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MEMORANDUM

To: Utah Public Service Commission

From: Division of Public Utilities

Philip Powlick, Director
Artie Powell, Manager, Energy Section
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Subject: In the Matter of: the Application of PacifiCorp, by and Through its Rocky Mountain Power Division, for Approval of a Solicitation Process for a Flexible Resource for the 2012-2017 Time Period, and for Approval of a Significant Energy Resource Decision, Docket No. 07-035-94.

Date: December 14, 2009

ISSUE

On December 2, 2009, the Public Service Commission ("Commission") issued a request for comments on the proposed change in PacifiCorp's 2008 All Source Request for Proposals ("2008 RFP") approved schedule. In response to the Commission's request, the Division of Public Utilities ("DPU") submits the following comments.

RECOMMENDATION

As discussed herein, the DPU raises several concerns with the PacifiCorp RFP process, including previous schedule delays and lack of transparent information. Therefore, the DPU makes several recommendations for PacifiCorp intended to keep the Commission and other regulatory parties better informed of the RFP process and progress. Additionally, the DPU believes there are several changes in the 2008 RFP from the original approved by the Commission that, taken together, are material in nature. These changes include, changed online dates, decreased number

of benchmark resources, a decrease in the megawatts sought, creditor asset requirements, and bid evaluation procedures. Therefore, the DPU is recommending that PacifiCorp amend the RFP to seek up to 2,000 megawatts in the 2008 RFP and file with the Commission explanations justifying the remaining changes in the RFP as discussed herein. The DPU does not believe PacifiCorp's proposed changes to the schedule are material and is not recommending any delay in the schedule to address the other issues raised in this memo.

BACKGROUND

In an application to the Commission dated October 6, 2009, PacifiCorp requested permission to resume its 2008 RFP. At the request of PacifiCorp, the Commission suspended the 2008 RFP in its order issued April 6, 2009. Among other factors, PacifiCorp sought suspension of the 2008 RFP for economic reasons. In its October application, PacifiCorp explained that resumption of the 2008 RFP is warranted "To take advantage of current market conditions that the Company believes will result in more favorable proposals."¹ In its application, PacifiCorp requests that the Commission act on its application to resume the 2008 RFP by October 22, 2009, approximately 14 calendar days.

PacifiCorp sought, and the Commission granted, permission to suspend the 2008 RFP in February 2009. However, in response to concerns raised by various parties, the Commission imposed six conditions on the approval of the suspension. The first three conditions, which are relevant to the issues at hand, are:

1. The suspension is granted for a period up to six months beginning with the effective date of this order.
2. Prior to providing notice to bidders that it will resume, request approval to further suspend, or request approval to cancel the All Source RFP, the Company shall notify and file the appropriate requests for approval with the Commission.

¹ PacifiCorp Application, "Notice of Intent to Resume All Source RFP and Request for Approval," Docket No, 07-035-94, October 6, 2009, p. 1.

3. If the Company notifies the Commission of its intention to resume the All Source RFP, it shall include in its notification to the Commission, a request for approval of the new schedule for the All Source RFP and include a request for approval of any material changes to the All Source RFP.²

In response to these conditions, PacifiCorp states in its application to resume the 2008 RFP that, "By this Notice, the Company notifies the Commission and parties of its intention to resume the RFP, explains how it has satisfied the pertinent conditions in the Order and provides a schedule for the RFP. The Company is not proposing any material change to the RFP."³ Additionally, as part of the application, PacifiCorp requests approval of a new schedule.

In its order dated October 26, 2009, the Commission approved resumption of the 2008 RFP and, based on comments from Utah's Independent Evaluator ("IE") and the DPU, a revised schedule. (See Table 1.)

However, on November 19, 2009, PacifiCorp filed a letter with the Commission stating that PacifiCorp was modifying the approved schedule. Specifically, PacifiCorp intended to postpone the bidder and stakeholder conference from November 20, 2009 until December 15, 2009 and, consequently, postpone the bidder's deadline to submit a notice of intent to bid from December 17, 2009 to December 22, 2009. These dates are line items five and seven, respectively, found in Table 1.

In its Request for Comments, dated December 2, 2009, the Commission explained that it would treat PacifiCorp's November 16, 2009 letter as a request to change the approved revised schedule and sought comments to be filed on or before December 14, 2009, from parties.

² Utah Public Service Commission order, "Order Approving Suspension of Request for Proposals," Docket No. 07-035-94, April 6, 2009, p. 8. (Formatting changed from the original.)

³ PacifiCorp Application, p. 3.

DISCUSSION

At PacifiCorp's request, by order dated April 6, 2009, the Commission approved the suspension of the 2008 RFP for up to six months. The six months ended on October 6, 2009, the day PacifiCorp chose to file its notice and request with the Commission to resume the 2008 RFP. The Commission approved resumption of the 2008 RFP, along with a revised schedule (See Table 1), on October 26, 2009. However, on November 19, 2009, less than two months after filing for resumption of the 2008 RFP and less than a month after the Commission's approval, PacifiCorp filed a letter requesting to modify the approved schedule. PacifiCorp provides no explanation for the proposed changes.

Table 1: Approved Revised Schedule (Oct. 26, 2009)

1.	October 26, 2009	Commission approve resumption of RFP
2.	October 27, 2009	Issue notice to bidders of resumption of RFP and suggest that they consider the 2008 IRP
3.	November 2, 2009	Technical conference on modeling and schedule
4.	November 16, 2009	Stakeholders file comments and conclusions on modeling
5.	November 20, 2010 <i>(sic)</i>	Stakeholder and bidder RFP meeting including information about transmission project status
6.	December 2, 2009	Reissue RFP to market
7.	December 17, 2009	Bidders submit a notice of intent to bid
8.	February 15, 2010	Benchmark submits proposals
9.	March 1, 2010	Bidders submit proposals
10.	May 28, 2010	Evaluation of Initial Shortlist completed
11.	July 1, 2010	Benchmark submits firm proposals
12.	July 15, 2010	Initial Shortlist provides firm proposals
13.	September 10, 2010	Final evaluation of bids completed
14.	September 12, 2010	Final shortlist acknowledgement
15.	January 10, 2011	Negotiation of bids on final shortlist completed
16.	January 17, 2011	File request for approval of significant energy resource

	decision
17.	May 17, 2011

Commission approval of significant energy resource decision

While these proposed changes will not likely affect other major dates such as the starting point or ending dates of the RFP, items 6 and 17 in Table 1, the request is emblematic of PacifiCorp's management of its RFP processes. In its memo dated October 19, 2009, the DPU noted once again its concern with the systematic inability of PacifiCorp to set and meet key RFP dates:

The Division is concerned that the Company has once again lost valuable time over the past few months. By waiting until October 6, a full six months after the April 6 Suspension Order, the Division believes the Company will be challenged to meet its June 1, 2014 deadline for bringing the RFP resource on line. This observation by the Division is based upon the previous schedule delays of the 2012 RFP in Docket No. 05-035-47 and the 2008 All Source RFP in this docket. The Division raised this concern first about the schedule and delays in a memorandum to the Commission dated October 19, 2008. The Division repeated these concerns and documented RFP schedule delays and related matters in direct testimony filed in the Lake Side Resource Approval in Docket No. 08-035-95.

Slippage of other dates, however, would make it unlikely that PacifiCorp would be able to meet an online date of June 1, 2014. For example, the schedule calls for the Commission to approve the significant resource decision in the 2008 RFP by May 17, 2011. Assuming that a resource will take from 36 to 38 months to build, PacifiCorp has left no room in the schedule to allow for slippage of any key dates such as issuing the RFP. On issuing the 2008 RFP, the DPU notes that PacifiCorp closes its November letter with the caveat that, "the proposed new dates are contingent on the Company reissuing the RFP. While the Company fully intends to do so, it is important to

keep in mind that the dates may still move, depending on the date the RFP is finally finished.⁴ Since PacifiCorp chose not to file its (revised) 2008 RFP with the Commission and has not informed the Commission whether or not the 2008 RFP was issued on schedule, it is uncertain at this point whether PacifiCorp is compliant with the Commission's approved schedule.⁵ Nor is it clear, as PacifiCorp claims in its October Notice of Intent to resume the 2008 RFP, whether or not there is "any material change" to the 2008 RFP as finally issued.⁶

To date, the DPU has received and reviewed three copies of the 2008 RFP: two redline versions and a Final version. The two redline versions were provided to the DPU on or about November 24 and December 2, 2009. Both of these two redlined versions have the same title "All Source - Request for Proposal; PacifiCorp, Oregon; Issued December 2, 2009; Responses March 1 2010." Upon brief review, both versions appear to be the same. PacifiCorp sent to the DPU the final version, with a title indicating Utah instead of Oregon, on or about December 3, 2009. A summary of the changes in these documents follows.

Review of Redline Version (Oregon), December 2, 2009

Based on the Company's filing to reissue the 2008 RFP, the Division formulated the impression that other than dropping one or more benchmarks, other changes to the RFP were minor. The following review is based on a redline version of the RFP provided to the Division on or about December 2, 2009 ("Redline"). The document presumably records changes from the original RFP approved by the Commission in its order dated September 25, 2008.

1. **Online Dates:** The online dates are changed from starting on June 1, 2012 to starting on June 1, 2014. (2008 RFP p. 8)⁷

⁴ PacifiCorp letter to the Public Service Commission of Utah, Docket No. 07-035-94, November 19, 2009.

⁵ The DPU is aware that copies of the 2008 RFP are available on PacifiCorp's and the Utah IE's websites. However, the Division is concerned about the lack of publicity given to its release and to the fact that neither the Commission nor the Division was informed and given a copy of the final RFP as it was released. Thus, the Division will limit its review to a comparison of the Documents it has received.

⁶ With the application to resume the RFP dated October 6, 2009, and the letter proposing changes in the schedule with a reference to the RFP being unfinished, it is not clear how any weight can be given to PacifiCorp's claim of no material change.

⁷ Page numbers throughout this section of the memo refer to the December 2, 2009 redline version of the 2008 RFP.

2. **Benchmark Resources:** The Company will offer a benchmark only in the base load category. Previously the Company was also proposing an intermediate benchmark resource. (2008 RFP p. 8)
3. **Benchmark Evaluation:** The Company will offer an **indicative** benchmark prior to opening **indicative** bid proposals. Once the initial shortlist is established, the Company will offer a firm benchmark before opening firm bid proposals. (2008 RFP p. 8)
4. **RFP MW:** The Company has decreased the amount of MW sought under the RFP from 2,000 to 1,500. (2008 RFP p. 11, 46)
5. **Bid Fees:** Bid fees will be required except for those bidders that have already paid such fees and not had them returned. (2008 RFP p. 31)
6. **Effectiveness of Bids:** Bidders will offer an initial **indicative** price and, if moved to the initial short list, will provide a **firm** price. This changed from the original RFP where the bidders had the option of providing either a fixed price or an indexed pricing proposal. (2008 RFP pp.31-32)
 - **Capacity Cost Payment or Purchase Price:** Bidders must submit fixed prices - \$/kW-month; indexing is not allowed. (2008 RFP pp.45)
7. **Financial Institutions:** Financial institutions supporting a bid must have investment grade credit ratings from Standard & Poor's or Moody's and have assets net of reserves in excess of \$10,000,000,000 (\$10 billion). (2008 RFP p. 34)
8. **Evaluation Process:**
 - **Benchmark Resources:** Benchmark resource scores will no longer be adjusted for risk. (2008 RFP p. 52)
 - **Bids:** Bidders will not be informed as to which indices the Company is using or of the volatility in the indices. (2008 RFP p. 52)
 - **Short List:** Indicative bids will be used to develop the initial short list. (2008 RFP p. 52)

- **Short Listed Bids:** Bids making the initial short list will be required to submit firm pricing. (2008 RFP p. 53)
- **Firm Bids:** Firm bids must be functionally and operationally equivalent to and within 10% of the indicative bid. (2008 RFP p. 53)

Summary of Wayne Oliver, Merrimack Energy, Email concerns

On November 28, 2009, the Utah IE, Wayne Oliver of Merrimack Energy, expressed his concerns to the Company in two emails. The Utah IE was concerned about recent changes to the RFP and whether they were consistent with the Commission Order on the RFP. The Utah IE pointed to statements in the recently changed RFP that did not reflect the consistency in treatment of the benchmark and third-party options. The Utah IE also expressed concerns regarding the elimination in the RFP of the section dealing with indexing.

The DPU agrees with the Utah IE, that these changes, appearing in the Redline version, are material. However, on November 30, 2009, the DPU, Office of Consumer Services, the Utah IE, Wayne Oliver, and the Oregon IE participated in a phone conference with PacifiCorp where Mr. Oliver's and other concerns were discussed. A few days later, PacifiCorp indicated that, "As a result of the call on November 30 and the push back on the initial and firm pricing, deletion of the index and the risk adjustment mechanism I have gone back to the original RFP."⁸ The DPU was also provided a copy of the Final version of the 2008 RFP at this time.

Review of Final Version (Utah), December 3, 2009

The DPU compared the Final Version of the 2008 RFP as it was provided with the original RFP approved by the Commission on October 2, 2008.⁹ The Comparison was based on the changes found in the redline versions as outlined herein.¹⁰

⁸ Email received from Stacey Kusters (Market Function), December 2, 2009.

⁹ For comparison purposes, the DPU downloaded a version of the original RFP from the Utah IE website.

¹⁰ Although the DPU has reviewed the Original and Final versions as described herein, other changes may appear in the Final.

1. **Online Dates:** The online dates change from starting on June 1, 2012 to starting on June 1, 2014. Chart 2, Schedule of RFP Actions, also reflects new online dates. The proposed changes to the approved schedule are also included in Chart 2. (Final, p. 7, 26)
2. **Benchmark Resources:** The Company will offer a benchmark only in the base load category. Previously the Company was also proposing an intermediate benchmark resource. (Final, p. 8)
3. **Benchmark Evaluation:** Although there are language changes from the original, PacifiCorp has retracted the idea of "indicative" bids and benchmarks. (Final, p. 8)
4. **RFP MW:** The Company has decreased the amount of power sought under the RFP from 2,000 MW to 1,500 MW. (Final, p. 10)
5. **Bid Fees:** Bid fees will be required except for those bidders that have already paid such fees and not had them returned. (Final, p. 30)
6. **Effectiveness of Bids:** Instead of offering indicative bids, PacifiCorp is offering bidders the option of submitting either fixed or indexed bids. This is consistent with the Original RFP. (Final, pp. 31-32)
 - **Capacity Cost Payment or Purchase Price:** Appears consistent with the Original RFP (Final, p. 44)
7. **Financial Institutions:** Financial institutions supporting a bid must have investment grade credit ratings from Standard & Poor's or Moody's and have assets net of reserves in excess of \$10,000,000,000 (10 billion). (Final, p. 33)
8. **Evaluation Process:**
 - **Bench Mark Resources:** As in the Original RFP, benchmarks will be adjusted for risk. (Final, p. 51)
 - **Bids:** Consistent with the Original RFP (Final, p. 51)
 - **Short List:** Consistent with the Original RFP (Final, p. 51)
 - **Short Listed Bids:** This varies from the original considerably. (Final, p. 52)

- **Firm Bids:** Firm bids must be functionally and operationally equivalent to and within 10% of the indicative bid. (Final, p. 52)

Although the Final version of the 2008 RFP appears to be mostly consistent with the Original version, there are several areas that appear to contain significant differences. These differences are found in items 1 (online dates), 2 (benchmark resources), 4 (RFP MW), 7 (Financial Institutions), and 8 (Evaluation Process) listed previously.

1. Online Dates

The online date of June 1, 2014, is consistent with the suspension and resumption of the 2008 RFP. As previously noted, given the currently approved schedule, the schedule allows no room for further delays. Therefore, it is imperative that PacifiCorp meet each of the other dates or milestones contained in the schedule.

2. Benchmark Resources

In the Original version of the 2008 RFP, PacifiCorp proposed a benchmark for both the base load and intermediate categories. The benchmarks serve, among other things, as resources against which bids are evaluated and shown to be least cost/least risk. Additionally, since the benchmarks are independently assessed by the IE, the benchmarks provide regulators with a threshold for prudence reviews. In the Final version of the 2008 RFP, PacifiCorp is proposing to have a benchmark in the base load category only. Without an intermediate benchmark, it is not clear from PacifiCorp's current set of filings how bids in this category will be evaluated as being least cost/least risk resource or how regulators are to assess prudence of the final resource choice.

4. RFP MW

PacifiCorp has decreased the number of megawatts sought in the 2008 RFP from 2,000 to 1,500. While this is technically consistent with the 2008 IRP, it is well short of the system shortfall or resource deficit for the year 2014. PacifiCorp's 2007 IRP shows a system deficit of 2,794 megawatts with a 12% planning margin; the 2008 IRP shows a deficit of 2,498 megawatts. With a 15% planning margin, the deficits in both IRPs are even larger.

Both the 2007 and 2008 IRPs, however, show deficits beginning as early as 2010. For example, again using a 12% reserve margin, the 2007 IRP capacity and load resource balance shows a system deficit position of 791 MW beginning in 2010; 2,038 MW in 2011; 2,446 MW in 2012; and 2,563 MW in 2013. Similarly, the 2008 IRP shows a system deficit beginning in 2011 of 498 MW, increasing to 1,936 MW in 2012 and 2,176 MW in 2013. Although PacifiCorp spoke of bridging strategies in requesting the suspension of the 2008 RFP in February 2009, it has not provided an update to that strategy or any reassurances that a bridging strategy is still a viable option. Nor has PacifiCorp provided an explanation of why lowering the number of megawatts sought in the RFP is reasonable.

7. Financial Institutions

PacifiCorp is requiring that financial institutions supporting a bid must have investment grade credit ratings from Standard & Poor's or Moody's and have assets net of reserves in excess of \$10,000,000,000 (\$10 billion). While investment grade credit ratings are not new, the \$10 billion asset requirement does appear to be new. In the November 30, 2009 phone conference, PacifiCorp explained that the asset requirement was in reaction to the recent economic turmoil and bank closures. However, it was not clear from that conversation what is meant by "assets net of reserves." The DPU believes that a proper measure of financial health would be assets net of total liabilities. Furthermore, it is not clear why \$10 billion is the appropriate level or amount. However, the DPU claims no special expertise in this area. In response to an informal inquiry on this matter, PacifiCorp offered the following explanation:

The credit requirements were raised for financial institutions providing credit assurances on behalf of a bidder in the All Source RFP. These higher standards were imposed in direct response to the turmoil in the credit markets which began in 2008. The creditworthiness of financial institutions became quite volatile starting in 2008 and is continuing. PacifiCorp feels that these

higher standards for financial institutions provide strong protection for the ratepayer.

Note that according to published reports, and as of November 24, 2009:

- there have been 124 bank failures in the nation so far in 2009
- 552 lenders are on the FDIC's so-called problem list and are at risk of going under.¹¹

While the DPU supports PacifiCorp in requiring appropriate levels of credit assurances, the DPU believes this issue warrants further explanation.

8. Evaluation Process

There appear to be substantial wording changes in this section of the 2008 RFP. In particular, the Final version of the 2008 RFP inserts the following language:

Bids which qualify for the initial shortlist will be required to provide their best and final pricing. Best and final pricing must be from the same site, using the same or equivalent technologies and bids must be within 10% of the Bidders original bid(s) selected in the initial shortlist.

In the event that prices proposed in any final proposals are more than 10% higher than prices submitted by that Bidder, PacifiCorp reserves the right to either (a) reject the final proposal or, (b) replace that short-listed Bidder with a final proposal solicited from another Bidder that submitted a timely indicative bid that was not short-listed. Accordingly, PacifiCorp may request that certain

¹¹ Email received from Stacey Kusters (Market Function), December 3, 2009.

indicative bids, not short-listed, remain open after the initial short-list is identified and that those Bidders should be prepared to submit their best and final proposals on an expedited basis. Each of the above requirements will also be applicable to the Benchmark submitted by the Company. (Final p. 52)

This language appears to be contemplating bidders updating bids and possibly being removed from the short-list and replaced with an indicative bid not originally on the short list. This language does not appear to be consistent with the Original RFP and evaluation process approved by the Commission in its September 25, 2008 order. This language, which appears in the redline versions of the 2008 RFP, may be left over from PacifiCorp's proposed changes to allow indicative bids. The DPU believes that PacifiCorp needs to justify this language for the Commission or remove it from the RFP document.

RECOMMENDATIONS

Given the schedule delays and changes in the RFP, the DPU makes the following recommendations.

1. PacifiCorp file at least quarterly progress reports on the 2008 RFP with the Commission detailing its progress, milestones reached or achieved, and any issues that affect the outcome or success of the RFP.
2. PacifiCorp inform the Commission immediately in writing of any delays extending beyond three days in the approved 2008 RFP schedule detailing the reasons for the delay, the impact on the schedule, the impact on the RFP, and the likelihood of meeting the online date.
3. PacifiCorp immediately file a letter certifying whether the 2008 RFP was issued on December 2, 2009.
4. PacifiCorp immediately file with the Commission both a redline and final versions of the 2008 RFP as issued on December 2, 2009 and an explanation of

- and supporting reasons or documentation for all changes from the approved RFP issued on October 2, 2008. Documents should be in Word format.
5. PacifiCorp immediately file with the Commission a final version of the 2008 RFP as issued on October 2, 2008. Documents should be in Word format.
 6. PacifiCorp immediately file a detailed explanation of how bids in the intermediate class will be evaluated without a proposed benchmark.
 7. PacifiCorp immediately file a detailed explanation of its bridging strategy to meet its retail loads in Utah for the years 2010 through 2014 and an explanation of why it is considering lowering the total megawatts sought under the RFP.
 8. PacifiCorp immediately explain the language changes in the Evaluation Section of the 2008 RFP to the satisfaction of the Commission or remove the language from the RFP document.
 9. PacifiCorp amend the 2008 RFP to indicate it is seeking up to 2,000 meagwatts.

cc: Michele Beck, Office of Consumer Services
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