction .....	6
II. Background .....	9
III. Summary of the Key Provisions of the All Source RFP .....	11
IV. Role of the Independent Evaluator... .....	22
V. Positions of the Parties .....	27
VI. Discussion of Important Competitive Bidding Issues .....	39
VII. Assessment of the Contract and Related Benchmark Risk Issues .....	68
VIII. Conclusions and Recommendations .....	79

Appendix A Mark-up of Credit Requirements Sections in the RFP

Appendix B Summary of Credit Requirements in Other Bidding Processes

## **Report of the Independent Evaluator Regarding PacifiCorp's All Source RFP**

### **Executive Summary**

Merrimack Energy Group, Inc. (Merrimack Energy) was retained by the Utah Public Service Commission (Commission) to serve as Independent Evaluator (IE) for PacifiCorp's All Source Request for Proposals (RFP). One of the tasks required of the IE is to provide a written evaluation including recommendations to the Commission on approval of the proposed solicitation or modifications required for approval and the bases for the recommendations. This report is intended to meet that requirement.

The overall objective of the IE in this process is to ensure the solicitation process could reasonably be expected to be undertaken in a fair, consistent and unbiased manner. As a component of the first phase of the solicitation process (i.e. review of the RFP and related documents) the objective of the IE is to ensure the RFP will lead to a fair and equitable process and the key aspects of the RFP are consistent with industry standards. To accomplish these objectives the IE has undertaken the following activities:

- Reviewed the draft RFP documents;
- Participated in technical, bidders and stakeholders conferences prior to the development of the RFP;
- Reviewed the comments filed by all interested parties;
- Applied the "Lessons Learned" from the 2012 RFP; and
- Compiled and reviewed several recent power supply RFPs as a means of comparing the components in PacifiCorp's RFP to industry standards.

The IE has prepared its comments in three areas: (1) comments and recommendations on major issues identified by multiple parties and recognized by the IE as important to the fairness and equity of the process; (2) comments on the attached contracts, with emphasis on the Power Purchase Agreement (PPA) and the Asset Purchase and Sale Agreement (APSA) as a means of assessing the risk sharing provisions of a power purchase option versus utility ownership; and (3) comments on specific aspects of the RFP document, including suggested formatting changes and revisions/modifications designed to make the document clearer to bidders.

The IE is of the opinion that the All Source RFP is a transparent process which is designed to be fair and equitable to all bidders. While the 2012 made strides toward comparability for third-party bids and benchmarks, the playing field may not yet be level. Our report identifies options for moving toward a comparability standard along with the challenges of reaching such an objective. Our conclusion is that establishing a set of rules for comparability have a number of pros and cons but may ultimately serve to discourage some groups of bidders from participating depending on the design of the rules. We feel perhaps a better solution is to further enhance the evaluation process to identify and quantify risk and attempt to use evaluation methodologies to

account for the differences between such resources. Of note, the All Source RFP, though modeled on the 2012 RFP, makes several improvements over the 2012 RFP which should facilitate bidder participation in the process, notably the elimination of the pre-qualification process and the easing of credit requirements in the pre-qualification process. We are of the opinion that with the exception of a few contentious issues (i.e. comparability and credit), the remaining issues should be able to be resolved. If these issues can be resolved to the satisfaction of the parties, it is our view that approval of the RFP is a reasonable result.

Based on our review of the RFP and related information, the conclusions and recommendations of the IE are presented as follows:

- The All Source RFP is based largely on the 2012 RFP that was approved by the Commission in April 2007. Many of the provisions, procedures, evaluation criteria, evaluation protocols, evaluation and selection process, evaluation methodologies and models are either the same or very similar.
- The RFP is a reasonably transparent RFP, with a significant amount of information provided to bidders on which the bidders could base their proposals.
- Many of the lessons learned from the 2012 RFP process have been applied to this RFP.
- The RFP is designed to provide the same information to all bidders including the benchmark options.
- The products sought in this RFP are clearly defined and the information required for each type of resource alternative is specified in the RFP in a clear and concise manner.
- The inclusion of bid categories of base load, intermediate load, and summer peaking resources should allow for an optimal portfolio of options. We would encourage PacifiCorp to revise the peaking requirement to at least encourage bidders of new or existing peaking options to consider submitting a bid.
- The indexing mechanism should be reconsidered based on recent industry trends. The IE recommends that PacifiCorp consider offering more flexibility and indexing options to bidders and also incorporate the level and timing of the indexing mechanism proposed by each bidder in the risk assessment. The RFP would need to be revised to address this issue.
- The RFP documents clearly describe the products requested, the requirements of bidders, the evaluation and selection process, and the risk profile of the buyer. In this regard, there is sufficient information to allow bidders to assess whether or not to compete, the product of choice to bid to be most competitive, and the process by which their proposals will be evaluated.
- Several parties have raised the issue of ensuring comparability for resource evaluation, notably ensuring that utility benchmarks and third-party bids are required to compete

based on the same set of rules or on a level playing field. While the 2012 RFP moved in the direction of establishing a more level playing field, differences still remain among the options that were addressed in this report. The IE has attempted to assess how such different resources could be more effectively and efficiently evaluated on the same or similar basis. We also demonstrate the complexities associated with different model options. In response to these complexities, we have attempted to expand the provisions in the RFP and evaluation process for creating a more level playing field. We feel this issue should be discussed at the Hearing to assess if reasonable options exist for establishing a more level playing field.

- PacifiCorp has made several improvements to the credit sections of the RFP (i.e. requiring a commitment letter after selection of the final award group, establishing credit requirements for the different resource categories, etc.). However, we still feel that clarification improvements could be made and have attempted to do so in this report (See Appendix A).
- The IE recommends that the Commission require PacifiCorp to hold at least one workshop on the credit issue, and allow prospective bidders and other interested parties the opportunity to comment and propose alternative credit methodologies and options. Such a workshop would allow for a broader assessment of this issue, more input from bidders and hopefully ensure that all prospective bidders are familiar with the credit requirements or could offer suggestions to improve the requirements.
- The quantitative methodologies developed by PacifiCorp for undertaking the initial price factor evaluation (RFP Base Model) and for selecting the final short list (CEM and PaR models) are applicable for the modeling of the proposals expected in this RFP. Furthermore, the model methodology is consistent with and likely exceeds industry standards applied by others for conducting such a price and risk analysis. While the RFP Base Model may be unique to PacifiCorp, the model methodology and concept is consistent with the approaches applied by others. The portfolio evaluation and risk assessment methodologies are very detailed and are generally pertinent to the requirements of the Energy Procurement Resource Act.
- The evaluation and selection process is a comprehensive and creative process designed to evaluate the cost implications associated with different resource portfolios, the important non-price factors required in the Act that influence project viability and assesses the risk parameters associated with the portfolios.
- The IE has found that the methodologies and approach used by PacifiCorp for forecasting fuel and power forward prices are reasonable and consistent with industry standards. PacifiCorp uses actual market quotes and transactions as the basis for short-term prices for both power and fuel and blends into a long-term fundamental forecast for the mid to long-term. The use of actual quotes and transactions is a valid approach for capturing market prices in the short-term which is preferable to using the fundamental forecast for all years of the forecast period. Furthermore, the use of actual quotes serves to minimize

or eliminate any forecasting bias in the short-term based on the timing of forecast release or the failure of the forecast to account for market volatility.

- While the type of primary security required by PacifiCorp (i.e. letter of credit, guarantee, or cash) are generally consistent with the approach used by other utilities in RFP processes, the IE encourages PacifiCorp to consider these forms of security in combination with other forms in the contract negotiation process if beneficial to both parties.
- Based on our experience with the 2012 RFP, it became obvious that transmission cost and access could have an important impact on the cost of a resource option. In addition, transmission costs appear to be uncertain and potentially much higher than originally estimated. While we feel that the transmission requirements outlined by PacifiCorp in the RFP are reasonable and consistent with industry standards, we recommend that PacifiCorp Transmission hold a technical conference or workshop for bidders on the transmission requirements for this RFP as well as the plans of PacifiCorp regarding transmission expansion projects.
- The IE has conducted a thorough review of the two basic contract forms - - the PPA and the Asset Purchase and Sale Agreement (APSA). The PPA form is decidedly less favorable to Sellers than to Buyers, as performance-based contracts are designed to be. While the same may be said of the APSA form, the APSA does show more flexibility which benefits Sellers and could lower their cost of capital somewhat. Neither the PPA nor the APSA form is as favorable to Sellers as the utility cost of service approach is to the utility as seller to its ratepayers. The benchmark approach transfers risks to ratepayers and lowers the utility's cost of capital in comparison to PPA and APSA Sellers. Ratepayers have historically absorbed this risk in order to gain lower costs of capital and the prospect of cost under-runs to offset the risk of over-runs. The IE believes that the potential counterparties to the PPA and APSA contracts will propose additional revisions during the negotiation process which will reflect their self-interest and present fundamental questions to PacifiCorp whether it will accept greater risks in order to lower the cost of capital for their counterparties.

## **I. Introduction**

Merrimack Energy Group, Inc. (Merrimack Energy) was retained by the Utah Public Service Commission (Commission) to serve as Independent Evaluator for PacifiCorp's 2008 All Source Request for Proposals (RFP).<sup>1</sup> The scope of work for the assignment requires the Independent Evaluator (IE) to participate in all three phases of the solicitation process: (1) Solicitation process approval; (2) Solicitation process bid monitoring and evaluation and (3) Energy resource decision approval process. The specific tasks for the Independent Evaluator under each phase of the solicitation process are listed below. The specific tasks outlined will guide the activities of the Independent Evaluator throughout the solicitation process.

### **A. Solicitation Process Approval**

1. Review PacifiCorp's proposed solicitation process to assure it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to PacifiCorp's retail customers taking into consideration long-term and short-term impacts, risk, reliability and the financial impacts on PacifiCorp.
2. Review PacifiCorp's proposed solicitation process to assure the evaluation criteria, methods and computer models are sufficient to evaluate the benchmark option and prospective bids in a manner that is fair, unbiased and comparable, to the extent practicable, and that the evaluation tools will be sufficient to determine the best alternative for PacifiCorp's retail customers.
3. Review the adequacy, accuracy and completeness of all proposed solicitation materials including bid evaluation templates, bidding documents (i.e. RFP, Bid Form or Response Package, and the proposed Contracts), disclosure of evaluation criteria (including financial and credit requirements), methods and modeling methodology to ensure the process is fair, equitable and consistent.
4. Review and evaluate the benchmark option cost assumptions and the proposal for disclosing information about the benchmark to potential bidders.
5. Review and validate the adequacy and reasonableness of the proposed evaluation methods and any computer models used to screen and rank bids from initial screening to final resource selection (including spreadsheet screening models and production cost models). This task requires an assessment of the extent to which the evaluation methods and models are consistent with accepted industry standards and/or practices and the appropriateness of any adjustments made for debt imputation are assessed.
6. Provide a written evaluation including recommendations to the Commission regarding the results of the above tasks. Include recommendations on approval of the proposed solicitation or modifications required for approval and the bases for recommendations.

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<sup>1</sup> For future reference and based on comments from a few parties, the 2008 All Source RFP will be referred to by the IE as the All Source RFP.

7. Testify before the Commission regarding approval of the proposed solicitation, if necessary.

## **B. Solicitation Process Bid Monitoring and Evaluation**

1. Monitor all aspects of the solicitation process, including: communications between bidders and PacifiCorp; evaluation and ranking of responses; selection of the “short list” of bidders; negotiations between short list bidders and PacifiCorp; ranking of the final list of alternatives; selection of energy resource(s).
2. Participate in the pre-bid conferences.
3. Following the pre-bid conference, and before the bids are due submit a status report to the Commission and the Division noting any unresolved issues that could impair the equity or appropriateness of the solicitation process.
4. Monitor communications with bidders prior to receipt of the bids.
5. Participate in the receipt of bids.
6. Establish a webpage for information exchange between bidders and PacifiCorp.
7. Monitor all communications with bidders after receipt of bids and negotiations conducted by PacifiCorp and any bidders.
8. Audit the evaluation process and validate that evaluation criteria, methods, models and other solicitation processes have been applied as approved by the Commission and consistently and appropriately applied to all bids. Audit the bid evaluations to verify that assumptions, inputs, outputs and results are appropriate and reasonable.
9. Advise the Commission, Division and PacifiCorp of any issue that might reasonably be construed to affect the integrity of the solicitation process and provide PacifiCorp an opportunity to remedy the defect identified.
10. Periodically submit written status reports to the Commission and Division on the solicitation.
11. File a report with the Commission and Division detailing the methods and results of PacifiCorp’s initial screening evaluation of all bids. Include a description of the bids, selection criteria, and provide the basis for the selection of the short-listed bids and rationale for eliminating bids.

## **C. Participation in the Energy Resource Decision Approval Process**

1. File a detailed final report (confidential and public versions) with the Commission and provide a copy to the Division within 21 days of PacifiCorp's final ranking of bids and identification of its Energy Resource Decision.
2. Participate in any Utah technical conferences related to the Energy Resource Decision Approval Process.
3. Testify during the Energy Resource Decision Approval Process in Utah.

In addition to the Introduction, the report is presented in seven other sections. Section II provides a brief background on PacifiCorp's Draft All Source RFP. Section III describes the key provisions of the 2008 All Source Solicitation and compares the key provisions to the 2012 Base Load RFP since the structure of the RFP and solicitation process are largely modeled after the 2012 RFP. This Section also provides a listing of the "Lessons Learned" from the 2012 RFP that should be applicable to the design of the All Source RFP. Section IV lists the roles and functions of the IE in the process based on Rule R746-420. Section V provides a summary of the positions on the parties in the case as presented in the comments filed by each party. Section VI provides an overall assessment of the competitive bidding documents and process. Section VII provides a detailed discussion of major/important competitive bidding issues and suggestions/recommendations for addressing the major RFP issues. Section VIII provides a review and assessment of major contract issues, particularly the differences in contract risk considerations between a Power Purchase Agreement (PPA) and an Asset Purchase and Sale Agreement (APSA), and then contrasts the Benchmark treatment of these issues under traditional cost of service principles.<sup>2</sup> Finally, Section VIII provides our conclusions and recommendations.

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<sup>2</sup> In Merrimack Energy's report as Independent Evaluator for PacifiCorp's 2012 RFP, we focused on the risk allocation principles associated with the different contract structures included in the RFP. For the 2008 RFP Merrimack Energy reviewed the contracts to ensure there was not a major revision to contract provisions. Based on our review it appears that the contract structures have been largely left in tact from the 2012 RFP.

## **II. Background**

On December 21, 2007, PacifiCorp filed an application with the Utah Public Service Commission (Commission) requesting the Commission to open a docket in anticipation of PacifiCorp following Utah Code 54-17-101 et seq., the Energy Procurement Resource Act (the Act) to obtain what PacifiCorp characterizes as a “flexible resource for the 2012-2017 time period”. The Act contemplates that PacifiCorp will:

1. Prepare and submit, for Commission approval, a proposed solicitation process to obtain and evaluate proposals to obtain the 2012-2017 flexible resource (i.e. RFP Solicitation)
2. Solicit and evaluate proposals, given in response to the approved RFP solicitation, in order to select a proposal and obtain an energy resource contemplated by the selected proposal (i.e. Significant Energy Resource Decision)
3. Obtain Commission approval of the Significant Energy Resource Decision

PacifiCorp also requested the Commission to appoint an Independent Evaluator and conduct the All Source RFP activities contemplated and required by the Act in an expedited manner.

By Order issued on January 28, 2008 the Commission denied PacifiCorp’s request for expedited review to the extent of explicitly following the time lines contained in the Application but indicated it would proceed as expeditiously as possible as discussed in the Order.

PacifiCorp applied to issue the All Source Request for Proposals (RFP) in order to meet a resource need of up to 2,000 MW of cost effective resources consisting of Base Load, Intermediate Load, and Summer Peak resources to meet the Company’s System Position during calendar years 2012 to 2016. Capacity and energy must be either scheduled into or dispatched by PacifiCorp. In the initial draft of the RFP, the Company indicated it would not solicit for coal unless there is a change in current legislation or technology developments to materially eliminate the carbon risk. Also, intermittent resources will not be eligible.

The scope of the in draft All Source RFP is focused on system-wide, east and west control area, energy and capacity generation which is capable of delivering energy and capacity in or to the Company’s Network Transmission system. Bidders could submit proposals for any one of seven products or resource alternatives listed in the RFP plus two eligible resource exceptions (Qualifying Facility and load curtailment) in three separate bid categories (i.e. Base Load, Intermediate Load and Summer Peak – Q3 Purchases). The resource alternatives include power purchase and tolling services agreements as well as asset purchase and sale agreements on select PacifiCorp sites or on bidders’ sites and EPC options. Minimum bid size (except for resources that qualify for an exception) is 100 MW with a minimum term of 5 years.

The initial draft RFP was posted on PacifiCorp’s website on February 15, 2008. The draft RFP provided a detailed description of the resource alternatives sought by PacifiCorp, the logistics for submitting a bid including the information, forms, and schedules required with each type of

resource alternative proposed, a description of the bid evaluation process and a description of the evaluation criteria to be used to evaluate and select bids. The draft RFP contains eight Appendices and twenty five Attachments, including applicable contractual agreements. In addition, there are Forms in the document for bidders to fill out and submit with their proposal. Finally, the draft RFP contains a Code of Conduct and a description of the role of the Independent Evaluator in the bidding process. The Draft RFP was modeled on the basis of the 2012 RFP, with a number of revisions to reflect lessons learned in the 2012 RFP process.

Since the All Source RFP process was initiated, PacifiCorp has held two technical conferences, one in Utah and the other in Oregon to describe the RFP process and schedule going forward. In addition, comments were filed by interested parties in Utah and Oregon on March 21, 2008. On March 28, PacifiCorp filed comments in response to the comments filed by other interested parties and also submitted a revised Final Draft All Source Request for Proposal (RFP).

The All Source RFP is the fourth RFP for conventional supply-side resources developed by PacifiCorp over the past five years. The draft All Source RFP is being initiated at the same time that PacifiCorp is proceeding with negotiations with Bidders who submitted proposals in response to the 2012 RFP. Several of the “lessons learned” from the 2012 RFP were incorporated into the 2008 RFP. In addition, this report will highlight these experiences from the IE’s perspective and will be included in our comments on the RFP itself.

In addition to these comments we also provide a red-lined copy of the credit sections from the RFP to reflect our comments on specific wording changes or clarification of selected sections of the RFP.

All comments are designed to comply with the Act and Rules R746-420.

### **III. Summary of the Key Provisions of the All Source RFP**

This Chapter of the Report will provide a high level description of the RFP, including a comparison between the requirements of the 2012 RFP and the 2008 All Source RFP. In addition, the “Lessons Learned” from our perspective as Independent Evaluator for the 2012 Base Load RFP are described in this Section of the Report. The “Lessons Learned” are distinguished as both positive and negative for purposes of assessing the development and implementation of the 2008 All Source RFP.

#### **A. Comparison of the Key Provisions From the All Source RFP and the 2012 Base Load RFP**

For purposes of providing a comparison between the key provisions of each RFP, Exhibit 1 lists the key provisions in both RFPs, highlighting the differences between the two documents by category.

**Exhibit 1**

#### **Comparison of the All Source and 2012 RFPs**

<b>RFP Characteristics</b>	<b>All Source RFP</b>	<b>2012 RFP</b>
Resource Requirements	PacifiCorp is seeking up to 2,000 MW of cost effective resources to meet system needs during the 2012-2016 timeframe	PacifiCorp is seeking up to 1,700 MW of cost effective Base Load resources for delivery in 2012, 2013 and/or 2014.
Resource Timing	PacifiCorp is seeking resources with an in-service date of either June 1, 2012, June 1, 2013, June 1, 2014, June 1, 2015 and/or June 1, 2016.	PacifiCorp is seeking resources with an in-service date of either June 1, 2012, June 1, 2013 and/or June 1, 2014.
Eligibility	This RFP is seeking capacity and energy for Base Load, Intermediate Load and Summer Peak (Q3) purchases. Coal and intermittent resources were originally not eligible to bid. All energy and capacity resources must provide unit contingent or firm resource capacity and associated energy incremental to the Company’s existing resources.  In addition, unless a resource qualifies for one of the	This RFP is seeking capacity and energy from a base load resource. Any base load resource must provide unit contingent or firm capacity and associated energy that are incremental to the Company’s existing capacity and energy resources and are available for dispatch or scheduling.  In addition, unless a resource qualifies for one of the exceptions, the minimum bid that will be accepted is for

	exceptions, the minimum bid is for 100 MW or greater and a minimum term of 5 years.	100 MW or greater of dependable capacity and a minimum term of five (5) years.
Bid Categories	Bid categories include Base Load (i.e. 60% capacity factor and a heat rate between 6,900 to 8,870); Intermediate Load (20-60% capacity factor and heat rate between 8,870-11,500); and Summer peak (i.e. July-September from 7 am to 11 pm)	Since the RFP was seeking base load resources there were no bid categories.
Resource Alternatives	<p>Resource Alternatives include:</p> <ul style="list-style-type: none"> <li>(1) Power Purchase Agreement (may include geothermal or biomass);</li> <li>(2) Tolling Service Agreement;</li> <li>(3) Asset Purchase and Sale Agreement (PacifiCorp site and specifications);</li> <li>(4) Asset Purchase and Sale Agreement (Bidder site);</li> <li>(5) Purchase of an Existing Facility;</li> <li>(6) Purchase of a Portion of a facility jointly owned or operated by the Company;</li> <li>(7) Restructuring of an Existing PPA or Exchange Agreement or</li> <li>(8) Exceptions which include (a) Load Curtailment or (b) QF.</li> </ul> <p>PPAs and TSAs could also be bid on one of PacifiCorp's identified sites.</p> <p>PacifiCorp indicated based on comments that it will allow bids from geothermal and biomass resources with a capacity of 10 MW or greater. These options are included as third "exception".</p>	<p>Resource Alternatives include:</p> <ul style="list-style-type: none"> <li>(1) Power Purchase Agreement;</li> <li>(2) Tolling Service Agreement (may include gas or coal);</li> <li>(3) Asset Purchase and Sale Agreement (PacifiCorp site and specifications);</li> <li>(4) Asset Purchase and Sale Agreement (Bidder site);</li> <li>(5) Engineering, Procurement and Construction Contract (Currant Creek site only);</li> <li>(6) Purchase of an Existing Facility;</li> <li>(7) Purchase of a Portion of a facility jointly owned or operated by the Company;</li> <li>(8) Restructuring of an Existing PPA or Exchange Agreement;</li> <li>(9) IGCC resource proposals (PPA, TSA or APSA on Bidder's site);</li> <li>(10) Geothermal or Biomass PPA or</li> <li>(11) Exceptions which include (a) Load Curtailment or (b) QF.</li> </ul>
Bid Alternatives	Bidders are allowed to offer a base proposal and up to two	Bidders are allowed to offer a base proposal and up to two

	<p>alternatives for the same bid fee. Alternatives are limited to different bid sizes, contract terms, pollution control technology, water cooling technology, in-service dates, and/or pricing structures. Bidders will also be allowed to offer up to three additional alternatives at a fee of \$1,000 each.</p>	<p>alternatives for the same bid fee. Alternatives are limited to different bid sizes, contract terms, pollution control technology, water cooling technology, in-service dates, carbon capture design components, in-service date and/or pricing structures. Bidders will also be allowed to offer up to three additional alternatives at a fee of \$1,000 each.</p>
Bidding Process	<p>The Company will conduct a two stage process. In the first stage, the bidder must submit the “Intent to Bid Form”. The Intent to Bid Form includes responses to the information requested in Appendices A and B. In the second stage, bidders are required to submit their proposals and respond to the requirements for the type of resource alternative they are proposing. All bidders must submit the Form 1 Pricing Input Sheets.</p>	<p>The Company will conduct a two stage process. In the first stage, the bidder must submit a “Request for Qualification (RFQ) Bid Form”. The Intent to Bid Form includes responses to the information requested in Appendices A and B. Bidders that are pre-qualified are allowed to submit a proposal. In the second stage, bidders are required to submit their proposals and respond to the requirements for the type of resource alternative they are proposing. All bidders must submit the Form 1 Pricing Input Sheets.</p>
Utility Bid Options	<p>In this RFP, PacifiCorp originally proposes that the Company will not propose benchmark resources; however, the Company’s generation group will submit the Company’s Self-Build options subject to the same requirements as a third-party bidder. Any self-build options will be blinded and will be evaluated with the other third-party blinded proposals.</p>	<p>PacifiCorp proposed three Benchmark resource options, all of which were coal projects:</p> <ul style="list-style-type: none"> <li>• IPP3</li> <li>• Bridger Pulverized Coal project</li> <li>• Bridger IGCC</li> </ul>

	After receiving comments from interested parties, PacifiCorp proposed to offer Benchmarks as in the 2012 RFP rather than submit self-build options.	
Price Evaluation Process	PacifiCorp proposes a multi-stage price evaluation process. The original proposal was for exactly the same pricing metric as in the previous RFP. However, based on comments from the Division, PacifiCorp decided to offer a revised metric. In the first stage, all bids will be evaluated using the RFP Base Model. Price will account for a 70% weight. The comparison metric will be the projected net present value revenue requirement per kW month. Bids with a price less than 80% of the adjusted price projection will receive all the points (70%); Bids with a price greater than 120% of the adjusted price projection will receive 0%; Bids with a price greater than 80% but less than 120% of the adjusted price will be awarded percentages based on linear interpolation.	PacifiCorp proposed a multi-stage price evaluation process. In the first stage, all bids will be evaluated using the RFP Base Model. Price will account for a 70% weight. The comparison metric will be the projected net present value revenue requirement per kW month. Bids with a price less than 80% of the adjusted price projection will receive all the points (70%); Bids with a price greater than 120% of the adjusted price projection will receive 0%; Bids with a price greater than 80% but less than 120% of the adjusted price will be awarded percentages based on linear interpolation.
Non-Price Evaluation	In Step 1 of the evaluation process, price and non-price weights are combined to select the short list within each resource Category. The non-price characteristics include Development Feasibility/Risk, Site Control and Permitting, and Operational Viability/Risk Impacts	In Step 1 of the evaluation process, price and non-price weights are combined to select the short list within each resource Category. The non-price characteristics include Development Feasibility/Risk, Site Control and Permitting, and Operational Viability/Risk Impacts
Detailed Evaluation	PacifiCorp intends to subject the short listed bidders to a	PacifiCorp intends to subject the short listed bidders to a

	<p>detailed price/risk evaluation in three remaining steps. In Step 2 PacifiCorp will use the CEM model to develop optimized portfolios under various assumptions for future emission levels and market prices. In Step 3a, PacifiCorp will use the PaR model in stochastic mode to develop expected PVRR and tail risk PVRR measures for the optimal portfolios developed from Step 2. In Step 3b, PacifiCorp will subject the optimal portfolios to a more in-depth deterministic dispatch model using CEM with each portfolio being assessed for each of the future scenarios described in Step 2 above.</p>	<p>detailed price/risk evaluation in three remaining steps. In Step 2 PacifiCorp will use the CEM model to develop optimized portfolios under various assumptions for future emission levels and market prices. In Step 3a, PacifiCorp will use the PaR model in stochastic mode to develop expected PVRR and tail risk PVRR measures for the optimal portfolios developed from Step 2. In Step 3b, PacifiCorp will subject the optimal portfolios to a more in-depth deterministic dispatch model using CEM with each portfolio being assessed for each of the future scenarios described in Step 2 above.</p>
Pricing Mechanism	<p>Bidders are allowed to index their capacity price and capital cost to variable indices. Bidders must provide a minimum of 60% of the capacity charge or capital cost as fixed and may index 40%. A maximum of up to 25% may be indexed to the Consumer Price Index and 15% to the PPI – Metals and Metal Products. The bidders will be allowed to index from the time of bid submission or contract execution until the earlier of the time the Bidder executes the EPC Agreement or the Bidder achieves project financing.</p>	<p>Bidders are allowed to index their capacity price and capital cost to variable indices. Bidders must provide a minimum of 60% of the capacity charge or capital cost as fixed and may index 40%. A maximum of up to 25% may be indexed to the Consumer Price Index and 15% to the PPI – Metals and Metal Products. The bidders will be allowed to index from the time of bid submission or contract execution until the earlier of the time the Bidder executes the EPC Agreement or the Bidder achieves project financing.</p>
Bid Blinding	<p>PacifiCorp originally included the same blinding requirements for the proposals received. However, based on comments PacifiCorp has removed the</p>	<p>All bid proposals must be “blinded” and shall not include identifying information about the Bidder. Bidders are required to submit</p>

	blinding requirements.	their proposals using only the bid number provided by the IE.
Credit Requirements	<p>PacifiCorp provides Attachment 21: Credit Methodology. The credit methodology is based on the Base Load Bid category. Credit requirements for the other two categories will be determined based on a percentage of the amount contained in the credit matrix. Credit requirements are distinguished by asset backed and non-asset backed agreements. In addition, security amounts are established by credit rating and bid size. The schedule for posting credit for the selected project is listed in the Attachment with 100% of the security required 24 months after the effective date of the contract.</p> <p>The Company will require each bidder to satisfy the specific qualification, credit and capability requirements 20 business days after the Bidder is notified by the Company that the bidder has been selected for the final short list.</p>	<p>PacifiCorp provides Attachment 21: Credit Methodology. The credit methodology is based on the Base Load Bid category. Credit requirements are distinguished by asset backed and non-asset backed agreements. In addition, security amounts are established by credit rating and bid size. The schedule for posting credit for the selected project is listed in the Attachment with 100% of the security required 24 months after the effective date of the contract.</p> <p>The Company required each bidder to satisfy the specific qualification, credit and capability requirements during the pre-qualification stage. Bidders who did not meet these requirements would not be eligible to submit a bid.</p>
Transmission	<p>The Company is interested in resources that are capable of delivery into or in a portion of the Company's network transmission system in PACE or PACW. Specific delivery points of primary interest to PacifiCorp are identified. Bidders will bear 100% of the costs to interconnect to PacifiCorp's transmission</p>	<p>The Company is interested in resources that are capable of delivery into or in a portion of the Company's network transmission system in PACE. Specific delivery points of primary interest to PacifiCorp are identified. Bidders will bear 100% of the costs to interconnect to PacifiCorp's transmission system. Bidders</p>

	<p>system. Bidders are responsible for any costs on third party transmission systems necessary to deliver the power to the PacifiCorp system.</p> <p>Attachment 13 is included which provides proxy costs to integrate resources into the system. PacifiCorp has added delivery points to reflect the request for delivery of power into the western part of the Company's system.</p>	<p>are responsible for any costs on third party transmission systems necessary to deliver the power to the PacifiCorp system.</p> <p>Attachment 13 is included which provides proxy costs to integrate resources into the system.</p>
Accounting Issues	<p>With respect to Variable Interest Entity treatment, the Company is unwilling to be subject to accounting or tax treatment that results from VIE treatment.</p> <p>To the extent that PacifiCorp rejects a proposal submitted in this RFP because it triggers VIE treatment, PacifiCorp shall provide documentation to the IEs justifying the basis for the decision.</p>	<p>With respect to Variable Interest Entity treatment, the Company is unwilling to be subject to accounting or tax treatment that results from VIE treatment.</p> <p>To the extent that PacifiCorp rejects a proposal submitted in this RFP because it triggers VIE treatment, PacifiCorp shall provide documentation to the IEs justifying the basis for the decision.</p>
Imputed Debt	<p>PacifiCorp will not take into account potential costs to the Company associated with direct or inferred debt as part of the economic analysis in the initial or final shortlist evaluation. The Company may take imputed debt costs into account when seeking acknowledgement or cost recovery for the resource selected. The Company will bear the burden to demonstrate to the satisfaction of its regulators the validity, magnitude and impacts of any such projected costs. At the</p>	<p>PacifiCorp will not take into account potential costs to the Company associated with direct or inferred debt as part of the economic analysis in the initial or final shortlist evaluation. The Company may take imputed debt costs into account when seeking acknowledgement or cost recovery for the resource selected. The Company will bear the burden to demonstrate to the satisfaction of its regulators the validity, magnitude and impacts of any such projected costs. At the</p>

	request of each Commission (Utah and Oregon) PacifiCorp will be required to obtain a written advisory opinion from a rating agency to substantiate the utility's analysis and final decision regarding direct or inferred debt.	request of each Commission (Utah and Oregon) PacifiCorp will be required to obtain a written advisory opinion from a rating agency to substantiate the utility's analysis and final decision regarding direct or inferred debt.
Code of Conduct	A Code of Conduct is included as Attachment 20 to the RFP.	A Code of Conduct is included as Attachment 20 to the RFP.
Benchmark Bids	The Company originally proposed to submit self-build proposals into the RFP rather than Benchmarks. However, the Company will now submit benchmarks.	The Company submitted Benchmark resources in response to the RFP.
Role of the IE	Attachment 4 to the RFP describes the role of the IE in the process.	Attachment 4 to the RFP describes the role of the IE in the process.
Contracts	The Company provides a sample PPA, TSA, and APSA Agreement	The Company provides a sample PPA, TSA, EPC contract, APSA
Information Required of Bidders	The RFP contains a matrix that identifies the information requirements for each resource alternative.	The RFP contains a matrix that identifies the information requirements for each resource alternative.
Schedule	A detailed expedited schedule is provided in the RFP	A schedule is provided in the RFP.

## **B. Lessons Learned from 2012 Base Load RFP**

There were a number of lessons learned, both positive and negative, from the 2012 RFP that are applicable to the 2008 All Source RFP. Certainly, the objective should be to maintain the positive aspects of the 2012 RFP and attempt to improve on or revise the negative aspects of the RFP. It is also important to note that the power market has undergone a number of changes since the development and issuance of the 2012 RFP. To meet the goals of developing a process that will lead to workable competition, a fair and reasonably transparent process and ultimate benefits for customers, the lessons learned from those market changes need to be considered in addition to the lessons learned from the 2012 RFP.

### **Positive Aspects of 2012 RFP**

- The RFP documents were generally transparent, comprehensive and effective in describing the overall competitive bidding process and the requirements of bidders.

- Bidders and other interested parties had the opportunity to comment on the RFP, contracts and related documents. PacifiCorp made changes to the documents based on comments filed by the interested parties and the IEs prior to issuance of the final RFP.
- All bidders were treated the same and provided access to the same information, including both third-party bidders and the benchmark team. The PacifiCorp management team was very effective in providing consistent information to all bidders even during individual conference calls with bidders.
- We were not able to identify any violations of PacifiCorp's Code of Conduct. The Company appeared to diligently follow the Code of Conduct and did not deviate from the requirements.
- The Bid Pricing Input Sheets (Form 1) were clear and transparent and led to consistent information provided by all bidders. PacifiCorp's efforts also to offer a workshop with bidders to review and explain the Pricing Input Sheets was a positive step for ensuring that bidders fully understood the information they were asked to provide.
- PacifiCorp offered a range of proposal alternatives which allowed bidders to structure their proposals to take maximum advantage of their capabilities and project characteristics. The definitions of the products and the information required from bidders for each alternative were clearly described and defined in the RFP. None of the bidders raised any issues with regard to the information required in the RFP, with the exception of credit requirements.
- PacifiCorp offered their own sites to Bidders which provided several options for bidders to consider in structuring their proposals.
- The Bid evaluation models and methodologies are very applicable for the cost and risk analysis undertaken by PacifiCorp. In particular, the models and methodology underlying the Step 1, Step 2 and Step 3 analyses are state of the art and provide very comprehensive and complete evaluation results.
- The price evaluation methodology effectively addressed overall cost, uncertainty, and risk. The risk assessment process, which evaluated multiple risks with stochastic and scenario analysis including gas and electricity prices, CO2 emission costs, and the impacts of hydro generation, load and thermal outages led to the selection of a robust set of portfolios.
- While the IEs did not have access to the models themselves, PacifiCorp set up a separate website which contained the model results for the bid evaluation along with the Benchmarks and input assumptions. This allowed the IEs to access the model results at any time and to seek clarification of the results if required.

- PacifiCorp management was generally consistent in following the process established in the RFP. Deviations from the process suggested by the IEs were generally accepted. These included holding a workshop for bidders to explain the credit requirements prior to receipt of proposals, holding conference calls with bidders as necessary, providing bidders with bid numbers even though the bidders had not been pre-qualified.
- The Term Sheet process is an excellent step to ensure that the Company fully understands the elements of the bidders' proposal.
- All bids were evaluated using the same input assumptions and evaluation methodology. In addition, the IRP and RFP were closely linked, with generally the same assumptions and modeling methodologies used for both processes.
- The blinding of the questions and answers from bidders prior to bid submission was effective in encouraging bidders to ask questions without identifying their affiliation.
- The IRP group and quantitative analysis groups within PacifiCorp were thorough and responsive in completing the analysis over a very short timeframe. The members of this group were always able to provide thorough responses and explanations of the results and basis for the analysis.
- The RFP took several important steps in the right direction in moving toward comparability for third-party power purchase agreements and cost of service options.
- PacifiCorp made significant strides in developing a credit methodology, credit support amounts and a security posting schedule that leads to credit requirements that are consistent with industry standards and offer some flexibility to bidders.
- PacifiCorp's decision to address imputed debt impacts at the final bid selection phase of the process rather than in the initial evaluation phase is a positive step for encouraging third-party bidder participation.
- The information provided for the Benchmark resource options was totally consistent with the information required of third-party bids. This led to a reasonably consistent evaluation based on the same level of information provided by all bidders.

### **Negative Aspects of the 2012 RFP**

- PacifiCorp's insistence on maintaining the credit requirements for bidders associated with securing a commitment letter from a guarantor during the pre-qualification stage of the process even after comments from the bidders and the IEs to the contrary certainly delayed the bid evaluation process and may have discouraged bidder participation in the 2012 RFP and possibly participation in future RFP processes.
- Most bidders were not proactively involved in the RFP development process and did not submit comments on the process or documents. For the process to be effective and to

reflect market requirements, we encourage more involvement from bidders or industry associations to identify issues with the documents and process in advance of issuance of the final RFP.

- The RFP document contained some inconsistencies with regard to the credit requirements and may have been confusing to bidders. For example, there were references to both a comfort letter and commitment letter in the RFP. Also, the RFP continued to confuse bidders even after the pre-bid workshop since there were “either/or” statements that made bidders believe that the amount of credit required could be determined by looking in the Credit Matrix a single time to see what was applicable to their creditworthy guarantors, even though the bidder itself was not creditworthy.
- The Step 1 evaluation was not completed as outlined in the RFP. The non-price evaluation was not completed and the price evaluation did not include the analysis of the benchmarks. Furthermore, the IE’s concerns at the beginning regarding the rigid range of price relationships for awarding price scores in Step 1<sup>3</sup> were realized since all bids were higher cost than the Company’s forward curve. Fortunately the process was moot since all bids were included on the short-list.
- The blinding of bids by the IEs proved to be time consuming without much value to the process. In fact, it was our view that members of the PacifiCorp evaluation team could probably identify the projects and their sponsors based on the location, size, etc.
- In our view, while a few bidders mentioned that indexing of capacity and capital costs has some value, the limited application of the indices does not meet the specific cost components that are of most concern to bidders. Bidders expect project costs, including equipment and EPC costs to continue to increase, with EPC contractors unlikely to offer a fixed price proposal in the early stages of the bidding process, if at all. Some bidders expressed difficulty when competing for the same contractors who were negotiating with utility projects at the time. Such bidders suggested that contractors were attracted to the more flexible pricing arrangements they might be able to negotiate with utilities which had more freedom to seek cost of service recovery for price changes.
- The large increase in transmission costs calculated by PacifiCorp Transmission after receipt of the bids (based on proposed delivery points) proved troubling and could have a significant impact on project costs. The basis for such an increase, as discussed by PacifiCorp Transmission with the IE’s, needs further scrutiny.
- The delay in the process during the August-September 2007 timeframe and the request of PacifiCorp to offer new benchmarks could send a negative message to the market. We have seen in other RFP processes that Bidders are most confident about the process when the utility follows its schedule and is generally responsive to bidder issues.

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<sup>3</sup> We had suggested in comments with regard to the development of the 2012 RFP that it had been our experience with rigid, pre-determined price ranges that often bids can fall outside the range and non-price scores will therefore dominate the scores to each project. That proved to be the case for the 2012 RFP. The IE previously suggested recalibrating the range after the receipt and evaluation of the bids if necessary.

## **IV. Role and Approach of the Independent Evaluator**

### **A. Requirements for an Independent Evaluator**

Rule R746-420, Request for Approval of a Solicitation Process provides a detailed description of the role of the Independent Evaluator (IE), the required qualifications for the Independent Evaluator, payments to the Independent Evaluator and the functions of the Independent Evaluator. The list of activities and functions of the Independent Evaluator as outlined in Rule R746-420 provide the overriding requirements for the Independent Evaluation in the solicitation process. This Chapter will list the functions and requirements for purposes of identifying the duties and roles of the IE throughout this process.

### **B. Activities of the Independent Evaluator**

The overall objective of the Independent Evaluator is to ensure the solicitation process could reasonably be expected to be undertaken in a fair and consistent manner. On a high level basis, specific objectives include the following:

- Identify any potential undue biases in the evaluation criteria, evaluation and selection process, and contractual arrangements.
- Assess whether the RFP and related documents will lead to a fair and equitable competitive bidding process.
- Assess whether the components of the process conform to accepted industry standards.
- Assess the likelihood the process will conform to the characteristics of an effective competitive bidding process.
- Determine whether or not the proposed RFP documents and associated attachments provide adequate and consistent information on which bidders can adequately prepare their proposals.

To accomplish these objectives the Independent Evaluator has reviewed the RFP documentation in detail, and reviewed and evaluated the attached contracts and other arrangements. In addition, the IE has reviewed and assessed the evaluation criteria used to assess bids at all stages of the process, the models and methodologies underlying the pricing assessment, the evaluation and selection process and the overall process for bid evaluation, selection and contract negotiations. These models and methodologies are largely consistent with the models, methodologies and processes used in the previous RFP process.

### **C. Scope of Work of the Independent Evaluator**

PacifiCorp has included Attachment 4 (Role and Function of the Independent Evaluators and Communication Protocols) in the RFP, which describes the roles for the Independent Evaluators. The role of the Independent Evaluator as described by PacifiCorp is consistent with the

requirements for the IE listed in the Utah Energy Resource Procurement Act and Rule R746-420. Any differences are highlighted in this section. The four major functional areas for the IEs as listed in Attachment 4 include:

1. Overall role and function of the Independent Evaluator
2. The manner in which communications between the IEs, the Company and the Bidders should be conducted
3. Reporting process for the Independent Evaluators
4. Communications between the Evaluation Team and the Company Self-Build Team

The scope of work is consistent with Rule R746-420 implementing S.B. 26. A brief summary of the roles identified by PacifiCorp include:

#### **D. Roles and Functions of the Independent Evaluators**

- Facilitate and monitor communications between the soliciting utility and bidders.
- Review and validate the assumptions and calculations of any Benchmark Option.
- Analyze the Benchmark Option for reasonableness and consistency with the solicitation process.
- Access all important models to validate modeling techniques, assumptions, inputs and bid evaluation by the soliciting utility in the solicitation process.
- Receive and blind bid responses.
- Provide input to the soliciting utility on aspects of the competitive bidding process, including (1) development of screening and evaluation criteria, ranking factors, and evaluation methodologies that are reasonably designed to ensure that the solicitation process is fair, reasonable, and in the public interest in preparing a solicitation and in evaluating bids; (2) the development of initial screening and evaluation criteria that take into consideration the assumptions included in the soliciting utility's most recent IRP, any recently filed IRP update, any Commission Order on the IRP or IRP update and in its Benchmark options; (3) whether a bidder has met the criteria specified in any RFQ and whether to reject or accept non-conforming RFQ responses; (4) whether and when data and information should be distributed to bidders because it is necessary to facilitate a fair and reasonable competitive bidding process or has been reasonably requested by bidders; (5) negotiations of proposed contracts with successful bidders; and (6) other matters as appropriate in performing the duties of the Independent Evaluator under the Act and Commission rules, or as directed by the Commission.
- Ensure that all bids are treated in a fair and non-discriminatory manner.
- Monitor, observe, validate and offer feedback to the Soliciting Utility, Commission and Division on all aspects of the solicitation process, including (1) content of the solicitation; (2) evaluation and ranking of bid responses; (3) creation of the short list, post bid discussions and negotiations, and (4) negotiations of the proposed contracts with successful bidders.

- Evaluate the unique risks and advantages associated with any Company Self-Build bid, including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.
- Once the competing bids have been evaluated by the Soliciting Utility and IEs, the Soliciting Utility and the IEs will compare results.
- Offer feedback to the Soliciting Utility on possible adjustments to the scope or nature of the solicitation or requested resources in light of bid responses received.
- Solicit additional information on Bids necessary for screening and evaluation purposes.
- Advise the Commission of any unresolved disputes or concerns at all stages of the process that could affect the integrity of the process.
- Analyze and attempt to mediate any disputes between the utility and bidders and present recommendations to the Commission for resolution of unresolved disputes to the Commission.
- Participate in and testify at Commission hearings on approval of the solicitation process and/or acknowledgement of the short list.
- Coordinate as appropriate and as directed by the Commission with staff or evaluators designated by regulatory authorities from other states served by the soliciting utility.
- Perform such other tasks as the Commission may direct.

#### **E. Manner of Communication Between the IEs, the Company and the Bidders**

- The soliciting utility may not communicate with any bidder regarding the solicitation process, the content of the solicitation or solicitation documents, or the substance of any potential response by a bidder to the solicitation, except through or in the presence of the IEs.
- The soliciting utility shall provide timely and accurate responses to any request from the IEs, including requests from Bidders submitted by the IEs, for information regarding any aspect of the solicitation or the solicitation process.
- Communications between a soliciting utility and potential or actual bidders shall be conducted only through or in the presence of the Independent Evaluator. Bidder questions and soliciting utility or IE responses shall be posted on an appropriate website. The IE shall protect or redact competitively sensitive information from such questions or responses to the extent necessary.

#### **G. Reporting by the IE**

The IE shall prepare at least the following confidential reports and provide them to the Regulators and the soliciting utility:

- Monthly progress reports on all aspects of the solicitation process as it progresses.
- Final Report as soon as possible following the completion of the solicitation process. Final reports shall include analyses of the solicitation, the solicitation process, the soliciting utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest.
- Other reports the IE deems appropriate, and

- Other reports as the Commission may direct.

The IE shall prepare at least the following public reports and provide them to the Commission, interested parties and the soliciting utility:

- Final Report, without confidential information, analyzing the solicitation, the solicitation process, the soliciting utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest.
- Comments and recommendations with respect to changes or improvements for a future solicitation process.
- Other reports as the Commission may direct.

## **H. Communications Between the Evaluation Team and Company Self-Build**

- The Evaluation Team, including the non-blinded personnel, may not be members of the Company Self-Build Team, nor communicate with members of the team during the solicitation process.
- The exception is that internal company attorneys and credit analysis personnel may deliver legal or credit advice, as applicable, to either or both teams.
- The IEs must participate in any communications between members of the Company Self-Build Team and the Evaluation Team and must retain a copy of all such correspondence to be made available in further Commission proceedings.
- There shall be no communications regarding the blinded bid information between the non-blinded personnel and other evaluation team members until the final short list is determined, which communication shall be done in the presence of the IE.
- The Evaluation Team shall have no direct or indirect contact or communication with any Bidder other than through the IE until such time as a final shortlist is selected by the soliciting utility.
- Should any Bidder or a member of the Company Self-build team attempt to contact a member of the Evaluation Team, such Bidder or member of the Company Self-Build Team shall be directed to the IE for all information and such communication shall promptly be reported to the IE by the Evaluation Team.

Attachment 4 contains additional requirements which include:

- Provide input to the soliciting utility on:
  - The development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the solicitation process is fair, reasonable and in the public interest in preparing a solicitation and in evaluating bids;
  - The development of initial screening and evaluation criteria that take into consideration the assumptions included in the soliciting utility's most recent IRP, any recently filed IRP update, any Commission Order on the IRP or IRP update and its Benchmark option;

- Whether a bidder has met the criteria specified in any RFQ and whether to reject or accept non-conforming RFQ responses;
  - Whether and when data and information should be distributed to bidders because it is necessary to facilitate a fair and reasonable competitive bidding process or has been reasonably requested by bidders;
  - Whether to reject non-conforming bids or accept conforming changes.
- Upon advance notice to the soliciting utility, the IE may conduct meetings with intervenors during the solicitation process to the extent determined by the IE or as directed by the Commission.
- If at any time the IE becomes aware of any violation of any requirements of the solicitation process or Commission rules, the IE shall immediately notify the soliciting utility and the Commission. The IE shall report any actions taken by the soliciting utility and any other recommended remedies to the Commission.
- The IE shall document all substantive correspondence and communications with the soliciting utility and bidders, shall make such documentation available to parties in any relevant proceedings upon proper request and subject to the terms of a protective order if the request contains or pertains to confidential information.

## **V. Positions of the Parties**

As noted, interested parties were allowed to submit comments regarding the RFP by March 21, 2008. Comments on the draft RFP were filed on or around the due date by the Division of Public Utilities, Western Resource Advocates, Utah Association of Energy Users (UAE), the Committee of Consumer Services, and LS Power. In addition, PacifiCorp provided its comments in response on March 28, 2008. A summary of the comments and positions of each party is provided below.

### **Division of Public Utilities**

The Division of Public Utilities focused its comments on several areas associated with the draft RFP: These included (1) Bid categories; (2) Resource flexibility; (3) Submission of Self-Build Proposals; (4) Number of bids submitted; (5) Blinding of bids; (6) Schedule; (7) Proposal options; (8) Flexibility of proposals; (9) Indexing; (10) Term sheets; (11) Transmission assessment; (12) Price evaluation; (13) Benchmarks vs Self-Build options; (14) Credit; (15) Schedule. The positions and recommendations of the Division with regard to each of the above issues are summarized below.

#### **Bid Categories**

The Division agrees with PacifiCorp's revisions to the bid categories in this RFP to Base Load, Intermediate Load, and Summer Peak resources in the screening process to establish the short list.

#### **Resource Flexibility**

The Division does not agree with the exclusion of coal resources as eligible options. The Division believes that for an RFP to be an "All Source RFP", all energy resources, including coal, should be considered. In addition, for the Company to demonstrate through its RFP evaluation that it has selected the least-cost least-risk resources, coal should be eligible. The Division is not opposed to excluding intermittent resources, since these resources would be eligible in a renewable RFP. The Division also recommends that a 100 MW minimum bid size for biomass and geothermal is not reasonable, and instead recommends a 10 MW minimum.

#### **Submission of Self-Build Proposals**

The Division recommends that Self-Build proposals be submitted to the Independent Evaluators one day in advance of other bids and such language needs to be included in the RFP.

#### **Number of Bid Submitted**

The Division notes that the required submission of 10 bids to each of the IE's is a burden on bidders. Instead, the Division recommends that 5 hard copies of the bids should be submitted to each IE.

## **Blinding of Bids**

The Division questions the value of “blinding” bids, however, the Division will accept the positions of the Company and the other parties on the blinding of bids.

## **Schedule**

Based on the experiences with the 2012 RFP, the Division is concerned that a 45-day period to complete the evaluation is too short and suggests that a 60-day period may be more realistic.

## **Proposal Options**

The Division supports the Company’s proposal to allow a base bid and two alternatives for the base bid fee. In addition, the Division recommends that the Company allow bidders to offer different prices for different security requirements to assess what the cost of security really adds to the bid price. The Division supports the Company’s objectives to optimize the benefit from the solicitation by combining proposals of different sizes, terms, and in-service dates.

## **Flexibility of Proposals**

The Division suggests that specific milestones for establishing in-service date deferral, acceleration, and buyout options should be specifically addressed in the RFP rather than allowing for pricing for all milestones established in Form 2. The Division suggests that bidders may respond with pricing if specific milestones are identified.

## **Indexing**

The Division recommends allowing bidders to index 60% of their price and maintain fixed pricing for 40% of their price, in contrast to the 40% index limit in the previous RFP. In addition, the Division suggests that the bidders should have the opportunity to suggest alternative indices in alternative bids. In this case, the Company and IE would determine if the index proposed would be accepted. This recommendation would provide bidders with more flexibility to link prices to their cost structure.

## **Term Sheets**

The RFP makes no mention of the development of term sheets after receipt of bids as initiated by PacifiCorp in the previous RFP. The Division recommends that the Company should commit to bidders to develop term sheets shortly after receipt of bids.

## **Transmission Assessment**

The Division notes that one of the lessons learned in the previous RFP was that transmission costs had a major impact on the evaluation results. The transmission cost estimates included in the original and revised Attachment 13 were significantly higher in the revised version. The Division recommends that the IE meet with PacifiCorp Transmission to ensure a full

understanding of how transmission cost estimates are developed. In addition, the Company should provide more information in the RFP about its transmission plans in order to guide bidders on possible resource options and locations.

### **Price Evaluation**

The Division is concerned with several issues with regard to the modeling methodology. First, the price metric in Step 1 of the process needs to be more flexible to ensure that the price and non-price weighting are maintained. Second, the Company needs to clarify whether Tail Risk or Risk Adjusted PVRR will be used as the risk metric in the evaluation and selection process.

### **Benchmarks vs Self-Build Options**

The Division identifies a benefit associated with PacifiCorp offering a self-build option bid like all other proposals as opposed to identifying benchmark options. However, the Division does not advocate one option over another.

### **Credit**

The Division recognized that credit was a key issue in the previous RFP and although the Company has attempted to ease the credit issue, the Division still believes that credit is not completely addressed. However, the Division defers to the IE with regard to comments for addressing credit.

### **Schedule**

The Division recommends that the Company, before bids are received, develop a consistent policy for granting time extensions, if any to bidders, in light of the significant delays in the previous process.

Finally, the Division recommends changing the title of the RFP from 2008 All Source RFP to 2017 All Source RFP to avoid confusion since the last RFP was entitled 2012 Base Load RFP.

## **Western Resource Advocates (WRA)**

The comments of Western Resource Advocates focus on two areas: (1) resource options and environmental requirements and (2) revisions to the evaluation criteria and evaluation process.

With regard to the RFP, the comments of Western Resource Advocates are as follows:

### **Resource Options**

WRA agrees that PacifiCorp's restrictions to exclude coal and intermittent resources are generally appropriate. WRA stated that it appreciates PacifiCorp's recognition that carbon is no longer a manageable risk for the utility. WRA, however, has several clarifications with regard to these limitations that it believes might be appropriate for the RFP:

1. Rather than an outright ban on coal, it might be more appropriate to place a limitation on the carbon footprint of any proposed resource. WRA would suggest that no baseload or intermediate resource that emits greater than 1100 pounds of CO<sub>2</sub> per MWh be eligible to bid into this RFP.
2. WRA suggests that the RFP specifically define what characteristics define an “intermittent” resource, i.e. capacity factor, availability factor, dispatchability, etc. It should be clear that a combination of resources that provide needed reliability are eligible to bid (e.g. wind or solar coupled with a gas turbine or energy storage)
3. The RFP should clearly state, with respect to each bid category, that resources that do not meet the CO<sub>2</sub> or intermittency requirements will not be eligible. The RFP as it is currently written is not entirely clear that all categories are subject to this criteria.

## **Bid Categories**

WRA questions PacifiCorp’s explanation of baseload, intermediate load and peak resources as being defined by heat rate. This seems to presume that the resources to be analyzed will be natural-gas turbines.

## **Resource Alternatives**

WRA is not sure why financial curtailment would not be eligible. Further explanation would be helpful.

## **Evaluation Criteria**

WRA believes the Environmental Team should evaluate several items in addition to the ones listed in the RFP. The additional items should include decommissioning requirements, hazardous waste, and impacts on groundwater.

WRA questions the requirement listed on page 28 and 31 of the RFP that a bidder’s development team must have “successfully completed the development and commissioning of at least one generation project with characteristics similar to the proposed project.” While WRA understands the need for this type of restriction, we think the language might preclude resources which utilize new technologies. Perhaps the language could be a bit looser, along the lines of: “the development team must have reasonable experience in the development of the type of generation project being proposed”.

WRA also suggests a revision to the weighting given to the bidders’ ability to address changing environmental requirements. PacifiCorp assigns this factor 10 percent of the weight. WRA believes this weighting is significantly understated. WRA suggests that the weighting given environmental management capability be upped to at least 25 percent. This should be made up by decreasing the price factor weighting by 10%, and the other non-price factors by 5%.

## **Indexing**

While WRA agrees that limited indexing should be permitted, there should also be an evaluation penalty associated with indexing – because of the added cost risk.

## **Utah Association of Energy Users**

The Utah Association of Energy Users (UAE) submitted comments and recommendations on a number of issues associated with the draft 2008 RFP. UAE states that the draft RFP attempts to address many of the concerns raised by UAE in previous RFPs and appears to make a reasonable attempt to incorporate lessons learned from the recent RFP process. A summary of the suggestions and recommendations are provided below by category:

### **Comparability of Utility Bids and Third Party Bids**

UAE states that under the Commission rules, in order for the RFP process to satisfy these rules and produce a result that is in the public interest, all resource options must, to the greatest extent possible, be made directly comparable and put on an even footing for all evaluation and scoring purposes. UAE is concerned that PacifiCorp intends to have its self-build projects treated differently than other bids for ratemaking purposes. PacifiCorp and other bidders will be required to bear different risks. Ratepayer risk associated with the self-build option must be factored into any resource decision. The portion of the risk premium that will be shifted to ratepayers under a utility bid (particularly in the event of pre-approval of cost recovery) must be incorporated into the evaluation process.

UAE would like to see a means developed for identification and quantification of the value of this “risk premium” borne by ratepayers with a utility-built resource. To date, nobody has offered a clear means for doing so. Rather, the primary focus has been on changing bidding requirements and options in an attempt to create a more even playing field. UAE continues to have significant concerns over this issue, and encourages the IE and others to explore and recommend the best means of ensuring fairness and comparability, from the perspective of both market participants and rate payers, in the RFP process.

### **Coal Resources**

UAE disagrees with the categorical exclusion of coal resources. UAE submits that the risks associated with coal resources have been adequately evaluated in the IRP process. The IRP identified and evaluated a number of possible coal and risk implications of carbon regulations. Rather than exclude this entire category of resources from consideration, UAE submits that, as a condition to resource pre-approval, PacifiCorp should be required to invite and evaluate all potential resource bids, regardless of fuel source.

## **PPA/TSA Resources**

The RFP states that a PPA or TSA “not backed by an asset” will have a maximum term of 5 years. This limitation was not included in the 2012 RFP. In addition, the RFP requires that the PPA and TSA agreements must put the physical resource behind the agreement. It is not clear to UAE whether these requirement are reasonable, particularly for a bidder with strong credit. PacifiCorp should be required to provide an adequate explanation for these requirements/limitations or they should be removed.

## **Load Curtailment**

The draft RFP requires that the “fuel source type” must be specified for each category of bids and exceptions. This requirement makes no sense, however, with respect to a load curtailment bid, which will not consist of a fuel source but rather curtailment of usage.

## **Blinding of Intent to Bid Forms**

It is not clear why the intent to bid forms are not blinded or whether they should be.

## **Credit**

While UAE strongly supports adequate credit requirements, UAE believes that the credit requirements should be commercially reasonable and no more onerous than those commonly used in the utility and other industries. UAE invites the IE and potential bidders to identify any remaining issues with the credit requirements and the credit matrix, and to recommend appropriate revisions.

## **Reservation of Rights**

UAE does not believe that the Company should be permitted to retain discretion to terminate the RFP without PSC input or approval as is currently stated in the RFP. As stated, PacifiCorp reserves the right to reject any and all bids and to terminate the RFP in whole or in part at any time. UAE submits that a proposal to terminate an RFP and reject all bids should require, at a minimum, the filing of a detailed explanation with the Commission and an opportunity for the Commission to provide appropriate reactions and guidance.

## **CO2 Costs**

UAE does not believe that it is reasonable or in ratepayers’ best interest to require the utility (and thus its ratepayers) to bear all risks of CO2 costs under all circumstances. If a bidder places a lower value on CO2 risk than does the Company or the Commission and is able to provide adequate security for that risk, the bidder should be allowed to bear at least a portion of the CO2 risk, and its bid should be credited accordingly.

## **Pro Forma Contracts and Other Attachments**

UAE continues to rely largely on the IE and potential bidders for comments and suggestions on the appendices and attachments to the RFP, including the credit matrix, pro forma contracts, specifications, etc. UAE invites the IE and potential bidders to provide specific proposed additions, deletions and changes to all such documents as appropriate.

## **Utah Committee of Consumer Services**

The Utah Committee of Consumer Services (Committee) suggests three modifications to the proposed solicitation process as follows:

- The 2008 RFP should be rewritten to include a benchmark option and provide for the disclosures and process requirements applicable to benchmarks as required by the Procurement Act.
- The 2008 RFP should be rewritten to include initial screening and evaluation criteria that consider the assumptions included in the utility's most recent integrated resource plan in light of the Commission's February 6, 2008 Order in Docket 07-2035-01.
- The Commission should provide an opportunity for public comment on the rewritten 2008 RFP.

## **Compliance with the Utah Energy Resource Procurement Act**

The Committee states that the Utah Energy Resource Procurement Act applies to the filing. The Committee has scrutinized the proposal for strict compliance with the statutory and administrative rules that is prerequisite to a Commission order granting the utility extraordinary relief afforded by the Procurement Act. The Committee concludes that the proposed 2008 RFP does not comply with the Act, legally or substantively.

## **Benchmarks and Self-Build Resources**

The Committee states that the Procurement Act plainly prohibits the self-build options proposed for the 2008 RFP. The Act defines "benchmark option" as an energy resource against which bids in an open bid process may be evaluated that (a) could be constructed or owned by: (i) an affected electrical utility; or (ii) an affiliate of an affected electrical utility. The meaning of the Act is that any self-build option shall be treated as a benchmark option for all purposes in the solicitation process. Nowhere in the Act is any provision made for the self-build option as the utility has designed and proposed in the 2008 RFP. If the solicitation includes a benchmark option, the solicitation must include the disclosures required by R746-420-3. The 2008 RFP cannot be approved because the affected utility presumptuously creates for itself a bidding opportunity that omits the disclosure and process requirements required by Utah law.

The Procurement Act and the rules make no provision for the affected utility to submit its own competing bid in any form but a benchmark resource that fully complies with all of the statutory and administrative rule requirements. The Act and the rules plainly state that the open bid

process that must be used by the affected utility may include projects owned by or affiliated with the affected utility only if the solicitation incorporates the process and disclosure provisions that assure a truly competitive procurement of the lowest reasonable cost generation resource.

The benchmark is necessary to the fundamental analysis and transparency of the process. By providing benchmarks, the RFP signals to the market and the stakeholders the preferred mix of resources against which other bids will be measured. Another important purpose of the benchmarks is to signal to the market what types of resources bids would be competing against. The Procurement Act requires that bidders be given as much information as possible about the resource needs of the system in order to determine whether it is advantageous for them to participate in the RFP process.

## **LS Power Associates, L.P.**

LS Power, a developer of power generation projects, submitted comments focusing on two issues: (1) Comparability; and (2) Credit Requirements. The comments of LS Power are summarized below by topic area.

LS Power concluded that the Draft RFP does not allow for fair and reasonable consideration of third-party bids relative to PacifiCorp's self-build proposals. The credit requirements for third party bids are unreasonably high. In addition, an approach which allows risk-free estimates for a self-build option, and requires fixed price third-party bids lacks comparability. PacifiCorp's bids should be held to the same standards as third party bids, so that the risks and benefits to ratepayers from third party bids can be fairly considered in the evaluation. LS Power requests that the Commission consider these comments and take the necessary steps to ensure a reasonable process and level playing field for all bidders, and to ensure the best outcome for all ratepayers.

### **Comparability**

The potential lack of comparability troubles LS Power as a potential bidder, and will likely have a chilling effect on some bidders. It is LS Power's understanding that PacifiCorp's proposal will be an estimate only. As a rate-based proposal, PacifiCorp's bid will be subject to differences in the actual construction costs compared to the estimate, and also subject to differences in the actual financing costs compared to the estimate. In an environment of rising construction costs, and interest rates, PacifiCorp's ratepayers are likely to bear the risk that PacifiCorp's bid will not meet the cost estimate, while third-party bidders are required to assume all interest rate risk and the risk of cost overruns. The result is that bidders are at a significant disadvantage, because their proposals need to cover the risk of rising construction costs and interest rates. Also, the indexing mechanism is limited in scope. Bidders are required (or must be willing), for example, to commit to fuel efficiency operating costs, and unit availability, while PacifiCorp provides only estimates of those items, free from the risk of being low since it is only an estimate. The fact that bidders are required to take into account a premium for risk results in an incompatible comparison between the proposals of PacifiCorp's proposals and third-party bidders' proposals. In addition to the disparity between certain requirements for PacifiCorp and those of the bidders, there are significant benefits to third party suppliers such as performance guarantees, increased wholesale

competition, and diversification of suppliers which are not captured in the evaluation. LS Power recommends that the Commission examine whether the evaluation criteria are designed to yield a fair and reasonable comparison between PacifiCorp and third party bidders.

## **Credit Requirements**

LS Power's concern with the Draft RFP is that strict application of unduly high credit requirements will severely limit participation in the process, and limit available alternatives for ratepayers. The approach of requiring bidders to either be investment grade or post security at a certain level is reasonable. Because most independent power suppliers are not investment grade, the industry standard practice is to post security for transactions. However, the required amounts of security in the Draft RFP are unreasonably high, and provide a disadvantage to third party suppliers. Security has a cost associated with it which will increase the cost under a proposal.

The levels required in the Credit Matrix place an undue burden on bidders and give PacifiCorp's self-build options a significant advantage. There is a balance between requiring a reasonable amount of credit support to protect the purchaser, and imposing excessive requirements that increase the costs to be incorporated into the proposals and potentially passed on to ratepayers. PacifiCorp's Credit Matrix proposes an unreasonably high level of proposed credit support. While the Credit Matrix presents what appears to be an objective analysis of risk, it is not an approach LS Power has seen in any other RFP in the country and the results are wholly unreasonable. Even the credit requirements for asset-backed resources are 5-10 times higher than LS Power has negotiated with third-party purchases at arms length for new generation resources.

## **Comments of PacifiCorp**

PacifiCorp filed its comments on March 28, 2008 responding to the comments of the interested parties in Utah and Oregon. Those comments are summarized below. In a number of cases, PacifiCorp's proposals have led to a revision of sections of the RFP.

### **Title of the RFP**

PacifiCorp suggested referring to the RFP as the All Source RFP and deleted references to specific years.

### **Resource Options**

PacifiCorp has made several revisions to the RFP to address comments of the interested parties on the resource option issue.

1. 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.
2. The final Draft RFP contains language that allows the Bidder 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.

3. PacifiCorp added language in the RFP in response to the Oregon Staff that it will consider creative proposals by sellers to absorb the risk of regulatory costs associated with greenhouse gas emissions.
4. The Company revised the RFP to address the concern raised by the Division that the Company must demonstrate through its RFP evaluation and analysis that it has selected the resource that is “least-cost, least-risk”.<sup>4</sup>

### **Geothermal and Biomass Exceptions**

Based on comments from the Division and Oregon Staff, PacifiCorp 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.

### **Self-Build Bids and Benchmark Resources**

Based on several comments, PacifiCorp will abandon its proposal to be treated as another bidder and instead submit a benchmark resource or resources.

### **Timing of Submission of Benchmark Resources**

PacifiCorp has added language in the RFP stating that the Benchmark Resources should be submitted to the IEs one day in advance of other bids.

### **Blinding of Bids**

PacifiCorp has removed the blinding requirements in the RFP from both the Intent to Bid process and the RFP response process based on suggestion by the Division and Oregon IE regarding the value of blinding. Conforming changes were also made to Attachments 4 and 20.

### **Resource Need**

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.

### **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 5 years.

### **Load Curtailment**

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<sup>4</sup> PacifiCorp noted in its comments that the appropriate standard should be “least cost, adjusted for risk”.

PacifiCorp has clarified that load curtailment may be aggregated by a single supplier in order to meet the 25 MW minimum requirement.

## **Schedule**

PacifiCorp has modified the time period to complete the evaluation process from 45 to 60 days as recommended by the Division. In addition, 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.

## **Bid Fees**

PacifiCorp is open to considering a success fee approach as suggested by the Oregon IE but did not make any modifications to the RFP at this time pending further comments from the IEs, bidders and other interested parties on this issue.

## **Credit**

PacifiCorp has made several modifications to the credit sections in the RFP to address concerns raised during the 2012 RFP and to clarify language in the RFP documents consistent with PacifiCorp's expectations. 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. PacifiCorp also indicated it 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.

## **Transmission**

PacifiCorp has expanded its identification of potential delivery areas. However, PacifiCorp notes 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.

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 encourages bidders to contact PacifiCorp Transmission directly with any transmission related questions or concerns.

## **Term Sheets**

PacifiCorp agrees with the suggestion made by the Division to document the practice of providing term sheets to bidders during the bid evaluation process. PacifiCorp has included this modification on page 47 of the RFP.

## **Flexibility of Proposals and Indexing**

PacifiCorp will consider including a modification to Form 2 as suggested by the Division to allow bidders to provide pricing for in-service date deferral, acceleration and buyout options based on the identification of specific milestones.

PacifiCorp does not intend to adopt the suggestion of the Division to allow bidders to index 60% of their price as opposed to 40% in the 2012 RFP.

## **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 concern about the price comparison metric in Step 1. In addition, the Division requests that PacifiCorp clarify the risk metric to be used in Step 3 of the evaluation and selection process. PacifiCorp 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.

## **VI. Discussion of Important Competitive Bidding Issues**

This section begins with a listing of the factors Merrimack Energy feels, based on its experience, are necessary for an effective competitive bidding process in any state and under any circumstance. Following these factors, this section continues with a more detailed assessment and discussion of the important competitive bidding issues in this All Source RFP. Based on the comments of the participants in the proceeding as well as Merrimack Energy's view of the key RFP issues based on review of the RFP and associated documents, the following issues are addressed: (1) Comparability of third-party bids and utility benchmarks; (2) Benchmarks vs self-build options; (3) Bid Categories; (4) Credit; (5) Submission of the self-build proposals/benchmarks; (6) Transmission assessment; (7) Eligibility for Geothermal and Biomass; (8) Number of bids submitted; (9) Indexing; (10) Blinding of bids; (11) Resource eligibility; (12) Proposal option; (13) Eligibility of proposals; (14) Schedule; (15) Price evaluation; (16) Term sheets; (17) Pre-Qualification vs Notice of Intent; (18) Risk of CO<sub>2</sub> costs; (19) Economic evaluation methodologies and models; and (20) Other. Each issue is discussed in some detail below. In addition, Merrimack Energy has also provided specific comments on the provisions of the RFP in this section of the assessment.

### **A. Characteristics of any Effective Competitive Bidding Process**

Based on its experience in several states, it is Merrimack Energy's view that any effective competitive bidding process should have the following characteristics:

1. The solicitation process should be fair and equitable, consistent, comprehensive and unbiased to all bidders. For assessing the documents and information at this stage of the process, one of the key criteria is bias, whether intended or unintended. Merrimack Energy's evaluation at this stage is designed to identify if any bias exists with regard to the type of products, resources, bid categories and alternatives, etc. that are allowed to compete in the process and the methods for evaluating and scoring the competing products.
2. Scoring and evaluation of proposals can be free of intended and unintended bias only if similarities in proposals are evaluated and scored similarly and differences in proposals are evaluated and scored differently. In identifying similarities and differences, all costs, benefits and risks of competing proposals must be accurately identified and fairly assessed.
3. The solicitation process should ensure that competitive benefits for utility customers result from the process. In this regard, it is important to determine whether all costs to consumers are reflected in the evaluation process so that true competitive benefits emerge in both the intra resources and inter resources comparisons.
4. The solicitation process should be designed to encourage broad participation from potential bidders. In this regard, it is important to assess whether the process is sufficiently transparent to allow bidders to determine how they can best compete in the

process and sufficiently balanced so that no potential bidder faces uneven burdens or enjoys uneven advantages.

5. The Request for Proposal documents (i.e. RFP, Information required from bidders, and Model Contracts) should describe the bidding guidelines, the bidding requirements to guide bidders in preparing and submitting their proposals, the bid evaluation and selection criteria, and the risk factors important to the utility issuing the RFP. The RFP documents should effectively inform bidders how they can compete in the process.
6. The solicitation process should include thorough, consistent, and accurate information on which to evaluate bids, a consistent and equitable evaluation process, documentation of decisions, and guidelines for undertaking the solicitation process.
7. The solicitation process should ensure that the resource contracts are designed to provide a reasonable balance between the objectives of the counter-parties, seeking to minimize risk to utility customers and shareholders while ensuring that projects can reasonably be financed. Differences in the project contracts should be fairly reflected in the evaluation and selection process.
8. The solicitation process should incorporate the unique aspects of the utility system and the preferences and requirements of the utility and its customers.

## **B. Utah Specific Competitive Factors**

The Energy Resource Procurement Act, codified at Utah Code §§ 54-17-101 et seq. (the “Act”), as applied to the facts of this RFP, controls this assessment by the IE. The Act creates a public interest standard for Commission review and approval of this Draft RFP in UCA § 54-17-201(2)(c)(ii) as follows:

In ruling on the request for approval of a solicitation process, the commission shall determine whether the solicitation process:

\* \* \*

- (ii) is in the public interest taking into consideration:
  - (A) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;
  - (B) long-term and short-term impacts;
  - (C) risk;
  - (D) reliability;
  - (E) financial impacts on the affected electrical utility; and
  - (F) other factors determined by the commission to be relevant.

While the Act controls these proceedings, the context of this assessment is a Soliciting Utility which is subject to both a duty to serve and a duty of prudence in meeting its duty to serve. With respect to Commission rate-making, for example, see: UCA § 54-4-4(4)(a) (added by Senate Bill

26, 2005). Prudently implementing its duty to serve will require PacifiCorp to observe the Act, much as it observes all applicable permitting, licensing, rate-making and other laws. Prudently implementing its duty to serve will require PacifiCorp to plan its benchmark options prudently. However, the duty to serve creates no preference for benchmark options, notwithstanding the fact that the Soliciting Utility may in good faith have more confidence in itself than others. To the contrary, the duty to serve requires a truly workable procurement process -- in compliance with the Act.

### **Comments on the PacifiCorp Draft RFP**

Below is a compendium of our comments on the PacifiCorp RFP. The comments reflect the positions of the interested parties as well as our own assessment based on a review of the Final Draft RFP as well as the lessons learned from the 2012 Base Load RFP.

#### **1. Comparability**

Several parties have raised the issue of comparability between benchmark resources and other bids. For example, UAE cites Commission rules that "all bids must be considered and evaluated against the Benchmark option on a fair and comparable basis" [R746-420-3(8)(i)]. UAE states that in order for the RFP process to satisfy these rules and produce a result that is in the public interest, all resource options must, to the greatest extent possible, be made directly comparable and put on an even footing for all evaluation and scoring purposes. UAE states that it continues to have significant concerns over this issue, and encourages the IE and others to explore and recommend the best means of ensuring fairness and comparability, from the perspective of both market participants and rate payers, in the process.

LS Power raises concern over comparability and states that the potential lack of comparability troubles LS Power as a potential bidder, and will likely have a chilling effect on some bidders. LS Power recommends that the Commission examine whether the evaluation criteria are designed to yield a fair and reasonable comparison between PacifiCorp and third party bidders.

Merrimack Energy recognizes the valid concerns about comparability shared by UAE and LS Power. In fact, we view the comparability issue to be the most important and most complex issue in the design of competitive bidding processes. Unfortunately, there are no industry standards or valid working models that can be relied upon to ensure comparability in resource treatment. While we recognized this issue in the design of the 2012 RFP, our focus was on developing a more level playing field since there were no accepted models or rules to ensure comparability. Since the design of the 2012 RFP, the focus on comparability in competitive bidding processes has increased due largely to the current uncertain and volatile pricing considerations for power plant construction. However, there are still no industry standards regarding comparability rules or processes that can ensure that third-party bids and utility resources compete on the same basis. Based on comments from the interested parties as identified above, we feel it is beneficial to raise the dialogue about the comparability issue further. As a result, the focus of our comments will be to identify possible options for dealing with comparability, including the advantages, disadvantages, and possible ramifications. Our discussion about comparability will be

constructed around the three key issues associated with resource procurement of (1) cost; (2) risk and (3) reliability.

In our view there are two primary options for addressing comparability, and several hybrid options that could be considered. The two primary options address both ends of the spectrum and represent the major type of project arrangements found in the power market. These include:

- a. A Performance-based approach based on the provisions of a traditional performance-based Power Purchase Agreement. Under this model, all bidders and utility resources would effectively compete based on the meeting the provisions of a performance-based PPA.
- b. A Cost of service based approach based on the provisions of traditional cost of service principles. Under this model, all bidders and utility resources would effectively compete based on meeting the provisions of cost of service based arrangement. Some contracts between the utility and an affiliate can serve as a model.

The details and possible implementation of each approach is discussed below. In addition, we also present a hybrid approach based on expanding the comparability standards and approaches included in the 2012 RFP.

### **Performance-Based Approach**

Some parties, including IPP interests and IPP trade associations, have advocated that utility cost of service resource options enjoy a competitive advantage over third-party IPP options since their bid price is only an estimate (i.e. not firm) and the utility could seek cost recovery of additional costs if the actual cost of a project is higher than the estimated cost. To counteract that competitive advantage, IPPs argue that the utility should bid to a performance-based contract as the IPPs do, including the risk profile included in such a contract. In addition, these interests have generally advocated that the utility resource should be subject to a price cap<sup>5</sup> as would a third-party IPP bid under a performance-based contract.

While this approach appears to be theoretically reasonable, there are a number of hurdles which must be overcome. For example, we have never seen the details of such an approach implemented in any state. Certainly, the “devil is in the details”. Although we are not aware of any detailed proposal for such an approach, we can speculate what such details may entail given the components of a performance-based contract. The rules underlying this approach could include:

- The bidder and utility would submit a proposal with a capacity cost on a \$/kW-month basis and would recover the costs in the contract accordingly based on the bid pricing formula in its proposal. The contract amounts would be paid based on the bid over the term of the contract. This would be consistent with the pricing proposals required of IPPs.

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<sup>5</sup> In Utah, such an approach may fall victim to a legal challenge under the terms of the Act unless the Company were willing and able to execute a waiver of its rights to recover all prudently incurred costs pursuant to the Act.

A utility resource (even if the resource is seeking cost of service treatment) would presumably also be subject to these requirements and not traditional utility cost principles.

- The bidder and utility would recover other costs such as fixed O&M, variable O&M, and fuel costs based on an acceptable index over the term of the contract no matter what their actual costs. In addition, the bidder must include costs associated with capital additions over the term of the contract as there would be no price adjustment for such additions.
- The third-party bidder and utility would be subject to the same performance requirements in the contract including guaranteed availability and guaranteed heat rates. If the actual availability and heat rates are higher or lower than the guaranteed level, the payment to the bidder or utility will be based on the bid levels and any bonus/penalty provisions contained in the contract that all bidders would be required to meet.
- The third-party bidder and utility would bid to the same contract terms which presumably would include credit requirements, default provisions, liquidated damages, milestone schedules, force majeure provisions, etc. We would assume that both third-party bidders and the utility option would have to post the same levels of security and both would be subject to replacement cost requirements in case of a default under the contract.
- Both the utility and third-party bids would have to absorb any environmental compliance costs or other costs not addressed with specific contractual adjustments or “pass-through” provisions.
- The capacity price could also be subject to an indexing mechanism similar to the 2012 RFP.

While the focus of this debate is on the different pricing structures and risk profiles of utility cost of service and traditional IPP resources, it is assumed this parity would likely require the utility to bid through an unregulated affiliate. It is clear that if a utility bids via an unregulated affiliate, the utility and third-party could compete based on the same rules under a performance based contract arrangement.<sup>6</sup> The affiliate would bid based on the provisions of the RFP and would be paid based on the pricing formulas and contract terms included in the contract with the soliciting utility.<sup>7</sup>

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<sup>6</sup> PacifiCorp’s revisions to the RFP to submit benchmarks rather than self-build options in competition with other bids likely means that the benchmarks will be proposed as cost of service based resources. If PacifiCorp had submitted a self-build option, it was the IEs understanding in any event, that the self-build option would be different than all other bids in that the Company would still be entitled under the Act to seek cost recovery for amounts which exceeded their proposed pricing. Such unique advantages would present significant comparability issues.

<sup>7</sup> If the utility prefers to bid or is required to bid under a cost of service based option, it is difficult to view the bid in the same category as a performance based bidding approach. Cost of service bidding could lead to comparable bidding procedures only if other bidders had the same rights to adjust pricing and the same duty to recover only actual costs when the bid prices were higher. If cost of service was a true bidding rationale, the utility and any third party would be free to bid or not to bid and to terminate or not to terminate any contract entered into, subject to the forfeiture of any applicable security. If embodied in a formal third party contract with an affiliate, that affiliate

As noted, this model or set of bidding rules have associated advantages and disadvantages. These are enumerated below.

### **Advantages with the Model**

The advantages associated with this model include:

- Presumably bids and benchmarks (fashioned as any other bid through an unregulated affiliate) will be bidding to the same or similar risk parameters. This should lead to a more equivalent evaluation than most current evaluation processes.
- This model can lead to a consistent and symmetrical bidding and cost recovery process for both third-party bids and benchmarks.

### **Disadvantages Associated with the Model**

The disadvantages associated with this model include:

- If a cost of service resource option is selected, the Commission or some other entity retained by the Commission will have to monitor the “contract” between the benchmark resource (if it is the selected resource) and the utility much the same way a utility manages the contract with the third-party developer to ensure the pricing mechanism and contract provisions proposed by the utility are maintained.
- The utility may decide it doesn’t want to submit a bid (either as a cost of service option or as an affiliate bid), depending on the rules established. As noted, such a model would be applicable to a utility affiliate bid but the utility may not want to establish a separate affiliate to bid. The utility may not be willing to offer a cost of service bid unless it can keep any revenue achieved if it brings the project in at a cost below its bid price similar to the IPP. Also, utilities are concerned that revenues in excess of costs received from an approved affiliate contract or rate base offer may be taken away in a future rate case with a whole new set of Commissioners and want some regulatory or legislative assurance that this would not happen.
- The traditional regulatory compact or traditional rate regulation may have to be revised to address the different structure of the utility project as a performance-based resource.

In summary, with regard to the three key factors associated with resource procurement decisions (i.e. cost, risk and reliability), the performance-based model is most effective in addressing risk associated with price variability. Since bidders are required to “live” with their bid pricing and “absorb” and differences between the bid price and actual costs, the customer is generally

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would be a FERC-regulated entity, just as any other third party bidder entering into a wholesale sales agreement with the Company based on cost of service principles.

shielded from potential cost increases. However, from a cost perspective, this model is likely to lead to higher bid prices (particularly in a volatile and increasing cost environment as exists in the market today) since bidders will include a higher risk premium in their bid pricing to hedge the risk of higher input and commodity costs. While some bidders may be adept at managing risk and reducing cost exposure, there is a cost for managing such risk. This cost will be included in the bid pricing proposed by the bidder. Finally, with regard to reliability, in our view this model does not perform well with regard to ensuring reliability. For example, if costs to construct and operate a project increase above the bid price, the bidder will likely terminate their project at any time until they are required to post security rather than absorb losses. The time period from bid submission to the posting of security could be quite long (6-12 months in many cases). Bidders will assess their bid price relative to cost during this period and can terminate their project with only limited cost exposure. We have been involved in and are aware of a number of RFP processes where the selected resource withdrew its bid during the contract negotiation process citing increasing costs and inability to receive Board approval as the basis for the decision. The utility resource option, on the other hand (unless bid through an affiliate), would likely continue to develop the project to meet system reliability requirements (obligation to serve) as long as there is an opportunity to recover prudently incurred costs.

### **Cost-of-Service Based Approach**

The cost of service based approach is obviously common to the structure of utility construction. In addition, there has been recent evidence that at least one utility has signed a contract of this nature with an affiliate based on a project acquired by the utility that was subject to abandonment. The Power Purchase Agreement between Southern California Edison and Mountainview Power Company LLC provides an example of a cost of service contract.<sup>8</sup> In addition, contracts between a jointly-owned nuclear unit or coal unit would likely have many of the same provisions.<sup>9</sup> Under this model, both utility self-build and non-utility projects will be required to conform to arms-length terms between the utility entity as buyer and a separate entity as seller under a contract which memorializes the traditional cost of service principles and contract terms. While comparability can be achieved by requiring all bidders to bid to the same requirements the “devil is still in the details” with regard to this model as well.

The rules underlying this approach could include:

- The bidder and utility would submit a proposal based on a total capital cost for the project. The utility and third-party bidder would be required to bid a base capital cost and a capital cost with a contingency to cover a significant portion of upside risk. The process would effectively be an “open book” process. The utility and the third-party bidder along with their EPC contractors would provide the details of their capital costs in their bid. The winning bidder would be able to recover all or a part of its additional costs (perhaps

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<sup>8</sup> **Southern California Edison, on behalf of Mountainview Power, LLC** 106 FERC 61,183, Docket No. ER04-316 (2004); see 1<sup>st</sup> Revised FERC Schedule 1 Tariff, Document Accession Number 200500606-0143.

<sup>9</sup> Where contracts were used, the contract entities were generally a special purpose entity owning the plant and the utility-owners in their capacity of buyers. Such wholesale sales agreements based on cost of service principles would be subject to the jurisdiction of FERC. Several such models are available in the dockets at the FERC and have been addressed in the FERC case law.

within established bounds) that are deemed to be prudently incurred. Bidders would be encouraged to bid bounds on some part of their capital costs or to offer to recover only a percentage of their prudently incurred capital cost increases. Bidders would enhance their chances of selection to the extent that they offered to absorb some part of such increases and did not at the same time adjust their bid cost or equity upward. Once the capital cost is determined, the pricing structure for a monthly capacity price or traditional cost of service arrangement can be established based on a capital structure which the bidder would disclose, including a fixed or formula return on equity.

- The bidder and utility would have other costs such as fixed O&M, variable O&M, and fuel evaluated based on the acceptable index included in the RFP. If actual costs deviate from the proposed costs, the bidder (whether it is the utility option or a third-party option) must justify any change in costs either above or below the indexed pricing before it could make use of a contractual adjustment mechanism for post-construction operation cost increases. Again, incentive clauses would be encouraged.
- Bidders would be allowed to recover costs associated with capital expenditures (including environmental compliance costs) as long as the utility or third-party can justify such costs as being prudent and necessary. An incentive mechanism might result in the voluntary recovery of less than 100% of all such capital additions.
- The third-party bidder and utility would be subject to the same performance requirements in a contract such as those included in the Mountainview Power contract which includes guaranteed availability and guaranteed heat rates. If the actual availability and heat rates are higher or lower than the guaranteed level, the payment to the bidder or utility will be based on the availability and heat rate impacts achieved as long as the bidder can justify that such impacts were reasonable. However, departure from the “guaranty” levels would be subject to bonus and reward provisions.
- The third-party bidder and utility will bid to the same contract terms which presumably include default provisions, liquidated damages, milestone schedules, force majeure provisions, etc. The Mountainview contract provides an example of these provisions.

As noted, this model or set of bidding rules have associated advantages and disadvantages. These are enumerated below.

### **Advantages with the Model**

The advantages associated with this model include:

- Presumably bids and benchmarks will be bidding to the same or similar parameters. This should lead to a more equivalent evaluation than most current evaluation processes.
- This model can lead to a more transparent process since the capital cost of all proposals will be known and reviewable, much like the case whereby the utility acquires a plant from a seller via an Asset Purchase and Sale Agreement.

- Cost risk for sellers is reduced since the bidder will be allowed to recover increased costs beyond its control.
- Reliability is improved since cost increases will not result in the same motivation to terminate contracts as would be the case if no cost adjustment mechanisms were allowed in the wholesale sales agreements.

### **Disadvantages Associated with the Model**

The disadvantages associated with this model include:

- The contracts would be subject to ultimate control by FERC.
- The third-party bidder may decide it doesn't want to submit a bid, depending on the rules established. Under this model, the third-party bidder would be required to submit its costs on an open book basis, which could be a detriment to its competitive position.
- Actual capital structures would be reviewed and used to convert capital costs into a pricing structure. Bidders would have to bid the return on equity which they would accept and this could be done based on the FERC generic rate of return or some other index which would be acceptable to the FERC.

In summary, with regard to the three key factors associated with resource procurement decisions (i.e. cost, risk and reliability), the cost-based model is most effective in addressing project cost. Since bidders would be allowed to potentially recover some costs above their bid price if the cost increases are prudent and outside the reasonable control of the bidder, cost exposure is reduced. The bidders will not have to add such a large risk premium as they would in a performance-based arrangement since there is some opportunity to recover the costs in their pricing arrangements. From a risk perspective, customers are exposed to the same risk for cost increases as they are when the benchmark resources are allowed to recover in their pricing arrangements. This creates greater exposure for such customers. From a reliability perspective, if the bidder has the opportunity to recover costs above their bid prices there should be less opportunity for the bidder to abandon its project as long as the bidder can demonstrate that the cost increases are prudent and reasonable.

### **Hybrid Model**

Given the complexities of the two models described above, we have reservations about each option, including how such options or models could be effectively implemented. As noted, “the devil is in the details” and the law of unintended consequences could apply if the theoretical basis for such options cannot be translated into effective workable models. While we have identified contract options based on cost of service principles, we are not aware of any procurement processes where all bidders are required to bid to performance-based contractual arrangements.

In the previous RFP, Merrimack Energy attempted to address comparability through the creation of a level playing field for all types of bids. This included:

- Index pricing for the capacity or capital cost component of the bid pricing formula.
- Pass through of change in law costs associated with meeting environmental requirements.
- Support for the position proposed by PacifiCorp to address imputed debt at the end of the selection process rather than include imputed debt as an evaluation factor.
- Support for PacifiCorp's proposal to allow bidders to phase-in the posting of security such that the majority of security would not be required until financial closing. This would allow the bidder to incorporate the cost of security in their financing arrangements and would hopefully reduce the cost burden associated with the cost of security.
- The requirement for the benchmark resource option to provide all the same information as any other bidder in the process.
- The requirement in the Utah rules that the IE evaluate and audit the Company's benchmark resources. In this process our objective was to assess whether the utility benchmark team included all the necessary and expected cost items in their benchmark option and whether the costs were consistent with industry benchmarks. The overall objective of the IE was to ensure that the utility benchmark did not contain "low-ball" cost estimates that would serve as the basis of the evaluation with the potential for an increase in actual costs after the project was selected as the winning bidder.
- The view that the IE had the ability to request that PacifiCorp would run sensitivity analysis on the costs of the benchmark resources. Merrimack Energy intended to request PacifiCorp to conduct break-even cost analysis on the capital and possibly operating costs of its benchmark had the benchmark been selected as the preferred resource.

We feel these provisions are a step in the right direction. However, we are proposing additional steps designed to move both benchmarks and third-party bids onto a more level playing field. These proposed steps include additional flexibility afforded to bidders in suggesting more flexible pricing options, the recognition and treatment of costs absorbed by the third-party bidder which is not incurred directly by the benchmark, and suggesting options associated with the bid evaluation process to better address risk. The additional components of this hybrid model along with the above provisions are provided below.

- For the cost analysis component of the evaluation, all bids and benchmarks are required to provide the same information requested in the Form 1 Pricing Sheets. Thus, benchmarks and third-party bids provide bid pricing formulas, heat rate curves, availability adjustment mechanisms, guaranteed availability for evaluation purposes, heat rate degradation, etc.

- The IE will evaluate and audit the capital and operating costs as well as the operating parameters of the benchmark resources. The IE will develop a report with its finding much like the report prepared for the 2012 RFP.
- Utility benchmarks and third-party bids could index their capital costs or capacity prices from 0 to 100% of their price by the allowable indices. Bidders can also request different indices during the comment period on the RFP and PacifiCorp and the IEs will decide on whether a requested index will be deemed acceptable or will be rejected. The general criterion for acceptance of an index is whether or not the index can be forecast and hedged. Once an index is accepted all bidders are eligible to include this index in their pricing formulas.
- Utility benchmarks and third-party bids can choose the time at which the price/cost would be locked-in with regard to the indexing (i.e. execution of the contract, execution of the EPC, contract financing, commercial operation date).<sup>10</sup>
- The indexing proposal (including pricing mechanism and timing) could be subject to the risk assessment in Steps 2 and 3 of the evaluation process with bids offering a greater percentage of fixed costs and a limited period for indexing offering lower risk to the utility. However, it would then be up to the bidder to select the trade-off between cost and risk that it is best able to absorb.
- The risk assessment would therefore include an assessment of fuel cost/market price risk, CO2 risk, capacity pricing/capital cost price risk, and development and operating risk for both utility and non-utility projects. Issues associated with the timing risk for pricing and development and operating risk for both benchmark and third-party projects would be treated as a non-price factor. Financial proformas for third-party proposals would be required of any project that is selected for the short-list. In this manner, the utility can assess whether the third-party bid has offered a reasonable cost and revenue stream or whether its cost and revenue structure is very risky.
- With regard to the differences in contract terms and comparability issues, one of the major differences between utility self-build options and third-party bids is that third-party bids are required to post security that is accessible to the utility to secure replacement power should the third-party bidder fail to meet its obligations under the contract, default under the contract, or experiences undue delay in achieving milestones under the contract. To address this difference, the IE suggests that the bidder include a bid price with and without the required level of security identified in the RFP. The cost associated with this security in the bid pricing formula will not be included in the evaluation of the bids. However, should the third-party bid be selected for a contract, the bidder will be required to post security as defined in the RFP and will be allowed to recover the security-adjusted bid price.

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<sup>10</sup> We remain mindful that making the utility benchmark submit information and structure pricing the same way as bidders does not itself achieve comparability if the benchmark has the unique rights to recover all prudently incurred costs at some later time.

- The PacifiCorp RFP allows bidders to propose a base bid and two alternatives for the bid fee of \$10,000. In addition, bidders can offer allowable alternatives at a cost of \$1,000 per bid. As a result of the flexibility offered to bidders, the IE would encourage the bidders to submit multiple pricing options, which could include different pricing variations, including variations on the indices or offer firm price bid options. This would ensure that bidders could offer appropriate pricing options to address the level of cost and risk they are willing to accept.

## **2. Benchmarks vs Self-Build Options**

PacifiCorp initially proposed that the self-build proposals would be submitted under the same set of principles as third-party bids rather than be “bid” as benchmarks. Several of the interested parties in Utah and Oregon submitted comments on this issue. The Utah Committee of Consumer Services states that the 2008 RFP does not comply with the Energy Resource Procurement Act by providing that the utility may bid self-build resource options that circumvent the Act and administrative rules. The Division identifies potential benefits associated with bids submitted as self-build options rather than as benchmarks.

In response, PacifiCorp decided to abandon its proposal to be treated as another bidder and instead submit a benchmark resource or resources.

Merrimack Energy is not opining on the intentions of the Energy Resource Procurement Act but instead is focusing on the pros and cons of each option (i.e. benchmarks vs self-build options). In some RFP processes, benchmarks are presented differently than utility self-build bid options, namely that benchmarks do not include all the same information about the project as required of all other bidders. In other RFPs, we have therefore encouraged the utility to submit self-build proposals just like other bidders (and provide the same requested information) rather than be treated as a benchmark because in most cases the benchmark resource does not include the same information in their proposal as other bids. We have always felt that for comparability purposes, it is important that all options, including the utility self-build or benchmark provide the same price and non-price information required of all bidders.

Notably, in the 2012 Base Load RFP the benchmark resources submitted by PacifiCorp did include all the information as was required from other bidders. We viewed that favorably in our assessment. The difference here is that under a self-build option submitted at the same time as other bids the Company will not have to subject its cost information to the IEs review and assessment in advance of bid submission, will therefore have more time to submit its bid, and can keep its plans confidential. Therefore, under a “bid” as opposed to a benchmark option, it would appear the self-build team will not have to provide its cost information weeks in advance and can keep detailed cost information confidential rather than provide the details to the IE.

Provided below is a brief assessment of the issues (pro and con) associated with Benchmarks vs Self-build proposals.

### **Issues Associated with Benchmarks**

- The transparency of the process is enhanced. Bidders will know in advance the types of resource options the Company views to best meet its resource plan from the best cost/risk perspective.
- Bidders would also know the site, technology proposed, fuel supply option and other important competitive factors to guide their proposals.
- Bidders can use this information to determine if they wish to expend the money to compete in the process.
- On the other hand, bidders may be discouraged from bidding if the utility is proposing multiple benchmarks and at preferred sites.

### **Issues Associated with Self-Build Proposals**

- The lack of transparency (since the self-build option will be bid as any other resource) would not discourage bidders at the beginning of the process.
- Bidders can focus on developing their own project in the most competitive manner since they will not know in advance what type of resource they will be competing against.
- PacifiCorp would have more flexibility to bid a self-build internal bid or bid via an unregulated affiliate.

In either case, the role of the IE will still be to closely scrutinize and evaluate the self-build or benchmark options to determine if the cost information and other information presented is reasonable and consistent with industry standards since we expect that under either option PacifiCorp could offer cost of service based arrangements.

Another issue is the relationship between comparability and the appropriate mechanism for PacifiCorp to compete. Based on the comparability rules or principles developed, PacifiCorp may decide to bid either a self-build cost of service option or a performance-type arrangement from an affiliate generation entity. A self-build option submitted one day in advance of other bids would provide the flexibility to determine how it chooses to bid based on the comparability mechanisms accepted.

If it is determined that a self-build option is eligible as proposed by PacifiCorp, we could accept this option as long as the following conditions are met:

- The self-build proposal should submit all the same information as any other bid.
- The self-build option would be subject to the same analysis at all stages of the evaluation process including the initial evaluation.
- The self-build options should be submitted one day in advance of other bids.

These conditions should still ensure that the fairness and transparency in the process will generally be maintained.

Finally, we question whether the revisions made by PacifiCorp on page 8 of the Final Draft RFP regarding the evaluation of the benchmark captures the requirements of the IEs with regard to the auditing of the benchmark options. For example, Section R746-420-3(4)(f) states that the benchmark option will be validated by the Independent Evaluator and that no changes to any aspects of the benchmark option will be permitted after the validation of the benchmark option by the Independent Evaluator and prior to receipt of bids under the RFP. Section R746-420-3(8)(h) states that all relevant costs and characteristics of the benchmark option must be audited and validated by the Independent Evaluator prior to receiving any of the bids and are not subject to change during the Solicitation except as provided herein.

PacifiCorp's revisions on page 8 of the Final Draft RFP state that the Company will submit a detailed evaluation for each Benchmark Resource with supporting cost information to the IE prior to the opening of proposals submitted by the Bidders.

In our view, we require at least two weeks lead time before final submission of the benchmark by the Company to review and audit the costs and characteristics of the benchmark resources, similar to the 2012 Base load RFP process. While we believe this task can be accommodated within the existing schedule, the RFP document should at least identify the role of the IE relative to the auditing of the Benchmark options.

### **3. Bid Categories**

Both the Division and WRA address the issue of bid categories. The Division agrees with PacifiCorp's revisions to bid categories in the screening process to establish the short-list. WRA questions PacifiCorp's explanation of base load, intermediate and peak resource as being defined by heat rate.

We agree with the Division and PacifiCorp's revisions to the bid categories to Base Load, Intermediate Load and Summer Peak resources for purposes of establishing the short list (see page 7 of the Final Draft RFP). In many RFP processes, it is common practice to develop categories or clusters of bids to allow "like" resources to compete against each other at this stage of the evaluation process for the purpose of identifying the best bids within each category. Also, the smaller number of categories could serve to create more competition at the short-listing stage within each category as opposed to the large number of Resource Alternatives established in the 2012 RFP.

We also agree with WRA that pre-establishing bid categories based on heat rates may not be applicable in all cases. PacifiCorp has apparently classified resources by heat rate assuming only gas projects will likely bid. For example, a coal project with a 10,000 heat rate would not be classified as a base load resource within these categories. We expect it would be more appropriate to classify resources by capacity factor or classify resources after the bids have been submitted and the Company has had the chance to conduct the Step 1 evaluation of the bids to

assess where the bid would fit in its dispatch and operational ranking. Furthermore, during the process to develop the Term Sheets, PacifiCorp will be preparing information on the bid structure and operational characteristics of the bid and can question the bidder of its intent for the category of resources it is proposing and the basis for the distinction.

On the other hand, we also recognize that unless a bidder knows in advance whether it will be classified as a base load resource or intermediate resource<sup>11</sup> it would not be in a position to assess its credit requirements in advance of submitting a bid. As a result, we would encourage PacifiCorp to provide a more detailed description and explanation for its categorization of base load and intermediate resources based on the results of its production cost analysis.

We also believe that the RFP should be broader in terms of encouraging new construction to meet peaking requirements. For example, the table on page 7 of the RFP gives the distinct impression that PacifiCorp is seeking summer peak (July through September) market purchases only. We would suggest instead that PacifiCorp could identify a capacity factor for the resource and state that based on its analysis the Company appears to need peaking power primarily during the July-September timeframe. If a bidder feels it can offer a new or existing peaking resource to meet that need it should be encouraged to bid. Frankly, we are concerned as before that a PPA from the market will not be bid since the bidder will have to hold its price and obligation open for up to four years before the power needs to be delivered.

#### **4. Credit**

PacifiCorp includes an Attachment in the RFP (Attachment 21) which describes in detail its credit methodology. PacifiCorp also uses the methodology described in this Attachment to provide credit matrices for various resource types. The level of security identified in the matrix is distinguished by the credit rating of the counterparty and the size of the project.

The Bidder is required to utilize the Credit Matrix to determine the estimated amount of credit assurances required for each Resource Alternative bid in each Resource Category. The Bidder is required to demonstrate the ability to post any required credit assurances in the form of a commitment letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit. The Company will require each Bidder to provide the company with an acceptable letter (if applicable) twenty business days after the Bidder is notified that the bidder has been selected for the final short list.

The credit risk profile and amount of credit security to be provided will be determined based upon:

- The credit rating of the bidder and the entity providing credit assurances on behalf of the bidder if applicable.
- The size of the project
- The eligible on-line date
- The type of Resource Alternative

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<sup>11</sup> We assume that a peaking resource can be more easily defined based on a commitment to meet peak summer requirements only.

- The bid category
- Term of the underlying contract

All bidders will receive a credit rating which will be used in determining the amount of any credit assurances to be posted. In addition, the level of security will depend on whether the resource is backed by a physical asset or not. For all resource that involve a physical asset with appropriate step-in rights, PacifiCorp views potential credit exposure as the cost it would incur in the event the resource failed to come on-line when expected. PacifiCorp believes it could take up to 12 months to either step in and complete the project or cause the project to be completed on its behalf. If failure occurred near the expected on-line date, PacifiCorp would have to procure energy in the open market at then prevailing market prices.

In determining the amount of security to be posted, a Credit Matrix for each Resource Alternative and each eligible on-line date is shown. Next, PacifiCorp applies its internal credit risk tolerance specific to this RFP to each potential credit exposure in every cell of the Credit Matrix. The results are the amounts of excess credit risk that PacifiCorp requests be secured through third-party guaranties, cash, letter of credit, or other collateral or combination thereof.

The credit posting schedule is also defined in the RFP. Basically, bidders are required to post only 10% of the amount of credit required upon contract execution. The full amount of credit required has to be posted in increments up to 100% by project financing.

Several parties addressed the credit issue. The Division and UAE discuss the importance of credit and the issues associated with credit and request the IE and potential bidders to address the credit issue. LS Power states that the required amounts of security in the Draft RFP are unreasonably high, and provide a disadvantage to third party suppliers. LS Power provides an example based on a 5 year contract term and concludes that the credit requirements for asset-backed resources are 5-10 times higher than LS Power has negotiated with third-party purchasers at arms length for new generation resources.

PacifiCorp, in its March 28, 2008 comments, stated that its replacement power price is significantly less than replacement power price calculated by LS Power. PacifiCorp welcomes the opportunity to discuss in detail the estimate of the replacement power prices with LS Power to improve the accuracy of the example they provided. To afford all bidders the same opportunity to understand the credit requirements and the basis for the credit levels we recommend that PacifiCorp conduct a technical conference on credit to ensure bidders fully understand the requirements and overcome any confusion/concerns from the 2012 RFP.

Obviously, credit was the key issue in the last RFP. In the last RFP, we had several issues with the credit requirements, notably the inconsistencies in the language in the RFP about the credit requirements (i.e. comfort letter vs commitment letter) and PacifiCorp's adamant approach to require the commitment letter during the pre-qualification stage. While PacifiCorp has made strides to develop a thorough credit methodology and the credit requirements consistent with industry standards, we feel there are still some issues that need to be addressed.

The areas with regard to credit that we will address in these comments include:

- Commitment letter requirements and timing for requiring bidders to provide a firm commitment letter, including a red-lined version of the commitment letter.
- Credit Methodology (Attachment 21), notably the determination of security requirements for different categories of Bidders (i.e. Base Load, Intermediate Load, and Peaking)
- The reasonableness of the levels of security required based on industry standards
- The timing for posting security

For example, the RFP main document is still a bit confusing but could be easily be fixed as to the question how you determine the amount of credit required. Attachment 21 is clear but the main document still needs work. The real problem is the unrevised form of the credit commitment letter and the letter of credit in Attachment 22. We will attempt to address specific language and timing in these formal comments. Merrimack Energy is including Appendix A which provides our suggested changes to the commitment letter and the credit language in the RFP. We also provide a separate supplement to these comments which include red-lined versions of the commitment letter as well as a mark-up of the sections in the RFP dealing with credit that need to be revised to ensure consistency.

Also, on the surface we don't have a problem with the credit methodology for developing security requirements or the posting schedule for security (i.e. the issue which one bidder in the final short list would not meet). However, the credit methodology only calculates security requirements for a base load option. The RFP indicates that the credit requirements for the other two categories will be determined based on a percentage of the amount contained in the credit matrix. It would appear that the Company could use the same methodology as used to estimate the security requirements for the base load resource for intermediate and peaking resources as well. Also, the security methodology envisions a two step process based on the credit rating of the Bidder and Credit Support Provider. This was not clear to Bidders in the last RFP. We plan to identify this issue and attempt to propose language or request examples describing more clearly how this process actually works.

LS Power questions the level of security required and indicates it is up to 10 times the levels required in other bidding processes. As illustrated in Appendix B to the RFP, the level of security required for entities with credit ratings at BBB- and below would be approximately \$136/kW for base load resources in 2012. Based on Merrimack Energy's experience in other competitive bidding processes, the range of security requirements generally is from \$100/kW to \$200/kW, with outliers on either side. Therefore, the security levels proposed by PacifiCorp appear to be in zone of reasonableness for investor-owned utilities. Appendix B to this report provides a summary of the collateral requirements in other RFPs over the past few years. As noted, several RFPs include specific amounts of security on a \$/kW basis. Those levels are consistent with the level proposed by PacifiCorp.

With regard to timing for the posting of security, PacifiCorp is requiring that 10% of the security required should be posted at the time of contract execution. The amount of security required increases over time up to the earlier of 2 years after the effective date of the contract or upon project development financing. The IE feels that the posting schedule offers flexibility to the bidder since the majority of the security required can be linked to the date of project financing. In some other RFP processes, utilities require the bidder to post all of the required security at the time of contract execution.

Finally, with regard to the timing for bidders to provide a firm commitment letter, PacifiCorp is requiring bidders to provide any necessary commitment letter from the entity providing credit assurances on behalf of the Bidder within 20 business days after the Bidder is notified by the Company that the Bidder has been selected for the final short list. While this is a major change in the timeframe for providing the commitment letter, the IE still questions the value of such a requirement based on discussions with bidders and EPC contractors. In fact, in our previous comments we had recommended that bidders be required to provide the commitment letter within 15 days after selection of the winning bidder and notification that the Company would initiate negotiations with the Bidder as a concession to move the process forward. However, bidders and others have indicated that once such a commitment letter is signed, the guarantor has to include the obligation as a liability on its financial statements. As a result, several entities expressed concern over this requirement even after they were notified to move forward with negotiations. Furthermore, we also question how firm the commitment really is in terms of the guarantors' obligations. Guarantors have indicated they need to know the terms of the deal before they are comfortable with the commitment letter.

We have addressed both the timing problems and the disclosure issue in our redlined documents. Such provide the same flexibility to proposed guarantors as the Company granted to financial institutions issuing letters of credit. That flexibility is the condition that the commitment promise in the guaranty commitment letter is subject to the guarantor's review of the final contract terms. On the other hand, the redlined documents required that when the commitment letters are delivered, the proposed guarantor must have an agreement in place with the bidder which captures the substance of the commitment promise. Proposed guarantors who are only taking an early or a tentative look at the bidder's project should be eliminated by a requirement that they have actually entered into an understanding about their commitment, under the proper conditions, to execute the guaranty with the Company.

We recommend that PacifiCorp hold a workshop for Bidders on the credit requirements and the basis of the methodology similar to the approach taken in the 2012 RFP. We also encourage Bidders, such as LS Power, to submit alternative proposals for establishing and implementing credit requirements in this RFP process.

## **5. Submission of the Self-Build Proposals**

We agree with the Division that should the RFP be revised to allow self-build proposals, those proposals should be submitted to the IEs one day in advance of other bids (page 7). It was our recollection that PacifiCorp agreed to this in the workshop on March 14, 2008 but the appropriate language to convey that requirement to the bidders needs to be written into the RFP.

If Benchmarks are submitted, as PacifiCorp now suggests, we feel that the IEs should receive the Benchmark options at least two weeks before the bids are received to meet the requirements under R746-420.

## **6. Transmission Assessment**

The Division suggests that one of the lessons learned in the previous RFP was that transmission costs will have a major effect on the evaluation results. The Division recommended that the IE meet with PacifiCorp Transmission to ensure a full understanding of how the transmission costs are developed based on the constraints in the transmission system. PacifiCorp agreed with the recommendation of the Division.

We agree with the Division on the importance of transmission to the analysis and the requirement for the IEs to more fully understand the basis for transmission costs. In our view, one of the lessons learned in the last RFP was the uncertain nature of transmission costs and the potential impact of transmission costs on the evaluation results. We were very surprised to observe the significant increase in transmission as included in Attachment 13. In particular, the transmission cost estimates provided by PacifiCorp Transmission for some delivery points tripled in cost from the Attachment 13 included in the RFP to the revised Attachment 13 that included the delivery points for the specific bids proposed. While the IEs did have a discussion with a representative from PacifiCorp Transmission about the reasons for and nature of the increase, more definitive information on the methodologies and studies associated with the transmission cost analysis is necessary given the magnitude of the costs. In our view, PacifiCorp should include more information about its transmission plans in the RFP to guide bidders on possible resource options and locations.

We also believe it would be valuable for PacifiCorp Transmission to offer a workshop to Bidders on the transmission system and inform bidders what they need to do with regard to transmission information and requests for bid development.

## **7. Eligibility for Geothermal and Biomass**

The Division recommended that a 10 MW minimum for geothermal resources and significantly less for biomass resource. PacifiCorp agreed to establish a minimum size of 10 MW for both geothermal and biomass resource.

Originally, PacifiCorp proposed that all supply-side proposals with the exception of QFs have to offer a minimum of 100 MW. Presumably this would have included both geothermal and biomass alternatives. In our view, a minimum bid of 100 MW is not reasonable for such resources. Typically, such resources as biomass and geothermal cannot offer such large proposals. We agree with PacifiCorp's revision to the size minimums for geothermal and biomass resources of a 10 MW minimum, similar to QF requirements.

## **8. Number of Bids Submitted**

The Division stated that it is a burden on bidders to request a signed original and 10 hard copies of the proposal for each IE. The Division felt that 5 hard copies for each IE should be sufficient (page 24). PacifiCorp has made this modification to the RFP.

We agree with the Division that the requirement to have bidders provide 10 copies to each IE was burdensome in the previous RFP and resulted in excess copies of the proposals. We agree that requiring five copies from each bidder for each IE should be sufficient.

## **9. Indexing**

The Division noted that the previous RFP allowed bidders to index 40% of their capacity price or capital cost to two indices, CPI and PPI – Metals and Metal Products. The other 60% has to be fixed. The Division recommended reversing the percentages such that 60% of the cost could be indexed. Also, the Division suggested that the bidders should have the opportunity to suggest alternative indices and the Company and IE will determine whether the index proposed should be accepted.

The IE notes that in other RFPs, it is common for the utility to generally accept requests from Bidders to add indices if the indices can be forecasted and managed. This will provide more flexibility for bidders to link their bid prices to the cost structure in their EPC contracts. Bidders requesting alternative indices would have to request the index in advance and the Company would have to determine if it can obtain a reasonable forecast for the specific index. Based on our discussions with market participants and EPC contractors it was clear that while the indexing option provided value, the limited indices allowed and the fixed percentages did not adequately capture the cost structure of the projects.

WRA offers a recommendation that has value to the process as well. WRA stated that while it agrees that limited indexing should be permitted, there should also be an evaluation penalty associated with indexing because of the added cost risk.

While indexing can allow bidders to hedge the risk of increasing capital costs by indexing certain components of the cost to different variable indices, indexing does increase the risk to consumers. There would certainly be some trade-offs between cost and risk as a result of indexing. One way to address this is to conduct a risk assessment on the bid pricing formula. Bids that offer minimum or no indexing will convey less risk than a bid where a high percentage of the bid price is tied to indices. In conducting the risk analysis, PacifiCorp could also consider the bid pricing formulae in the risk assessment, as suggested by WRA.

The comparability discussion presented by Merrimack Energy incorporates the option for expanding the flexibility for the bidders and the benchmark options to utilize index options and would also take into account the nature of the proposed indexing in the risk assessment. In our view, the trade-offs would add value to the proposal options.

## **10. Blinding of Bids**

The process of blinding proved to be a successful process in that the name of the bidders was not divulged to the Company evaluators during the bid evaluation process and bidders generally complied with the requirements to blind their bids. While we felt that blinding had value during the question and answer process, the trade-off between the time and effort to ensure the bids were blinded to Company evaluators versus the value of blinding should be considered.

The Division also questions the value of blinding in its comments and suspects that level of effort for bidders and the IEs may not be worth the benefit. The Division states that while it is raising this as an issue, it will accept the positions of PacifiCorp and the other parties on the blinding of bids.

UAE notes that the Intent to Bid forms submitted by potential bidders are not blinded. It is not clear why these forms are not blinded or whether they should be. In the 2012 RFP, only the Credit and Legal teams had access to the Pre-qualification information. Both teams were not blinded teams. We would expect that the same requirements would apply to the Notices of Intent should bid blinding be required for this process. That is, only the Credit and Legal teams would have access to this information..

The IE is of the opinion that blinding the name of bidders during the question and answer period is valid and ensures that bidders are not required to divulge any competitive information. Also, blinding at this stage ensures all bidders have access to the same information.

With regard to the specific blinding of bids, we agree with the Division. There did not appear to be commensurate value given the level of effort. However, Rule R746-420 discusses bid blinding and the use of bid blinding in case of a benchmark bid. Presumably, the requirements in the rules will dictate whether or not bid blinding will be required.

## **11. Resource Eligibility**

The Company initially decided that coal-based resources would not be eligible to bid. However, several parties raised concern about this decision. The Division did not agree with excluding coal resources because the Company cannot demonstrate that it has selected the least cost-least risk resource without including coal in the analysis. UAE also disagrees with the exclusion of coal resources and suggests that all resources should be invited regardless of fuel source. Only under this case could the utility evaluate cost and risk trade-offs. WRA also suggests that a ban on coal may not be appropriate. Instead, WRA suggests that it may be more appropriate to place a limitation on the carbon footprint for the proposed resource.

PacifiCorp responded by incorporating language in the final Draft RFP that allows the Bidder 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.

The IE is in general agreement with the Company and other parties. Eliminating coal as an option may preclude a viable resource or discourage potential new technologies that may offer

significant value to customers. As long as the rules of the game are identified in the RFP and bidders are aware how such resources will be evaluated, it is appropriate to allow coal-based options to compete.

## **12. Proposal Options**

The Division agrees with the Company's proposal on page 21 to allow bidders to provide a base bid and two alternatives under the same bid fee. The Division also recommends that bidders should be encouraged to bid multiple pricing options under the allowed alternatives. For example, bidders could offer different indexing mechanisms. Also, the Division recommends that the Company allow Bidders to offer different prices for different security requirements to assess what the cost of security really adds to the bid price.

The IE supports the Division's proposal. In our view, allowing bidders the flexibility to offer multiple pricing proposals should lead to creative solutions for the benefit of customers. In addition, the IE would recommend that PacifiCorp include in the list of eligible pricing options the ability of bidders to offer different indexing options. For example, a bidder may want to propose both a fixed price bid as well as an indexed bid or offer bids with different indices. We also support the suggestion that bidders be allowed to offer pricing proposals for different levels of security. We have included this idea in our comparability discussion. Bidders could offer this option as part of their original bid (e.g. base bid plus two alternatives) or offer different pricing arrangements for a fee of \$1,000 per option.

## **13. Flexibility of Proposals**

The Division suggests that specific milestones for establishing deferral, acceleration and buyout options should be identified in Form 2, Permitting and Construction Milestones. Currently, the RFP states that bidders should either provide pricing for all the milestones identified or provide pricing based on their desired milestones. The Division suggests that bidders may be more likely to respond with pricing options if specific milestones are identified.

The IE agrees with the Division. Form 2 is very detailed and complex on its face. We also believe that bidders may be more likely to offer flexibility options if the milestone requirements are specified in the RFP. Since PacifiCorp is requesting bids over a multiple year period (i.e. 2012-2017), such options as in-service date deferral, acceleration as well as contract buyout and resource acquisition options add value to the resource planning process. The milestone dates we recommend are listed below. Generally, deferral and buyout options would be exercised just prior to reaching the milestone. The milestones should be consistent with the major milestones for which expenditure increases can be expected if such milestones are reached. These may include:

- Six months after contract execution
- Prior to:
  - Secure Major Permits
  - Secure Major Equipment

- Begin Pouring of Foundations
- Begin Performance Testing

Bidders can refer to their critical path schedule for identifying these or other milestone events for which they would offer a buyout/break-up fee, deferral option or acceleration option.

#### **14. Schedule**

The Division is concerned that a 45 day period to complete the evaluation is too short and suggests that a 60 day period would be more realistic. Sixty days would be more realistic but may still not be adequate.

The Company has agreed to make a change in the schedule to allow a 60 day bid evaluation period as suggested by the Division.

Based on the experience with the 2012 RFP, the IE agrees with the Division and the Company's revision to the schedule. While the Step 2 and Step 3 process took approximately 30 days to complete, the process for developing the term sheets proved to be a protracted process. In total, the bid evaluation and selection process took more than 60 days to complete taking into account the delays in the process. Furthermore, the non-price evaluation was not completed in the 2012 RFP. We suggest that the timeframe should be extended to 60 days and the Company should develop a detailed schedule and present the schedule to bidders who submit a Notice of Intent to Bid to notify bidders of the specific milestones in the schedule.

#### **15. Price Evaluation**

The Division is concerned with several issues with regard to the modeling methodology based on the lessons learned in the previous RFP. First, the Division stated that the price comparison metric in Step 1 (page 49) needs to be flexible. For example, if this metric was applied as described in the previous RFP most bids would have received 0 price points and non-price points would have determined which bids would have made the short-list. Thus, there needs to be some flexibility applied to ensure the weightings are maintained as proposed. Second, the evaluation process identified on page 47 indicates that PacifiCorp will rely on PVRR Tail Risk for its risk assessment metric. The Company needs to clarify whether Tail Risk or Risk Adjusted PVRR, as used in the 2012 RFP evaluation, will be used as the risk metric in the evaluation and selection process.

The IE agrees with the Division's position with regard to the price evaluation methodology in Step 1. In our comments on the 2012 RFP we raised this same issue on the Step 1 process. We noted our concern that a strict application of the price ranges specified could result in price having little impact on the short-list selection process. As a result, we advocated that the price range selected be readjusted based on the actual range of prices if the price range differs from the identified range. If the price range is not adjusted appropriately, the short-list selection could be based on the non-price evaluation.

We also agree that the risk metric should be clearly identified and maintained in the evaluation process unless the Company can demonstrate to the satisfaction of the IEs and the Division that an alternative metric should be used.

PacifiCorp responded by revising the pricing metric through broadening the price range. For example, bidders will receive the full percentage of the price weightings (i.e. 70%) if their bid is less than or equal to 60% of the adjusted price projections and 0% if the price is equal to or greater than 140% of the adjusted price projection. Bid prices between that range will be linearly interpolated. While this approach adds more flexibility, we are still concerned there is a risk that non-price could dominate the evaluation results if the bid prices are higher than the adjusted price projections. We still feel it is beneficial to reserve the right to revise the ranges after the bids are received to ensure the weightings are maintained as intended.

PacifiCorp has also added a provision in the RFP identifying the that the “key stochastic performance measure used to assess each resource set will be the risk-adjusted PVRR which is calculated as the mean PVRR plus the expected value (EV) of the 95<sup>th</sup> percentile PVRR (see page 47 of the Final Draft RFP).

## **16. Term Sheets**

The Division notes that in the previous RFP, after receipt of bids, PacifiCorp spent several weeks working with Bidders to develop term sheets that summarized in detail PacifiCorp’s understanding of the specific elements of the proposal. However, the current RFP makes no mention of this phase in the process. The Division recommends that PacifiCorp should identify to bidders that they will work with the bidders to develop term sheets shortly after receipt of bids.

PacifiCorp has included this modification on page 47 of the RFP. PacifiCorp noted it intends to exchange input sheets with Bidders in order to ensure that all inputs entered into the price evaluation are validated by the bidders.

The IE agrees with the Division and PacifiCorp’s revisions to the RFP that the process for working with bidders to develop term sheets should be explicitly identified in the RFP when discussing the evaluation process. While this step in the process is important to ensure both parties have a full understanding of the details of the bid, it did prove to be a time consuming process in the 2012 RFP. Given the tight timeframe for bid evaluation and selection, we believe that if this process is identified in the RFP and Bidders know that there is a schedule to complete the term sheets that perhaps this step in the process can be completed quickly rather than undergo multiple turns as in the 2012 RFP.

## **17. Pre-Qualification vs Notice of Intent**

PacifiCorp has proposed replacing the Pre-Qualification process from the previous RFP with a Notice of Intent to Bid process. In this way, Bidders do not have to pass an initial pre-qualification stage to qualify to submit a proposal. The Notice of Intent process is less formal and restrictive to bidders. In our view, a Pre-Qualification process is most effective if a newer

technology or large scale project is being solicited. For example, we felt that a Pre-Qualification process was appropriate for coal projects, notably IGCC options, in the previous RFP.

In addition, the information requested of bidders in the Notice of Intent was the same as was requested in the Pre-Qualification process. Therefore, we have no issue with relaxing the requirements for this process. The Notice of Intent process should encourage bidder participation since there are limited hurdles for submitting a proposal. In the previous RFP, some of the feedback from bidders was that they were uncertain whether they would pass the Pre-Qualification stage and were hesitant to go forward with the preparation of a proposal until they knew for certain. This combined with the issues associated with credit requirements could have discouraged bidder participation. Finally, it is common practice in the industry that a Notice of Intent followed by a proposal is more the norm.

## **18. Risk of CO2 Costs**

UAE does not believe that it is reasonable or in the ratepayers best interests to require the utility (and thus its ratepayers) to bear all risks of CO2 costs under all circumstances. If a bidder places a lower value on CO2 risk than does the Company or the Commission and is able to provide adequate security for that risk, the bidder should be allowed to bear at least a portion of the CO2 risk, and its bid should be credited accordingly.

While UAE's suggestion would represent a significant change from the approach taken in this and the previous RFP, perhaps this option could be addressed via alternative proposals. In this manner, the base bid could solicit bids assuming that PacifiCorp bears the CO2 cost risk. Bidders could then include an alternative proposal where the bidder agrees to absorb this risk and provides its pricing assuming the bidder bears the CO2 cost risk. If this suggestion is adopted, PacifiCorp will need to change Section F on pages 27-28 of the RFP to add this as an allowable option for the alternative proposals.

## **19. Economic Evaluation Methodologies and Models**

PacifiCorp will rely on several economic models and methodologies for undertaking the price evaluation of the eligible bids. According to the Final Draft RFP, PacifiCorp indicates that it will use the same models and methodologies it used in the 2012 competitive bidding process. PacifiCorp will therefore utilize a spreadsheet model ("RFP Base Model") to screen the proposals and to evaluate and determine a short list, and then use a production cost model to determine the final short list and the least-cost/risk resource(s). PacifiCorp provides a description of the RFP Base model inputs in the RFP.

The IE met with the staff at PacifiCorp on several occasions during preparation for the 2009 and 2012 RFP processes to discuss the models to be used for the analysis, the methodologies underlying the economic evaluation of the bids, the development of major inputs to the models (i.e. forward curves for power and gas), and the major assumptions used in the evaluation. In addition, the IE was provided access to the model results for the 2012 RFP via a dedicated website established by PacifiCorp to maintain analysis results and supporting documentation. The IE became quite familiar with the models and methodologies during the 2012 RFP process.

The IE's focus with regard to the models is to ensure the modeling approach and assumptions used do not create any undue biases favoring any resource alternative, that the methodologies are consistent with industry standards, and that the methodologies produce consistent results.

For purposes of the evaluation, the quantitative methodologies used will be very important at each stage of the process. As noted, PacifiCorp proposes to use three models for this process. The modeling steps in the process include: (1) In Step 1 the RFP Base Model will be applied at the initial screening phase of the evaluation; (2) In Step 2, the Capacity Expansion Model (CEM) will be used to develop optimized portfolios from the initial short-list under various assumptions for future emission expense levels and market prices; (3) In Step 3, the Planning and Risk Model (PaR) will be used in stochastic mode to develop expected PVRR and tail risk PVRR measures for the optimal portfolios developed from the CEM model in Step 2; and (4) Also in Step 4 the optimal portfolios will be subjected to a more in-depth deterministic dispatch using CEM, with each portfolio being assessed for each of the future scenarios described in Step 2 above.

#### **A. RFP Base Model**

The RFP model is a spreadsheet based model designed with the capability of conducting analysis of a number of products based on the optionality and value embedded in each product. The model contains several modules or blocks that are used depending on the type of product and the embedded optionality to be analyzed. The model has the capability for evaluating the major alternatives requested in the RFP. In addition, PacifiCorp has expanded the model to include a ratebase tab to allow for the evaluation of ratebase options within the same model construct. This model has continually undergone improvements over time and we would expect to again review the latest version of the model and request that PacifiCorp maintains the dedicated web address on its system to maintain all input assumptions and model output results.

The model compares the cost components of each bid with the revenues the proposal would generate based on the projected market price of power times the projected level of output. In effect, the net present value of the revenue stream (assuming the energy could be sold at the projected market price) over the proposal term is compared to the net present value of the cost streams over the same term. The model includes the costs proposed by the bidder including capacity cost, fixed O&M cost, variable O&M cost, fuel cost, and start-up cost. In addition, the model adds transmission costs, CO<sub>2</sub> adder, and debt impacts. In the screening phase, proxy transmission costs will be included. The draft RFP describes how transmission costs will be evaluated and provides estimated integration costs in Attachment 13.

The calculated difference between costs and revenues is then divided by the real levelized contract capacity to estimate a Present Value Revenue Requirement (PVRR) in dollars per kW-month for each bid. Bids are then ranked with those bids having the highest positive value per kW-month ranking highest.

The model methodology is consistent with industry standards applied by others for conducting such a pricing analysis of bids received. Furthermore, based on our previous review it appears the operations of the model track consistently from case to case. The inclusion of the Pricing Input Sheet (Form 1), which the bidder is required to complete and submit, should minimize any interpretation errors on the part of PacifiCorp's analysts and serves as a means of verifying the inputs submitted.

The Pricing Input Sheet also provides a "check" for the IE to ensure the input assumptions presented by the bidder are appropriately incorporated in the model. The Pricing Input Sheets are a valuable component of the RFP to ensure consistency of bid inputs.

## **B. Production Cost Models**

The IE previously met with PacifiCorp to discuss the production cost model and methodology proposed by PacifiCorp for determining the final short list and the least-cost/risk resource. PacifiCorp plans to again use the Capacity Expansion Model (CEM) and the Planning and Risk (PaR) Module in the EnerPrise Suite, which the Company has used for both its IRPs and the 2012 RFP. The PaR model is driven by the PROSYM simulation engine for unit dispatching purposes. PROSYM is a long standing production cost model with many users in the electric utility industry. The model optimizes dispatch of the company's generation units against company load on an hourly basis for 20 years. PROSYM considers a complex set of operating constraints to simulate the least-cost operation of the utility. This simulation, respecting chronological, operational, and other constraints in the case of cost-based dispatch, is the essence of the model. PROSYM is a general purpose simulation model capable of representing most electric load and resource situations.

Included among the fundamental drivers of the model are fuel prices, hydro output, load, unit availability, status of new generation, and emission markets. The model does not produce a forward price but uses forward gas and electric prices as inputs.

The CEM model is a model used for screening and evaluation of generation capacity expansion, transmission upgrades, strategic retirement, and other resource alternatives. CEM is an economic optimization model that simultaneously considers resource expansion investments and external market transactions. With CEM the optimal resource expansion strategy is determined based on an objective function subject to a set of constraints. The typical criterion for evaluation is the expected present value of revenue requirements (PVRR) subject to meeting load plus reserves, and various resource planning constraints. Finally, CEM is used to develop long-term resource expansion plans with type, size, location, and timing of capital projects over a 20-year horizon.

The PaR model has a number of applications associated with budgeting and planning, investment analysis and risk assessment. PacifiCorp intends to apply the model for risk assessment purposes. The PaR model allows the analyst to undertake a comprehensive risk assessment using scenario, stress testing and stochastic risk assessment approaches. It provides a variety of risk measures based around the uncertainty facing a particular asset or portfolio, providing risk analysis by value, individual time periods, individual assets, etc.

The IE has worked on a number of competitive bidding projects with utilities where such models as PROSYM, PROMOD, EGEAS, Strategist or other second or third generation production cost or generation expansion models were used to undertake the detailed or final short-list evaluation. As noted, PROSYM and other PROSYM-related models are well established in the utility industry. Finally, the models are sophisticated tools that can be used to conduct detailed portfolio evaluation and risk assessment.

While it is important to ensure consistent output, probably the major driver of the process is the inputs and assumptions used in the evaluation. The key fuel price assumptions and the methodologies for developing these forecasts are described below.

### **C. Power and Fuel Price Forecasts and Forward Curves**

In our view, based on experience with the 2012 RFP PacifiCorp has developed a reasonable approach for forecasting long-term fuel and power forward prices. For both fuel and power prices, PacifiCorp uses actual market quotes and transactions as the basis for developing the forward curve for the first six years of the forecast. PacifiCorp then blends in the market forecast to the long-term projection for the next one to two years. For forward power prices, PacifiCorp's long-term projections take into account transmission constraints, the cost and operating characteristics of new build options, fuel prices and a number of other inputs. For natural gas, PacifiCorp uses market quotes for six years and then blends in the next few years to the forecasts of a well recognized forecasting organization.

In our view, the approach used by PacifiCorp for developing forward prices for power and fuel is reasonable and is consistent with industry standards. Furthermore, the forecasts minimize any potential forecasting bias in the short-term because the forecasts are based on actual market quotes. In this case, if counterparties are hedging the risk of fuel cost volatility, the market quotes will incorporate these costs in the forecast. We expect to review the methodologies and results prior to the submission of bids in this process.

### **D. Conclusions and Recommendations on the Models and Methodologies**

Based on our previous reviews of the models (i.e. RFP Base Model and Production Cost Models) and their results, meetings with PacifiCorp staff to discuss the model methodologies and applications, and industry standards from other RFP processes, the IE concludes that the methodologies proposed by PacifiCorp are reasonable and should result in fair and equitable modeling results. However, the input assumptions used in the bid evaluation process could have important impacts on the bidding results. We believe the approaches used by PacifiCorp for developing forward prices are reasonable and should minimize any undue bias associated with lower than expected fuel prices. We recommend, however, that meeting with PacifiCorp staff should be initiated to review any lessons learned from the applications of the models for the 2007 IRP as well as the 2012 RFP soon after approval of the RFP.

## **20. Other Issues**

Several issues raised by the parties in the 2012 RFP process were no longer addressed in this process. Notably, no one raised any issues with PacifiCorp's approach for addressing direct or inferred debt. We assume that there is therefore no opposition to this approach.

## **21. Specific Comments on the RFP Documents**

The IE also has identified several issues in the RFP that need to be clarified or addressed prior to completion of the Final RFP. These are listed in this section of the Report.

- First full paragraph on page 9 – Will Bidders be informed about the status of any resources that may be secured from the 2012 RFP.
- Page 14 – first full paragraph – The Company states that “to the extent no fuel source is specified, the Company will assume the fuel source type is gas”. Why wouldn’t the Company just go back and inquire from the bidder what its fuel source is rather than assume it is gas.
- Page 28 – First paragraph – Will “pricing structure” as an alternative include different index options. If so, PacifiCorp should include such a statement.
- Page 28 – Effectiveness of Bids – The first full paragraph contains some inconsistent language with regard to the execution of the EPC contract, i.e. “two years after the EPC Agreement has been executed with the Company”.
- Page 28 – Effectiveness of Bids – The last line states that the Company will be required to submit any Benchmark one day prior to the due date for third-party bids. Does this mean the Benchmark along with the evaluation and all other information will be submitted to the IE one day in advance. The submission of the Benchmark, evaluation of the benchmark, auditing by the IEs, etc. needs to be made clearer in the RFP.
- Page 33 – Company’s Reservation of Rights – The Company’s Reservation of Rights should be subject to review and approval of the Commission.
- Appendix A – Page 4 Footnote. Please explain the intent of this footnote particularly the phrase “limiting the amount of leverage on the project by way of a cap on the debt to equity ratio”
- Will the proposed benchmarks or other proposal options be affected by any resource selected through the 2012 RFP?

## **VII. Assessment of the Contract and Related Benchmark Risk Issues**

Like the contracts in the 2012 RFP, the pro forma contracts in the 2008 Draft RFP differ from the pro forma contracts in the earlier RFP's only in a small number of ways. Those differences from the very early RFP's do improve the comparison between PPAs and APSAs and will be noted below. Like the prior contracts, the IE has again assessed the forms contained in the RFP to determine whether there are any undue biases in the form contracts that could favor one type of resource option over another. However, like the 2012 Draft RFP, in the present case, benchmark options are being proposed. Accordingly, to assess the fairness of the RFP, the IE points out in this section how each of the major project risk characteristics, that are either captured in the pro forma contracts or presented by the cost of service benchmark options, differs among all of the selection options. The benchmark options in this 2008 Draft All Source RFP present higher risks which, at least in theory and without regard to the possible mitigating impacts of prudence reviews, fall on ratepayers under traditional cost of service pricing principles. The sections below provide a discussion of such major project risk characteristics and how key provisions of the PPA and APSA agreements and the principles of cost of service pricing compare with respect to such risks.

### **A. Risk Allocation between Seller and Buyer in Contracts and Benchmark Options: Issue by Issue Comparison among Power Purchase Agreement (PPA) (Attachment 3), Asset Purchase and Sale Agreement (APSA) (Attachment 6)<sup>12</sup> and Cost of Service Benchmark Pricing Principles**

1. **Milestone and Development Risk.** Both PPA Sellers and APSA Sellers have duties to meet applicable Milestones and achieve completion of the Facility or face contract consequences for delays or failures in performance. See: Sections 2.2, 2.3, 10.1.2.4, 10.1.2.5 and 10.2 of the PPA and Sections 7.5, 7.36, 10.6, 17.1(b), 17.2, 24.2, 24.3, 29.1(a), 29.4 and 30.1(b) of the APSA. APSA Sellers enjoy somewhat more flexibility in their performance than do PPA Sellers due to differences in the Force Majeure, scheduling and permit provisions of the subject forms. See: Comments No. 2-4.

PPA Sellers still face a “no notice and no opportunity to cure” risk of termination for any delay in obtaining the Commercial Operation Date (Section 10.1.2.5); however, bidders are allowed to propose an extension period after the deadline date before which any default comes into existence. Now, there is some meaningful relief from the default risk from the Force Majeure provisions dealing with permits and required documentation. On the other hand, APSA Sellers do not face a comparable “no notice and no opportunity to cure” risk of termination when the deadline for Substantial Completion is missed (Sections 29.1(a) (30 day period before defaults come into existence) and 30.1(a)(ii) (14

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<sup>12</sup> The Tolling Service Agreement (TSA) shares a common foundation in the forms and can be described as a PPA without gas service. The Engineering, Construction and Procurement Contract (EPC) shares a common foundation in the forms with the APSA and can be described as an APSA without the development and permitting duties. For purposes of brevity, a comparison of the PPA and the APSA should be sufficient to illustrate the salient differences between the two categories of forms: third party product delivery and service agreements (PPAs and TSAs) and owner asset procurement and acquisition agreements (APSAs and EPCs).

days notice and opportunity to cure) and can also get meaningful relief from such risk in the Force Majeure and scheduling provisions of the APSA. See: Comments No. 2-4.

Accordingly, the risk of milestone and development default and termination is somewhat higher for PPA Sellers than for APSA Sellers. For the benchmark options, no milestone or commercial operation deadlines, as such, apply under traditional cost of service principles. However, PacifiCorp has a duty to serve and, if the benchmark options are selected, PacifiCorp must prudently plan to have the benchmark facility on line in a timely fashion. It is the IE's understanding that prudent planning, under applicable case law and UCA § 54-4-4(4)(a), is unlikely to require that any specific deadline or target commercial operation date be met, as long as the utility, based on what it knew at the time or should have known, continues to plan and identify alternatives to meet its needs prudently as permit and other development problems occur. No formal definition of Force Majeure would limit its ability to proceed free of penalties as long as prudence continued to apply as it took action to counter events outside its control. While PacifiCorp could prudently decide to cancel an unsuccessful or uneconomic benchmark, and seek recovery of prudently incurred costs<sup>13</sup>, no default and termination risk as such applies to benchmark projects. Even if schedules and target dates slip, as long as PacifiCorp continues to review alternatives prudently, and then prudently decides to continue, it will be entitled to finish the benchmark project without interruption and seek to recover its costs in rates. Accordingly, under traditional cost of service principles, ratepayers will experience the full impact of delay costs prudently incurred when a benchmark project cannot be finished on time.

2. **Force Majeure Exclusion of Permits.** In Section 1.1 of the PPA, the Force Majeure definition in Section 13.1 is cross-referenced. In Section 13.1, Force Majeure is now defined explicitly to limit the prior exclusion of permits from the definition. The subject definition now excludes "(v) delay or failure of Buyer to obtain any Required Facility Document other than Permits which Seller is diligently and timely taking all reasonable steps to obtain." Required Facility Document is defined in Section 1.1 to include all Permits and agreements necessary for development, construction, operation and maintenance of the Facility. Accordingly, the limitation was needed to allow delay or failure of Seller to obtain its required permits to be an event of Force Majeure excusing a delay or failure of Seller to meet its Milestone duties under Section 2.2. Such a Milestone failure can still, however, mature into a Seller Event of Default under Section 10.1.2.4 and 10.1.2.5, after 180 days, the limit to any Force Majeure event.

Under the APSA, the definition of Force Majeure in Appendix F also contains some relief to the advantage of Seller. An exclusion is first stated but then qualified as follows: Force Majuere excludes "(iii) delay or failure by the Seller to obtain any Governmental Approval, all of which should have been anticipated by the Seller in connection with Seller's reply to the RFP, other than the delay or failure to obtain Governmental Approvals occasioned by (x) revocation, stay, or similar action by a Governmental

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<sup>13</sup> Under UCA § 54-17-304(4)(b), PacifiCorp now is able to seek prior review of whether to proceed with an earlier approved project and to recover its costs to date and termination expenses if the Commission decides not to approve continuation. Further, under UCA § 54-17-304(5)(a)(i) and (ii), PacifiCorp is not obligated to follow Commission determinations and can later seek recovery of the prudently incurred costs of continuing a questionable project.

Authority of a Governmental Approval after issuance thereof by a Governmental Authority, (y) the failure of a Governmental Authority to comply with rules, procedures or Requirements of Law applicable to such Governmental Authority or (z) another Force Majeure.” The exceptions to the exclusion mean that time-consuming appeals, governmental miscues and other Force Majuere events causing permit delay or failure may result in excused permit failures.

Accordingly, while the provisions are not comparable, APSA Sellers may fare somewhat better in avoiding the risk of defaults due to delays in obtaining permits than do PPA Sellers which are entitled to 180 day relief from Milestone failures due to permit delay<sup>14</sup>. APSA Buyers experience higher risks of uncompensated delays and cost increases as a result of the flexibility in performance accorded APSA Sellers. See: Comment No. 5, infra.

With respect to permit delays, the benchmark options under traditional cost of service principles fare best of all. Permit delays for reasons outside the control of the utility would generally be no basis for a finding of imprudence, provided that the utility continued to plan and consider alternatives and the impacts of delay prudently. No formal Force Majeure clause limits PacifiCorp ability to show the prudence of its planning when permit problems, or other development difficulties, occur. There is little risk of an imposed project cancellation due to delays in obtaining permits.

3. **General Force Majeure Standard.** In Appendix F of the APSA, Force Majeure is defined with reference to a general standard, “an event not reasonably anticipated as of the date of this Agreement”. Now, Force Majeure is similarly defined in Section 13.1 of the PPA as “an event . . not reasonably anticipated as of the date of this Agreement. The APSA and PPA definitions are now comparable with respect to the issue of anticipation of future events.

Since no formal Force Majeure clause is operative with respect to benchmark options, PacifiCorp would have all the flexibility available under prudence principles for excusable delays. As long as continued development was prudent under the circumstances, PacifiCorp could incur the costs associated with delayed performance without significant risk of later being unable to recover those costs from ratepayers.

4. **Force Majeure Exclusion of Required Facility Documents.** As indicated above, delay or failure of Seller under the PPA in obtaining any Required Facility Document is not an event of Force Majeure. In Section 1.1, Required Facility Documents include all financing related agreements, such as the lender consent and intercreditor and subordination agreements which the Company expects to execute. While PacifiCorp’s

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<sup>14</sup> Both PacifiCorp’s June 20, 2006 PPA with Spanish Fork Wind Park 2, LLC and PacifiCorp’s standard form QF contract shows tolerance for permit delays. See: Section 13.1 of FORM OF POWER PURCHASE AGREEMENT [QUALIFYING FACILITIES IN EXCESS OF 1000 KILOWATT NET OUTPUT] (Force Majuere includes “other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which is in each case (i) beyond the reasonable control of a party, (ii) by the exercise of reasonable foresight such party could not reasonably have been expected to avoid and (iii) by the exercise of due diligence, such party shall be unable to prevent or overcome.”)

actions as Buyer affect the ability of Seller to obtain such financing documents, Seller under the PPA remains at risk, without Force Majeure excuse, for any delay in satisfying its Milestones duties under Section 2.2. Such a Milestone failure can then mature into a Seller Event of Default under Section 10.1.2.4 and 10.1.2.5.

The timely completion of comparable Transaction Documents, defined in Appendix F of the APSA, appear to be Seller's responsibility under various provisions of Section 4, Section 10.6, and Section 17.1(b)(v) of the APSA. However, delays in obtaining Transaction Documents are not excluded from the APSA Force Majeure definition. Moreover, any delay in issuance of the Notice to Proceed due to delays in Transaction Documents requires Seller to submit an updated version of the Project Schedule under Section 10.1. The procedure for rejection of updated schedules in Section 10.3(a) (treated as a "Buyer-Initiated Change" under Section 13.1) may not ultimately result in Seller accountability for the document delays<sup>15</sup>.

Accordingly, APSA Sellers fare significantly better in avoiding the risk of defaults due to delays in obtaining Transaction Documents than do PPA Sellers which are entitled to no relief from Milestone failures due to Sellers' delay in obtaining Required Facility Documents. APSA Buyers, and in turn, ratepayers taking service from such Buyers, experience higher risks of uncompensated delays and cost increases as a result of the flexibility in performance accorded APSA Sellers. See: Comment No. 5, following.

As long as prudence applies, ratepayers absorb the costs of delay in completing project documentation for benchmark options. Completing all Transaction Documents related to the benchmark options must be done on some prudent schedule. However, no firm deadlines exist in the flexible schedule available to a prudently performing utility. As long as delays arise from reasonable causes and schedules are adapted with a mind toward possible alternatives, there would be little chance of an imposed project termination as a result of delays in executing project documentation.

5. **Force Majeure and Change in Law Cost Increases.** The applicable provisions of the EPC and APSA result in a risk that costs to Buyers may increase to reflect certain Force Majeure and Change in Law events or occurrences. In light of the well-understood fixed pricing provisions of the PPA, no comparable risk exists for Buyers under the PPA. Compare: Sections 5.1.2 and 6.3.1.1 of the PPA to Sections 10.1, 10.3(a), 13.2(b), 13.2(c), and 28.3 of the APSA.

Under traditional cost of service principles, events outside the control of the utility, including, in particular, changes in law, would not result in imprudence disallowances as long as the utility continued to adapt its development efforts to the changed circumstances in a prudent fashion. As a result, permit opposition and delay, changes in law relating to environmental control requirements, and other similar occurrences would result in prudently incurred delay and scope-change costs. Ratepayers have traditionally absorbed costs such as these which a prudent utility could not reasonably avoid. For a

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<sup>15</sup> Seller accountability for failure to obtain Governmental Approvals and Permits under the APSA, even when it is clear that no Force Majeure excuse is applicable, is likewise subject to doubt due to the Project Schedule revision process in Section 10 of the APSA. The APSA Form exhibits ambiguity that may have been the intentional result of actual negotiations that affect the Form.

coal project, the risks of events outside the control of the utility and of changes in applicable law are high. The ability of the developer, whether a utility or a third party bidder, to adapt to such risks and continue an otherwise valuable project is critical if coal projects are to succeed. Recognizing this reality, PacifiCorp has again agreed in the 2008 Draft RFP that the risk of a change in law which imposes a carbon tax should be, in all cases, absorbed by PacifiCorp on behalf of its ratepayers (RFP, page 38). This facially prudent decision still has not, however, been reflected in the explicit provisions of the pro forma contracts. Moreover, other environmental changes in law which result in higher costs to bidders have not yet been addressed in the documentation and it is not clear whether PacifiCorp intends to treat such change in law right in a manner comparable to the treatment received by the utility under cost of service principles for the benchmark resources.

6. **Delay Damages**. Under Section 2.3 of the PPA, Seller is required to pay defined Daily Delay Damages if the Commercial Operation Date occurs after the guaranteed date. The damages are defined to recover only cover damages between the reference market price for replacement power at a specified location and the contract price<sup>16</sup>.

Under Sections 24.2(c) and 24.3 of the APSA, Seller is required to pay daily Critical Milestone liquidated damages and daily Late Substantial Completion LDs (\$175,000 per day for dispatchable Projects and \$350,000 per day for non-dispatchable Projects), respectively.

In the case of both PPAs and APSAs, the delay damages collected from Sellers serve to offset the losses incurred by Buyers when replacement power must be purchased due to the late completion of the PPA and APSA projects. To the extent of such damages, ratepayers are in theory<sup>17</sup> protected from the excess cost of replacement power over project costs. For the benchmark options, provided that delays are outside the utility's control and the utility prudently adapts to the delays, cost of service principles would not require that the utility experiencing the delay in the benchmark completion date absorb the extra costs, if any, associated with purchasing replacement power during the delay period. Ratepayers in theory are chargeable for the consequences of prudent delay under cost of service principles.

7. **Capital Cost Escalation**. Under Sections 5.1.2 and 6.3.1.1 of the PPA, payments to PPA Sellers are not allowed to increase for any reason, including, as indicated above in Comment No. 5, for reasons of Force Majeure or Change in Law. This applies equally before and after the Commercial Operation Date.

Sections 10.1, 10.3(a), 13.2(b), 13.2(c), and 28.3 of the APSA may, under certain circumstances, result in capital cost increases to APSA Buyers, and in turn to ratepayers

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<sup>16</sup> The IE has discussed with PacifiCorp in the past the need to make conforming changes to Section 10.7 of the PPA so that the full contract price, and not just the Exhibit F energy price, is deducted from the replacement power cost in order to obtain the net replacement cost for purposes of default damages. Changes have been made, but the language is not clear and appears to be mistaken as to how the proper calculation should be made.

<sup>17</sup> The actual measure of protection would depend on the ratemaking conventions which determine how and to what extent replacement power costs are charged to ratepayers and how and to what extent damage revenues are credited to ratepayers.

taking service from such Buyers. Other events during the Term of the APSA could cause a change in the Scope of Work, as defined in Appendix F, and potentially, an increase in the final capital cost incurred by APSA Buyers. Like most construction-based contractual forms, the APSA contains Change Order procedures which contemplate price and other adjustment to the original contract terms (e.g., see: Section 7.21 (Spare Parts available by Change Order); Section 10.3 (Buyer Initiated Change when Buyer rejects an updated Seller Project Schedule); Sections 13.1(c)(iii), 13.2(b), 13.2(c)(i) (Change in Applicable Law/Permit or Site Condition), 13.2(c)(ii) (Suspension of Work by Buyer), and 13.2(c)(iii) (Non-Performance by Buyer). Additionally, a failure of Buyer to meet its schedule obligations under Section 10.2 can lead to delays and cost increases under Section 10.8(d). During operation of APSA resources by APSA Buyers, capital additions and retrofits would, except for warranty items, be at the risk and cost of APSA Buyers<sup>18</sup>.

Accordingly, APSA Buyers are exposed to risks of capital cost increases, both before and after the Commercial Operation Date, which are simply not applicable to PPA Buyers.

Under traditional cost of service principles, provided that planning and construction exhibit prudence, benchmark options which experience capital cost increases during development or construction enter rate base at the higher costs resulting from such increases. Ratepayers are expected to absorb the risk of prudent capital cost increases. For a variety of reasons, including the topics already addressed such as permit Force Majeure and change in law risk, capital costs for coal projects could readily escalate during development and construction in spite of all prudent efforts to prevent such increases. Delays will increase carrying costs for capital costs already incurred and may result in price escalation for capital costs not yet incurred. Environmental controls may be revised and cause a dramatic change in construction scope and costs. Whatever the best guess as to the “expected costs” of a new coal project, significant risk exists in the dispersion of possible final costs which may result from many coal project risks.

8. **Unavailability and Replacement Power Costs.** During the portion of the PPA Term after the Commercial Operation Date, PPA Sellers are exposed to the risk of reductions in their Capacity Payments under Section 5.1.2 to the extent of their monthly unexcused hours of unavailability exceed allowed margins. Defined Events of Default create additional risk of default and termination for unexcused unavailability by PPA Sellers (Sections 10.1.2.2, 10.1.2.8). Payment reductions flow to the benefit of PPA Buyers which can use the savings to fund the cost of replacement power. When termination results from unavailability defaults, PPA Sellers are exposed, under Section 10.7, to conventional contractual cover damages requiring termination payments calculated to cover, for the remainder of the Term, the difference between the defined Replacement Price for energy and the price per MWH specified in Exhibit F to the PPA<sup>19</sup>.

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<sup>18</sup> Under the present scoring of APSA resources in comparison to PPA resources, capital additions and retrofits or repairs outside of PacifiCorp’s “most probable estimate” of expected costs would not even be taken into account.

<sup>19</sup> As noted above, Exhibit F to the PPA contains only the Energy Payment required under Section 5.2. As a result, a question immediately arises whether Section 10.7 correctly calculates conventional cover damages or incorrectly fails to give appropriate credit to Seller for the Capacity Payment component of the contract price. Changes made to date to Section 10.7 leave its meaning unclear and more attention is required to assure that the correct calculation of proper cover damages is effected.

Conversely, except for warranty defects enforced during the applicable warranty period (18 months in most cases) (see: Article 23), no comparable risks for unavailability problems during operation of the Project exist for APSA Sellers. By its terms, the APSA has been performed and is not longer in effect when the majority of the operating period under the PPA is occurring. In general, APSA Sellers bear no risk for replacement power costs since the product delivered under the APSA is a completed Project asset and not a power commodity over a period of years. See: Section 6.2(b) of the APSA where the APSA Seller's primary liability for direct damages is described as the payment of the defined Net Replacement Cost – the excess costs incurred by Buyer to complete the Project after terminating Seller. See also: Section 29.4 where Buyer's spectrum of remedial rights and damages are set forth, none of which includes the obligation to cover the excess replacement cost of power<sup>20</sup>.

Accordingly, APSA Sellers are exposed to little risk of replacement power costs and APSA Buyers have little protection from the risk of incurring full replacement power costs for their own account<sup>21</sup>. On the other hand, PPA Sellers have a significant risk of payment reductions designed to contribute to replacement power costs and of termination liability calculated to provide full cover damages for the unexpired remainder of the Term of the PPA. PPA Buyers have corresponding protection from replacement power costs.

Provided that operating problems do not arise from imprudence, availability shortfalls experienced by benchmark options, under traditional cost of service principles, would not result in either a reduction in the rate base recovery of the benchmark capital costs or the inability of the utility to recover the full costs of replacement power from ratepayers. Ratepayers are expected to absorb the risk of prudently incurred replacement power costs<sup>22</sup>.

9. Energy Cost Escalation. Under the present provisions of Section 5.2 and Exhibit F to the PPA as contained in the 2012 RFP, PPA Sellers are restricted to bidding Energy Payment formulae that conform to inflation-based indices. In turn, PPA Buyers would benefit from important risk protection from fuel-based escalation indices in current and future fuel markets which, for the reasonably foreseeable future, may be extremely volatile. The IE

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<sup>20</sup> APSA Sellers may be required to enter into 10 year Operating and Maintenance Agreements “in order to ensure cost effectiveness, availability and reliability of the resources prior to the Company’s acceptance of the resource.” (RFP, page 18). The terms and conditions of any such agreement are not proscribed by PacifiCorp. To the contrary, the terms and conditions are required to be submitted by the APSA Sellers as a part of their bid. Contract operators of powerplants in general are reluctant to put at risk sufficient capital to cover replacement power costs when there are shortfalls in performance. Thus, it is far from clear that the 10 year contracts put APSA Sellers on comparable terms with PPA Sellers and such an outcome is considered unlikely.

<sup>21</sup> In light of the language in 17-54-201(2)(c) requiring consideration during the solicitation approval process of the interests of both retail customers and the financial health of the affected electrical utility, the IE makes no distinction whether the risks experienced by Buyers under PPAs and APSSAs are ultimately borne due to ratemaking rules or conventions by the shareholders or the customers of the utility.

<sup>22</sup> Depending on the availability expectations used in the power cost modeling which determines power purchase and fuel costs for ratemaking purposes, shareholders of PacifiCorp could experience either short term gains or short term losses when the actual availability of new coal benchmark options differ from such expectations. The IE questions whether PacifiCorp would ever use availability expectations as high as the 96% in the PPA for such ratemaking purposes.

had discussed the restriction on fuel escalators with PacifiCorp. PacifiCorp has expressed a willingness to consider other forms of energy pricing over time and will review what forms of escalation may be needed to reflect markets for fuel. However, the PPA attached to the 2008 All Source RFP does not contain the specific Exhibit to the PPA. We are requesting PacifiCorp to identify whether they intend to maintain the same index option or revise the index to be more applicable to the specific fuel source.

In contrast to the PPA Buyers, APSA Buyers, as asset owners, will be exposed to the full risk of fuel market escalation<sup>23</sup>. APSA Sellers have no role in fuel purchasing which occurs after their performance is complete.

For the benchmark options, PacifiCorp will be responsible for the prudent purchase of fuel and should be entitled, subject to applicable ratemaking conventions, to recover all such prudently incurred costs from ratepayers. As fuel costs change over time, PacifiCorp will recover all prudent fuel price changes under traditional cost of service pricing principles.

10. Fuel Infrastructure and Electric Interconnection Costs. The costs of the fuel infrastructure and the electric interconnection for the Projects are aspects of the capital cost of the Projects. As such, comments set forth in Comment No. 7 are equally applicable to fuel infrastructure and electric interconnection cost increases that are experienced after the Effective Date of the PPA or the APSA. Under Sections 5.1.2 and 6.3.1.1 of the PPA, payments to PPA Sellers are not allowed to increase for any reason, including, for any change in the scope of the fuel infrastructure or the electric interconnection. Such changes could, however, result in capital cost increases to APSA Buyers.

Under traditional cost of service principles, provided that planning and construction exhibit prudence, benchmark options which experience capital cost increases for fuel infrastructure and electric interconnection during development or construction enter rate base at the higher costs resulting from such increases. Ratepayers are expected to absorb the risk of prudent capital cost increases.

11. Lender Rights and Coordination. Other than a milestone requirement in Section 2.2.3 for construction financing, only one reference to role of lenders in connection with a Project is set forth in the PPA. In Section 7.2.1, the Security Interests required to be given by PPA Sellers to Buyers are made subordinate in right only to the interests of financiers contemplated by Section 2.2.3 and approved by Buyers. In light of the provision for Progress Payments to APSA Sellers (Article 3), there appear to be no references to lenders or financing parties which apply to APSA Sellers in the APSA.

For 2008, as in prior years, PacifiCorp added to the PPA a form of Lender's Consent. However, the document was not incorporated into the operative text of the PPA and it does not appear that PacifiCorp even agrees in the PPA to execute the Lender's Consent

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<sup>23</sup> By ratemaking convention (net power cost modeling), Buyer's customers will experience much of the actual fuel escalation. However, between rate cases, Buyer's shareholders will share in exposure to fuel price changes, which vary from the fuel price modeling done at the time rates are set. For purposes of this analysis of contract risks, the IE does not distinguish between Buyer risks actually experienced by customers and Buyer risks actually experienced by shareholders.

at any particular time or under any particular conditions. It is the understanding of the IE that the general absence of lender rights and lender coordination provisions in the PPA was intentional. However, PacifiCorp has previously acknowledged that in due course, before or after PPA execution, negotiation of intercreditor or subordination agreements could result in changes to the PPA or the PPA Buyer's rights and remedies thereunder. It is important to note that any delay in such negotiations after execution would be at the risk of PPA Sellers. See: Comment No. 4, above.

Here, based on the present PPA form, PPA Sellers will experience added risk in negotiating additional lender provisions and may have to do so after PPA execution when time needed to meet construction financing milestone deadlines is expiring. See: Section 2.2.3.

APSA Sellers experience no comparable risk.

In connection with its capitalization of the benchmark options , PacifiCorp will be in regular negotiations with its lenders and its sources of equity (through its ultimate parent). Since no disclosure of PacifiCorp's plans, and estimated costs, to raise capital for the benchmark options has been made to date, the IE is unable to assess the financial impacts on the affected utility for comparison or any other purposes. Provided that capital formation is prudently planned and implemented, ratepayers would be expected to incur all costs incurred in connection with raising capital for the benchmark resources.

12. Events of Default. Subject to limited relief from the Force Majeure clause, PPA Sellers face an Event of Default if they fail to achieve milestone deadlines, subject to notice and a 30 day opportunity to cure (other than failure to achieve the Commercial Operation Date covered by Section 10.1.2.5). Section 10.1.2.4. However, of most importance, PPA Sellers, except for the 180 day Force Majeure relief early in the development period for permits, have no opportunity to avoid an Event of Default and to cure a failure to achieve the Commercial Operation Date by the extended date after the Guaranteed Commercial Operation Date, even if the Facility is then within days of completion. Section 10.1.2.5.

In comparison, for APSA Sellers, all milestone failures are covered by Section 29.1(a) with notice and a 30 day period to cure. Furthermore, the provision for Project Schedule revisions in Section 10.1 creates the prospect that milestone deadlines will be flexibly extended notwithstanding prior problems.

Accordingly, PPA Sellers face higher risks of default and termination under the default provisions of the PPA than APSA Seller face under the counterpart provisions of the APSA.

As indicated in Comment No. 1, above, no default and termination risk as such applies to benchmark projects. Even if schedules and target dates slip, as long as PacifiCorp continues to review alternatives prudently, and then prudently decides to continue, it will be entitled to finish the benchmark project without interruption and seek to recover its costs in rates. Accordingly, under traditional cost of service principles, ratepayers will experience the full impact of delay costs prudently incurred when a benchmark project cannot be finished on time.

## **B. Product Differences as Shown in PPA and APSA Forms and the Benchmark Options:**

A power purchase agreement for an extended number of years, preceded by development and construction of the Facility dedicated to the subject sales service, captures a markedly different product than an asset acquisition agreement ending after the development and construction of the otherwise comparable Facility. The fact that the Facility may be identical under both agreements is misleading - - the services hired, the product delivered, the standards for performance and the very term of years are all different. In comparison to benchmark options, the asset acquisition agreement allows the utility to manage and control certain risks that ratepayers otherwise would be exposed to by securing contractual promises for project development and construction. For the benchmark options, no contractual promises exist which manage and control risks of development delay or failure and costs overruns. Risks are generally expected to fall on ratepayers as long as expenses were prudently incurred. Prudence reviews, codified in part under Utah Code §§ 54-17-101 et seq. (the “Act”), now occur before the fact and can be followed up with interim and implementation reviews later.

In simplified terms, the PPA internalizes many risks to which the owner of a benchmark resource would otherwise be exposed. During the development and construction period, the risks of licensing or other development failure, construction mishaps and retrofits, cost overruns and defective or late completion are largely accepted by PPA Sellers and largely avoided by PPA Buyers. At the time of contract execution, prices are fixed or set according to fixed formulae for units of capacity and output and remain unchanged, except for adjustment in accordance with negotiated performance standards, for the contract term. During the operating period, a period which is absent under the asset acquisition agreements, for a price, the risks of capital and fixed and variable cost increases from defects, capital additions and other retrofits or overhauls, routine and major maintenance, taxes, efficiency problems or other operating deficiencies, environmental or other changes in law and in some cases, fuel price changes, are largely accepted by PPA Sellers and largely avoided by PPA Buyers<sup>24</sup>. When termination occurs, damages are determined based on “cover” theories applied to the cost of the replacement product - - power over the unexpired portion of the original term.

The APSA in many ways mirrors the development and construction period of the PPA. During that period, the risks of licensing or other development failure, construction mishaps and retrofits, cost overruns and defective or late completion are also mainly accepted by APSA Sellers and avoided by APSA Buyers. However, in this APSA, as in many others in the industry, the transfer of risk to APSA Sellers is not as complete as in the case of the PPA - - more flexibility and tolerance for force majeure events are shown during construction and development than in the PPA. As well, APSA Buyers become invested in the process, making progress payments and anticipating the likely completion, rather than abandonment, of the Facility, at the cost of defaulting APSA Sellers, when problems arise and the Facility is

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<sup>24</sup> The cost of replacement power during continued operation by PPA Sellers is not explicitly covered; however, performance standards serve to reduce payments required from PPA Buyers, freeing cash to contribute to excess replacement power costs.

not completed by the original counterparty at the contract price. Thus, when termination does occur, damages are recovered on “cover” theories, but in this case, “cover” is the excess cost to complete construction as bargained for.

APSA Sellers are now exposed to the possibility that a 10-year period of operation will be a part of the asset acquisition agreement. However, the terms and the conditions of the Operating and Maintenance Agreements remain to be negotiated. APSA Sellers are required to provide the proposed terms and conditions with their Bid, along with a form of agreement. It is considered unlikely, however, that APSA Sellers would accept typical incidents and risks of replacement power costs, or other risks associated with ownership, as if they had retained ownership upon completion of the Facility. As the actual owners, the risks of capital and fixed and variable cost increases from unwarranted defects, capital additions and other retrofits or overhauls, routine and major maintenance, taxes, efficiency problems or other operating deficiencies, environmental or other changes in law and in all cases, fuel price changes, are accepted by APSA Buyers. As indicated, it appears unlikely that coverage for replacement power costs would be negotiated into an Operating and Maintenance Agreement that APSA Sellers would be willing to accept for any long period of operation after the APSA expires.

For the benchmark options, no transfer of risk away from ratepayers occurs under any third party contract. In return for the benefits of cost of service pricing, ratepayers accept the risk that extra but prudent costs will be incurred during the development and operation of the benchmark resources.

## **VIII. Conclusions and Recommendations**

Based on our review of the RFP and related information, the conclusions and recommendations of the IE are presented in this section of the report.

- The 2008 RFP is based largely on the 2012 RFP that was approved by the Commission in April 2007. Many of the provisions, procedures, evaluation criteria, evaluation protocols, evaluation and selection process, evaluation methodologies and models are either the same or very similar.
- The RFP is a reasonably transparent RFP, with a significant amount of information provided to bidders on which the bidders could base their proposals.
- Many of the lessons learned from the 2012 RFP process have been applied to this RFP.
- The RFP is designed to provide the same information to all bidders including the benchmark options.
- The products sought in this RFP are clearly defined and the information required for each type of resource alternative is specified in the RFP in a clear and concise manner.
- The inclusion of bid categories of base load, intermediate load, and summer peaking resources should allow for an optimal portfolio of options. We would encourage PacifiCorp to revise the peaking requirement to at least encourage bidders of new or existing peaking options to consider submitting a bid.
- The indexing mechanism should be reconsidered based on recent industry trends. The IE recommends that PacifiCorp consider offering more flexibility and indexing options to bidders and also incorporate the level and timing of the indexing mechanism proposed by each bidder in the risk assessment. The RFP would need to be revised to address this issue.
- The RFP documents clearly describe the products requested, the requirements of bidders, the evaluation and selection process, and the risk profile of the buyer. In this regard, there is sufficient information to allow bidders to assess whether or not to compete, the product of choice to bid to be most competitive, and the process by which their proposals will be evaluated.
- Several parties have raised the issue of ensuring comparability for resource evaluation, notably ensuring that utility benchmarks and third-party bids are required to compete based on the same set of rules or on a level playing field. While the 2012 RFP moved in the direction of establishing a more level playing field, differences still remain among the options that were addressed in this report. The IE has attempted to assess how such different resources could be more effectively and efficiently evaluated on the same or similar basis. We also demonstrate the complexities associated with different model

options. In response to these complexities, we have attempted to expand the provisions in the RFP and evaluation process for creating a more level playing field. We feel this issue should be discussed at the Hearing to assess if reasonable options exist for establishing a more level playing field.

- PacifiCorp has made several improvements to the credit sections of the RFP (i.e. requiring a commitment letter after selection of the final award group, establishing credit requirements for the different resource categories, etc.). However, we still feel that clarification improvements could be made and have attempted to do so in this report (See Appendix A).
- The IE recommends that the Commission require PacifiCorp to hold at least one workshop on the credit issue, and allow prospective bidders and other interested parties the opportunity to comment and propose alternative credit methodologies and options. Such a workshop would allow for a broader assessment of this issue, more input from bidders and hopefully ensure that all prospective bidders are familiar with the credit requirements or could offer suggestions to improve the requirements.
- The quantitative methodologies developed by PacifiCorp for undertaking the initial price factor evaluation (RFP Base Model) and for selecting the final short list (CEM and PaR models) are applicable for the modeling of the proposals expected in this RFP. Furthermore, the model methodology is consistent with and likely exceeds industry standards applied by others for conducting such a price and risk analysis. While the RFP Base Model may be unique to PacifiCorp, the model methodology and concept is consistent with the approaches applied by others. The portfolio evaluation and risk assessment methodologies are very detailed and are generally pertinent to the requirements of the Energy Procurement Resource Act.
- The evaluation and selection process is a comprehensive and creative process designed to evaluate the cost implications associated with different resource portfolios, the important non-price factors required in the Act that influence project viability and assesses the risk parameters associated with the portfolios.
- The IE has found that the methodologies and approach used by PacifiCorp for forecasting fuel and power forward prices are reasonable and consistent with industry standards. PacifiCorp uses actual market quotes and transactions as the basis for short-term prices for both power and fuel and blends into a long-term fundamental forecast for the mid to long-term. The use of actual quotes and transactions is a valid approach for capturing market prices in the short-term which is preferable to using the fundamental forecast for all years of the forecast period. Furthermore, the use of actual quotes serves to minimize or eliminate any forecasting bias in the short-term based on the timing of forecast release or the failure of the forecast to account for market volatility.
- While the type of primary security required by PacifiCorp (i.e. letter of credit, guarantee, or cash) are generally consistent with the approach used by other utilities in RFP processes, the IE encourages PacifiCorp to consider these forms of security in

combination with other forms in the contract negotiation process if beneficial to both parties.

- Based on our experience with the 2012 RFP, it became obvious that transmission cost and access could have an important impact on the cost of a resource option. In addition, transmission costs appear to be uncertain and potentially much higher than originally estimated. While we feel that the transmission requirements outlined by PacifiCorp in the RFP are reasonable and consistent with industry standards, we recommend that PacifiCorp Transmission hold a technical conference or workshop for bidders on the transmission requirements for this RFP as well as the plans of PacifiCorp regarding transmission expansion projects.
- The IE has conducted a thorough review of the two basic contract forms - - the PPA and the Asset Purchase and Sale Agreement (APSA). The PPA form is decidedly less favorable to Sellers than to Buyers, as performance-based contracts are designed to be. While the same may be said of the APSA form, the APSA does show more flexibility which benefits Sellers and could lower their cost of capital somewhat. Neither the PPA nor the APSA form is as favorable to Sellers as the utility cost of service approach is to the utility as seller to its ratepayers. The benchmark approach transfers risks to ratepayers and lowers the utility's cost of capital in comparison to PPA and APSA Sellers. Ratepayers have historically absorbed this risk in order to gain lower costs of capital and the prospect of cost under-runs to offset the risk of over-runs. The IE believes that the potential counterparties to the PPA and APSA contracts will propose additional revisions during the negotiation process which will reflect their self-interest and present fundamental questions to PacifiCorp whether it will accept greater risks in order to lower the cost of capital for their counterparties.

## **Appendix A**

### **ALL SOURCE – REQUEST FOR PROPOSAL**

**PACIFICORP**

#### **H. PROCEDURAL ITEMS**

##### **1. Intent to Bid Form - Bidder's Qualification, Capability and Credit**

In order to participate in the RFP, each Bidder must complete and submit to the IEs the Intent to Bid Form which includes **Appendices A** and **B** for each Resource Alternative it intends to submit in its proposal by the date identified in Section 3. The Company will require each Bidder to demonstrate their Qualification Capability and Experience as required in **Appendix A**. In addition, twenty (20) business days after the Bidder is notified by the Company that the Bidder has been selected for the final shortlist the Bidder will be required to provide any necessary guaranty commitment letter from the entity providing guaranty credit assurances on behalf of the Bidder and/or any necessary letter of credit commitment letter from the financial institution providing letter of credit assurances. The timing of when credit security must be posted is detailed in **Attachment 21**. The forms of commitment letters are in **Attachment 22**.

Attachment 21 explains how the **Credit Matrix** in **Appendix B** will be used to determine the amount of credit assurance required. The use of the **Credit Matrix** requires a sequence of checks against the **Credit Matrix**. The Bidder must first check its credit rating in the **Credit Matrix** in order to determine the amount of total credit assurance required. The Bidder must next check the credit rating of its proposed credit support guarantor in the **Credit Matrix**. The difference in the amounts of credit required from the Bidder and amount of credit required from its proposed credit support guarantor is the maximum amount of the guaranty that the credit support guarantor is allowed to commit to in its guaranty commitment letter. For the residual amount of credit required, the Bidder must obtain a letter of credit commitment letter from the financial institution providing letter of credit assurances in that residual amount of required total credit. An example of using the **Credit Matrix** in this sequence of checks is described in **Attachment 21**. It is important that Bidders realize that both a guaranty commitment letter from the entity providing guaranty credit assurances on behalf of the Bidder and a letter of credit commitment letter from the financial institution providing letter of credit assurances may be required. If the Bidder's proposed credit support guarantor has no credit requirement in the **Credit Matrix** due to its high credit rating, only the single guaranty commitment letter from that entity providing guaranty credit assurances is needed.

**Appendices A** and **B** are attached to the Intent to Bid Form and must be completed in order to submit a proposal. In **Appendix A**, the Bidder must provide information that the Bidder's project development team has successfully completed the development and commissioning of at least one generation project with characteristics similar to the proposed project. The proposal must pose an acceptable level of development and technology experience, as determined by the Company's Evaluation Team. In **Appendix B** the Bidder must demonstrate the ability to post the credit assurances consistent with the credit matrix for each Resource Alternative being

proposed.<sup>25</sup> Each Bidder must provide the requested financial and credit information and indicate what its ability will be to post any necessary credit assurances, if applicable, and be prepared to provide the necessary guaranty and/or letter of credit commitment letter(s) if they are selected for the final short list. The forms of commitment letters are in **Attachment 22**.

All Bidders must demonstrate their ability to meet the credit requirements and to provide any necessary credit assurances, including their plan for doing so (including the type of security proposed, sources of security and a description of its credit support provider) for the Resource Alternative they are proposing. Bidders should also provide a demonstration of their ability to finance their project based on past experience and a sound financial plan identifying the proposed sources for debt and equity. If the Bidder does not provide all the information required in **Appendices A and B** to the satisfaction of the Company the Bidder may be notified that the Bidder will not be eligible to submit a proposal. If the Bidder can demonstrate to the Company its ability to meet the qualifications in **Appendices A and B** then the Bidder will be permitted to submit proposal(s) in the RFP. In the event that the Bidder (or Bidder's credit support provider's) credit status changes at any time after submission of a bid into the RFP process, the Company reserves the right to request updated information to reevaluate the creditworthiness of the Bidder and/or the Bidder's credit support provider.

The Bidder will be required to demonstrate its ability to post credit assurances in the amounts outlined in the credit matrix in **Appendix B** or as otherwise adjusted based on the Bid Category proposed. A credit methodology paper explaining the rationale behind the credit matrix is provided in **Attachment 21**. A Bidder must be able to demonstrate its ability to post any necessary credit assurances in the form of a guaranty commitment letter from either a proposed guarantor and/or in the form of a letter of credit commitment letter from a financial institution that would be issuing a letter of credit. This commitment letter(s) is (are) then to be posted twenty (20) days after the Bidder is selected for the final shortlist. Forms of credit commitment letters are provided in **Attachment 22**. The amount of any credit assurances to be provided will be determined based upon (a) the Credit Rating in the credit matrix of the Bidder **and** the entity(ies) providing credit assurances on behalf of the Bidder, if applicable, (b) the size of the project, (c) the Eligible Online Date, (d) the type of Resource Alternative bid, and (e) the Bid Category proposed. QF Bidders, and Biomass or Geothermal Bidders are subject to the credit requirements contained in this RFP.

The Credit Rating is defined as the lower of: (x) the most recently published senior, unsecured long-term debt rating (or corporate rating if a debt rating is not available) from Standard & Poor's ("S&P") or (y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is not available) from Moody's Investor Services. If option (x) or (y) is not available, the Credit Rating will be determined by the Company through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party. All Bidders will receive a Credit Rating which will determine the amount of any credit assurances to be posted.

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<sup>25</sup> The credit matrix was developed based on the Base Load Bid category; however, the matrix will form the basis for developing credit requirements for the other two Bid Categories.

If a Bidder is an existing counterparty of the Company, the Company reserves the right to protect itself from counterparty credit concentration risk and may require credit assurance in addition to that outlined in the credit matrix.

In the event that the Bidder posts a letter of credit as collateral it must be issued by a bank acceptable to the Company in the Company's reasonable discretion, and be in form and substance acceptable to the Company and meet the requirements set forth in **Attachment 11**. The timing of when credit security must be posted is detailed in **Attachment 21**.

## RFP Appendix B Excerpt

### 2. Credit information for entity providing credit assurances on behalf of Bidder (if applicable)

A. Exact legal name and address of entity providing credit assurances on behalf of Bidder:

B. Describe relationship to Bidder and describe type of credit assurances to be provided (e.g. parental guaranty, letter of credit, etc.) once notified that the Bidder has been selected for the final shortlist. Bidder must provide to Company a guaranty letter of commitment letter in a form acceptable to Company (see **Attachment 22**) from the entity providing the guaranty credit assurances on behalf of the Bidder executed by an authorized signatory and indicating the amount and form of credit assurances it will provide. Bidder must provide to Company a letter of credit commitment letter in a form acceptable to Company (see Attachment 22) from the financial institution, if any, providing the letter of credit assurances on behalf of the Bidder executed by an authorized signatory and indicating the amount and form of credit assurances it will provide.

C. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source:

D. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three (3) most recent fiscal years.

Fiscal Year End:

E. Pending material legal disputes (describe):

F. Please state whether entity providing credit assurances on behalf of the Bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

## **CREDIT MATRIX**

The Bidder should utilize the Credit Matrix to determine the estimated amount of credit assurances required for each Resource Alternative bid in each Bid Category. The Bidder will be required to demonstrate the ability to post any required credit assurances in the form of a commitment letter(s) consistent with **Attachment 22** from a proposed guarantor and/or from a financial institution that would be issuing a Letter of Credit. The Company will require each Bidder to provide the Company with ~~an~~ acceptable commitment letter(s) (if applicable) twenty (20) business days after the Bidder is notified that the Bidder has been selected for the final shortlist.

The amount of any credit security to be provided will be determined based upon:

- a) the Credit Rating of the Bidder and the entity(ies) providing credit assurances on behalf of the Bidder, if applicable, b) the size of the project, c) the Eligible Online Date, d) the type of Resource Alternative, and e) the Bid Category.

The Credit Rating is defined as the lower of: x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is unavailable) from Standard & Poor's (S&P) or y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is unavailable) from Moody's Investor Services. If option x) or y) is not available, the Credit Rating will be determined by the Company through an internal process review utilizing a proprietary credit scoring model developed in conjunction with a third party.

All Bidders will receive a Credit Rating which will be used in determining the amount of any credit assurances to be posted. Please note that should a Bidder be an existing counterparty with PacifiCorp, PacifiCorp reserves the right to protect itself from counterparty credit concentration risk and require credit assurances in addition to those outlined in the Credit Matrix.

The timing of when credit security must be posted is detailed in **Attachment 21**.

### Credit Matrices Notes

- Columns contain maximum value of credit assurances to be posted for each range of MW for a 2012-2016 resource
- Based on the Eligible Online Date, size and type of Resource Alternative bid and Bid Category
- For projects less than 5 years, the amount of credit assurances required may be adjusted
- Credit Requirements for the Bid Categories other than the Base Load Bid Category will be determined based on a percentage of the amount contained in the credit matrix

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# RFP

## Attachment 22: Forms of Credit Commitment Letters

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### **GUARANTY COMMITMENT LETTER**

(Must be on letterhead of Bidder's credit support provider)

PacifiCorp  
825 NE Multnomah  
Portland, Oregon 97232

Dear Sirs:

The undersigned bears the following relationship to the Bidder \_\_\_\_\_ (insert Bidder name) ("Bidder") in your RFP process: (insert nature of relationship, e.g., Parent company, tax investor, etc.). Bidder and the undersigned are under agreement with respect to the promise set forth in this letter.

This will indicate our promise to you that, should you enter into a transaction with Bidder arising out of any bid submitted by Bidder in the RFP, with terms and conditions mutually acceptable to Bidder, the undersigned and you, that we will at that time issue an unconditional guaranty in form and substance reasonably satisfactory to youand the undersigned, and that we will guarantee all obligations of payment and performance of Bidder to you as our independent obligation, (up to a maximum amount of \$\_\_\_\_\_ plus enforcement expenses).

We understand that you will not enter into a transaction with Bidder without said guaranty. We understand that you are under no obligation to enter into any transaction with Bidder, under the RFP or otherwise.

Yours truly,

(name of committing guarantor)  
(name of authorized officer)

## **LETTER OF CREDIT COMMITMENT LETTER**

(Must be on letterhead of Bidder's credit support provider)

PacifiCorp  
825 NE Multnomah  
Portland, Oregon 97232

Dear Sirs:

The undersigned bears the following relationship to the Bidder \_\_\_\_\_ (insert Bidder name) ("Bidder") in your RFP process: (insert nature of relationship). Bidder and the undersigned are under agreement with respect to the promise set forth in this letter.

This will indicate our promise to you that, should you enter into a transaction with Bidder arising out of any bid submitted by Bidder in the RFP, that we will, subject to our customary credit committee and board approval at that time, then issue an irrevocable standby letter of credit in a form reasonably acceptable to you and the undersigned up to a maximum amount of \$\_\_\_\_\_.

We understand that you will not enter into a transaction with Bidder without said letter of credit. We understand that you are under no obligation to enter into any transaction with Bidder, under the RFP or otherwise.

Yours truly,

(name of committing financial institution)  
(name of authorized officer)

## Appendix B

### Research on Contract Provisions in Power Supply RFPs

<b>Utility</b>	<b>Eligible Bids</b>	<b>Description of Credit and Security Requirements</b>
<b>Southwestern Electric Power Company</b>	<p>Request for Proposals for Baseload Capacity and Energy Resources, December 2005</p> <p>SWEPCO issued an RFP for Peaking, Intermediate and Baseload Resources</p> <p>Eligible bids included PPA, Asset Acquisition of an existing unit, System sale.</p> <p>RFP looking for long term resources 20-35 years</p>	<p>RFP document contained a model PPA and a Power Sales Agreement.</p> <p>The Company described its process for determining credit requirements in the RFP. First, the Unsecured Credit Limits are identified in a Table in the RFP, with a maximum limit of \$75 million for AA- to AAA rated entities down to \$25 million for entities with a credit rating of BBB-. Non-investment grade entities have an Unsecured Credit Limit of \$0. Second, in determining the financial and performance obligations component of a PPA, SWEPCO will estimate the cost to replace the PPA. These costs will relate to capacity and energy and will cover an 18 month period which is the minimum period that SWEPCO estimates it will take to obtain government and regulatory approval of an equivalent replacement contract. Credit Support related to capacity charges will be based on 50% of the value of the estimated future capacity costs covering the aforementioned period of 18 months. Credit Support related to energy charges will be based on the expected incremental replacement costs of such energy given a 50% market move over the 18 month period. Third, the Company also calculates a probability of contract default based on the credit rating of the bidder or its credit support provider. The estimated credit support requirements are based on subtracting the estimated amount from the Unsecured Credit Limits based on the credit rating of the bidder. A Credit Support table is provided in the RFP with estimated credit requirements based on the credit rating of the bidder and based on the type of resource bid (i.e. baseload, intermediate and peaking). According to the estimates, only bidders with non-investment grade ratings will be required to post credit, with the range increasing based on the lower non-investment grade rating. For example, firms with a CCC rating will be required to post the highest amount of</p>

		<p>credit support.</p> <p>As noted above, credit issues in the RFP and Contract are somewhat unique. The RFP contains a table with the required credit support amounts based on the credit rating of the respondent. For example, credit support amounts for baseload resources varies from \$0 for investment grade counterparties to \$53.65/kW for a company with a BB+ rating to \$106.55/kW for a company with a BB- credit rating and to \$214.65/kW for a counterparty with a CCC rating.</p> <p>Bidders with less than an investment grade rating are eligible to submit a bid but must abide by the credit levels established.</p> <p>Threshold requirements include a provision that a bidder or its Credit Support Provider must have Tangible Net Worth equivalent to at least \$500 million.</p> <p>SWEPCO will accept credit in the form of a letter of credit, cash or a corporate guarantee.</p> <p>Bidders submitting an Asset Purchase option will be subject to the same creditworthiness scrutiny as PPAs.</p> <p>Contract requires payment of capacity and FOM based on specified monthly multipliers. This is designed so that the payment reflects the value of the capacity during the peak season.</p>
<b>Progress Energy Florida</b>  <b>Request for Proposals for Power Supply Resources, October 2003</b>	Eligible proposals include any project that can substitute for the identified next planned generating unit proposed by the Utility. Utility option	<p>Model PPA included.</p> <p>The Key Terms and Conditions contain security provisions which require the Bidder to provide financial security to ensure the project is completed on schedule (development security) and is operated effectively and reliably (operational security). Bidder will be required to post security consistent with the schedule provided in the Key Terms and Conditions.</p> <p>Security in the form of cash or US government bonds held in escrow is preferred. However, Progress Energy will accept other forms of security that may be less costly to the Bidder, including a letter of credit with a bank or financial institution. Security must be guaranteed by entities that are considered investment</p>

	generally has been an expansion of an existing facility located on a utility brownfield site.	grade.  Development Security increases from \$20/kW 30 days after contract signing to \$40/kW 18 months before scheduled commercial operation date and is set at \$50/kW 12 months before commercial operation. Operational security was set at \$10/kW within 30 days after commercial operations, \$20/kW 5 years after commercial operations and up to a maximum of \$30/kW 10 years after commercial operations..
<b>Georgia Power Company</b>  <b>2010 Request for Proposals, March 22, 2006.</b>	Eligible bids include self-build options and PPAs.  The Georgia Commission hired the Independent Evaluator for the RFP process.	<p>Model PPA included.</p> <p>Any PPA that the Company enters into must provide reasonable assurance that the Company will be able to readily recover its actual damages in the event of any default by the seller under a PPA. The RFP states credit conditions for 7, 15 and 30 year arrangements.</p> <p>For 30 year PPA terms, the Company will require that the seller either:</p> <ol style="list-style-type: none"> <li>1. Have a credit rating at least one notch above the rating specified in the PPA definition of Creditworthy (investment grade rating such that senior unsecured debt is rated at least BBB- by S&amp;P) and have a Net Worth (defined as the dollar value calculated by subtracting liabilities from total assets excluding goodwill and other intangible assets as such terms are determined in accordance with generally accepted accounting principles) of at least \$750,000,000 or</li> <li>2. Supply an uncapped guaranty from an entity with a credit rating of at least one notch above the rating specified in the PPA definition of Creditworthy and with a net worth of at least \$750,000,000, in a form acceptable to the Company.</li> </ol> <p>In the event that the seller or its guarantor experiences a Material Adverse Change following the execution of the PPA (i.e. seller or guarantor is no longer creditworthy), seller will be required to provide replacement Eligible Collateral as defined in the PPA. With respect to any default by a seller during the development of the selected project, the PPA will provide for a liquidated damages remedy for the Company. The PPA provides</p>

		<p>details concerning these security requirements and remedy provisions based on the assumption that the seller itself is not Creditworthy under the PPA definition.</p> <p>The credit terms for 7 year and 15 year contracts have alternative provisions, including a lower net worth threshold of \$500,000,000.</p> <p>For a 30 year contract term, the bidder is required to post \$75/kW at signing. Development security reaches \$120/kW until commercial operations.</p>
<b>Duke Power</b>	<p>Request for Proposals, March 2005</p> <p>Eligible bids include existing resources, new construction , renewable resources, and sale of a facility.</p> <p>Duke is looking for proposals that provide the greatest value to Duke and its customers.</p> <p>Value is defined as the combination of price, reliability, and flexibility.</p>	<p>Terms and Conditions which serve as the basis for a Model PPA included in the RFP.</p> <p>RFP guidelines include the following financial resources requirements:</p> <ul style="list-style-type: none"> <li>• An equivalent corporate bond rating of BBB- or above from at least two rating agencies, one of which should be S&amp;P or Moody's</li> <li>• A commercial paper rating of 1 or 2 from at least two rating agencies.</li> <li>• A Dun &amp; Bradstreet credit appraisal rating of 1 or 2.</li> </ul> <p>Model PPA has Credit Section. The section states that if either party has reasonable grounds to believe that the other party's creditworthiness or performance under this Agreement has become unsatisfactory, the requesting party may provide the other party with written notice requesting Performance Assurance in an amount determined by the requesting party in a commercially reasonable manner.</p> <p>No specific levels of security or amounts were included.</p> <p>Contract requires payment of capacity and FOM based on specified monthly multipliers. This is designed so that the payment reflects the value of the capacity during the peak season.</p>

	The proposal that has the greatest value may not necessarily be the lowest price proposal.	
<b>Public Service Company of Colorado (PSCO)</b>	<p>XCEL Energy 2005 All-Source RFP</p> <p>Eligible resources include CT, CC, solid fuel coal projects, and firm power from other utilities.</p> <p>Ownership options also considered.</p>	<p>Model PPA attached.</p> <p>Security for performance was quoted in the contract as \$125/kW of net capability. The Security fund shall be available to pay any amounts due PSCO pursuant to the PPA and to provide PSCO security that seller will construct the facility to meet the Construction Milestones. The security fund shall also provide security to PSCO to cover damages, including but not limited to Replacement Power Costs, should the facility fail to achieve the commercial operation date or otherwise not operate in accordance with the PPA.</p> <p>The type of security required may be comprised of a combination of the following:</p> <ul style="list-style-type: none"> <li>• Standby letter of credit or a performance bond from an issuer with an unsecured bond rating equivalent to A- or better.</li> <li>• US currency</li> <li>• A guaranty from an issuer with an unsecured bond rating equivalent to BBB+ or better.</li> </ul> <p>Prior to the commercial operation date, seller and PSCO shall execute and record separate agreements under which the seller will provide PSCO in a form acceptable to PSCO and the facility lender, with fully perfected subordinated security interests, and/or mortgage lien in the facility and in any and all real and personal property rights, contractual rights, and other rights that seller acquires in order to construct and/or operate the facility.</p> <p>A minimum bid eligibility requirement is that the bidder must demonstrate to Public Service of Colorado's satisfaction that they can meet the security requirements of Article 11 of the PPA.</p>

<b>Idaho Power Request for Proposals for Peaking Resources, June, 2005</b>	Idaho Power is seeking to acquire peaking electric generating resources on a turnkey basis at an existing site.	<p><b>Minimum Credit Requirements:</b></p> <p>Respondent or Guarantor of Respondent must be able to financially secure the project and contract. It is the responsibility of the Respondent or Guarantor of Respondent to demonstrate financial security to the satisfaction of Idaho Power Company. Idaho Power suggests that Respondent possess a senior unsecured debt rating equivalent to no less than BBB- from S&amp;P or Baa3 from Moody's at the time of the proposal. The Respondent must be able to provide satisfactory performance assurances in the event Idaho Power believes Respondent's ability to perform or creditworthiness has become unacceptable. The Respondent must be willing to grant a present and continuing security interest in any performance assurances or cash equivalent collateral.</p> <p>The RFP also states that Idaho Power will rely on this RFP to meet the near-term incremental electric needs for its customers with low cost, dependable and reliable electric service. As a result, the resource must be in commercial operation with a demonstrated high degree of operating availability on April 1, 2007. Substantial delay liquidated damages will be included in the negotiated agreement for failure to meet this commercial operations date. Following April 1, 2007, the purchased resource must be guaranteed to operate at an availability of 97% during non-planned outages and stringent availability liquidated damages provisions will be required in any negotiated agreement. The resource will be required to meet the appropriate proposed performance guarantees or to pay performance liquidated damages.</p> <p>A model PPA was not included with the RFP.</p>
<b>Public Service of New Mexico PNM Request for Proposals for Capacity</b>	Eligible proposals include: (1) power from dedicated generating facilities;	<p>PNM requires both an investment grade rating (S&amp;P BBB- or above) as well as sufficient equity to cover respondent's anticipated delivery obligations under any contract entered into as a result of this RFP process.</p> <p>If respondent is unable to satisfy the foregoing credit standards, Respondent may designate a Credit Support</p>

<b>Supply, August 2004.</b>	(2) system sales or (3) sales by certified power marketers  PNM is seeking Capacity Supply of 74-165 MW net summer dependable capability of dispatchable peaking or intermediate resources in the 2006-09 timeframe.	Provider/Guarantor, and if the Credit Support Provider/Guarantor is satisfactory to PNM, the Respondent shall be deemed to have satisfied PNM's credit standards. The quality of credit of the proposed Credit Support Provider/Guarantor will be evaluated under the same standards as the bidder.  In lieu of designating a Credit Support Provider/Guarantor, a Respondent that is otherwise unable to satisfy the foregoing credit standards may elect to satisfy PNM's credit standards by providing adequate collateral to PNM, in the form of either: (1) a letter of credit from a financial institution satisfactory to PNM; or (2) a security deposit in the form of cash. In either event, the collateral must be sufficient to cover respondent's anticipated delivery obligations under any contract entered into as a result of this RFP process.  A model contract is not provided but PNM identifies key contract provisions in the RFP.  RFP includes required information and pricing schedules for bidders to complete.
<b>Portland General Electric</b>  <b>Request for Proposals for Power Supply Resources, June 18, 2003</b>	Eligible bids included PPA, tolling options, self-build options, asset acquisitions of existing and proposed resources and short-term options.	Model PPAs and Asset Purchase Agreements included in the RFP.  <b>Credit and Bidder Qualifications:</b>  All transactions are contingent upon the Bidder meeting and maintaining the credit requirements established by PGE's Wholesale Credit Department: <ul style="list-style-type: none"> <li>• Bidder's long-term senior unsecured debt that is not supported by third-party credit enhancement must be rated BBB- or higher by S&amp;P, and Baa3 or higher by Moody's, if the bidder is rated by both agencies.</li> <li>• Bidders that are not publicly rated, and bids offering full project ownership, will be subject to review by PGE's Wholesale Credit Department for qualification.</li> </ul> Bidders may obtain credit approval by providing security in a form and amount acceptable to PGE. Bids for an outright purchase of a 100 percent interest in a plant will be considered regardless of the creditworthiness of the Bidder. If the plant is not yet

		<p>complete, PGE's Wholesale Credit Department requirements apply until construction is satisfactorily completed.</p> <p><b>Contract Security:</b> If at any time during the course of the Agreement, the Termination Payment that would be owed to PGE exceeds the counterparty's Collateral Threshold, then PGE, on any Business Day, may request that the Counterparty provide Performance Assurance in an amount equal to the lesser of (1) the remaining period of the contract term or (2) for a period of 24 months commencing from the date PGE provides notice to Counterparty of such required Performance Assurance less any Performance Assurance already posted with PGE.</p>
<b>Cleco Power LLC, 2004 RFP for Capacity and Energy Resources</b>		<p>Cleco will evaluate the ability of bidders to perform under the PPAs by reviewing ratings and credit information published about bidders or their parent organizations by third parties.</p> <p>In addition, Cleco Power may perform its own internal credit evaluation of bidders or their parent organizations through a review, at a minimum, of the following factors:</p> <ul style="list-style-type: none"> <li>• Historical and projected tangible net worth</li> <li>• Historical and projected measures of cash flow adequacy</li> <li>• Measures of historical and projected leverage</li> <li>• Other credit risk issues, including but not limited to, the status of ongoing court, regulatory, or other governmental processes or proceedings or significant contract negotiations or renegotiations.</li> </ul> <p>Cleco Power will expect any successful bidder (or its parent organization) to post a form of credit support to ensure the seller's performance under any PPA. The amount of such credit support will be determined by Cleco's evaluation of the bidder's credit condition and a determination of the financial obligations of the bidder under the terms of the PPA. In determining the financial obligations component, Cleco Power will estimate the costs to replace the PPA. Such costs will relate to capacity or energy and will cover, at a minimum, 18 months of replacement costs as this period is the</p>

		<p>minimum period that the company believes it will take to obtain and have governmentally approved an equivalent replacement PPA. Credit support related to capacity charges will be valued at the contract price for a minimum period of about 18 months of payments. Credit support related to energy charges will be based on the Company's assessment of replacement energy cost, also for a minimum period of about 18 months, compared to the contract's energy pricing formula (commodity fuel price, heat rates, fixed dollar, etc.)</p> <p>Any credit collateral will be in a form acceptable to Cleco Power and may include a parental guarantee from a creditworthy entity, a letter of credit from an investment grade institution, or cash on deposit in escrow.</p>
<b>Entergy</b>	<p>Draft 2006 RFP for Long-Term Supply-Side Resources</p> <p>Options include PPA, Tolling and ownership acquisitions.</p>	<p><b>Credit/Collateral Requirements</b></p> <p>Each conforming proposal will be analyzed by the Credit Evaluation Team to assess potential credit risks and collateral requirements. The credit evaluation seeks to assure that the Bidder's credit quality, combined with its proposal to ESI, is in compliance with ESI's corporate credit risk standards, and that any requirements for additional collateral or security associated with the proposal are identified. Considering construction lead times and 20 year plus contracts, the critical credit risk management issue will be protecting the Buyer from the risk of a Bidder's non-performance over the duration of the contract. This risk is tied to the necessity to replace power and/or capacity from higher cost resources than the contracted-for resources should a supplier become unable to perform.</p> <p><b>Bidder Requirements:</b></p> <p>ESI will evaluate all proposals on an economic basis and will not exclude or prohibit a potential bidder from participating in the RFP on the basis of credit.</p> <p>Bidders who have been notified of their "final selection" will be required to provide a letter of credit in the amount of \$2 million.</p> <p>The Credit Evaluation Team will determine a maximum</p>

		<p>uncollateralized supplier exposure for each bidder as a function of the credit rating.</p> <p>ESI will require bidders who execute an agreement with ESI to provide acceptable collateral. ESI will consider a variety of traditional forms of collateral as well as some non-traditional collateral such as liens on assets and step-in rights on a case-by-case basis.</p> <p>The Collateral Requirements outlined in Appendix F to the RFP include: (1) \$200/kW for long-term PPA and ownership acquisition of a baseload solid fuel facility after 6/1/07; (2) \$100/kW for a long-term non-tolling and tolling PPAs from load following CCGT's; and (3) \$0 for ownership of a load following CCGT and ownership acquisition of a baseload solid fuel facility online no later than 6/1/07)</p>
<b>Puget Sound Energy, Request for Proposals from All Generation Sources, 2006.</b>	Eligible resources include PPAs, Exchange Agreements, Capacity Products and Asset Ownership options (joint development, transfer of ownership.	<p><b>Credit Requirements: PPA Acquisitions and Power Exchanges.</b></p> <p>Respondents with senior unsecured credit ratings of at least BBB- and Baa3 by S&amp;P and Moody's or, alternatively, that have received a credit rating from Puget's credit department equivalent to at least BBB+, or that provides a parent or affiliate guarantee in form and substance acceptable to PSE from a guarantor with senior unsecured credit ratings of at least BBB- and Baa3, or, alternatively, from a guarantor that is assigned a credit rating equivalent to at least BBB+ by PSE's credit department will be considered Investment-Grade Respondents. Reciprocal credit terms in the Definitive Agreements will include an adequate assurance clause similar to that set forth below:</p> <p>Adequate Assurance Clause: When reasonable grounds for insecurity arise with respect to the performance of either party, the other party may in writing demand adequate assurance of the due performance under the definitive agreement by the First Party, and the failure of the First Party to provide to the Second Party such adequate assurance of due performance within 3 business days following the First Party's receipt of the demand shall be deemed to be a material breach of, and an Event of Default under, the Definitive Agreement by the First Party.</p>

	<p>Other credit terms, including but not limited to collateral thresholds, rating triggers and/or similar financial covenants will not apply to Puget but may apply to the Investment Grade Respondent.</p> <p><b><u>Speculative Grade Respondents</u></b></p> <p>Respondents with a senior unsecured credit rating equal to or below BB+ and Ba1, or alternatively, that receive a credit rating from Puget's credit department equal to or below BB+, or that provide a parent or affiliate guarantee in form and substance acceptable to Puget from a guarantor with senior unsecured credit ratings equal to or below BB+ and Ba1, or alternatively from a guarantor that is assigned a credit rating of BB+ or below by Puget's credit department will be considered Speculative Grade Respondents.</p> <p><b>Generation Project Acquisitions and Project PPA Acquisitions</b></p> <p>Puget prefers acquisitions that do not impose credit support requirements on Puget. If any respondent intends to propose that Puget provide credit support (e.g. in the form of a letter of credit or otherwise), the respondent must describe in its proposal all desired terms and conditions regarding such credit support.</p> <p>Puget reserves the right to require adequate credit assurances that provide security for, among other things, the value associated with market-based damages for failure to perform, delays in construction, failure to meet minimum availability levels and/or other forms of default or non-performance. Such assurances may include, without limitation, a parent or affiliate guaranty and/or letter of credit, each in the form and substance, for a term and from a parent, affiliate or a financial institution, acceptable to Puget. In the event that Puget anticipates that adequate credit assurances may be required from a respondent, Puget reserves the right to request that the respondent reply in writing regarding its intent to provide such credit assurances prior to the beginning of negotiations of any Definitive Agreement.</p> <p>Model PPA include with the RFP but no security levels</p>
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		<p>are included. However, section 7.4.1 of the PPA states:</p> <p><i>With respect to the obligations of Seller set forth in Sections 6.3, 7.1, 7.2 and 7.3, Seller shall cause one or more of its respective affiliates (each a Seller Guarantor) having an Earnings-to-Interest Ratio of at least 2.00, to execute and deliver to Purchaser prior to the Commercial Operation Date a guaranty in favor of Purchaser, in the form attached as Exhibit G, under the terms of which Seller Guarantor unconditionally guarantees the full and prompt payment of Seller's payment obligations of this Agreement, in a maximum aggregate amount not to exceed _____ dollars. Such guaranty shall remain in effect for the Term and thereafter until Purchaser has certified to the Guarantor that no damages are owed by the seller.</i></p>
<b>Pacific Gas and Electric 2004 Long Term Request for Offers Power Purchase, March 18, 2005</b>	Eligible Resources include Power Purchase Agreements and Asset Acquisitions	<p>RFP document includes a Power Purchase Agreement Term Sheet.</p> <p>Credit Requirements:</p> <p>The amount of unsecured credit to be extended will be determined based on the credit rating of the counterparty. The Collateral Threshold amount may be set at zero. The buyer intends to compute a market value for the products sold under the Agreement, with weekly collateral posting requirements (in excess of the collateral threshold amount) tied to changes in the market value of the products. From the initial delivery date, the seller will also be subject to an amount equal to the product of \$30,000 multiplied by the maximum monthly contract capacity to be provided in any month of the services term during the first two years for a 24-month generation technology and \$60,000 multiplied by the maximum number of MW of capacity to be provided in any month of the term during the first five years for a 60 month generation technology. The parties agree that each party will post collateral equal to the collateral requirements in accordance with the formula contained in the Term Sheet (when positive for such Party), which is based on an on-going rolling two or five year Mark to Market Value, calculated in accordance with Attachment 2 (formula). If Seller has to post collateral, seller will have the option to post in the form of a Letter or Credit or cash. The determination of the two or five years is</p>

		<p>dependent on the generation technology and the length of time that would be required to procure a like-kind replacement of the agreement in the market.</p> <p>The collateral requirement at any point in time for seller after the initial delivery date is the amount calculated which is equal to (x) less (y) but no less than 0, where (x) equals the positive amount of the Mark-to-Market Value as determined pursuant to Attachment 2 plus the Independent Amount (established amount above) and (y) is the amount of collateral previously provided by seller plus the collateral threshold amount applicable to the seller.</p> <p>Formula included in Attachment 2 compares the price of a monthly forward NP-15 peak and off-peak power price with the gas price adjusted for the heat rate and the variable O&amp;M cost summed over 24 or 60 months.</p>
<b>Delmarva Power &amp; Light Request for Proposals November 2006</b>	Eligible proposals include the construction of new generation resources within the state of Delaware. Resources are not limited by technology.	<p>Credit Requirements threshold includes the following:</p> <ol style="list-style-type: none"> <li>1. The net worth of the bidder must be at least as large as the total capital that will be required for this project.</li> <li>2. Bidders and/or guarantor must have an investment grade rating senior unsecured debt.</li> </ol> <p>Security Schedule and Level</p> <p>The bidder security posting will be as per the following schedule:</p> <ol style="list-style-type: none"> <li>3. Bidder shall post security at a level of \$50/kW of contract capacity value at the time the PPA is executed.</li> <li>4. Upon approval of the PPA for rate recovery by the relevant regulatory authorities the security posting requirement will be raised to \$100/kW of contracted capacity.</li> <li>5. For wind projects and other intermittent renewable energy projects, the amount of security required would be 40% of the normal required security for other projects</li> <li>6. Upon the Initial Delivery Date, and before the in-service date security postings requirements will be discontinued</li> <li>7. Upon the Initial Delivery Date, the bidder will be required to post and maintain security in the amount equal to the anticipated replacement</li> </ol>

		<p>cost for the PPA (i.e. Delmarva's SOS customer exposure). The security posting will cover a two-year forward period, which is the minimum period that Delmarva estimates it will take to obtain and have governmental and regulatory approval of an equivalent replacement contract subject to a cap of \$200/kW. The security posting for PPA replacement cost will be marked-to-market daily for that rolling two-year forward period beginning on that day.</p> <p>8. A seller with an investment grade parent could provide a parent guarantee capped at the \$200/kW level once the Initial Delivery Date of its plant has been achieved.</p> <p>Delmarva is willing to accept security in the forms listed below: (1) an irrevocable letter of credit in form and substance acceptable to Delmarva, from an Issuer with a senior unsecured long-term credit rating equivalent to A- or better; (2) Delmarva will accept a guarantee from an investment grade rated entity; (3) Delmarva may accept other forms of security in its discretion.</p> <p>The amount of unsecured credit shall be capped at \$50,000,000 for the most credit-worthy entities, and shall decline as the credit rating of the bidder declines.</p> <p>A minimum of 10% of the security posting must be provided in the form of a Letter of Credit and any additional security posting in excess of the Bidder Credit Limit shall also be in the form of a Letter of Credit.</p>
<b>Northern Indiana Public Service Company 2006 All Source RFP, June 1, 2006</b>	RFP looking for incremental long-term resources comprised of Supply-Side Base, Supply-Side Intermediate , Supply-side peaking,	<p>NIPSCO requires credit support and security requirements that will provide protection in the event that a Bidder breaches or fails to perform under any agreement arising from this RFP. Performance security will address the risk associated with both the completion of a new facility to deliver capacity on the scheduled delivery date and the contracted deliveries throughout the duration of the contract.</p> <p>Bidder shall provide Performance Security. The amount of the security deposit will be negotiated and will be determined based upon the specific Proposal characteristics and the potential risk of contract default.</p>

	<p>renewable/ DSM. NIPSCO is looking for PPA from existing and new facilities, Asset Purchase or Lease agreements from either existing or new facilities.</p>	<p>NIPSCO will consider Performance security mitigating factors such as, but not limited to; subordinated liens on project assets and step-in rights. Bidders shall set forth their proposal for Performance Security and mitigating factors on Appendix 5 Financial Information.</p> <p>Performance Security must be posted upon execution of the Master Power Purchase and Sale Agreement or other agreement satisfactory to NIPSCO and remain in place throughout the duration.</p> <p>Based on the Bidder's credit quality and tangible net worth, the amount of the Performance Security will vary. Performance Security must be provided in the form of cash or cash equivalents (US dollars or US Government Bonds) deposited with an Issuer acceptable to NIPSCO (Letter of Credit), and/or a company guarantee from an investment-grade rated entity. NIPSCO included a table in the RFP that defines the Credit Limit based on the credit rating of the bidder or Guarantor.</p> <p>A minimum of 10% of the Performance Security must be provided in the form of Deposits and/or a Letter of Credit. The remaining Performance Security shall be in the form of a company guarantee from an investment-grade rated entity, Deposits, and/or a Letter of Credit. Performance Security in excess of the Bidder credit Limit shall be in the form of Deposits and/or a Letter of Credit. The Bidder Credit Limit shall be recalculated and the form of Performance Security adjusted based on the Bidder's most recent fiscal year end audited financial statements or within 5 business days of the Bidder becoming aware of any change in the Bidder's senior unsecured debt rating.</p>
<b>PacifiCorp 2008 All Source Request for Proposal, Draft RFP posted on PacifiCorp's website in February 2008.</b>	<p>Eligible Bid Categories include Base Load, Intermediate and Summer Peak  Eligible resource alternatives</p>	<p>PacifiCorp includes an Appendix which describes its credit methodology in detail.</p> <p>PacifiCorp also uses the methodology described in the Appendix to provide credit matrices for various resource types. The level of security identified in the matrix is distinguished by the credit rating of the counterparty and the size of the project.</p> <p>The Bidder is required to utilize the Credit Matrix to determine the estimated amount of credit assurances</p>

	<p>include PPA, Tolling Agreement, Asset Purchase and Sale on PacifiCorp site, Asset Purchase and Sale on Bidder site, Purchase of an existing facility, purchase of portion of jointly-owned facility, and restructuring of an existing contract.</p>	<p>required for each Resource Alternative bid in each Resource Category. The Bidder is required to demonstrate the ability to post any required credit assurances in the form of a commitment letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit. The Company will require each Bidder to provide the company with an acceptable commitment letter (if applicable) twenty business days after the Bidder is notified that the bidder has been selected for the final short list.</p> <p>The credit risk profile and amount of credit security to be provided will be determined based upon:</p> <ul style="list-style-type: none"> <li>9. The credit rating of the bidder and the entity providing credit assurances on behalf of the bidder if applicable.</li> <li>10. The size of the project</li> <li>11. The eligible on-line date</li> <li>12. The type of Resource Alternative</li> <li>13. The Bid Category</li> <li>14. Term of the underlying contract</li> </ul> <p>All bidders will receive a credit rating which will be used in determining the amount of any credit assurances to be posted.</p> <p>In addition, the level of security will depend on whether the resource is backed by a physical asset or not. For all resources that involve a physical asset with appropriate step-in rights, PacifiCorp views potential credit exposure as the cost it would incur in the event the resource failed to come on-line when expected. PacifiCorp believes it could take up to 12 months to either step in and complete the project or cause the project to be completed on its behalf. If failure occurred near the expected on-line date, PacifiCorp would have to procure energy in the open market at then-prevailing market prices.</p> <p>In determining the amount of security to be posted, a Credit Matrix for each Resource Alternative and each eligible on-line date is shown. Next, PacifiCorp applies its internal credit risk tolerance specific to this RFP to each potential credit exposure in every cell of the Credit Matrix. The results are the amounts of excess credit risk that PacifiCorp requests be secured through third-party</p>
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		<p>guarantees, cash, letter of credit, or other collateral or combination thereof.</p> <p>The credit posting schedule is also defined in the RFP. Basically, bidders are required to post only 10% of the amount of credit required upon contract execution. The full amount of credit required has to be posted in increments up to 100% by project financing.</p>
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