Final Report of the Utah Independent Evaluator

PacifiCorp 2012 Base Load Request for Proposals

Public Version

January 12, 2009

Merrimack Energy Group, Inc.
155 Borthwick Avenue
Suite 101
Portsmouth, NH 03801
(603) 427-5036

Table of Contents

Executive Summary

Merrimack Energy Group, Inc. (Merrimack Energy) was retained by the Public Service Commission of Utah ("Commission") to serve as the Independent Evaluator (IE) for PacifiCorp's (the Company) 2012 Request for Proposals (RFP) for Base Load Resources. Utah Code Section 54-17-101 (known as the "Energy Resource Procurement Act") requires the Commission to appoint an Independent Evaluator to monitor any solicitation conducted by an affected electrical utility under this chapter.

Merrimack Energy's involvement as Independent Evaluator, therefore, began at the very initiation of the RFP development process and continued through final evaluation, selection, and negotiations of the preferred resources(s). The roles and functions of the Independent Evaluator in Utah are defined in the Energy Resource Procurement Act and in Rule R746-420-6. As defined, the overall objective of the Independent Evaluator is to ensure the solicitation process could reasonably be expected to be undertaken in a fair, consistent and unbiased manner.

The Scope of Work prepared by the Commission for the Independent Evaluator with regard to the final report identifies two specific issues that are required to be addressed in the final report:

1. A detailed description of the solicitation process and the Independent Evaluators' involvement, role, observations regarding the process, conclusions about the process and recommendations.

2. Fairness assessment of the process, including the treatment of third-party bids and benchmarks, contract negotiations, and access to necessary information and data by the Independent Evaluator. In particular, in cases where a host utility bid or benchmark bid is considered, fairness issues involve detailed scrutiny of the evaluation process to ensure the utility bid or benchmark is treated the same as other bids.

Merrimack Energy has been involved in the RFP development process and monitoring the solicitation process through participation in all major team meetings, conference calls and conversations regarding the decisions about the RFP and solicitation process. Our involvement has included all stages of the solicitation process, including (1) development of the RFP; (2) receipt and evaluation/selection of proposals; and (3) monitoring contract negotiations. The objective of this involvement has been to ensure the process is fair and unbiased and provides the best deal for consumers and to raise any concerns along the way, if necessary, to ensure the process stays on track to meet these objectives.

The solicitation process and procedures developed and implemented by PacifiCorp, including the bid evaluation and selection process and methodologies are, in substance, consistent with Utah competitive procurement requirements and industry standards and led to a fair, consistent and unbiased evaluation and selection process. The results from the 2012 competitive procurement process should lead to 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, risks, reliability and financial impacts on PacifiCorp. In that regard, the resource selected through this process represents a resource that was subject to detailed scrutiny and evaluation, was vetted through a fair and equitable process, is subject to a contractual arrangement that ensures an effective balance of risk with benefits to customers should market conditions render other resources more economic, and represents the lowest cost resource available through this competitive solicitation process to meet base load requirements.

There were also a number of lessons learned, both positive and negative, from the 2012 RFP process that can have positive impacts in designing and implementing future competitive procurement processes. The solicitation process was conducted during a very volatile (in terms of generation project costs) and uncertain (in terms of financial issues) time in the power generation industry and PacifiCorp's performance must be considered in light of these market changes.

As noted on pages 10 and 11 of this report, the Scope of Work prepared by the Commission for the Independent Evaluator identifies specific requirements for the IE to confirm whether or not the solicitation process was undertaken in a fair manner. The following overall conclusions associated with the 2012 Base Load solicitation process will address these requirements, among others.

Conclusions

- The solicitation process was undertaken in a fair, equitable and unbiased manner by the Company with the oversight of the IE at all stages of the process.

- The RFP process was a highly transparent process, providing detailed information about the requirements for bidding, the products requested, the evaluation methods and methodology, the evaluation process, bid evaluation criteria (both price and non-price), the weights for the criteria, information required of the bidder, requirements of the bidder for submitting its proposal, the schedule for undertaking the process, and risk parameters of the Company as identified in the RFP and related contracts. In conjunction with the role of the IEs throughout the process, in our view the transparency of the process significantly exceeds industry standards for other competitive bidding processes.

- The bidder outreach and communication activities implemented by PacifiCorp were designed to encourage broad participation from the market. PacifiCorp maintains a large database of potential suppliers and informed those suppliers of the development and issuance of the RFP. Furthermore, throughout the process, bidders were informed through conferences, workshops, and Commission hearings.

- The level of response to the RFP exceeded bidding requirements and was sufficient to provide a competitive process throughout. However, nearly all bids had conditions attached or were classified as non-conforming (e.g. the bidder did not propose delivery into the PacifiCorp control area). The selected resource was a lowest cost option and did not possess the specific risks to development that other resources faced.

- The solicitation process led to the ultimate selection of only one resource for 2012 capacity in the amount substantially less than that requested in the RFP. This was attributed to failure of the two other resources selected for the short list to demonstrate a willingness to overcome conditions placed on these bids. The IE suggested that a back-up list of resources should be maintained in case bidders are no willing to move forward with their projects. Although we recommended that a back-up list of resources should be maintained, it is important to note that there were also conditions associated with each of the back-up bids that would have been challenging to overcome.

- The competitive solicitation process is closely linked to the Integrated Resource Planning process. This includes significant input from other market participants and interested parties in the assessment of the need for power and the amount to be bid, input assumptions, modeling methodologies, and resource selection process. While we have identified a few minor deviations from the established methodology (use of a different risk measure than previously utilized in the IRP and use of a different metric to rank bids in the Step 1 process), these deviations had no impact on the final resource ranking and selection.

- 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 throughout the process, even during conference calls with bidders.

- The Code of Conduct and communication protocols were well developed and clearly identified in the RFP and were taken very seriously by PacifiCorp. Members of the bid teams were subject to training on the protocols prior to receipt of bids and were informed of the importance in following the protocols. We were not aware of any violations of PacifiCorp's Code of Conduct and communication protocols. The Company appeared to diligently follow the Code of Conduct and did not deviate from the requirements.

- The IE can document that the confidentiality requirements of the exchange of information between PacifiCorp, the IE and the bidders were maintained. For the most part, the IEs initiated communications with the bidders directly, rather than the company to maintain bid blinding. The IE has kept documentation to verify the communication process.

- The Bid Pricing Sheets (Form 1) were clear and transparent and led to consistent information provided by all bidders. PacifiCorp's efforts to also offer a workshop with bidders to review and explain the Bid Pricing Sheets was a positive step for ensuring that bidders fully understood the information they were asked to provide.

- PacifiCorp offered a range of resource 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 in the RFP.

- PacifiCorp offered their own sites to Bidders which provided several options for bidders to consider in structuring their proposals. This is not a common practice in competitive bidding processes.

- The Benchmark resources provided the same information required of all bidders. Furthermore, the Benchmark team provided detailed back-up information to the IE on the cost and operating characteristics of the benchmark resources and responded to all questions about the resources. The IE audited and validated the information and concluded that the cost and operation information was conservative and complete and was not intended to provide a "low ball" cost estimate.

- PacifiCorp evaluated the benchmark resources consistently with other bids in the Step 2 and Step 3 phases of the price evaluation, even though PacifiCorp had withdrawn the benchmarks. The benchmark resources were not subject to the Step 1 price and non-price analysis.

- The Bid evaluation models and methodologies are very appropriate for the cost and risk analysis undertaken by PacifiCorp. In particular, the models and methodology underlying the Step 1, Step 2 and Step 3 analysis are state of the art and provide very comprehensive and complete evaluation results.

- While the IEs did not have direct access or control over 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. Thus, the IE can confirm that we did have access to all data, model results, input assumptions and other information necessary to render a thorough evaluation of the quality and comprehensiveness of the process. There were no occasions where we felt PacifiCorp was not responsive to our requests for information. Furthermore, given the nature of the models used by PacifiCorp, it was the view of the IEs that requesting that PacifiCorp run other cases and reviewing and questioning the results of the evaluation was more effective and timely than if the IEs attempted to run the models ourselves or undertake a totally independent evaluation.

- Merrimack Energy has concluded that the models and methodologies used are very detailed and comprehensive, accurately accounting for all costs associated with the evaluation. The modeling methodologies are state of the art and are among the most comprehensive and effective methodologies utilized in all the solicitation proceses in which we have participated. Furthermore, the price evaluation methodology is designed as an integrated evaluation process for Steps 2 and 3 which reflects the impact on total system cost associated with different resources and portfolios considered.

- The level of documentation supporting the resource evaluation and selection process was very detailed and significant. The Company provided the detailed back-up documentation to the IEs during the Step 2 and Step 3 evaluations.

- 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, and providing bidders with bid numbers even though the bidders had not been pre-qualified.

- All bids were required to provide consistent information, including the benchmark resource. The Term Sheet process proved to be an excellent step to ensure that all bids provided consistent information and were fairly and consistently evaluated.

- PacifiCorp did not follow the evaluation process as identified in the RFP. As we have reported, PacifiCorp decided to include all eligible proposals on the short list. As a result, PacifiCorp did not prepare and submit a non-price evaluation of the bids. While the IE can confirm that the price evaluation was consistently undertaken, the non-price evaluation was not. However, since PacifiCorp decided to select all eligible proposals for the short list (after the two month delay in the process in summer/fall of 2007) the IEs were not opposed to this decision. We recommend that in future RFPs, the entire process should be completed as listed in the RFP.

- Credit issues proved to be important throughout the process. While we felt security requirements, schedule for posting security and security levels were reasonable and consistent with industry standard, one short listed bidder refused to honor the security posting schedule (even though the bidder agreed to the level of security required). The IEs agreed with the Company’s decision to reject the suggested approach by the bidder to post security because it added significant risk to consumers.

- The IE confirms that the negotiations between PacifiCorp and bidders were conducted in a fair and consistent manner, with no undue biases toward any bidder. PacifiCorp negotiated fairly but aggressively throughout the negotiation process. PacifiCorp was able to negotiate an option with the developer and EPC contractor that provides value to the Company and its customers and has undertaken a procurement process (in combination with the 2008 solicitation process) that allows the company to reflect changes in the market in its resource decision process. In addition, PacifiCorp has secured a reduced price from the initial cost estimate with the potential for addition price reductions.

- The negotiation process was overly lengthy, in our view. However, we are not certain of the reasons for such a lengthy negotiation process. Reasons for the length of the process could include the time required to select potential EPC contractors, the stress on PacifiCorp staff given the other major initiatives on-going at the Company, or challenges in resolving key contract provisions. PacifiCorp had originally indicated to the IEs that the contract would be filed with the Commission in September, 2008. Subsequently, the Company indicated the filing date would be the week before Thanksgiving. Finally, the filing took place in early December.

- 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. Approximately 45 questions were submitted and responses provided.

- 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. This included the allowance for indexing of capacity or capital costs, contract provisions designed to balance risk, and the recognition that contract negotiations would address both price and non-price factors.

- 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 bid selection phase of the process rather than in the initial evaluation phase is a positive step for encouraging third-party bidder participation and putting projects from third-party bidders on a more equal footing with utility cost of service options since the application of imputed debt is not included in the bid evaluation and selection process.

- The information provided by the Benchmark resource options was totally consistent with the information required of third-party bids.

- 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.

- The RFP document contained a few 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.

- The Step 1 evaluation was not completed as outlined in the RFP. The non-price evaluation was not completed or the results were not provided to the IEs and the price evaluation did not include the analysis of the benchmarks. Furthermore, the IE's concerns at the beginning of the process were realized since all bids were higher cost that 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. While blinding was valuable and effective for the question and answer period, the value was limited in the evaluation stage of the process.

- 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 change, with EPC contractors unlikely to offer a fixed price proposal in the early stages of the bidding process.

- 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.

- In our view, timeframe for completing the solicitation process was much longer than necessary, marked by several delays, including the time for securing the commitment letters, two month delay to propose new benchmarks, and longer than expected negotiation process.

- Our assessment of the terms and conditions of the Master Development, Engineering, Procurement and Construction contract between PacifiCorp, the developer and the EPC contractor shows a well managed balancing of risk among customer interests, Company interests, and developer/EPC contractor interests. Consistent with industry practices skillfully applied, the agreement is soundly structured. Within that structure, the risk is well managed in ways which benefit the customers of the Company. In particular, the Company has taken full advantage of a two-stage notice to proceed process to ramp up its contractual exposure, while at the same time continuing to track market movements in pricing. Consistent with industry practices skillfully applied, the MDEPC manages the possibility of contractual change and retains adequate controls to protect its customers' interests and assure the completion of the Project in the event of contractor default. Based solely on its terms and conditions, the objectives in UCA § 54-17-302(3)(c) appear to have been met with respect to the MDEPC and the MDEPC appears to be in the public interest taking into consideration the applicable statutory factors.

I. Introduction

Merrimack Energy Group, Inc. (Merrimack Energy) was retained by the Public Service Commission of Utah ("Commission") to serve as the Independent Evaluator (IE) for PacifiCorp's (the Company) 2012 Request for Proposals (RFP) for Base Load Resources. Utah Code Section 54-17-101 (known as the "Energy Resource Procurement Act") requires the Commission to appoint an Independent Evaluator to monitor any solicitation conducted by an affected electrical utility under this chapter.

Merrimack Energy was originally retained as Independent Evaluator for PacifiCorp's proposed 2009 RFP for Flexible Resources in 2005. Late in 2005, the schedule for the RFP was suspended. Subsequently, in the spring of 2006, PacifiCorp proposed to develop a Request for Proposals to solicit for Base load Resources beginning in 2012. Technical Conferences were held in the spring of 2006. A draft RFP was filed by PacifiCorp on June 1, 2006. Interested parties in Utah filed comments on August 16, 2006 and the IE filed its Report on the RFP on August 30, 2006. Through the fall of 2006, discussions and conferences were held between the Company, Commission and Division staffs, interested parties and the IE to address key RFP issues. The RFP was subsequently approved by the Commission on April 4, 2007 and the Final RFP was immediately issued to the market.

Merrimack Energy's involvement as Independent Evaluator, therefore, began at the very initiation of the RFP development process and continued through final evaluation, selection, and negotiations of the preferred proposal(s). The roles and functions of the Independent Evaluator in Utah are defined in the Energy Resource Procurement Act and in Rule R746-420-6. As defined, the overall objective of the Independent Evaluator is to ensure the solicitation process could reasonably be expected to be undertaken in a fair, consistent and unbiased manner.

The Scope of Work prepared by the Commission for the Independent Evaluator with regard to the final report identifies two specific issues that are required to be addressed in the final report:

1. A detailed description of the solicitation process and the Independent Evaluator's involvement, role, observations regarding the process, conclusions about the process, and recommendations, including: [1]
    a. A detailed description of the evaluation and selection process and the company's approach for undertaking the evaluation and selection;
    b. Description of the process for evaluating and ranking bids and the benchmark option and the reasons for evaluating and ranking bids;

[1] Merrimack Energy completed and filed with the Commission a detailed report on the bid evaluation and selection process entitled "Report of the Independent Evaluator, Evaluation and Selection of the Draft Final Conditional Short List, PacifiCorp 2012 Base Load Request for Proposals. The Confidential version of the report was filed in September 2008 and the public version was filed in November 2008. The Confidential version contains detailed information on the results of the evaluation and selection process. The results are not repeated in this report. However, information from the public version is included in this Report in fulfillment of the reporting requirements.

c. Reasons and basis for selecting the winning bid or the benchmark option;
d. Reasons and basis for rejecting any bids;
e. Description of the "watch list" issues and a discussion regarding how these issues were addressed and resolved;
f. Identification of any issues with regard to the evaluation and selection of bids on which the independent evaluator disagrees or has reservations with regard to the rationale for PacifiCorp's decision.

2. Fairness assessment of the process, including the treatment of third-party bids and the benchmarks, contract negotiations, and access to necessary information and data by the Independent Evaluator. In particular, in cases where a host utility bid or benchmark bid is considered, fairness issues involve detailed scrutiny of the evaluation process to ensure the utility bid or benchmark is treated the same as other bids. Specific issues include:
    a. Identification of the criteria which the independent evaluator will use to assess the fairness of the solicitation process;
    b. Confirmation that the resource selected is the lowest reasonable cost option for customers taking into account all costs and risks;
    c. Confirmation that the solicitation was fair, equitable, and unbiased;
    d. Confirmation that the benchmark option was evaluated in the same manner as all other bids, with no inherent biases;
    e. Confirmation that the evaluation criteria, weights, and scoring factors were applied consistently among all bids including the benchmark;
    f. Confirmation that all bids provided consistent information and were fairly and consistently evaluated;
    g. Assessment of the implication of the key contract terms and risk factors (i.e. credit requirements, liquidated damage provisions, etc.) on the evaluation and selection of bids;
    h. Confirmation that the independent evaluator had access to all the data, models, model results, and other information necessary to render a thorough evaluation of the quality and comprehensiveness of the process;
    i. Documentation that the confidentiality requirements of the exchange of information between PacifiCorp, the Independent Evaluator and the bidders were maintained at all times;
    j. Confirmation that negotiations between PacifiCorp and bidders were conducted in a fair and consistent manner, with no undue biases toward any bidder. In addition, this assessment will identify any efforts on the part of PacifiCorp or the bidder to affect the timing of the negotiation process or attempt to inhibit good faith negotiations;
    k. Provide an overall assessment of the performance of PacifiCorp in carrying out the solicitation process relative to the criteria established by Merrimack Energy for evaluating such performance.

Chapters IV-VII address the first major task identified on the previous page. Chapter VIII addresses the fairness issues and scrutiny of the solicitation process.

Merrimack Energy has been actively involved in PacifiCorp's 2012 Baseload solicitation process from the beginning and has been involved in the RFP development process and monitoring the solicitation process through participation in all major team meetings, conference calls and conversations regarding the decisions about the RFP and solicitation process. Our involvement has included all stages of the solicitation process, including (1) development of the RFP; (2) receipt and evaluation/selection of proposals; and (3) monitoring contract negotiations. The objective of this involvement has been to ensure the process is fair and unbiased and provides the best deal for consumers and to raise any concerns along the way, if necessary, to ensure the process stays on track to meet these objectives. [2]

For purposes of undertaking this assessment of the competitive solicitation or RFP process, the following issues will be addressed in this report:

1. An overview of the competitive bidding requirements in Utah which serve to guide the implementation of the bidding process;

2. A list and description of the Scope of Work of the Independent Evaluator as well as the actual activities undertaken by the IE relative to the tasks included in the Utah statutes;

3. A list of the criteria relied upon by the IE to assess the performance of PacifiCorp during the solicitation process;

4. A brief description of the contents of the RFP document, including the objectives of the RFP, requirements of the bidders, the proposed evaluation process, Code of Conduct and other information. This information is included for reference purposes with regard to the discussion of PacifiCorp's performance;

5. A brief description of the activities undertaken by the IE at each stage of the solicitation process;

6. Description and assessment of the entire competitive solicitation process including preparation for receipt of bids, bid evaluation and selection process for establishing the conditional shortlist of preferred proposals and the initial negotiation process to address conditions associated with each short listed proposal; [3]

---

[2] It is important to note that the Company was ultimately responsible for all final decisions. The IE provided observations or input to the Company, Commission and Division as required.

[3] Merrimack Energy's Confidential and Public Reports on the Bid Evaluation and Selection process address the steps in the competitive bidding process from issuance of the RFP through selection of the conditional short list. Many aspects of that report will be highlighted in this report as well. In addition, the contract negotiation process will be addressed in detail as the final stage of the competitive bidding process.

7. Description of the contract negotiation process including an assessment of the effectiveness of the negotiation process with the award group of bidder(s) as well as a risk assessment of the contract provisions included in the final contract between PacifiCorp and the project sponsors;

8. Assessment of PacifiCorp's performance in managing and implementing the process relative to the requirements outlined in the Utah Procurement Rules, key criteria for a fair and equitable solicitation process, and lessons learned from the process;

9. Conclusions and recommendations for improving the competitive bidding process.

II. Competitive Bidding Requirements in Utah

Utah Code Section 54-17-101, known as the Energy Resource Procurement Act (2005) requires that an affected electric utility seeking to acquire or construct a significant energy resource [4] shall conduct a solicitation process that is approved by the Commission. The Commission shall determine whether the solicitation process complies with this chapter and whether it is in the public interest taking into consideration 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 electric utility located in the state.

Rule R746-420 outlines in detail the requirements of a solicitation process with regard to implementation of the Energy Resource Procurement Act. Among other issues, Rule R746-420 provides general provisions regarding the filing requirements for the soliciting utility in seeking approval of the solicitation, a description of the solicitation process and associated requirements, and the roles and responsibilities of an Independent Evaluator to oversee the solicitation process.

This Section of the Report will address three major issues. Sub-section A will provide a summary of the solicitation requirements in Utah as a means of setting the stage for a discussion of whether PacifiCorp effectively met the requirements of the Utah statutes. Sub-section B provides an overview of the required role of the Independent Evaluator in the process. Sub-section C identifies Merrimack Energy's criteria for an effective competitive procurement process based on our involvement in a number of competitive procurement processes throughout the US and Canada. These criteria will serve as the basis for evaluating the performance of PacifiCorp in developing, managing and implementing the solicitation process from initiation of the RFP and related documents through the negotiation of the final contract with the selected bidder.

A. <u>Solicitation Requirements in Utah</u>

The specific requirements for the solicitation process are included in section R746-420-3 of the Rules. The key provisions by topic area in the rules are summarized below. In our assessment of PacifiCorp's solicitation process, adherence to these requirements will be a focus of our discussion.

(1) <u>General Objectives and Requirements of the Solicitation Process</u>

- The solicitation process must be fair, reasonable and in the public interest
- Be designed to lead to acquisition of electricity at the lowest reasonable cost to retail customers in the state
- Consider long and short term impacts, risk, reliability, financial impacts on the utility, and other relevant factors

[4] A significant energy resource is defined as a resource that consists of a total of 100 MW or more of new generating capacity that has a dependable life of ten or more years.

- Be designed to solicit a robust set of bids
- Be sufficiently flexible
- Be timely in the sense of ensuring adequate time is allotted to undertake the analysis and secure the resources

(2) ***Screening Criteria – Screening in a solicitation process***

- Develop and utilize 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 consultation with the IE and Division. Initial screening criteria can include cost to ratepayers, credit requirements, transmission impacts, impacts of direct and inferred debt and environmental impacts, among other factors.
- In developing the screening and evaluation criteria, the utility shall consider the assumptions in the utility's most recent IRP.
- The utility may consider non-conforming bids

(3) ***Screening Criteria – Request for Qualification and Request for Proposals***

- The soliciting utility may utilize a Request for Qualifications (RFQ) process
- The IE will provide each eligible bidder a bid number when the utility, in consultation with the IE has determined the bidder has met the criteria under the RFQ
- Reasonable criteria for the RFQ could include such factors as credit requirements, non-performance risk, technical experience, and financial feasibility

(4) ***Disclosures – Benchmark Option***

- Identify whether the Benchmark is an owned option or a purchase option
- If the option is an owned option, provide a detailed description of the facility, including operating and dispatch characteristics
- Assurance from the utility that the Benchmark Option will be validated by the IE and that no changes to any aspects of the Benchmark option will be permitted after the validation of the benchmark option by the IE
- Assurances that non-blinded personnel will not share any non-blinded information about the bidders.

(5) ***Disclosures – Evaluation Methodology***

- The solicitation shall include a clear and complete description and explanation of the methodologies to be used in the evaluation and ranking of bids including all evaluation procedures, factors and weights, credit requirements, proforma contracts, and solicitation schedule

(6) *Disclosures – Independent Evaluator*

- The solicitation should describe the role of the IE consistent with Section 54-17-203 including an explanation of the role, contact information and directions for potential bidders to contact the IE with questions, comments, information and suggestions.

(7) *General Requirements*

- The solicitation must clearly describe the nature and relevant attributes of the requested resources
- Identify the amounts and types of resources requested, timing of deliveries, pricing options, acceptable delivery points, price and non-price factors and weights, credit and security requirements, transmission constraints, etc.
- Utilize an evaluation methodology for resources of different types and lengths which is fair, reasonable and in the public interest and which is validated by the IE
- Impose credit requirements that are and other bidding requirements that are non-discriminatory, fair, reasonable and in the public interest
- Permit a range of commercially reasonable alternatives to satisfy credit and security requirements
- Permit and encourage negotiation with short-listed bidders to balance increased value and risk
- Provide reasonable protection for confidential information

(8) *Process Requirements for a Benchmark Option*

- Evaluation team may not be members of the Bid team or communicate with the Bid team about the solicitation process
- The names and titles of each member of the Bid team, non-blinded personnel, and Evaluation team shall be provided to the IE
- The Evaluation team shall have no direct or indirect communication with any bidder other than through the IE until such time as a final short list is selected by the Soliciting Utility
- Each team member must agree to all restriction and conditions contained in the Commission rules
- All relevant costs and characteristics of the Benchmark option must be audited and validated by the IE prior to receiving any of the bids
- All bids must be considered and evaluated against the Benchmark option on a fair and comparable basis
- Environmental risks and weight factors must be applied consistently and comparably to all bid responses and the benchmark option

(9) Issuance of a Solicitation

- The utility shall issue the solicitation promptly after Commission approval
- Bids shall be submitted directly to the IE
- The utility shall hold a pre-bid conference

(10) Evaluation of Bids

- The IE shall blind all bids and supply blinded bids to the utility and Division
- The utility shall provide all data, models, materials and other information used in developing the solicitation, preparing the Benchmark option, or screening, evaluating or selecting bids to the IE and the Division staff
- The IE shall pursue a reasonable combination of auditing the utility's evaluation and conducting its own independent evaluation, in consultation with the Division.
- Communications with bidders should occur through the IE on a confidential or blinded basis
- The IE shall have access to all information and resources utilized by the utility in conducting its analyses. The utility shall provide the IE with access to documents, data, and models utilized by the utility in its analyses
- The IE shall monitor any negotiations with short listed bidders
- The Division and IE may ask the PacifiCorp Transmission group to conduct reasonable and necessary transmission analyses concerning bids received.

B. Role of the Independent Evaluator

The Scope of Work for the IE is presented in several documents including the Request for Proposals for Consulting Services for the IE issued by the Commission, Utah statutes (Section 54-17-101 and Rule R746-420), and Attachment 4 (Role and Function of the Independent Evaluator and Communication Protocols) in the 2012 Base Load RFP. 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 guide the activities of the Independent Evaluator throughout the solicitation process.

1. Requirements Outlined for the IE

The requirements of the IE are summarized below for each stage of the 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, evaluate and audit the benchmark options cost assumptions and calculations 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, any computer models used to screen and rank bids from initial screening to final resource selection (including spreadsheet screening models and production cost models), and input assumptions. 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. Provide input to the Soliciting Utility on the development of screening and evaluation criteria and evaluation methodologies.

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.

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

b. Solicitation Process Bid Monitoring and Evaluation

1. Monitor, observe, validate and offer feedback to the Soliciting Utility, the Commission, and the Division of Public Utilities on all aspects of the solicitation process, including: (1) content of the Solicitation; (2) communications between bidders and PacifiCorp; (3) evaluation and ranking of bid responses; (4) selection

of the “short list” of bidders; (5) post-bid negotiations between short list bidders and PacifiCorp; (6) ranking of the final list of alternatives; (7) selection of energy resource(s); and (8) negotiations of the proposed contracts with successful bidders.

2. Provide input to the Soliciting Utility on: (1) the development of screening and evaluation criteria, ranking factors and evaluation methodologies to ensure the solicitation process is fair, reasonable and in the public interest; (2) the development of initial screening and evaluation criteria that take into consideration the assumptions included in the most recent IRP; (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 to facilitate a fair and reasonable competitive bidding process; (5) negotiation of proposed contracts with successful bidders; and (6) other matters as directed by the Commission.

3. Participate in the pre-bid conferences.

4. 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.

5. Facilitate and monitor communications between the Soliciting Utility and Bidders.

6. Review and validate the assumptions and calculations of any Benchmark options.

7. Analyze the Benchmark option for reasonableness and consistency with the Solicitation Process.

8. Participate in the receipt of bids and “blind” bid responses.

9. Establish a webpage for information exchange between bidders and PacifiCorp.

10. Monitor all communications with bidders after receipt of bids and negotiations conducted by PacifiCorp and any bidders. Communications between a Soliciting Utility and potential or actual bidders shall be conducted through or in the presence of the Independent Evaluator.

11. 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.

12. Advise the Commission, Division and PacifiCorp at all stages of the process 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.

13. Periodically submit written status reports to the Commission and Division on the solicitation as directed by the Commission or as the IE deems appropriate.

14. 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.

Also, upon advance notice to the Soliciting Utility, the IE may conduct meetings with intervenors during the Solicitation Process to the extent determined by the Independent Evaluator or as directed by the Commission. The IE shall also document all substantive correspondence and communications with the Soliciting Utility and the bidders.

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 as soon as possible following the completion of the Solicitation Process. The Final Report 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.

2. Participate in any Utah technical conferences related to the Energy Resource Decision Approval Process.

3. Participate in and testify at Commission hearings on approval of the solicitation process and/or approval of a Significant Energy Resource Decision.

Merrimack Energy performed all these functions as IE in this process. Examples of the specific functions undertaken by Merrimack Energy are described within the Report for each of the phases of the solicitation process. This Report is the Final Report required of the IE as described above.

C. Criteria for an Effective Competitive Solicitation Process

Based on Merrimack Energy's experience with competitive bidding processes and observations regarding such processes, the key areas of inquiry and the underlying principles used by Merrimack Energy to evaluate this solicitation process includes the following:

1. Were the solicitation targets, principles and objectives clearly defined?

2. Did the solicitation process result in competitive benefits for customers?

3. Was the solicitation process designed to encourage broad participation from potential bidders?

4. Did PacifiCorp implement adequate outreach initiatives to encourage a significant response from bidders?

5. Was the solicitation process consistent, fair and equitable, comprehensive and unbiased to all bidders?

6. Were the bid evaluation and selection process and criteria reasonably transparent such that bidders would have a reasonable indication as to how they would be evaluated and selected?

7. Did the evaluation methodology reasonably identify how quantitative and qualitative measures would be considered and applied?

8. Did the Solicitation Documents describe the bidding guidelines, the bidding requirements to guide bidders in preparing and submitting their proposals, and the bid evaluation and selection criteria.

9. Did the utility adequately document the results of the evaluation and selection process?

10. Did the solicitation process 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.

11. Did the solicitation process ensure that the Power Contracts were designed to minimize risk to the utility customers while ensuring that projects selected can be reasonably financed.

12. Did the solicitation process incorporate the unique aspects of the utility system and the preferences and requirements of the utility and its customers.

III. Key Provisions of the 2012 Baseload RFP

The key provisions of the RFP document and solicitation process are provided in Exhibit 1 below. The summary information is provided for reference purposes during the discussion of the solicitation process and to set the stage for the assessment of the solicitation.

Exhibit 1
Provisions of the 2012 RFP

RFP Characteristics	2012 RFP Provisions
Resource Requirements	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 and/or June 1, 2014.
Eligibility	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 100 MW or greater of dependable capacity and a minimum term of five (5) years.
Resource Alternatives	Resource Alternatives include: (1) Power Purchase Agreement; (2) Tolling Service Agreement (may include gas or coal); (3) Asset Purchase and Sale Agreement (PacifiCorp site and specifications); (4) Asset Purchase and Sale Agreement (Bidder site); (5) Engineering, Procurement and Construction Contract (Currant Creek site only); (6) Purchase of an Existing Facility; (7) Purchase of a Portion of a facility jointly owned or operated by the Company; (8) Restructuring of an Existing PPA or Exchange Agreement; (9) IGCC resource proposals (PPA, TSA or APSA on Bidder's site; (10) Geothermal or Biomass PPA or (11) Exceptions which include (a) Load Curtailment or (b) QF.
Bid Alternatives	Bidders are allowed to offer a base proposal and up to two 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.
Bidding Process	The Company will conduct a two stage solicitation process. In

	the first stage, the bidder must submit a "Request for Qualification (RFQ) Bid Form". The 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.
Utility Bid Options	PacifiCorp proposed three Benchmark resource options, all of which were coal projects: • IPP3 • Bridger Pulverized Coal project • Bridger IGCC
Price Evaluation Process	PacifiCorp proposed a multi-step price evaluation process for those bids which are pre-qualified and are eligible to submit a proposal. In the first step (Step 1), 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. The results from Step 1 (price and non-price evaluation) will determine a short list of bids. Short listed bidders will then be subject to Step 2 of the price evaluation (development of optimized portfolios under various assumptions for future emission expense levels and market prices). In Step 3, stochastic and deterministic analyses will be performed on each optimized portfolio in order to identify the resources in the highest performing (least cost adjusted for risk) portfolios.
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
Detailed Evaluation	PacifiCorp intends to subject the short listed bidders to a 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 Present Value

	Revenue Requirements (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.
Final Selections	After completing the formal evaluation process, but before making the final resource selections to be submitted for approval or acknowledgement, the Company will take into consideration, in consultation with the IEs, certain other factors that are not expressly or adequately factored into the formal evaluation process, but that are required by applicable law or Commission order to be considered.
Contract Negotiation Process	The RFP states that the Company will further negotiate both price and non-price factors during post-bid negotiations. The Company will continually update its economic and risk evaluation until a definitive agreement acceptable to the Company in its sole and absolute discretion is executed by both parties. The Company will allow Bidders to negotiate final contract terms that are different from the Proforma Agreements including, but not limited to, CO2 risk to the extent the Bidder enters into a CO2 indemnity or equivalent.
Pricing Mechanism	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.
Bid Blinding	All bid proposals must be “blinded” and shall not include identifying information about the Bidder. Bidders are required to submit their proposals using only the bid number provided by the IE.
Credit Requirements	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. 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.
Transmission	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 are responsible for any costs on third party transmission systems necessary to deliver the power to the PacifiCorp system. Attachment 13 is included which provides proxy costs to integrate resources into the system.
Accounting Issues	With respect to Variable Interest Entity treatment, the Company is unwilling to be subject to accounting or tax treatment that results from VIE treatment. 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.
Imputed Debt	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 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. PacifiCorp committed to abide by a self-imposed Code of Conduct that will govern intra-company business relationships. These relationships and the team structures and responsibilities are described in the RFP. Chart 3 in the RFP describes the functions. Effectively, PacifiCorp established three teams: (1) Evaluation Team; (2) RFQ Team; and (3) Benchmark Team. Evaluation team members are classified into Blinded and Non-Blinded personnel. Non-blinded personnel include Credit and Legal and Risk. Other team members are blinded and are required to abide by the Code of Conduct with regard to blinding and sharing information with other teams.
Benchmark Bids	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. The RFP clearly stated that all proposals should be submitted to the IEs.
Information Required of Bidders	The RFP contains a matrix that identifies the information requirements for each resource alternative. All bidders were required to submit Form 1 Pricing Input Sheet. The other information required was based on the type of eligible resource alternative proposed.
Schedule	A schedule is provided in the RFP which includes projected dates for the entire process. According to the RFP, the evaluation was to be complete within 120 days of issuance of the RFP and contract negotiations complete within 240 days from issuance.
Contracts Provided	The RFP document included a Power Purchase Agreement, a Tolling Service Agreement, Asset Purchase and Sale Agreement, EPC contract, Lake Side and Currant Creek APSA Rights and Facilities.
Other Documents	The RFP also contained detailed information requested for each type of resource alternative bid, Credit Methodology, Code of Conduct, Role of the Independent Evaluator, Credit Commitment Letter, Pricing Input Sheet, Permitting and Construction Milestones, and other related documents.

The summary information from the RFP listed above will be referenced as required through the remainder of the report.

IV. Activities Undertaken by the IE During the Solicitation Process

This chapter provides a summary identification of the specific tasks undertaken by the IE during the solicitation process. These activities are presented for each of the three stages of the solicitation process: (1) Solicitation process development and approval; (2) Bid evaluation and selection process; and (3) contract negotiations.

A. Activities Undertaken by Merrimack Energy

1. Solicitation Process Approval

During the solicitation development phase, Merrimack Energy participated in the technical and stakeholders conferences, and met on a number of occasions with Commission and Division staff, Company personnel, and other interested parties to attempt to settle RFP design issues. In that process, we prepared issues lists and proposed solutions for addressing specific concerns during the RFP development process. We also prepared a major report as required on the draft RFP and solicitation process that was filed with the Commission on August 30, 2006 and served as a basis for suggesting changes to the RFP.

Merrimack Energy staff and Division staff held at least two meetings with the Company to review the Company models, the modeling methodologies and techniques, input assumptions, and the bid evaluation and selection process for each stage of the evaluation. Based on our concerns over the credit requirements initially proposed by PacifiCorp, we also recommended that the Company hold a workshop for bidders on credit and security requirements and the underlying methodology, which the Company held in Salt Lake City in October, 2206. The IE and Division also met with PacifiCorp Transmission to get a better understanding of the transmission system and the basis for bidder requirements. Merrimack Energy also provided testimony on the RFP approval process before the Utah Public Service Commission.

During this stage of the process Merrimack Energy identified what we refer to as “Watch List” issues or those issues that could have a major influence on the outcome of the solicitation process. We usually “flag” these issues to assess how the utility resolves such issues and what the implication is on the fairness and equity of the process. Some of the key “watch list” issues include:

- Credit requirements (Both pre-qualification and final selection and negotiation)
- Comparability of resource evaluation related to an assessment of third-party bids and benchmarks
- Equality of contract provisions for the different contractual arrangements to ensure that no resource options enjoyed a competitive advantage
- Assessment of the modeling methodologies and applications of the models to be used, including the methodologies used in all stages of the process
- Methodology for imputed debt and the potential impact on resource selection

- Price indexing for capital cost components in light of uncertain construction costs

These “Watch List” issues will be discussed in more detail in other sections of this report.

2. Solicitation Process Bid Monitoring and Evaluation

This stage of the process began with the issuance of the RFP in April 2008. Based on agreement with the Company and Division, upon issuance of the RFP all questions and communications with bidders would be directed through Merrimack Energy’s website. Merrimack Energy established a website devoted to the 2012 RFP which served as the basis for communications with Bidders. Since the bids (and communications with bidders) would be blinded, the website served as the basis for posting questions and answers as well as information to bidders such as any scheduled conference calls, notices, etc.

To test the bid evaluation methodologies and processes, Merrimack Energy also prepared test bids prior to receipt of bids and participated in a meeting with the Company, Division Staff, and Oregon IEs to walk through the analysis of the test bids, including assessing the price input sheets which served as the basis for the price evaluation. In addition, the IE met with the Company to assist in the development of the non-price criteria. We also met several times with the Generation Group at PacifiCorp to review and assess the reasonableness of the benchmark options and drafted a report with our findings.

Merrimack Energy also reviewed all responses from bidders during the pre-qualification process and raised issues about the Company’s requirement for bidders to provide a commitment letter from its credit support provider. We recommended the Company hold a conference call with bidders to explain the requirements for the commitment letter and solicit bidder feedback and participated in the call. In addition, we facilitated communications between the company and bidders to work toward qualifying bidders prior to the due date for bid submission. Calls were held with every eligible bidder to ensure fairness in the process. Merrimack Energy and the Oregon IE’s also recommended that bidders should be pre-qualified and provided a bid number even though few bids have been pre-qualified, once it became clear that resolution of the credit support requirements was not imminent.

Once the bids were received, Merrimack Energy along with the Oregon IEs blinded the bids, reviewed the proposals, determined whether the proposals met eligibility and threshold requirements, and prepared a summary of the bids. We also reviewed all the proposals and participated in conference calls with each bidder to develop a “term sheet” of project information designed to assist PacifiCorp to develop complete and consistent information on which to model and evaluate each proposal. We served as the facilitator for all discussions between the Company and bidders designed to ensure communications with bidders remained blinded.

Merrimack Energy also prepared a few status reports on the pre-qualification and bid evaluation process and provided the reports to Commission and Division staff. In particular, we were actively involved in discussions with the Company about its decision to suspend the process and drafted comments to the Commission in opposition to the Company's proposal to include new benchmark resources.

To facilitate review of the bid evaluation process, PacifiCorp established a secured part of its computer system for access to the IEs to review the results of the bid evaluations. Merrimack Energy also undertook a detailed review and assessment of the quantitative evaluation undertaken by PacifiCorp as the basis for selection of the final conditional short list. During December 2007, the Company and IEs communicated almost daily on the Steps 2 and 3 of the bid evaluation process. After conducting our review, Merrimack Energy agreed with the Company's decision regarding the selection of the conditional short list of bidders

3. Monitor Contract Negotiations

Subsequent to the selection of the conditional short list of three projects, the Company held follow-up discussions with each of the short listed bidders, with the objective of addressing outstanding issues associated with each project. During this phase of the process, one bidder was eliminated for failure to reach agreement with the Company on extension of a lease agreement on its project during the period until the new contract is effective in 2012. A second bidder was eliminated for failure to meet the security requirements identified in the RFP. Merrimack Energy agreed with the decisions of the Company in both cases. While it appeared the first bidder noted above preferred to pursue alternative sale options for its project, Merrimack Energy was somewhat surprised the second bidder was not able to reach resolution with the Company since the bidder was clearly aware of the credit requirements prior to submitting its proposal and aggressively pursued a more lenient contracting approach. Merrimack Energy prepared several brief status reports for the Commission and Division on the status of the conditional short list process.

The one remaining bidder also faced significant challenges in moving its project forward toward contract resolution. The bidder had to bring in an EPC contractor, which proved to be a challenge given the change and uncertainty in the power generation market. The Bidder initially identified two potential EPC contractors. However, both EPC contractors did not meet the credit requirements of PacifiCorp. Eventually, the bidder identified two additional EPC contractors that met requirements. The Company initiated contract negotiations with the Bidder and two EPC contractors to get the best overall deal for the project. During the period March through August, a number of negotiation sessions were held with the EPC contractors. Merrimack Energy participated in portions of a number of negotiation sessions. We also asked PacifiCorp to prepare and provide an Issues Matrix, which identified the areas of agreement and disagreement between the parties. This allowed the IEs to track the progress on contract negotiations and to assess the remaining outstanding issues. PacifiCorp agreed to provide this information, which facilitated review of negotiations. Both EPC contractors agreed to provide their final costs and contract requirements in July 2008. The Company provided the information filed by Bidders to the IEs.

The IE also participated in several conference calls with the Company, the Oregon IEs, and Division Staff during the August through December 2008 period to discuss the status of final contract negotiations with the Project Developer and EPC contractor. The Company provided the IE's with status reports on the process and informed of any changes in negotiations. PacifiCorp submitted the Application on December 3, 2008.

V. Description of the Bid Evaluation and Selection Process

This section of the Report provides an assessment of the evaluation and selection process for the 2012 RFP as required in the Scope of Work for IE consulting services. This includes the period from release of the RFP in April 2007 to selection of the conditional short list. Much of the information in this section of the report is from the report previously prepared by Merrimack Energy on the bid evaluation and selection process.

A. Background to the RFP Bid Evaluation and Selection Process

PacifiCorp's 2012 RFP for Base Load Resources was approved by the Utah Public Service Commission on April 4, 2007 after undergoing several months of review and development. Once the RFP was issued, communications with Bidders would occur through Merrimack Energy's website, which ensured consistent information was provided to all bidders at the same time. A total of forty-five questions were submitted and answered. The RFP identified ten different eligible resource alternatives and two exceptions that could be bid. The Company also identified three different benchmark options, all of which were coal-based resources. The eligible resource alternatives included:

- Power Purchase Agreements
- Tolling Service Agreements (Gas or Coal)
- Asset Purchase and Sale Agreement on PacifiCorp sites
- Asset Purchase and Sale Agreement on Bidder's Site
- EPC Contract for Currant Creek
- Purchase of an Existing Facility
- Purchase of a Portion of a Facility Jointly Owned by and/or Operated by PacifiCorp
- Restructuring of an Existing Power Purchase Agreement or Exchange Agreement and/or Buyback of an Existing Sales Agreement
- IGCC Options
- Geothermal and/or Biomass Power Purchase Agreement
- Load Curtailment
- Qualifying Facility

In the RFP, PacifiCorp proposed a multi-phase bid evaluation and selection process for the proposals received. In Phase 1 bidders were required to meet the Pre-Qualification requirements outlined in the RFP. Bidders were required to meet certain credit requirements and capability and experience requirements as described in the RFP. Bidders who did not meet the pre-qualification requirements would not be provided with a bid number and would not be allowed to submit a proposal. [5]

[5] As noted in Merrimack Energy's August 25, 2007 Status Report, only one bidder was qualified by the scheduled bid due date to submit a proposal based on meeting all pre-qualification requirements, with credit requirements proving to be the primary stumbling block. Both the Utah and Oregon IE's strongly recommended that the Company allow the IE's to provide bid numbers to bidders even though they did not

In Phase 2, bids that met the pre-qualification requirements would be eligible to submit a proposal. Once the proposals were received, they would be subject to several evaluation steps. All proposals were initially required to provide basic information[6] and meet specified minimum eligibility requirements. Eligible bids would then be subject to the established evaluation process.[7]

As noted in the RFP, the analysis would be focused on finding the best combination of resources to meet customer requirements at the least cost, on a risk adjusted basis. The evaluation process would utilize a screening process to derive an initial shortlist of bids (Step 1) which would be placed in a system-wide production cost model to determine the final short list (Steps 2 and 3). One of the roles of the IE with regard to the evaluation and selection process was to ensure the process was applied consistently with regard to the methodology and objectives outlined in the RFP or the Company had a valid reason to deviate from the stated approach.[8] As will be noted later in this report, the Company did deviate from the stated approach on a few occasions. In this report, we will identify those cases and opine on whether such changes were reasonable and consistent or served to bias or skew the results of the evaluation and selection process to the detriment of customer interests.

According to the RFP document, Step 1 of the evaluation process (i.e. Initial Short List) involves a price and non-price analysis of the eligible bids to determine an initial short list. PacifiCorp would use the PacifiCorp Structuring and Pricing RFP Base Model[9] to screen the proposals and to evaluate and determine the price ranking for the eligible bids received. Price was proposed to be weighted at 70% and non-price at 30%. From a price perspective, the Company would compare the bid price to its adjusted market price projections (forward curve) and determined a price factor weighting based on the relationship between the two prices. As identified in the RFP, the comparison metric identified by the Company for this analysis was the projected net present value revenue requirements (PVRR) per kilowatt month (Net PVRR/kW-month). The net PVRR component views the value of the energy and capacity from the proposal as a positive

---

specifically meet the credit requirements and allow bidders the opportunity to meet the pre-qualification requirements on or after bid submission to ensure the opportunity for continuation of the competitive procurement process was maintained.

[6] Page 30 of the 2012 Base load RFP lists the information requirements and page 31 listed the minimum eligibility requirements.

[7] As will be discussed, proposals were received and the Company initially attempted to develop term sheets for each third-party proposal based on the information contained in the proposals submitted. This involved several discussions between the Company, bidders and IE's to ensure that the information included in the term sheets was accurate. The information on the term sheets was to be used (along with the pricing input sheets) as the basis for undertaking the initial shortlist price evaluation. However, as will be discussed later in this report, PacifiCorp decided to put the evaluation process "on hold" and sought a motion to amend the RFP on October 2, 2007 prior to completing the initial shortlist assessment.

[8] One of the roles and functions of the IE as identified in the RFP includes access to all important models in order to analyze, operate and validate all important models, modeling techniques, assumptions and inputs utilized by the Soliciting Utility in the Solicitation Process, including evaluation of bids.

[9] The RFP Base Model is contained in a Microsoft Excel workbook that includes a number of proprietary Visual Basic macros, custom add-ins, and computational code written in C++.

(market value of the power based on projected price curves) and the offsetting costs (bid prices and other costs) as a negative. The larger the net PVRR, the more valuable a given resource is to the Company's customers. The net PVRR/kW-month metric is the annuity value, which, when applied to the nominal kilowatts on a monthly basis and present-valued, will result in the same net PVRR as a straight NPV calculation.

The RFP also defines the non-price factors that would be considered in the evaluation and the weights for each. After completion of both the price and non-price factors, the scores would be combined and the bids ranked. The initial shortlist would be established using the combined price and non-price results. According to the RFP, the initial shortlist will include the top bids in each Eligible Resource Alternative category, up to two times the approximate megawatt needs for each year during the term.

As noted in the RFP, in Step 2, the Capacity Expansion Model (CEM) would be used to develop optimized portfolios under various assumptions for future emission expense levels and market prices based on the initial shortlist. The objective in this step is for CEM to develop a number of optimized portfolios – one for each combination of emission and wholesale electric market and natural gas price assumptions – based on the bids in the initial shortlist and the Company benchmarks. An optimal portfolio will be established for each combination of emission and wholesale electric market and natural gas price assumptions. Each portfolio from the CEM scenarios will be a candidate for the optimum combination of resources to be selected through the RFP process and will therefore be advanced to the stochastic/deterministic analysis step.

In Step 3 (Risk Analysis), stochastic and deterministic analyses will be performed on each optimized portfolio in order to identify the resources in the highest performing (least cost, adjusted for risk) portfolios. Step 3 includes both a Step 3(a) Stochastic analysis (PaR model) [10]and Step 3(b) Deterministic Scenario Analysis (CEM model). [11]Consistent with the IRP, the Company will use the Planning and Risk Model (PaR) and Capacity Expansion Model (CEM) to assess the risks of each Eligible Resource Alternative. The Planning and Risk Model will model hydro conditions, thermal outages, gas prices, electricity prices, and load on a stochastic basis. The Capacity Expansion Model will model CO2, fuel prices (natural gas and coal) and electricity prices on a scenario basis.

---

[10] The PaR model will be used in stochastic mode to develop expected PVRR and PVRR volatility parameters. PaR is an hourly dispatch model that varies loads, wholesale gas prices, wholesale electricity prices, hydro variations and thermal unit performance to reflect uncertainty. Stochastic representations of these variables include specific volatility and correlation parameters. The model dispatches resources to meet load with given markets and transmission access to minimize PVRR using linear programming techniques. The resulting distribution of PVRR, typically over 100 draws of the variables, can be evaluated for the expected PVRR, tail risk PVRR, and PVRR volatility. According to PacifiCorp's 2007 IRP, PaR makes time path dependent Monte Carlo draws for each stochastic variable based on the input parameters. The Monte Carlo draws are a percentage deviation from the expected forward value of the variables.

[11] The optimal portfolios will be subject 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. This step is intended to identify portfolios with especially poor performance under certain future scenarios and used to inform the selection of final resource options.

As identified in the RFP, the three steps described above constitute the formal evaluation process and will lead to the compilation of the final shortlist of resources for further negotiation. After completing the formal evaluation process described above, but before making the final resource selections to be submitted for approval or acknowledgement, the Company will take into consideration, in consultation with the IEs, certain other factors that are not expressly or adequately factored into the formal evaluation process, but that are required by applicable law or Commission order to be considered. The Utah Energy Resource Procurement Act requires consideration of at least the following factors in determining whether a resource selected by the Company should be approved as in the public interest:

- 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;
- Long-term and short-term impacts;
- Risk;
- Reliability;
- Financial impacts on the affected electrical utility; and
- Other factors determined by the Commission to be relevant.

The RFP also notes that the Company will further negotiate both price and non-price factors during post-bid negotiations. The Company will continually update its economic and risk evaluation until a definitive agreement acceptable to the Company in its sole and absolute discretion is executed by both parties. The Company will allow bidders to negotiate final contract terms that are different from the Proforma Agreements including, but not limited to, CO2 risk to the extent the bidder enters into a CO2 indemnity or equivalent.

B. <u>Implementation of the Bid Evaluation and Selection Process</u>

This section of the report will provide an overview and assessment of the implementation of the bid evaluation and selection process from receipt of the pre-qualification information to selection of the draft final conditional short list. In addition, the role and activities of the Company, IE and bidders will be identified and described.

<u>Receipt of Pre-Qualification Information/RFQ Process</u>

On May 7, 2007 PacifiCorp received responses from bidders with regard to the Request for Qualifications (RFQ), as the initial phase in the evaluation process. A total of approximately 30 resource alternatives were submitted, with most bidders offering multiple options. However, virtually all the RFQ responses had deficiencies, with the vast majority of responses failing to meet the credit assurance requirements that PacifiCorp deemed necessary. As a result of discussions with the IEs, PacifiCorp held a Technical Conference for bidders to explain in detail the credit requirements included in the RFP and to describe the next phases of the solicitation process.[12] The Company also submitted a letter to the Utah Commission on May 21, 2007 outlining suggested clarifications to the RFP. Among other issues, the Company decided to allow existing bidders to provide any deficient or missing information to their pre-qualification submissions by May 25, 2007 and also extended the date for filing proposals from June 19, 2007 until June 29, 2007. As a result, on May 25, 2007 one new bidder provided its RFQ response and other bidders reassessed their positions. For example, three prospective bidders subsequently withdrew from the process and one prospective bidder opted to seek another alternative. Exhibit 2 provides a summary of the number of bidders who provided responses to the RFQ, the number of projects and the number of options originally proposed.

Exhibit 2: Project Submittal Summary

Stage in the Process	Number of Bidders	Number of Projects	Number of Options
Pre-Qualification	10	16	30

Credit continued to be an issue during the RFQ process.[13] Several rounds of calls were held with bidders to attempt to resolve issues deemed necessary by PacifiCorp for the bidders to conform to the credit requirements. Nevertheless, the company, with the encouragement of the IEs, decided to provide bid numbers to the remaining bidders and allow bidders to submit proposals on June 29, 2007 even though the vast majority of the bidders had not met the RFQ requirements, as intended by PacifiCorp.[14]

Between the time of submission of the pre-qualification information and schedule for submission of final proposals, the IEs and the Company undertook a number of activities to prepare for receipt of the proposals and ensure the bid evaluation criteria, methodologies, and input assumptions were appropriately audited and locked-down prior to bid receipt. The activities undertaken during this timeframe are described below.

Test Bid Assessment

As a means of testing the evaluation and selection process, the Utah IE prepared two test bids[15] for the Company to evaluate using the RFP Base Model in Step 1 of the bid evaluation process as well as the non-price criteria established. The Utah IE completed the Pricing Input Sheets from the RFP (Form 1) as well as other information requested

[12] Merrimack Energy reviewed the credit assurance requirements specified in the RFP documents and felt there were inconsistencies in the requirements listed in the RFP. The Technical Conference was designed to clarify the inconsistencies.

[13] The IEs informed the Company on several occasions that the credit assurance requirements were not consistent with industry standards and could limit competition. However, the Company persisted on requiring bidders to meet the perceived credit assurance requirements.

[14] The original objective of PacifiCorp was to allow only bidders who met the RFQ requirements to be eligible to receive a bid number and submit a proposal. However, only one bidder had met PacifiCorp's requirements during the RFQ stage. Since the RFQ stage was effectively not completed at the time bids were received, the IE did not submit a Status Report on the bidding process at that time.

[15] The two test bids were for the same resource but were for different contract structures (i.e PPA and APSA).

about the technical and operational aspects of the proposal including siting, transmission access, technology, fuel, financing, etc. In essence, the IE created projects and completed the bid forms and exhibits as an actual bidder would.

The Company conducted its evaluation of the test bids and the IEs and Company staff met on June 7, 2007 to review the evaluation of the bids. Company analysts explained the basis of the evaluation as an example of the process that would be undertaken when actual bids were received. Non-price criteria were also discussed and reviewed to ensure the criteria could be locked down prior to receipt of bids. The IEs were comfortable with the evaluation methodology and process the Company intended to implement based on previous discussions with the Company about the methodology and also on the basis of the test bid process. In addition, the test bid process provided insight to the IEs how the Company interpreted the pricing proposals for the test bids as an example of how actual bids would be treated as well as the details of the price evaluation methodology in Step 1 of the process.[16]

On June 7, 2007, the Company also held a Technical Conference for Bidders to provide a walk through of the Pricing Input Sheets and address any Bidder questions regarding the information required on the Pricing Input Sheet. Merrimack Energy recommended that such a Conference should be held with bidders to ensure bidders fully understood the bidding requirements and could ask any questions about the Pricing Input Sheets. This recommendation was based on our involvement in other competitive bidding processes where the host utility conducted a similar conference or workshop for bidders. In general, the use of the Pricing Input Sheets ensures that consistent and complete pricing, operations and technical information is submitted and provided by all bidders, which minimizes any evaluation bias.

Input Assumptions

At the meetings held in conjunction with the review of the test bid evaluation, the Company also provided the IEs with their proposed input assumptions and a detailed assessment which served as the basis for the assumptions. In addition, the Company provided the IEs with a table that included the basis for Carbon Dioxide prices and natural gas prices for 9 scenarios that would be used to evaluate candidate portfolios under various assumptions for future emission expense levels and market prices.[17]

Access to Assumptions/Models

PacifiCorp also agreed to provide the IEs access to a secured website on PacifiCorp's system devoted to the RFP. The input assumptions, benchmark resources, and bid evaluation results were included on the website. While the IEs would not be given unfettered access to independently run the models due to the complexity of accessing a

[16] The Pricing Input Sheets requested a significant amount of pricing, operational and technical information about each proposal. This process provided an excellent perspective regarding how such information would be used and interpreted by PacifiCorp and included in Company models.

[17] The matrix included a combination of three gas price scenarios (low, base and high) combined with three Carbon Dioxide price cases (low, base and high). The matrix fully described the basis for the case for each variable and the source of the information.

number of files on the Company's computer system, the Company agreed to provide all the input and output results for review and audit by the IEs. The IEs were given directions and a password for accessing the website to review the results of the analysis or appropriate documents. The IEs were comfortable with this approach given the complexities and difficulties for independently running the Company's models. The IEs concluded that it would be more effective and consistent for Company analysts to run the models at the IEs direction, with review of the results and discussions with the Company. Since the Company had provided a detailed assessment of the models and input assumptions the IEs had knowledge of the models and could reasonably interpret the results. PacifiCorp also provided access to technical personnel to answer any questions about the model results.

The process undertaken by the IEs to validate the inputs and assumptions was based on reviewing the sources of the inputs and assumptions, the methodologies and approaches used by the Company to develop the assumptions, and the reasonableness of the assumptions and inputs based on market forecasts and the forecasts and assumptions used by other utilities and power buyers. After review of the input assumptions and based on discussions with the Company, the IEs validated the input assumptions as being reasonable, which were then "locked down" prior to receipt of the bids, consistent with the requirements in the IE Scope of Work.

<u>Benchmark Resources</u>

Another requirement for the IEs was to review and validate the assumptions and calculations of any benchmark resource options and analyze the Benchmark options for reasonableness and consistency with the solicitation process prior to submission of third-party bids. To undertake this task the IEs held several meetings and phone calls with PacifiCorp's Benchmark team to review and assess the benchmark resources.

An initial meeting was held with the Benchmark team on June 8, 2007. At that meeting the Benchmark team described the benchmark resources in general, including a description of the important aspects of each of the three benchmark projects. The Benchmark team provided the IEs with slide presentations on each project. The Benchmark team also described the detailed back-up data from the Engineering, Procurement and Construction (EPC) vendors that served as the basis for the cost estimates.

On or around June 19, 2007 the Benchmark team presented its detailed cost and overall information for each benchmark resource to the IEs in the same form and substance in which other bidders were required to submit their proposals. The Benchmark team provided the IEs copies of disks with the benchmark resources included for review and assessment. Also, the benchmark options and back-up information was posted on the secured website for review by the IEs. On June 27, 2007, the Benchmark team and the IEs held a conference call to discuss any outstanding questions from the IEs.

On June 28, 2007, the Utah IE and Division Staff met with the Benchmark team to conduct a final review of the detailed cost data for each benchmark resource. On June 29, 2007 the Utah IE completed and submitted its report on the Benchmark resources to the Division, as required. The IE provided an update with minor changes on July 2, 2007. In summary, the IE was of the opinion that the costs (including capital, operating costs and operational parameters) of the benchmark resources were conservative estimates and were certainly not low ball estimates. These estimates were overall reasonable assessments relative to our experience with the cost of other similar projects.[18] Furthermore, the Benchmark resources included all the same information as requested of other bidders, ensuring a fair and consistent assessment and treatment of all resource options.

Receipt of Bids

Bids were received as scheduled on June 29, 2007. At that time, six bidders/project sponsors submitted proposals consisting of nine projects and twelve options.[19] One alternative offered three mutually exclusive options of different sizes from the same project. The one bid that had previously met the credit requirements in the RFQ process decided not to submit a proposal.[20] As previously noted, one new bidder submitted a proposal. In addition, one of the bidders submitted a proposal that was not identified in its pre-qualification filing. Although this bid could be deemed as non-conforming PacifiCorp and the IEs agreed to accept the bid.

Evaluation of Bids

The bids were received and blinded by the IEs as required. The first major step in the evaluation process after ensuring bids met the minimum eligibility criteria was to review the proposals, notably the Form 1 Pricing Input Sheet. PacifiCorp then developed a term sheet that would initially serve as the basis for evaluation of the bids. PacifiCorp developed the initial term sheets for distribution to the bidder for review and sign off.[21] PacifiCorp intended that it would confer with the bidders to ensure that all parties were in agreement with the information contained in the term sheets, which included all bid evaluation details and confirmation of the offer, before initiating the first step of the bid evaluation process. The IE was supportive of this process since it served to ensure all bids would provide the same information and would be consistently evaluated. At the same

[18] One of the concerns of the IEs was that the utility benchmarks could be submitted as a low ball cost estimate. In this case, the benchmark would be evaluated based on the cost information submitted. However, under a cost of service pricing mechanism, other bidders are usually concerned that if the actual costs of the project exceed the estimated costs, the benchmark is afforded an unfair competitive advantage since third-party power purchase agreements or tolling service agreements have to essentially fix their price formulas at the time of bid submission. If actual costs are higher the bidder takes the risk. However, a cost of service resource generally is allowed to pass through cost changes (increase or decrease) to customers that are prudently incurred. To ensure comparability, it is important that the utility benchmark costs be reasonable and consistent with the cost of similar projects.

[19] While the same project development firm offered multiple proposals, we treated each project as a separate bid because the bid actually identified a separate special purpose entity.

[20] This bidder was a power marketer who was expected to offer a power purchase agreement. The bidder was not expected to construct a resource to support the offer.

[21]The term sheet for each project was an approximately three page document that contained detailed pricing, operations, and other project specific information that would be used by PacifiCorp in the bid evaluation process.

time, PacifiCorp continued to work with the bidders to secure the credit commitment letters deemed necessary by PacifiCorp.

One of the bidders withdrew from the process shortly after submitting its proposal. The remaining eight proposals (i.e. projects) were eventually subject to the evaluation.[22] These proposals included two bids located on company sites, two bids located in Wyoming, two in Nevada, and one bid which was an existing unit under a lease agreement with PacifiCorp.

The effort to complete the term sheets lasted longer than expected due to the need to conduct several iterations between the Company and Bidder. By early August, the term sheets were still not complete. At the beginning of the week of August 6, 2007, PacifiCorp informed the IEs they wanted to resolve outstanding RFQ and eligibility issues (notably credit and transmission issues) with bidders before proceeding with the evaluation. At that time, PacifiCorp targeted August 9, 2007 as a “drop dead” date for bidders to submit the final information required in order to qualify the bidders to move forward in the evaluation. By August 9, 2007 several bidders still did not meet the pre-qualification requirements. During a conference call between the IEs and the Company on August 9, 2007 several options were identified and discussed regarding the possible steps going forward. Four options, in particular, were addressed:

1. PacifiCorp would withdraw the IPP3 benchmark due to legal complications associated with the Los Angeles Department of Water and Power (LADWP) withdrawing support for the project. As a result, PacifiCorp believed IPP3 was no longer a viable option. PacifiCorp proposed issuing a new RFP for 2012 and 2013;

2. Freeze the proposals as they exist and evaluate the bids based on the best information available;

3. Continue to attempt to accommodate bidders to ensure bidders meet qualification requirements (including credit and transmission issues); and

4. Begin negotiation with the three bids that qualified or are expected to qualify. Instead of comparing bids against the benchmark resources, PacifiCorp could compare the bids against its forward curve.

[22] However, several bids were non-conforming. One bidder proposed a pricing mechanism that included an indexing mechanism which was not consistent with the indexing options allowed in the RFP. PacifiCorp, with concurrence from the IEs, did not accept the proposed indexing options on grounds that it was not fair to other existing bidders who followed the RFP requirements or prospective bidders who elected not to submit a proposal but may have if more flexible indexing was allowed. In addition, a bidder did not propose delivery of its power into the PacifiCorp control area and instead proposed that PacifiCorp secure transmission from the proposed delivery point of the bidder. In both cases, the directions in the RFP should have been clear to the bidder.

During discussion about the options the Company did discuss the option of amending the RFP. However, no action was taken for several weeks. In fact, little communications between the Company, IEs and Bidders occurred during September, 2007.

Motion to Amend the RFP

On October 2, 2007, PacifiCorp, through its Rocky Mountain Power division, moved the Public Service Commission of Utah for an order authorizing the Company to amend its 2012 Request for Proposals for Base Load Resources that was previously filed March 26, 2007. PacifiCorp filed a supporting memorandum on October 16, 2007, which provided information concerning the reasons PacifiCorp sought to amend and the amendments proposed. The supporting memorandum was submitted pursuant to the additional protective terms provided in the Revised Protective Order issued in this docket. The October 16 memorandum provided a status report on the proposals received and included the Step 1 evaluation results of the proposals as requested on several occasions by the IEs. The analysis compared the cost of the current proposals to the Company's forward price curve. The analysis included several metrics for each proposal including the Net Present Value Revenue Requirements difference between the bid price and forward price curve, the nominal levelized delivered cost, the break-even nominal levelized delivered cost, and the ratio of the cost to the break even market price. [23] All third-party bids had a calculated price which exceeded the forward price.

On November 8, 2007, Merrimack Energy filed comments on the proposals of PacifiCorp requesting the Motion to Amend the RFP. Merrimack Energy generally opposed the Company's motion. Merrimack Energy was concerned that the Company's proposals would not lead to increased competition and lower rates as the Company had indicated but instead would be unfair to existing bidders and could lead to decreased competition if bidders feel they do not have a fair opportunity to compete in the process after having spent considerable time, money and effort to this point.

Withdrawal of Motion to Amend the RFP

Subsequent to receipt of the comments of the IEs and other interested parties in Utah (the Utah Division of Public Utilities, the Utah Committee of Consumer Services, and the Utah Association of Energy Users), on November 28, 2007, PacifiCorp decided to withdraw its Motion to Amend the RFP and proceed with the 2012 RFP including evaluation of the bids received. PacifiCorp also sought expedited approval for a new incremental Request for Proposal for additional capacity in the 2012 through 2017 time frame. As a result, there was a three month delay in the competitive bidding process based on the actions of the Company to reassess its benchmark options.

In its Withdrawal of the Motion to Amend, PacifiCorp announced its intention to complete the evaluation of all bids (except bids that present significant risk due to the

[23] While the Step 1 shortlist process was designed to include a price evaluation of the bid price relative to the forward price as well as a non-price analysis of the bids, PacifiCorp did not conduct the non-price analysis. In addition, the price analysis results were not used as a basis for developing a short list. Instead, all proposals submitted were eventually subjected to the Step 2 and Step 3 analysis as will be discussed later in this report.

pendency of bankruptcy proceedings), [24] identify a final shortlist, and negotiate with the bidders who presented the most beneficial bids after all bidders have had the opportunity to cure any credit or minimum eligibility requirements. The approach eventually recommended by PacifiCorp was consistent with the recommendations by Merrimack Energy as Independent Evaluator.

On November 28, 2007 the Company initiated a call with the IEs and Division to provide a status update on the process and announce the timing for the next steps in the process.

C. Completion of the Bid Evaluation Process

According to the RFP document, the bid evaluation process for the RFP would be focused on finding the best combination of resource opportunities to meet customer requirements at the least cost on a risk adjusted basis. The evaluation process would utilize a screening process to derive an initial shortlist of bids which would then be placed in a system wide production cost model to determine the final shortlist.

Step 1 – Selection of the Initial Shortlist of Bids

As stated in the RFP, the selection of the initial shortlist of bids was designed to be based upon price and non-price factors taking into account resource diversity of the term and fuel source. The price factor would be derived in the initial shortlist analysis using the PacifiCorp Structuring and Pricing RFP Base Model. The price and non-price factors would be evaluated separately and combined to determine a bid ranking in each category. The price factor would be weighted up to 70% and non-price factor will be weighted up to 30%. The price and non-price evaluation results would be added together and used to determine the initial shortlist. The initial shortlist would be made up of the highest scoring proposals for each of the Resource Alternative Categories.

Since there were a manageable number of eligible bids, PacifiCorp conducted a price only evaluation of the bids and effectively included all the bids (with the exception of the bids affiliated with an entity in bankruptcy) on the short-list. This analysis was undertaken during the period in which the process was delayed during the October timeframe. PacifiCorp did not provide a non-price evaluation of the bids since the short-list would be comprised of all remaining projects.[25]Given the delays in the process and the number of bids remaining the IEs agreed with this approach, but only for this specific RFP.[26]

---

[24] On December 18, 2007 the Bidder in question submitted a letter to the Utah and Oregon IEs advising that it is withdrawing its bids and does not wish any further consideration given them. One of the reasons given was that each of the bids was subject to a contingency related to proceedings before the United States Bankruptcy Court for the District of Nevada and the contingency was not fulfilled. In addition, the bidder stated that given the delays in the bid process and the resulting uncertainties associated with timing of the process, with the attendant cost changes, the bidder cannot further maintain those bids.

[25] At the time the initial price analysis took place, only two proposals had satisfied the minimum eligibility and credit requirements.

[26]Merrimack Energy has provided a number of suggestions for future RFPs based on the lessons learned in the 2012 Base Load RFP with regard to the Step 1 bid evaluation process.

Furthermore, the initial price analysis undertaken by PacifiCorp did not conform to the methodology outlined in the RFP. First, the comparison metric developed by PacifiCorp in a Highly Sensitive document to compare the bid results against the forward curve was based on Nominal Levelized Delivered Costs in $/Mwh and not on Net PVRR$/kW-month as described in the RFP. Second, the Company did not compile any non-price weightings for the bids evaluated. While the Company did present a ratio of the costs of the bids to the break even market price, it is not clear whether the results would exactly match the results had PacifiCorp utilized the original methodology outlined in the RFP. [27]

Given the status of the process and the fact that PacifiCorp had completed the initial price analysis during the delay in the bidding process, the IE's did not have access to the evaluation results and did not undertake a detailed review and assessment of the results. However, since the purpose of this phase of the process was to determine an initial short-list and all remaining bids were selected for the short-list, we did not think that it would be time well spent to conduct a detailed review and assessment of the initial short-list selection process and instead decided to focus on the evaluation associated with Steps 2 and 3 of the evaluation process.

For the next RFP, it is our view that the initial price and non-price evaluation should be conducted consistent with the methodology outlined in the RFP.

<u>Technical Conference</u>

On December 3, 2007 PacifiCorp submitted a discussion paper to the IEs identifying a proposed schedule for undertaking the Step 2 and Step 3 evaluation of the bids and completing the Shortlist. In addition, the discussion paper also confirmed the proposed Technical Conference with remaining eligible Bidders scheduled for December 7, 2007. In addition to the schedule, the discussion paper included a brief description of the Step 2 and Step 3 processes for completing the evaluation of the bids, including the methodology, input assumptions, and scenarios. These include the following three steps in the evaluation process, which are discussed in more detail below.

1. Step 2: Portfolio Development/Optimization to be undertaken by the IRP Group using the Capacity Expansion Model (CEM).
2. Step 3a: Stochastic Analysis using the Planning and Risk Model (PaR)
3. Step 3b: Deterministic Scenario Analysis using the CEM model.

On December 4, 2007 a conference call was held with the Company to discuss the December 3rd discussion paper. Information to be presented during the Technical Conference was discussed as well as the schedule for December. PacifiCorp announced that its goal was to complete Steps 2 and 3 during December and compile a final shortlist by the end of the month. Also, during the call Merrimack Energy requested a conference call to discuss each bid to be evaluated including the assumptions and inputs for each bid

[27] While we would expect the results would be the same or similar in terms of bid ranking, PacifiCorp did not verify the results under both approaches. Since no bids were eliminated from consideration at this stage of the evaluation, the IE did not contest the inconsistency in the evaluation process.

to be used in the Step 2 and Step 3 analysis to ensure the Company and IE's were in agreement on the input assumptions and bid information.[28]

Merrimack Energy also requested a conference call with PacifiCorp Transmission to discuss the revised transmission cost estimates for each bid. This request was based on the fact that the estimated transmission costs as included in the revised Attachment 13 PacifiCorp Costs Associated With Integration (revised on 9/25/2007) were substantially higher than the original values included in Attachment 13 to the RFP. The updated Attachment 13 costs were posted on the Company's Oasis website for review. In some cases, these costs were double or triple the original values. Based on the magnitude of the cost increases, the Utah IE wanted a detailed description of the basis of the cost increases because of our concern that transmission costs would be a key determinant in the evaluation and ranking of the bids. PacifiCorp did not oppose these requests and moved to accomodate the IEs requests.

A conference call with PacifiCorp's evaluation team was held on December 6, 2007 and a call with the Transmission Group was held on December 10, 2007. During the conference call on December 6, 2007, PacifiCorp described the methodology it used to develop inputs necessary for use in the CEM model and addressed a number of questions from the IEs about the sources of data and information from the proposals and consistency in the application of the information. Both the Utah and Oregon IEs were satisfied that the methodology used by PacifiCorp was reasonable and consistent.

As noted, the Technical Conference was held on December 7, 2007. PacifiCorp's representatives described the Company's original amendments, the reasons for withdrawing the Motion to Amend, the basis for continuing the RFP bid evaluation, the evaluation methodologies to be used going forward, and a proposed schedule. Also, bidders were notified that once Step 3 is completed, the selected bids will be included on a conditional final shortlist and bidders would need to cure any outstanding contingencies in order to be accepted for the final shortlist. It was estimated that the evaluation would be completed by January 2, 2008 and bidders would be given 15 days to cure any deficiencies.

Transmission Assessment

According to the RFP document, in the evaluation process the Company would add the cost of integration to the analysis results. The integration costs associated with ten possible Points of Delivery in Attachment 13 of the RFP would be used, on a prorated basis, as a proxy cost in the initial shortlist. Bidders were required to identify the Points of Delivery for their project. If the Bidder cannot determine if the Point of Delivery corresponds to one of the Points of Delivery in Attachment 13 then the Bidder must

[28]The modeling methodologies for Steps 2 and 3 require that data and information for each proposal be presented in a certain format for the capital-related costs of the project (i.e. real levelized costs) for input into the CEM model. The IEs therefore requested that PacifiCorp's evaluation team review how such data was prepared for each bid to ensure that the methodology was consistently applied. The IEs asked a number of questions and the Company provided thorough and consistent responses. Also, the Compny agreed to post the analysis on its secure website.

request clarification with the Utah IE who will seek determination from PacifiCorp Transmission.[29] The initial analysis conducted by PacifiCorp used the proxy transmission costs included in Attachment 13 in the RFP (i.e. Original Analysis) as part of the initial evaluation.[30]

The RFP further defines the transmission analysis requirements for later stages of the evaluation. According to the RFP, after the initial shortlist is determined, the Structuring and Pricing Group would provide the results of the initial short list to the IRP Group by bid number. Pursuant to a consulting agreement between the IRP Group and PacifiCorp Transmission, PacifiCorp Transmission would determine the actual costs associated with integrating the short-listed resources into PacifiCorp's system. The IRP Group would seek updated costs from PacifiCorp Transmission to integrate only the short-listed bidders, by bid number. These integration costs would be used as inputs into the IRP model with the short-listed proposals in order to determine the final short list as well as for the benchmarks.

PacifiCorp Transmission updated Attachment 13 (PacifiCorp Costs Associated With Integration) as required and provided the results to the IRP Group. However, the cost differences associated with the original Attachment 13 included in the RFP and the revised Attachment 13 (with new delivery points based on the actual bids submitted) was quite significant.

As noted, Merrimack Energy was concerned that the magnitude of the transmission cost assessment could have a major impact on the evaluation of the proposals and asked for a conference call with PacifiCorp Transmission, who was responsible for independently developing such estimates. The representative from PacifiCorp Transmission who participated on the conference call with the IEs and staff indicated that the methodology used by the PacifiCorp Transmission was to assess the high level costs of getting the power from the project into the main load area on the system (i.e. Wasatch Front). Each project was looked at independently, not as a portfolio, from a transmission perspective.

The representative indicated that the reason why the costs increased so dramatically was because steel and right-of-way costs have escalated significantly and longer transmission lines are required. Costs were also expected to increase due to increased voltage requirements. In addition, all projects required transmission upgrades and a new, dedicated transmission line is generally required. Also, the Company was able to specifically use better information since the project locations were identified. Finally, the representative noted that the costs were allocated on a pro-rata basis to each project based on the size of the project relative to the size of the transmission line proposed, which should lead to consistent results for each project. It is our understanding that the analysis did not assume the cost of major planned transmission projects referenced in Appendix A

---

[29] The Utah IE did not receive any requests for clarification from any bidders with respect to transmission.
[30] However, it is our understanding that the analysis of short listed project results presented by PacifiCorp to the Commission on February 14, 2008 included the updated transmission costs as opposed to the transmission costs included in the RFP which served as the basis for undertaking the original Step 1 evaluation.

in the 2007 IRP. The revised Attachment 13 illustrated that estimated costs to upgrade transmission was substantially lower for projects located at existing company sites (i.e. Lake Side and Currant Creek)

The IRP Group also described the methodologies it uses for assessing transmission costs in the evaluation. The IRP Group also indicated in a separate discussion that transmission assets have an asset life of 57 years, a cash flow stream for 57 years was developed, and costs are applied on a real levelized cost basis over the asset life.

Given the magnitude of the transmission integration costs for various delivery points and the change in such costs over a short period of time, it is obvious that transmission cost differentials will have a significant impact on the relative cost of a project. In addition, if Bidders have a better understanding of such costs, it could aid in their project location decisions. For future solicitations, the IE suggests that PacifiCorp hold a transmission workshop for bidders. In addition, we also feel it may be valuable for the IEs to request a more detailed review of the cost analysis with PacifiCorp Transmission to determine a potential range of such costs under a high level of confidence. If the range of potential transmission costs appears wide, the IE reserves the right to request that PacifiCorp undertake sensitivity analysis around the range of transmission costs rather than use a single point estimate for such costs.

Step 2 Analysis: Capacity Expansion Model – Production Cost Runs

PacifiCorp submitted its Step 2 analysis results to the IEs and Division on December 7, 2007 and a conference call was held on the results of the CEM analysis for Step 2 on December 11, 2007.[31] For the Step 2 assessment, the objective of the model was to solve for the optimal portfolio of resources to ensure the company meets its planning reserve margin under a range of alternative cost assumptions (i.e. natural gas and CO2 costs primarily). The model evaluates both bids and benchmarks.

In addition to screening portfolios for the Step 3 analysis (i.e. stochastic production cost analysis), the results derived in Step 2 will indicate the frequency with which bids and benchmarks are selected in the various optimized portfolios. Another objective of this analysis, therefore, is to identify unique sets of portfolios to use in Step 3a, as discussed later in this section.

As identified in PacifiCorp's supporting documentation, the model includes some specific resources in the base case including 2000 MW of wind and certain long and short-term contracts. In addition, the model is allowed to select front office transactions up to specified limits based on the amount of front office transactions that could be sourced. The limits on front office transactions were set at 1,200 MW from 2012 through 2018 (in the 15% reserve margin case) based on the Company's view of market depth at different market hubs. Prior to 2012, the CEM model could select an unlimited quantity of market purchases, with no restrictions. For the 12% reserve margin case, the model

[31] At the beginning of the call, PacifiCorp informed the IEs that they had made minor changes to the input assumptions for two bids based on comments raised by the IEs during the December 6th conference call.

was allowed to choose annual quantities of firm market purchases up to the 2007 IRP levels from 2007 through 2018.

The model starts with a set of IRP resources. Three resources identified in the IRP, totaling about 1415 MW, are removed as resource options to create a capacity deficit that the model must fill with a combination of bids and benchmarks from the RFP.[32] Inputs to the CEM model were based on the June 2007 assumptions which were reviewed and locked down by the IEs. The model then considers the bid resources and benchmarks to develop portfolios to fill the gap.[33] For this analysis, the Company initially considered 20 cases and developed optimal portfolios for each case. The 20 cases included:

- A combination of low, medium and high CO2 cost adders and gas/electricity prices at both a 12% and 15% planning reserve margin (total of 18 cases) [34]

- Low and high coal commodity price levels for new resources at a 12% planning reserve margin.

According to PacifiCorp's analysis, the low and high variable values were derived from 2007 IRP assumptions applied to the medium or base case values. The specific cases are described below.

<u>CO2 Adder</u>

- Low value – No adder
- Medium value - $8/ton in 2008 dollars, beginning in 2010 with costs phased in at 50%, escalating to 75% in 2011 and 100% in 2012
- High value - $37.90/ton in 2008 dollars ($25/ton in 1990 dollars), beginning in 2010 with costs phased in at 50%, escalating to 75% in 2011 and 100% in 2012.

<u>Natural Gas/Electricity Prices</u>

- Low value – 32% lower than the medium prices on an average annual basis for 2007 through 2016 (associated electricity prices are 14% lower than the medium prices)
- Medium value – June 22, 2007 forward price curve
- High value – 86% higher than the medium prices on an average annual basis for 2007 through 2016 (associated electricity prices are 25% higher than the medium prices).

---

[32]The three baseload resources, totaling 1,415 MW, removed from the portfolio include: (1) a 340 MW Utah pulverized coal project in 2012; (2) a 548 MW combined cycle in 2012; and (3) a 527 MW pulverized coal project in Wyoming in 2014.

[33] Eligible resources at this stage included three third-party coal bids, three third-party gas-fired combined cycles, one gas-fired peaking unit, and three coal benchmarks (IPP3, Jim Bridger 5 supercritical coal, and Jim Bridger 5 IGCC).

[34] PacifiCorp's 2007 IRP considers resource portfolios at 12 and 15 percent reserve margin levels. In the IRP, PacifiCorp states that it views this percentage range as a prudent and reasonable range for planning purposes when considering both supply reliability and economic impact to customers.

Coal Commodity Prices

- Low value – 12% lower than the PacifiCorp Fuels Marketing & Supply Group price forecast by 2026
- Medium value – PacifiCorp Fuels Marketing & Supply Department price forecast
- High value – 20% higher than the PacifiCorp Fuels Marketing & Supply Group price forecast by 2026.

In addition, PacifiCorp developed 8 additional cases that did not include any benchmark resources. According to PacifiCorp, in order to account for benchmark resource ineligibility in defining the range of portfolios for risk analysis, the company benchmarks were removed as resource options from the portfolios for which at least one benchmark was included. The CEM model was then re-run with that portfolio in order to force the model to fill the resulting capacity deficit with remaining third-party bid resources.

The results of the analysis illustrate that two resources dominate[35] the portfolios. One of the proposals, a gas-fired peaking unit was included in 17 of the 20 portfolios (and 21 of 28 cases) and a gas-fired combined cycle unit at a Company site was included in 14 of the 20 portfolios (and 22 of 28 cases). This gas-fired combined cycle was included in every case in which there are no benchmarks considered (i.e. cases 21-28). For the Company benchmarks, IPP3 appeared in 60% of the cases (12 of 20) and Jim Bridger 5 supercritical coal project appeared in 55% of the cases (11 of 20). The Jim Bridger 5 IGCC option did not appear in any case.

While the frequency of occurrence for each of the resource options illustrates the dominance of a resource in a number of portfolios, the important aspect for the Step 3 analysis is to include a wide range of resource options for consideration. As noted above, only the Benchmark IGCC option failed to show up in any of the portfolios/cases.

As explained by PacifiCorp in its analysis provided to the IEs, to select the CEM portfolios for the stochastic production cost analysis using the Planning and Risk Model, the number of cases was condensed to a group of cases with unique sets of bid and benchmark resources.

The following presents a brief summary of the results of the evaluation.

- The only three cases in which the gas-fired peaker does not appear is in the low gas cases under a 12% reserve margin. In these cases, a combined cycle unit replaces the peaking unit.

[35] The term "dominate" is used to indicate that the particular resource appears in a number of portfolios, essentially displacing other competing resources.

- The highest ranked gas-fired combined cycle is not selected in any high gas case. Coal units are selected in the high gas cases, including the benchmark resources. The gas-fired peaking unit is the only non-coal unit selected in these cases.

- IPP3 and Bridger are generally selected in the high gas cases as well as in the medium gas cases for low, medium and high CO2 adders under both a 12% and 15% reserve level. As a result, higher gas costs appear to be a more significant driver than CO2 cost levels when assessing the cases favorable to the benchmark coal units.

- Benchmark coal resources are selected more frequently than other coal units. For example, IPP3 is selected in 12 of 20 cases and Bridger in 11 of the 20 cases.

Once the cases were assessed and evaluated, PacifiCorp identified cases that did not include an overlap of resources for the Step 3a analysis. Seven sets of bids were selected that did not contain an overlap of resource options, including third-party bids and benchmarks. The cases selected along with the overlap options are identified as follows:

- Case 2 (overlap with cases 1 and 3)
- Case 5 (overlap with cases 4 and 19)
- Case 6 (unique case)
- Case 8 (overlap with cases 7, 9, 16, 17 and 18)
- Case 11 (overlap with cases 10, 12, and 15)
- Case 14 (overlap with case 13)
- Case 20 (overlap with cases 22 and 24)

In addition, PacifiCorp analyzed four additional cases that did not include any benchmark options. The total amount of resources (in MW) differed by case and ranged from a low of 1,553 MW to a high of 2,078 MW. These unique cases were the ones analyzed in Step 3a of the evaluation process.

Of the cases selected, the highest ranked combined cycle is included in 10 of 11 cases while the gas-fired peaking unit appears in 8 of 11 cases.

The IE has reached the following conclusions with regard to the Step 2 assessment:

- The use of both a 12% and 15% reserve margin to assess the various cases and scenarios is a reasonable approach for conducting the analysis since the use of different reserve margins will produce a range of resource requirement scenarios.

- The objectives of the Step 2 analysis were met given that all resource options, with the exception of the benchmark IGCC option, were included in a reasonable number of scenarios and are subject to the Step 3 analysis.

- All unique price scenarios for the input assumptions are reflected in the evaluation.

- The eleven portfolios selected ranged from a portfolio that included nearly 100% coal resources (Case 8 included over 90% coal) to two portfolios that were 100% gas. The other portfolios included ranges of resource options. In total, there was a very reasonable distribution of resource options for inclusion in the Step 3a analysis.

<u>Step 3: Risk Analysis</u>

According to the RFP document, "in order to identify the resources in the highest performing (least cost, adjusted for risk) portfolios[36], stochastic and deterministic analyses will be performed on each optimized portfolio. Consistent with the IRP, the Company used the Planning and Risk Model (PaR)[37] and the Capacity Expansion Model (CEM) to assess the risks to each Eligible Resource Alternative. The Planning and Risk Model will be performed for the following stochastic variables:

- Hydroelectric generation;
- Thermal outages;
- Gas prices for the Company's western and eastern control areas;
- Electricity prices; and
- Load.

The Capacity Expansion Model will model CO2, fuel (natural gas and coal) and electricity prices on a scenario basis."

There are two sub-steps to the Step 3 risk analysis in this process. Step 3a is the stochastic analysis and Step 3b is the deterministic scenario analysis. Each of these sub-steps is discussed below.

Step 3a: Stochastic Analysis

PacifiCorp notes that the purpose of this step is to formulate stochastic cost and risk profiles for each of the 11 portfolios identified in Step 2 above, and then identify the resources that appear consistently in the top performing portfolios based on cost and risk measures. The eleven portfolios from Step 2 included a mix of portfolio options including one portfolio comprised of nearly all coal, two portfolios that were all gas, and portfolios that included a mix of gas and coal options. The 11 portfolios were simulated using the

[36] The key risk metric used to assess least cost adjusted for risk is identified by PacifiCorp to be the risk adjusted PVRR.

[37] The Planning and Risk (PaR) model will be used in stochastic mode to develop expected PVRR and PVRR volatility parameters. PaR is an hourly dispatch model that varies loads, wholesale gas prices, wholesale electricity prices, hydro variations, and thermal unit performance. The model dispatches resources to meet load with given markets and transmission access to minimize PVRR using linear programming techniques. The resulting distribution of PVRR, typically over 100 draws of the variables, can be evaluated for the expected PVRR, tail risk PVRR, and PVRR volatility. In addition, PaR's stochastic model is a two factor (a short-run and a long-run factor) short-run mean reverting model. Variable processes assume normality or log-normality as appropriate.

Planning and Risk (PaR) model in stochastic mode. According to PacifiCorp, the PaR simulation produces a dispatch solution that accounts for chronological unit commitment and dispatch constraints. Stochastic risk is captured in the PaR production cost estimates by using Monte Carlo random sampling of the five variables noted above: loads, commodity natural gas prices, wholesale electricity prices, hydro energy availability, and thermal unit availability. The simulation is conducted for 100 model iterations using the sampled variable values. PacifiCorp states that the model set-up is identical to the stochastic simulations conducted for the 2007 IRP.

The portfolios or sets were evaluated based on four CO2 cost adder cases:[38]

- Low case of $0 per ton in 2008 dollars
- Medium case of $8 per ton
- High case of $38 per ton
- High plus case of $61 per ton (or $40/ton in 1990 dollars)

The PaR model results include net variable costs for each simulation. These costs are added to the capital and fixed costs from the CEM portfolio analysis to derive a real-levelized PVRR. For each simulation, the stochastic and risk measures calculated include the following metrics:

- Mean PVRR for the 100 simulation iterations
- 95^{th} percentile PVRR – the PVRR of the simulation iterations that represent the 95^{th} percentile for the 100 simulation iterations
- Risk-adjusted PVRR – calculated as the mean PVRR plus the expected value (EV) of the 95^{th} percentile PVRR, where EV = Prob(PVRR)95 x 5%
- Variable cost standard deviation – a measure of production cost variability risk, calculated as the standard deviation of annual variable costs for the 100 simulation iterations.
- Average Annual Energy Not Served [39]
- CO2 Emissions (1,000 tons)

In addition to the above metrics, other analysis provided by PacifiCorp to the IEs included PVRR data on stochastic average for each portfolio, 5^{th} percentile, 95^{th} percentile, Upper Tail (mean of the 5 highest cost cases) and upper tail less stochastic average. This assessment also provides cost/risk diagrams for the four CO2 scenarios and the seven original cases analyzed.

[38] Merrimack Energy focused on the first three cases for assessing the results of the evaluation but is reporting results for the four case for completeness purposes.

[39] As illustrated in the 2007 IRP, risk exposure is the stochastic upper-tail mean PVRR minus the stochastic mean PVRR. The upper-tail mean PVRR is a measure of high-end stochastic risk, and is calculated as the average of the five stochastic simulation iterations with the highest net variable cost. Risk exposure is somewhat analogous to Value at Risk (VaR) measures. The fifth and 95^{th} percentile PVRR's are also reported. These PVRR values correspond to the iteration out of the 100 that represents the fifth and 95^{th} percentiles respectively. These measures represent snapshot indicators of low-risk and high-risk stochastic outcomes.

While the Company used the upper tail mean in its assessment of risk exposure in the 2007 IRP, the Company proposed a different risk measure for this analysis. The Company was of the opinion that the use of the upper tail mean PVRR can skew the results of the risk assessment given the wide range and dispersion of results. The Company and IEs discussed the appropriate risk measures to consider in evaluating the portfolios. The risk-adjusted PVRR was considered as the key stochastic performance measure to assess each resource set.[40] The IEs were in general agreement with PacifiCorp on the use of this risk measure as being an appropriate and reasonable metric for this analysis, keeping in mind that subjective assessment would still be required in the resource selection process. The results derived in this assessment would serve to guide the resource selection decision. It is important to note that the IEs also considered the other risk metrics provided by PacifiCorp in assessing the risks associated with each portfolio.

The results from the analysis were provided for each set of resources for the four CO2 cases.[41] This allowed the Company and IEs to rank the sets and assess the frequency with which each resource is included in the highest ranking sets. A high relative frequency among the top-performing portfolios is indicative of a robust resource under a range of stochastic futures and CO2 cost scenarios.[42]

Based on the results of the rankings and analysis of the bids the Company and IEs came to the conclusion that the third-party bids could be grouped into two tiers. Three bids, two gas-fired combined cycles and the gas-fired peaking unit would be included in the Top Tier since these bids were generally included in the highest ranking portfolios.[43] The Bottom Tier would consist of two third-party coal projects and a gas-fired combined cycle unit. One third-party coal project did not appear in any of the top ranked portfolios and therefore was not even considered in the bottom tier. These bids are not consistently included in the highest ranked portfolios but appear in various high ranking portfolios under various scenarios. While the benchmark resources (notably IPP3, which appeared in several of the top performing portfolios under a range of scenarios) appear in a few portfolios under the low and medium CO2 cost cases, they are not included in the final assessment since PacifiCorp withdrew these benchmark options.

---

[40] According the PacifiCorp, the risk-adjusted PVRR is calculated as the mean PVRR plus the expected value (EV) of the 95th percentile PVRR, where EV=Prob(PVRR)95 x 5%. Adding the average cost to the probability weighted (i.e. 5%) 95th percentile cost (Prob(PVRR)95) results in the risk-adjusted PVRR.

[41] The analysis covers a 20-year planning horizon and reflects the costs for the entire utility system including existing and proposed resources from this RFP.

[42] While Merrimack Energy felt the frequency of occurrence approach for selecting preferred resources was reasonable for the 2012 Base Load RFP, we question whether such an approach will lead to the lowest cost portfolio in solicitation processes where there are a large number of bids and portfolios.

[43] The six bids reflect the bids that are included in the three portfolios considered in the final evaluation. Three projects, Bids 980, 520 and 480 appear in all portfolios. Arguably, these bids should represent the lowest cost portfolio if PacifiCorp had limited its evaluation to fewer total megawatts since these three projects are included in all final portfolios.

Step 3b: Deterministic Scenario Analysis

According to the RFP document, "as an additional risk analysis step, the optimal portfolios will be subjected 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. For example, Portfolio 1 will have been optimized for Scenario 1, but in this step Portfolio 1 will be reevaluated under Scenarios 2 through N in order to assess the consequences of choosing a portfolio under non-optimal futures. This step is intended to identify portfolios with especially poor performance under certain future scenarios and is used to inform the selection of final resource options."

For the final step in the process, PacifiCorp simulated three non-benchmark resource sets in the CEM model to determine the PVRR's for the top-performing resource sets under alternative cases based on various input parameters (low, medium and high CO2, low, medium and high gas and medium and one high coal case) assuming a 12% reserve margin. Three cases were considered, all of which included the three Top Tier bids. Each set included a different Bottom Tier resource. A PVRR cost (billion dollars for the system) was provided for each resource set.

PacifiCorp provided four metrics for each set of resources based on the eleven cases:

- PVRR, minimum
- PVRR, maximum
- PVRR, range
- PVRR, mean (excluding high and low coal price cases)

Based on these results, there was no consistent pattern that would lead one to conclude that one of the three Bottom Tier resources would perform best if a fourth or back-up resource was selected. Due to the fact that none of the three cases performed consistently well under a range of cases and input assumptions, the Company decided to select the three resources that performed best in most of the scenarios and not select a coal resource based on risk concerns.

D. <u>Conclusions Associated with the Bid Evaluation and Selection Process</u>

The analysis conducted by PacifiCorp was generally consistent with the methodology identified in the RFP. The analysis incorporated the impact of risk in the analysis based on different fuel and electricity price cases and CO2 cost cases. The assessment of resource options was based on the principle of robustness, which reflected the frequency with which the bids were included in high ranking portfolios. The methodology applied by PacifiCorp and assessed by the IEs encompasses both quantitative and subjective analysis to assess resource options. The results of this evaluation clearly illustrated that three resources were dominant in the analysis (based on their frequency of occurrence in a number of portfolios) and generally appeared in the highest ranking portfolios. Therefore the selection of these three resources for the final conditional short list should be in the public interest. These three resources (two gas-fired combined cycles and a gas-fired peaking unit) were classified as Top Tier resources and were selected for the draft final conditional short list. Three other bids were included in the Bottom Tier (two third-party coal projects and one gas-fired combined cycle). One eligible bid was not included in either tier, and, as noted the Benchmark resources were not considered.

The three Step methodology applied by PacifiCorp can be classified as a rigorous and detailed assessment which accounts for a range of fuel and CO2 cost cases under both deterministic and stochastic scenarios. The analysis accounts for both uncertainty and risk associated with different resources and portfolios. The methodology and process followed by PacifiCorp is among the most sophisticated and detailed methodologies we have seen and certainly exceeds industry standards for addressing portfolio analysis and risk assessment. However, with regard to the appropriate risk metrics to use in the evaluation and selection process, the IE believes that further assessment and review needs to be completed in this area to test whether the risk metric used in this RFP process, Risk-Adjusted PVRR, is the most appropriate measure, recognizing that there are a number of risk metrics that can be considered. In addition, based on PacifiCorp's objective to complete the evaluation and selection process for Steps 2, 3a and 3b by the end of 2007, the analysis was completed in less than four weeks over the December holidays. While PacifiCorp provided sufficient information for the IEs to opine on the selection process, future processes with a larger number of bids and resource options will likely take longer to complete. While we would have also preferred to conduct a preliminary discussion with PacifiCorp prior to undertaking the Step 2, 3a and 3b processes to better gauge the information that was to be presented, we would recommend that such a meeting occur in any future RFP processes. In addition, the portfolio evaluation process conducted by PacifiCorp proved to create challenges for effectively comparing different portfolios with different capacity and energy amounts. Merrimack Energy believes this issue needs to be addressed in the next competitive procurement process.

The Utah IE (and the Oregon IE) generally concurred with the overall methodology used by PacifiCorp, the selection of the draft final conditional shortlist and the classification of bids into the Top Tier and Bottom Tiers. While we agree that PacifiCorp should proceed to address remaining contingencies with Top Tier bids, we have recommended that the Bottom Tier bids should not be eliminated at this point but should serve as back-up resources to maintain a competitive threat or option and/or could be addressed at a later date.[44]

In conclusion, in our view the results of the analysis highlight the importance of three factors in the evaluation process: (1) CO2 costs; (2) transmission costs; and (3) gas/electricity prices. In particular, the impact of transmission costs is important, particularly for projects located in the Utah area or on Company sites. For example, the estimated transmission upgrade costs for Lake Side and Currant Creek were low compared to other resources located outside Utah. Projects located in Nevada and Wyoming were subject to much higher transmission costs. The transmission cost advantage for sites in PacifiCorp's Utah service area was highlighted to bidders in Attachment 13 in the RFP.

[44] PacifiCorp, however, did not consider any back-up bids.

VI. Description of the Contract Negotiation Process

On December 28, 2007 PacifiCorp, through the Utah IE, sent email messages to the three Bidders selected for the conditional final short list informing the bidders that the had been selected and requesting a conference call for either January 2 or 3, 2008 to review the conditional requirements for the bid.

Initial calls were held with all three Bidders, the Company, IEs and the Division on January 3 and 4. PacifiCorp informed all the above bidders that they had made the conditional final short list, identified any outstanding issues necessary to qualify the bidder, informed the bidders they had 21 days until January 23, 2008 to remove any outstanding conditions and requested a best and final offer from the bidders.[45] The Company also asked Bidders who did not provide a complete mark-up of the model contract to provide a marked-up version with their best and final offer. All Bidders were provided the same information.

Each of the bids had at least one condition that needed to be resolved before negotiations could proceed.

During the calls with Bidders PacifiCorp's project team provided the Company's expectations where pricing should be with respect to the final bids. PacifiCorp's representative indicated that the price should be competitive with the cost of the Lake Side I project. These expected prices were substantially lower than the bid prices and the estimates identified by the EPC contractors. Merrimack Energy was concerned that PacifiCorp was setting the expected cost at an unrealistic level, which could lead to bidders terminating their projects. PacifiCorp, however, was very consistent with regard to the message and information provided to all bidders during this process.

Bidders provided their responses and final offers as requested on January 23, 2008, including updated cost information. However, Bidders did not offer pricing that would be consistent with the expectations outlined by PacifiCorp. One bidder raised concerns about the level of security required, the posting schedule for security, access to the site, and timing required to reach agreement on the contract to ensure a June 1, 2012 in-service date. Although some progress was made to reach agreement on security, eventually the Bidder refused to agree to the timing for posting the security as required, although the Bidder did agree to meet the overall security requirements.

Merrimack Energy was of the view that the position taken by PacifiCorp with regard to security was reasonable and consistent with the terms of the RFP. We felt that PacifiCorp's schedule for posting security does provide flexibility to the bidder and is

[45] The RFP stated that the Company will further negotiate both price and non-price factors during post-bid negotiations. The Company will continually update its economic and risk evaluation until a definitive agreement acceptable to the Company in its sole and absolute discretion is executed by both parties. The Company will allow Bidders to negotiate final contract terms that are different from the Proforma Agreements including, but not limited to, CO2 risk to the extent the Bidder enters into a CO2 indemnity or equivalent.

more “bidder friendly” than most other investor-owned utility bidding processes. Based on the schedule proposed by PacifiCorp, the majority of the credit required will be posted upon project financing. This allows the bidder to include the cost of the letter of credit in its financing package. Furthermore, the security requirements were clearly outlined and described in the RFP. Bidders had knowledge of such requirements before submitting a proposal and could also have participated in a workshop conducted by PacifiCorp on security requirements. As a result, Merrimack Energy agreed with PacifiCorp’s position to maintain the schedule required for posting security and was surprised the Bidder was not willing to accommodate the schedule. PacifiCorp’s approach of allowing Bidders to post security over time, with the majority of security posted upon project financing already presents some risk to customers should the bidder default.

On February 14, 2008 PacifiCorp provided an update to the Utah Commission on the 2012 RFP process. The Company discussed the bid evaluation and selection process as well as an update on the status of negotiations with each short listed bidder. In addition, the Company discussed its options for securing resources going forward, including the proposal for issuing the 2008 All Source RFP.

PacifiCorp notified the remaining Bidder of its intention to proceed with the project. The Bidder sought proposals from two EPC contractors, both of which have significant industry experience. In early March, conference calls were held with both of the EPC contractors to discuss the process and the experience and approach of each of the contractors. Both EPC contractors provided a consistent view of the power generation market and the trends and prospects going forward.

In late March, PacifiCorp held conference calls with the developer and both EPC contractors. The purpose of the calls was to discuss the process going forward. PacifiCorp identified four parallel paths on which it envisioned the process proceeding:

1. Negotiation of the Asset Purchase and Sale Agreement with the EPC contractors
2. Detailed pricing proposals from the EPC contractors
3. Agreement with the developer to allow the developer site access and to begin project development activities
4. Negotiations with the equipment manufacturer

In early May, Merrimack Energy requested a conference call to discuss the status of the negotiation process with the involved parties. A conference call was held on May 14, 2008 to discuss project status.

PacifiCorp informed the IEs that the project is proceeding on a parallel path with regard to three initiatives:

1. Asset Purchase and Sale Agreement (APSA or EPC contract) with the EPC contractors
2. Detailed pricing proposals from the EPC contractors

3. Agreement with the developer to allow the developer to begin project development activities

With regard to the APSA, PacifiCorp noted that redline versions of the APSA's were due from the EPC contractors and negotiation sessions were scheduled to discuss comments. PacifiCorp was targeting developing final APSA terms that the two EPC bidders could bid to.

Detailed pricing for the EPC contract was due from the EPC contractors on July 7. The EPC contractors were supposed to provide "firm" pricing at that time. After the Company has had a chance to evaluate the pricing and risk included in the APSA, it will make a decision on the preferred EPC contractor.

PacifiCorp and the developer were also negotiating an agreement that will give the developer site access to allow development of the site and to begin the permitting process. The parties were also working on the initial development agreement. At some point the initial development agreement goes away and the APSA will be initiated.

PacifiCorp also noted that the project was still on track for a June 2012 in-service date.

During the conference calls, PacifiCorp raised two issues and sought advice from the IEs with regard to the process and procedures for addressing these issues. The two issues were:

1. Is it reasonable for PacifiCorp to provide specific information to the developer based on information gathered by the Benchmark team in their development of the Lake Side project.

2. Is it reasonable for PacifiCorp to utilize technical and operations staff from the Generation Group to assist in the integration of Lakeside 2 with the existing Lake Side 1 project.

With regard to the first issue, the IEs did not believe that if PacifiCorp provided this information to the developer (i.e. information on water rights, 404 permit, and LGIA agreement) it would unfairly benefit developer at the expense of other bidders, since the developer is the only bidder for Lake Side. The IEs did indicate that if this project failed and other bidders had the opportunity to bid for a project on the Lake Side site in the 2008 RFP that these bidders should be given access to the same information. However, the information was not viewed by PacifiCorp as providing a significant competitive advantage.

The second issue involved the use of technical staff from PacifiCorp for integration work on the Lake Side project. PacifiCorp noted it intended to separate the technical staff from the commercial/contracting team to ensure the technical staff had no access with regard to pricing information. The IEs were not opposed to this suggestion as long as the proper procedures were in place and the technical people had no access to pricing information.

Several conference calls were held in May and June with the two EPC contractors with the objective of developing the terms and conditions on which the contractors would submit their bids in July. Most of the discussion centered on key provisions of the APSA contract as well as the development of the technical scope of the project. Neither EPC contractor indicated that there were any “deal killers” or issues that could not be resolved in the contract.

PacifiCorp’s 2012 RFP process entered into a new phase with the submission of technical and commercial proposals by the two remaining EPC contractor candidates on July 8 and 9, 2008. Both EPC contractors submitted revised pricing for their EPC contracts as well as providing detailed technical specifications for completing the project. Both EPC contractors had been negotiating the terms of the EPC contract with the developer and PacifiCorp for several months but the pricing and technical proposals provided more detailed information on which to make a decision with regard to the preferred EPC contractor. As such, the available information provided by the EPC contractors was important to assess any decisions which PacifiCorp and the developer may make regarding the preferred EPC and the ultimate cost of the project.

EPC Contract Negotiations

EPC contract negotiations had been on-going for a few months with both vendors. The parties held several all day negotiation sessions, primarily in Salt Lake City. Copies of the EPC contracts had been provided to the IEs. Also, the IE’s had been invited to listen in on these sessions. Merrimack Energy listened in on select negotiation sessions and generally for a limited time since the vast majority of the negotiation discussions focused on a “page turn” of the contract. PacifiCorp also provided the IEs with an Issues Matrix, as requested, which compared the positions of the parties and allowed us to review which issues were still outstanding and which issues had been resolved.

Our view was that the negotiations had been somewhat tedious and difficult. It appeared that PacifiCorp’s negotiation team had taken tough but reasonable stances on most issues. Both sides appeared to be moving forward positively without any threats of terminating negotiations for failure to negotiate in good faith. PacifiCorp provided a Summary of Open Issues Matrix to the IEs (as requested) at times during the process that identifies those EPC contract provisions that are still outstanding.

Background to Commercial Proposals

[This Section contains primarily confidential information]

Based on both the pricing proposals and the EPC contract provisions, PacifiCorp decided to proceed forward with ______ as the EPC contractor. Merrimack Energy also concluded that the choice of ______ as the EPC contractor was the preferred choice based on the obvious price advantage and the lower risk to customers included in the contract provisions.

Overall, we felt the process for selection of the EPC contractor and contract negotiations were expertly executed by PacifiCorp. PacifiCorp's process maintained competition throughout the process by ensuring there were multiple EPC contractors involved in the process. Furthermore, we found that the contract provisions allocated risk appropriately to the EPC contractor and developer and away from the customers. PacifiCorp effectively followed the approach identified in the RFP to negotiate both price and non-price terms. We would expect that such a process would be followed in future RFPs whether the bidder is offering an APSA agreement, a Tolling Service Agreement or PPA.

On October 3, 2008 a conference call was held with the IEs and the Division to provide an update on the agreement for Lake Side II with the EPC Contractor. During the call, PacifiCorp indicated that it may be difficult to achieve a May 1, 2012 in-service date due largely to the expected schedule for securing the air permit. PacifiCorp also mentioned that there was a financial risk if the air permit was not secured on schedule. The Company provided a document which illustrated the financial exposure associated with the Limited and Full Notice to Proceed if the Developer failed to secure the air permit. The IEs were also informed that the contracts would include a Full Notice to Proceed only, not a Limited Notice to Proceed.

In addition, the Company also expressed an intent to bring Bid ____ back into the RFP process since the project was now in the hands of a new entity who may be willing to remove the conditions on the lease. The IEs were generally opposed to the idea of bringing this bid or any rejected bids back into the 2012 RFP process for several reasons:

1. The 2008 All Source RFP was active and bids would be due shortly in December 2008. The new owner should just bid into the 2008 RFP.
2. The new owner of the project underlying Bid 520 was a potential future affiliate of PacifiCorp, which could create self-dealing concerns.
3. The IEs were concerned that the potential self-dealing issue could discourage bidders from competing in the 2008 RFP.
4. The IEs felt that since the original bid was rejected in the 2012 RFP, it would no longer be reasonable to reconsider the bid at this time.

Merrimack Energy was particularly opposed to even considering a revised bid from the new owner. In our view, the bidder should just compete in the 2008 RFP. Despite the opposition of the IE, PacifiCorp did initiate discussions with both Bid ___ and ____, asking if they were interested in removing the conditions that led to rejection in the 2012 RFP. Bid ____ was clearly not interested because their position had not changed and there was no way they could meet a June 1, 2012 in-service date. Bid ____ was interested in reassessing the bid and actually offered a proposal. However, the offer was different than the bid submitted into the 2012 RFP and therefore could be viewed as a non-conforming bid.

The final contract was executed with the project developer and EPC contractor on December 3, 2008. Although the contract negotiations process took nearly one year to complete, Merrimack Energy is of the opinion that PacifiCorp negotiated fairly but aggressively throughout the negotiation process, secured a reduced price from the initial estimate with the possibility of further reductions in price, negotiated options with the developer and EPC contractor that provides value to the Company and its customers, and has undertaken a procurement process (in combination with the 2008 RFP) that allows the Company to reflect changes in the market in its resource decision process.

In addition, while the overall process has worked effectively for an APSA agreement in conjunction with EPC contractors, the process would ideally be tested for TSA and PPA bids as well as a means of achieving comparability. Merrimack Energy notes that the RFP, its post-bid negotiations and the MDEPC itself have together created a potential precedent which should be clarified and defined further so that there is a clear understanding among all stakeholders, including the bidders in the future, as to the following:

- What market conditions framed the decision to allow non-firm bids to be negotiated;
- What future conditions would lead to similar negotiating behavior;
- What conditions should be attached to the process in order to assure that all bid forms, including power products as well as Company-owned assets, receive comparable treatment with respect to bidding and negotiating flexibility;
- What minimum safeguards should be used to assure that non-firm bidding and cost of service pricing produces competitive results which protect ratepayers from untoward risks of cost increases.

VII. Assessment of the Contract

This section of the Report provides our assessment of the terms and conditions of the APSA contract or Master Development, Engineering, Procurement and Construction contract between PacifiCorp, the developer and the EPC Contractor. Our review is focused on the balance of risk in the contract between customer interests, Company interests, and developer/EPC contractor interests. Merrimack Energy feels it is important in such a solicitation process to undertake an assessment of the contract to ensure there is an appropriate balance of risk and that the utility customers are not required to absorb undue risk.

The Energy Resource Procurement Act, codified at Utah Code §§ 54-17-101 et seq. (the "Act"), creates a public interest standard for Commission review and approval of significant energy resource decisions in UCA § 54-17-302(3)(c) as follows:

> "(3) In ruling on the request for approval of a significant energy resource decisions, the commission shall determine whether the significant energy resource decision:
> *   *   *
> (c) is in the public interest taking into consideration:
> (i) 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;
> (ii) long-term and short-term impacts;
> (iii) risk;
> (iv) reliability;
> (v) financial impacts on the affected electrical utility; and
> (vi) other factors determined by the commission to be relevant."

Merrimack Energy has taken the above factors into account in reviewing the Master Development, Engineering, Procurement and Construction by and between PacifiCorp ("Company") on one hand, and ("Developer") and ("EPC Contractor") on the other hand, entered into as of December 3, 2008 ("MDEPC")[46.] Merrimack has organized the following discussion around the issues in the MDEPC which principally affect these statutory factors, including in particular the factors of development risks, cost risks and financial impacts on the Company and its retail customers.

[The discussion of the specific terms and conditions of the contract is confidential]

In summary, the Act, as codified at Utah Code §§ 54-17-101 et seq., creates a public interest standard for Commission review and approval of significant energy resource decisions. Our assessment of the terms and conditions of the Master Development, Engineering, Procurement and Construction contract between PacifiCorp, the Developer

[46] Capitalized terms used in this Report which are not defined here have the meanings given them in the definitional Appendix A to the MDEPC.

and the EPC Contractor shows a well managed balancing of risk among customer interests, Company interests, and developer/EPC contractor interests. Consistent with industry practices skillfully applied, the agreement is soundly structured. Within that structure, the risk is well managed in ways which benefit the customers of the Company. In particular, the Company has taken full advantage of a two-stage notice to proceed process to ramp up its contractual exposure, while at the same time continuing to track market movements in pricing. Consistent with industry practices skillfully applied, the MDEPC manages the possibility of contractual change and retains adequate controls to protect its customers' interests and assure the completion of the Project in the event of contractor default. Based solely on its terms and conditions[47], the objectives in UCA § 54-17-302(3)(c) appear to have been met with respect to the MDEPC and the MDEPC appears to be in the public interest taking into consideration the applicable statutory factors.

[47] The specific pricing of the MDEPC and the many other factors bearing on the significant energy resource decision are reviewed elsewhere in the many parts of this report.

VIII. Assessment of the Solicitation Process

This section of the Report provides our overall assessment of PacifiCorp's solicitation process with respect to (1) the consistency of the process to the solicitation requirements included in Section R746-420-3 and Chapter 54 of the Utah Code; (2) consistency of the process to the overall objectives for an effective competitive procurement process; and (3) approach of PacifiCorp in dealing with the "Watch List" issues identified by the IE. In particular, issues associated with the fairness and transparency of the process are addressed in this section.

A. Consistency of the Process With Regard to Utah Statutes

Exhibit 4 includes a detailed description and assessment of the results of the solicitation process relative to each of the solicitation requirements outlined in Section R746-420-3. As illustrated, the IE concludes that the design and implementation of the solicitation process is generally consistent with the solicitation requirements outlined in Section R746-420-3. Any specific issues we have with the process are also described in this Exhibit and are discussed in more detail in the Conclusions section of the report. In our view, overall the process was undertaken in a fair and reasonable manner and in the public interest. As we noted, the reasonableness standard may have been affected by the rigid adherence of PacifiCorp to what we feel were unrealistic credit support requirements. However, there is no indication that these requirements had an influence on the decisions of bidders to submit pre-qualification information or elect to submit or not submit a proposal even after they had submitted pre-qualification information.

Exhibit 4: Adherence of the Solicitation Process with Section R746-420

Solicitation Requirements included in Section R746-420-3	Adherence to Solicitation Requirements
1. General Requirements	
• The solicitation process must be fair, reasonable and in the public interest	In our view, the solicitation process overall was fair, reasonable and in the public interest. All bidders and benchmarks were treated the same, had access to the same information at the same time, and had an equal opportunity to compete. PacifiCorp was very diligent in maintaining confidentiality of information throughout. Furthermore, the process was a very transparent process with active involvement and oversight by the IEs. As noted, one area of concern was the implementation of credit requirements in the pre-qualification process. While this process proved to be rigid and inflexible, all bidders were treated equally in this process. PacifiCorp did attempt to work with bidders diligently and did not disqualify

	any bidders attempting to accommodate bidder issues. The public interest standard is served when the competitive process is effectively implemented encouraging a significant response from bidders competing to provide the lowest reasonable cost resources at minimum risk to customers.
• The solicitation process must be designed to lead to the acquisition of electricity at the lowest reasonable cost	In our view, the solicitation documents were transparent and detailed and provided significant information on which bidders could structure their proposals and decide how to compete. The bid evaluation and selection process was designed to lead to the acquisition of electricity at the lowest reasonable cost based on the detailed state-of-the-art portfolio evaluation methodology proposed, the steps taken to achieve comparability between utility cost of service resources and third-party firm priced bids, the flexibility afforded bidders via a range of eligible resource alternatives, and the contract negotiation process and schedule implemented. The implementation of the solicitation was structured to maintain competition at every step of the process.
• The solicitation process should consider long and short term impacts, risk, reliability, financial impacts and other relevant factors	The 2012 solicitation process met these requirements in both the bid evaluation and contract negotiation stage. In the bid evaluation stage, the analysis addressed short and long-term system impacts and risk associated with CO_2 costs and gas and power price ranges. The contract negotiation stage also addressed risk factors, financial impacts to the utility and its customers and reliability issues.
• Be designed to solicit a robust set of bids	PacifiCorp has maintained a large database of potential bidders and informed the list of bidders of the issuance of the RFP. PacifiCorp's outreach activities could reasonably be expected to lead to a robust set of bids. The only issue we observed was that at times (for workshops and conferences), PacifiCorp may not have provided adequate notice to potential participants.
• Be sufficiently flexible	With the exception of the rigid adherence to the credit support requirements in the pre-qualification stage, the 2012 solicitation process was a very flexible process. PacifiCorp generally allowed bidders to be flexible in their response time, worked with bidders to conform their proposals, made revisions to the process at the suggestions of the IEs, and maintained a

	flexible contract negotiation posture.
• Be timely in the sense of ensuring adequate time is allotted to undertake the analysis and secure the resource	Merrimack Energy did have some issues with regard to the timing for undertaking some of the key activities. In general, the company did not maintain the proposed schedule for the 2012 RFP very well. In particular, the delays in completing the pre-qualification process, the two month delay in evaluating and selecting resources and the long contract negotiation process has had a negative implication for ensuring a project to meet a June 2012 in-service date. Based on the original schedule in the RFP, bid evaluation should have been completed by October 2007 and contract negotiations completed by March 2008. Approximately one year to complete the process should have been sufficient.
2. Screening Criteria – Screening in a Solicitation Process	
• Develop and utilize screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure the process is fair, reasonable, and in the public interest in consultation with the IE and Division.	The RFP included a description of the screening and evaluation criteria, the evaluation methodologies, and other information to ensure the process was fair, reasonable and in the public interest. In our view, the evaluation criteria and evaluation methodologies were consistent with standard industry practices. Furthermore, the transparency of the criteria allowed bidders to reflect the specific criteria in their proposals. The IE and Division conducted several meetings with the Company to review the criteria and were in general agreement with the criteria and evaluation methodologies used.
• In developing the screening and evaluation criteria, the utility shall consider the assumptions in the utility's most recent IRP.	The Company used a consistent set of assumptions based on the assumptions used in the most recent IRP. The assumptions were consistent (e.g. fuel and CO_2 costs), were of recent vintage, and were locked down prior to receipt of bids. PacifiCorp provided the assumptions and inputs with back-up support to the IEs prior to receipt of the bids.
• The utility may consider non-conforming bids	Non-conforming bids were considered in the evaluation process, based on the failure of the bidders to meet transmission requirements, pricing requirements and of course credit requirements. PacifiCorp provided the opportunity to these bidders to conform their proposals to RFP requirements rather than

	eliminating the bid from consideration.
3. Screening Criteria – Request for Qualification and Request for Proposals	
• The soliciting utility may use a Request for Qualification (RFQ) process	PacifiCorp did use a Request for Qualification process for the Base Load RFP. In our view, an RFQ process made sense for solicitation of high capital cost coal-based resources that were contemplated from this RFP. The implementation of the credit requirements in this process created delays in implementation, confusion and frustration for bidders.
• The IE will provide each eligible bidder a bid number when the utility, in consultation with the IE, has determined the bidder has met the criteria under the RFQ.	Although the majority of the bidders did not qualify under the RFQ requirements, the IEs suggested that bidders should be issued bid numbers. PacifiCorp did not oppose this suggestion. Bid numbers were then provided to bidders prior to submission of their proposals.
• Reasonable factors for the RFQ could include such factors as credit requirements, non-performance risk, technical experience, and financial feasibility.	The pre-qualification requirements were largely comprised of financial requirements and experience requirements. The IE viewed the pre-qualification requirements to be reasonable and applicable, with the exception of the credit requirements as explained in this and other IE reports.
4. Disclosures – Benchmark Options	
• Identify whether the Benchmark is an owned option or a purchase option	PacifiCorp provided three benchmark coal options, all of which were utility owned options.
• If the option is an owned option, provide a detailed description of the facility, including operating and dispatch characteristics.	The Company provided a reasonable description of the facility in the RFP document and a very detailed description in the response to the RFP. As noted, benchmark bids and third-party bids were required to provide the same information.
• Assurance from the utility that the Benchmark option will be validated by the IE and that no changes will be permitted	It was clear to the IE that this was a requirement. The Benchmark team went out of their way to ensure that the IE had all pertinent information required. The Benchmark team provided very detailed line-by-line information on each resource, met with the IEs and Division to address any questions and provided all information requested. The IE submitted a report to the Commission validating the cost and operating information for each benchmark option.
• Assurances that non-blinded personnel will not share any non-blinded information about the bidders	The requirements of team members and the communication protocols were clearly described and explained to all members of the project teams. The IE worked very closely with the PacifiCorp project teams and is not aware

	of any cases where information about bidders was shared. PacifiCorp was exemplary in ensuring that the Code of Conduct, confidentiality requirements and communication requirements were adhered to. We were not aware of any violations.
5. Disclosures – Evaluation Methodology	
• The solicitation shall include a clear and complete description and explanation of the methodologies to be used in the evaluation and ranking of bids including evaluation procedures, factors and weights, credit requirements, proforma contracts, and solicitation schedule.	The RFP document contains a detailed description of the methodologies to be used to evaluate the bids, as well as the evaluation procedures, factors, weights, credit requirements, proforma contracts and schedule. Also, similar information was provided to bidders through the Bidders conference presentation. The IRP was another source of information about the methodology.
6. Disclosures – Independent Evaluator	
• The solicitation should describe the role of the IE consistent with Section 54-17-203 including an explanation of the role, contact information and directions for potential bidders to contact the IE with questions, comments, information and suggestions.	The RFP (e.g. Attachment 4) contains a description of the Role of the Independent Evaluator. In addition, the contact information for the Independent Evaluators is provided in the RFP and presentation materials. Bidders were also encouraged to contact the IEs either via Merrimack Energy's website or directly.
7. General Requirements	
• The solicitation must clearly describe the nature and relevant attributes of the requested resources	In our view, the RFP document was a transparent document, providing significant information about the nature and attributes of the requested resources including describing the specific resource and requirements, providing in most cases copies of specific and relevant contracts for the specific resource, and in some cases specifications for resource options.
• Identify the amounts and types of resources requested, timing of deliveries, pricing options, acceptable delivery points, price and non-price factors and weights, credit and security requirements, transmission constraints, etc.	As noted above, the RFP documents were very transparent and detailed and met all the requirements listed in the Rules.
• Utilize an evaluation methodology for resources of different types and lengths which is fair, reasonable and in the public interest and which is validated by the IE.	One of the major issues in a competitive solicitation process is the development and use by the utility of an evaluation methodology that can effectively account for the evaluation of bids with different terms, resource characteristics, and technologies. In our view, all of the models and methodologies used by PacifiCorp allow for a fair, reasonable, consistent and non-discriminatory evaluation of the bids and which is in the public interest. All

	of the models are either industry standard models or have been applied and refined for similar applications over time. The CEM and PaR models are industry standard models that have been tested in the market. The RFP Base Model allows for a consistent and fair evaluation of bids of different technologies and terms and is a reasonable tool for initial evaluation of bids. The IEs conducted several meetings with PacifiCorp to review and test the models prior to bid submission, including creating test bids and reviewing PacifiCorp's evaluation of the test bids.
• Impose credit requirements that are and other bidding requirements that are non-discriminatory, fair, reasonable and in the public interest.	Overall, the IE was of the opinion that the level, type and schedule for posting security were reasonable and consistent with industry standards. In fact, the posting schedule was more flexible in favor of the bidder. With regard to the level and type of security one prospective bidder complimented PacifiCorp's security requirements in comments in another jurisdiction. The issue that was problematic was the requirement that bidders had to provide a commitment letter from their credit support provider as a pre-qualification requirement. This was inconsistent with industry standards and was contrary to the way bidders approach project development. The time required to provide the commitment letter has been revised for the 2008 RFP.
• Permit a range of commercially reasonable alternatives to satisfy credit and security requirements	PacifiCorp's credit methodology is a creative methodology designed to determine credit requirements based on the size of the project, the credit rating of the bidders, the type of eligible resource, and whether the contract is asset-backed. PacifiCorp allowed several options for satisfying credit and security requirements including letter of credit, third-party guaranty, cash or other form of security acceptable to PacifiCorp.
• Permit and encourage negotiations with short-listed bidders to balance increased value and risk.	The RFP document indicates that the Company will further negotiate both price and non-price factors during post-bid negotiations. The Company adhered to this position in its contract negotiation process. We found that the Company was very effective in negotiating terms and conditions with the selected bidder(s) that provided an excellent balance of value and risk that protects the interests of the

	Company and the customer. The contract structure negotiated provides many advantages to the Company and the customers from the option structure, including the opportunity to assess market changes via the 2008 RFP results.
• Provide reasonable protection for confidential information.	The Company was very diligent in ensuring that confidential information was shared only with members of the internal team, IEs, Division and other parties as required. We saw no evidence where any violations of confidentiality took place. The Company took all reasonable measures to protect confidential information.
8. Process Requirements for a Benchmark Option	
• Evaluation team may not be members of the Bid team or communicate with the Bid team about the solicitation process.	The RFP and Code of Conduct clearly described the teams and requirements for each team. Each team member was instructed in writing on the separation of functions and the Code of Conduct requirements. Team members also went through an in-house training process. These requirements were maintained throughout the process. To the best of our knowledge, there were no violations by any team members. Furthermore, the company identified the protocols clearly to bidders in its Bidders conference presentation. Contact with the Bidders was only initiated through the IE and in our view the Company made every effort to follow this process. We did not observe any violations associated with team members violating Code of Conduct requirements. In fact, we observed the Company and team personnel observing the Code of Conduct and team separation requirements very seriously.
• The names and titles of each member of the Bid team, non-blinded personnel, and evaluation team shall be provided to the IE.	The names of individual team members were provided to the IEs as required along with the team to which they were assigned.
• The Evaluation team shall have no direct or indirect communications with any bidder other than through the IE until such time as the final short list is selected by the utility.	All communications with bidders was conducted through the IEs as required. IEs were present on all calls with bidders and in many cases initiated the contact with the bidder.
• Each team member must agree to all restrictions and conditions contained in the Commission rules.	PacifiCorp was diligent in informing all team members of the confidentiality requirements of the solicitation process and requirements of each team member. It was also our recollection that team members were required to sign a

	confidentiality agreement. PacifiCorp conducted training sessions for team members and provided the information used for training to the IEs. In our view, PacifiCorp was very diligent about meeting these requirements and we were not aware of any violations.
• All relevant costs and characteristics of the Benchmark options must be audited and validated by the IE prior to receiving any of the bids.	The IE audited the Benchmark resources, conducted several meetings with the Benchmark team, and prepared a report on the findings. The report was submitted to the Commission and Division prior to receipt of bids.
• All bids must be considered and evaluated against the Benchmark option on a fair and comparable basis.	PacifiCorp withdrew the Benchmark resources prior to the Steps 2 and 3 evaluation. However, the company did include the benchmarks in the Step 2 and Step 3 analysis for illustrative purposes. The benchmarks were not subject to the Step 1 price and non-price evaluation process in this RFP, although PacifiCorp has committed to subject the benchmarks to this analysis in future RFPs.
• Environmental risk and weight factors must be applied consistently and comparably to all bid responses and the benchmark option.	Non-price factors were not considered in the Step 1 evaluation process. However, the RFP did include the non-price factors along with the weights and an explanation of how the criteria will be applied. Also, CO2 cost scenarios were evaluated in the portfolio evaluation.
9. Issuance of a Solicitation	
• The utility shall issue the solicitation promptly after Commission approval.	The RFP was approved on April 4, 2007 and issued on April 5, 2007.
• Bids shall be submitted directly to the IE	Bids were submitted to the Utah IE at the Commission's offices in Salt Lake City and to the Oregon IE and the Company's offices in Portland. The IEs coordinated efforts to ensure the bids were blinded, summarized, and reviewed for eligibility prior to turning the bids over to the Company.
• The utility shall hold a pre-bid conference	PacifiCorp held a pre-bid conference on June 1, 2006 as well as a bidders' conference on April 25, 2007. In addition, the Company held several other workshops and stakeholders conferences for the bidders and other interested parties.
10. Evaluation of Bids	
• The IE shall blind all bids and supply blinded bids to the Utility and Division.	The blinding process was followed throughout the bid evaluation and selection process. The IEs provided bid numbers to the Bidders and requested that the Bidder self-blind the bids. In some cases, the IEs had to blind references to the Bidder names prior to providing the bids to

	the Company. Given the significant number of copies of the bids provided, this process proved to be time consuming and challenging.
• The utility shall provide all data, models, materials and other information used in developing the solicitation, preparing the Benchmark option, or screening, evaluating or selecting bids to the IE and the Division staff.	PacifiCorp provided all the input data prior to receipt of bids, conducted meetings with the IEs and Division to review the models, model methodologies, and basis for input forecasts. In addition, the Company's Benchmark team provided detailed information on the benchmark resources to the IEs and responded in a timely manner to all questions or information requests. All necessary and required information was provided to the IEs as required.
• The IE shall pursue a reasonable combination of auditing the utility's evaluation and conducting its own independent evaluation in consultation with the Division.	Given the timing of the evaluation process, the IE primarily audited the Company's analysis rather than undertaking its own independent evaluation. In other bidding processes, the IE usually undertakes an independent non-price and at times an initial price evaluation process to verify short list selection. In this case, the short list selection process was all inclusive.
• Communications with Bidders should occur through the IE on a confidential or blinded basis.	The IEs initiated communications with Bidders and maintained confidentiality throughout the bid evaluation and selection process; The IEs blinded all bids and communications with bidders to the maximum extent possible; we are not aware of any violations of this requirement on the part of the Company.
• The IE shall have access to all information and resources utilized by the utility in conducting its analyses. The utility shall provide the IE with access to documents, data, and models utilized by the utility in its analyses.	PacifiCorp developed a secure section on its website, which included model runs, input assumptions and analysis results. The IEs had access to the secure website to review the results. For the Step 2 and Step 3 evaluation, PacifiCorp provided all the output results and analysis directly to the IEs. PacifiCorp was very forthcoming with this information and at no time did the IE feel access was restricted or limited.
• The IE shall monitor any negotiations with short listed bidders.	PacifiCorp informed the IEs of all contract negotiation sessions and provided the opportunity to participate; At the IEs request, PacifiCorp also prepared Issues lists during the contract negotiation process to allow the IEs and Division to keep up to date on the status of key contract negotiation issues.
• The Division and IE may ask the PacifiCorp Transmission Group to conduct reasonable and necessary transmission analyses concerning bids received.	The IE requested a conference call with the PacifiCorp Transmission Group to explain the basis for transmission cost increases prior to the Step 2 and Step 3 evaluation and also met

	with the Transmission Group.

B. Consistency of the Process With Regard to an Effective Competitive Solicitation Process

Merrimack Energy has developed a set of criteria that we generally use to evaluate the performance of the soliciting utility in implementing a competitive solicitation process. These criteria were identified on pages 20-21 of this Report. In this section, the performance of PacifiCorp is assessed in more detail. [48]

This 2012 Base Load Request for Proposals process was a detailed process, encompassing the development of the RFP through contract negotiations. Based on Merrimack Energy's experience with competitive bidding processes and observations regarding such processes, the key areas of inquiry and the underlying principles used by Merrimack Energy to evaluate the bid evaluation and selection process include the following:

1. Were the solicitation targets, principles and objectives clearly defined?

2. Did the solicitation process result in competitive benefits from the process?

3. Was the solicitation process designed to encourage broad participation from potential bidders?

4. Did PacifiCorp implement adequate outreach initiatives to encourage a significant response from bidders?

5. Was the solicitation process consistent, fair and equitable, comprehensive and unbiased to all bidders?

6. Were the bid evaluation and selection process and criteria reasonably transparent such that bidders would have a reasonable indication as to how they would be evaluated and selected?

7. Did the evaluation methodology reasonably identify how quantitative and qualitative measures would be considered and applied?

8. Did the RFP documents (i.e. RFP, Attachments, Appendices, Pricing Form and Model Contracts) describe the bidding guidelines, the bidding requirements to guide bidders in preparing and submitting their proposals, and the bid evaluation and selection criteria.

9. Did the utility adequately document the results of the evaluation and selection process?

[48] It should be noted that there is overlap with the criteria and assessment of PacifiCorp relative to the criteria since some of the criteria are consistent with the requirements identified in the Utah Statutes.

10. Did the solicitation process 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.

11. Did the solicitation process ensure that the Power Contract was designed to minimize risk to the utility customers while ensuring that projects selected can be reasonably financed.

12. Did the solicitation process incorporate the unique aspects of the utility system and the preferences and requirements of the utility and its customers.

The implementation of the 2012 All Source Solicitation process relative to the characteristics identified previously is described below. Merrimack Energy has been involved in all aspects of the solicitation process.

1. Solicitation Targets

The RFP document clearly defined the amount of capacity requested, the timing for providing the capacity, the type of products and product characteristics required, the duration of the contract, and bidder eligibility.

2. Competitive Benefits

Competitive benefits can result from a process that encourages a large number of suppliers in combination with reasonable bidding standards and requirements and a balance of risk in the associated contracts such that the process leads to robust competition, lower prices for consumers, limited risk and reliability.

PacifiCorp’s solicitation process encouraged a reasonable response from the market, with several large and significant project development firms participating in the process. The RFP documents are transparent and allow bidders to effectively reflect the contractual provisions in their pricing. Importantly, PacifiCorp’s approach to the process was designed to maintain competitive options throughout the process, from submission of bids through negotiation of the final contract. Furthermore, the process has been designed to incorporate market changes into the final pricing even of the selected project through the use of fixed and variable pricing components for capital costs and capacity charges. The integration of the 2012 RFP with the 2008 RFP results as a means of evaluating the different responses should ensure that competitive benefits will result since the two RFP processes will allow for a real-time comparison of market prices. As we have also noted, we feel PacifiCorp has expertly negotiated contracts from the 2012 RFP to maintain competitive benefits in the process and minimize risk to ratepayers. This process has allowed PacifiCorp to incorporate recent reductions in market prices in the final contract with the selected bidder.

3. Broad Participation from Potential Bidders

As noted above, the process encouraged a reasonable number of proposals as well as different base load technologies (e.g. coal technologies and gas-fired combined cycle units). While we would have expected greater competition, based on responses to other RFPs conducted by PacifiCorp, we believe there are reasonable market explanations for the participation. These could have included the focus on base load resources as well as the requirements imposed by PacifiCorp regarding credit and security issues. While a number of prospective bidders submitted responses to the Pre-Qualification process, a number of bidders decided not to submit a final proposal. Nevertheless, the final evaluation process did allow for multiple portfolios of eligible bids to compete for the 2012 resource requirement.

Furthermore, Bidders were provided opportunities to have input into the development of the RFP documents and related issues. While a number of bidders complained about the security and credit support requirements during the pre-qualification process as being inconsistent with industry practices, no bidder raised the issue during the RFP development process. [49] Also, although a few bidders participated in the process and were involved in submitting comments or participated in the Commission's hearings, participation overall was limited. There were not a large number of questions submitted to the Company via Merrimack Energy's website during the bidding process, which was surprising given that the RFP document represented a change from previous PacifiCorp RFPs.

4. Outreach Initiatives

PacifiCorp has done a very effective job of maintaining communications with bidders and providing information to prospective bidders in their competitive solicitation processes. PacifiCorp has a large database of potential bidders and marketed the RFP to those prospective bidders. PacifiCorp also maintains a section on their website devoted to open RFPs which bidders could easily access. Also, through the solicitation process, PacifiCorp initiated a number of workshops and conference calls with prospective bidders to inform them of solicitation information. For the 2012 RFP, PacifiCorp held workshops on coal technologies, conducted a Bidders Conference, a workshop on security and credit requirements, a workshop on the Pricing Input Sheet, and a follow-up conference call on the credit requirements associated with the Pre-Qualification process. In addition, the Company and IEs were in constant contact with the Bidders throughout the solicitation process and initiated a number of conference call with all bidders. Finally, the hearing process in Utah allowed prospective bidder to have input into the RFP approval process.

[49] It is possible that the reason why prospective bidders did not raise concern about credit support and security requirements during the RFP development phase was because of the inconsistency in the RFP regarding commitment versus comfort letters.

5. The solicitation process should be consistent, fair and equitable, unbiased, and comprehensive

The principal areas of focus for our assessment of PacifiCorp's 2012 Base Load RFP are on the RFP document and on the Company's performance in carrying out the process, from issuance of the RFP document to completion of contract negotiations. The key criteria (fair, equitable, consistent and unbiased) are applied to PacifiCorp's implementation of the evaluation and selection process as well as the Company's ability to adhere to the requirements outlined in the RFP document. Therefore, the critique will focus on the implementation of the process rather than specific issues regarding the process.

In our view, PacifiCorp's solicitation process was an open, fair and consistent process in which all bidders had access to the same information at the same time. This was ensured through use of a third party website (i.e. Merrimack Energy's website) and the role of the IEs. In addition, bidders had the opportunity to review draft versions of the RFP and provide comments as well as participate in workshops and conference calls to make their views known. Bidders were also allowed to participate in hearings before the Utah Commission during the RFP approval process. As a result, it is our view that the final RFP document generally provided clear and comprehensive information about the requirements of bidders, product definition, schedule of the process, requirements for submitting a proposal, and the opportunities for competing. Bidders should have been able to understand how best to compete in such a process.

While it was our view that the bidding documents and materials were clear and comprehensive, several bidders failed to respond to several of the important requirements described in the RFP. For example, a few bidders offered pricing options that were clearly not consistent with the requirements of the RFP (e.g. different indexing options allowed) as well as not complying with the delivery requirements identified in the RFP (e.g. bidders were required to ensure delivery of the power into the Company system). [50]

The price evaluation methodologies were designed to evaluate bids using the same or consistent set of input parameters, assumptions, and modeling methodologies. This served to ensure a consistent evaluation of bids.

With regard to bias, the most obvious consideration is whether the process favors one type of bidder over another. In our view, even though different Eligible Resource Alternatives were required to provide different forms and information requirements there was no presence of bias against any type of bidder or benchmark. Also, we did not receive any input from bidders about any biases in the documents. Any complaints from Bidders were largely attributed to the credit support requirements and the length of the process. Overall, PacifiCorp conducted the Pre-Qualification process, the Bid Evaluation

[50] In the case of the proposed price indexing option offered by the Bidder, both the Company and IE felt the proposal was not consistent with the allowable indices included in the RFP. The parties also felt it would not be fair to other bidders or prospective bidders to allow such alternative indices.

and Selection process, and Contract Negotiation process consistent with the bidding guidelines and requirements outlined in the RFP.

We do not believe any bid had an inherent competitive advantage within the parameters of the solicitation process. The eligibility assessment and follow-up information requirements through the Term Sheet process ensured all bidders provided the same information for evaluation purposes. Through contact with Bidders (in the presence of the IE) PacifiCorp made all reasonable efforts to provide consistent information to all bidders and to prevent disclosure of confidential bidder related information. PacifiCorp was inherently focused on ensuring that all bidders competed on an equal footing and had access to the same information and maintaining all communication protocols and Code of Conduct requirements. We are not aware of any violation of the Code of Conduct or communication protocols throughout the process.

PacifiCorp also established Project Teams and developed protocols which identified the relationships between the teams, including how access to blinded and non-blinded information will occur. In our view, PacifiCorp diligently followed its policies and procedures and were not aware of any violations of the Code of Conduct or protocols. Furthermore, all communications with Bidders was initiated through the IE and the IEs and Division staff participated in all calls with Bidders. Our only issue with regard to such communications was that due to the fast-paced nature of the process, at times conference calls with bidders were established with little notice to all parties. This created scheduling problems and confusion but despite this we do not believe the blinding requirements or Code of Conduct issues were violated.

The solicitation process was well structured to ensure that the information required in the RFP document was linked to the evaluation criteria.

6. Transparency of the Process

The RFP documents, workshops for bidders, interactive questions and answer process with bidders, and posting of key documents by the Company and IE all led to a process where bidders would have significant information about the process and be aware how to effectively compete. The information required of bidders was clear and concise as witnessed by the generally complete and consistent proposals submitted by bidders. While a few bidders elected to either not conform to the requirements of the RFP or decide not to abide by security requirements, in our view these problems were not the responsibility of the Company. The RFP and related documents were clear on the security and transmission requirements, for example. We also believe that initiatives taken by PacifiCorp, such as the workshop to discuss the Form 1 Pricing Input Sheet and the workshop on security and credit requirements were very valuable for informing bidders of the requirements of the RFP and how to structure their proposals. In conclusion, it is our view that the solicitation process was a transparent process and in that regard was consistent with or exceeded industry standards.

7. Application of Quantitative and Qualitative Measures

The RFP document clearly articulated the quantitative and qualitative techniques and requirements associated with the evaluation process. The methodologies and models were clearly described in the RFP (which exceeds industry standards) and were also consistent with the Company's Integrated Resource Plan. Also, the Pricing Input Sheets and Term Sheet process served to ensure bids would be evaluated on a consistent and unbiased manner. These processes took the "guess work" or interpretation out of the process. PacifiCorp also provided bidders the opportunity to utilize indices for their capital or capacity charges that could allow bidders the opportunity to match their costs with the indexed pricing in their bids. Such indexing opportunities provided bidders with the ability to minimize market risk in their pricing proposals and served to put utility cost of service and third-party PPA or TSA's on a more level playing field.

8. The RFP Documents should describe the process clearly and provide adequate information on which bidders could complete their proposals

This objective deals with the quality of the documents contained in the RFP package (i.e. RFP, Contracts, Bid Forms required of all bidders, and other Attachements and pertinent information) and the integration among the documents. PacifiCorp's RFP provided considerable detail regarding the information required of bidders, the basis for evaluation and selection, and the criteria of importance. The RFP process clearly provides a direct link between the RFP document, bid form and contracts. In our experience, the 2012 RFP is a very detailed and complete document which provides a significant base of information to guide bidders in developing their proposals. As noted on several occasions, the inconsistency between the requirements for a commitment letter versus a comfort letter in different section of the RFP was the one point of confusion on the process.

9. Documentation of Results

The price evaluation process (notably Steps 2 and 3) was well documented and supported. The Company provided all necessary supporting information to the IEs, including details on the input assumptions, model outputs, and summaries of results. Also, the Term Sheet process led to complete and thorough information on all bids. PacifiCorp also provided the IEs with Issues Lists and other information about the proposals during the contract negotiation process. Since the non-price evaluation was not undertaken for short-list selection, there was no documentation associated with the non-price evaluation. Other than non-price information, we have concluded that the documentation of the evaluation results was thorough and easily reviewable.

10. The solicitation process should include thorough, consistent, and accurate information on which to evaluate bids

The bid forms (Appendices A, B, C, D and G) require a significant amount of information that bidders must include in their proposals. The requirements for different Eligible Resource Alternatives vary and are clearly outlined in Chart 4 in the RFP. Based on PacifiCorp's evaluation process, the vast majority of this information is used in the analysis and is consistent with the evaluation criteria developed. The level of information provided ensured that PacifiCorp could undertake a consistent and comprehensive analysis of each proposal and reflect the individual attributes of each proposal in the evaluation. We did not find any biases in the evaluation criteria or process that could benefit the benchmark resources or other types of resource alternatives.

11. Contracts

Merrimack Energy reviewed the model contracts in the RFP to ensure the provisions were consistent with industry standards and provided a reasonable balance of risk. In addition, Merrimack Energy conducted a detailed review of the final Master Development, Engineering, Procurement and Construction Contract between the Company, the Project Developer, and the EPC Contractor. Based on our review of this contract, we found that the contract was consistent with industry standards and provided a fair balance between the needs of the Company and its customers, as well as the bidders. In fact, in our view the contracts were expertly negotiated by PacifiCorp and provide a valuable option to minimize risk to the Company and its customers.

12. Preferences and Requirements of the Utility

PacifiCorp clearly identified several important requirements that bidders must meet, including the requirement that power be delivered by the seller to the PacifiCorp control area, PacifiCorp will not be subject to Variable Interest Entity (VIE) treatment, along with other eligibility requirements. In particular, transmission requirements and VIE requirements are consistent with industry practices in a number of other RFP processes. With the exception of the credit requirements for the pre-qualification process, these requirements were clearly described in the RFP.

C. Watch List Issues

At the beginning of the competitive bidding process, Merrimack Energy identified several issues which we felt could have a significant impact on the outcome of the process. These issues were referred to as "watch list" issues, meaning they merited special attention. Our scope of work requires that we address the watch list issues. A description of the watch list issues and a brief discussion regarding how these issues were addressed and resolved are included in this section.

1. Credit requirements (pre-qualification and final selection)

Credit is a major issue in virtually competitive bidding processes. In addition, the approach to credit and security varies by utility with no set industry standard. In the draft RFP, Merrimack Energy felt that PacifiCorp's credit requirements overall were onerous and could discourage bidding. Merrimack Energy, PacifiCorp and the Division met several times to attempt to develop security requirements that were reasonable for both the utility and the bidder. PacifiCorp developed its proposed methodology and at the suggestion of the IE held a credit workshop for bidders. At the end of the process, the IE felt that the level of security required, the schedule for posting security, the credit matrix and methodology, etc. were all reasonable and consistent with a balanced approach. The IE, however, did not pick up on the subtleties of the requirements imposed by PacifiCorp regarding the commitment letter requirements for the credit support provider. Is was not until the pre-qualification information was submitted and the IEs and Company were discussing the pre-qualification responses that the IE fully understood the intent of PacifiCorp in the commitment letter requirements. The IE understood that PacifiCorp required a comfort letter, not a commitment letter. As noted throughout this report, the commitment letter requirements proved to be the most contentious issue by far and one that threatened to totally sidetrack the process. The issue was ultimately resolved when PacifiCorp agreed to delay the commitment letter requirements to the time when the bidder was selected for the award group. This issue is discussed in detail in Merrimack Energy's Confidential Report on the Evaluation and Selection of the Draft Final Conditional Short List, September 2008.

2. Comparability of resource evaluation related to assessment of third-party bids and benchmarks

Comparability in the treatment and evaluation of benchmarks and third-party firm price bids has been a major issue in competitive bidding processes, in cases where a utility cost of service option is competing against a firm price third-party PPA or TSA. Third-party bidders generally argue that utility cost of service bids have a distinct advantage because the bid price is based only on an estimate. The utility is usually able to recover actual costs incurred as long as the costs are deemed prudent. Therefore, the utility does not take price risk. Instead, the price risk is shifted to customers who incur the costs of a plant based on the actual costs to build and operate. The third-party firm price bidder, on the other hand, bids a firm price and takes the price risk if costs are higher or lower than estimated. The implications of evaluating a cost of service option versus a firm price PPA or TSA has raised issues about the best method to place the two bids on a more level playing field for bid evaluation purposes.

While we focused this issue as a potential major concern given the presence of the benchmarks, the decision of PacifiCorp to withdraw the Benchmarks served to alleviate one concern associated with comparability. Based on the selection process, comparability was no longer the issue of concern as it once was in this process. However, comparability will remain an issue in future solicitation processes.

3. Equality of Contract Provisions

An issue related to comparability is the different risk profiles associated with each contract structure and the possible benefit afforded to one type contract structure over another. Merrimack Energy undertook a detailed review of the different contracts (notably an Asset Purchase and Sale agreement where a utility would eventually assume ownership over the project on a cost of service basis and a TSA or PPA which allocates much of the risk to the third-party bidder) to ensure they included a reasonable balance of the risk or identify areas where there the risk was skewed to favor one contract structure over another. Merrimack Energy has undertaken a review of the contract with these issues in mind to ensure there is a reasonable balance in risk allocation. Section VII contains our review of these issues.

4. <u>Assessment of the modeling methodologies and applications of the models to be used</u>

The modeling methodologies, input assumptions, and selection process always come under scrutiny in a bid evaluation process. One focus was whether the methodologies effectively address bids of different types, terms and in-service dates and therefore contained no inherent bias. In addition, it is important to assess whether the methodology accurately accounts for all costs and benefits. This initial issue was identified because such an issue is a typical watch list issue given the importance of the evaluation methods and models for producing consistent and detailed results. After review, Merrimack Energy has concluded that the models and methodologies used are very detailed and comprehensive, accurately accounting for all costs associated with the evaluation. The modeling methodologies are state of the art and are among the most comprehensive and effective methodologies utilized in all the solicitation processes in which we have participated. Furthermore, the price evaluation methodology is designed as an integrated evaluation process for Steps 2 and 3 which reflects the impact on total system cost associated with different resources and portfolios considered.

<u>5. Imputed Debt (Direct or Inferred Debt)</u>

A constant source of controversy in competitive bidding processes is the treatment of imputed debt for third-party power projects. Some utilities include the fixed cost associated with power purchase or tolling service agreements as debt on the balance sheet and add these costs into the evaluation of bids. Third-party developers contend that imputing such costs provides a distinct competitive advantage for utility self-build options. However, utilities contend that debt characteristics of power purchase agreements impose real costs on utilities and must be accounted for in the bid evaluation process. PacifiCorp has proposed a creative approach to imputed debt that defers consideration until after completing the final short list and before the final resource selections are submitted for approval by the Utah Commission or acknowledgement by the Oregon Commission. The Company agreed not to take into account potential costs to the Company associated with imputed debt as part of its economic analysis in the initial or final short list evaluation. The IE supports this approach as allaying concerns of bidders or discouraging bidding if imputed debt is included as part of the initial bid evaluation process. We feel this approach will encourage bidders to participate in the process and is a positive step.

IX. Conclusions and Recommendations

The solicitation process and procedures developed and implemented by PacifiCorp, including the bid evaluation and selection process and methodologies are, in substance, consistent with Utah competitive procurement requirements and industry standards and led to a fair, consistent and unbiased evaluation and selection process. The results from the 2012 competitive procurement process should lead to 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, risks, reliability and financial impacts on PacifiCorp. In that regard, the resource selected through this process represents a resource that was subject to detailed scrutiny and evaluation, was vetted through a fair and equitable process, is subject to a contractual arrangement that ensures an effective balance of risk with benefits to customers should market conditions render other resources more economic, and represents the lowest cost resource available through this competitive solicitation process to meet base load requirements.

There were also a number of lessons learned, both positive and negative, from the 2012 RFP process that can have positive impacts in designing and implementing future competitive procurement processes. The solicitation process was conducted during a very volatile (in terms of generation project costs) and uncertain (in terms of financial issues) time in the power generation industry and PacifiCorp's performance must be considered in light of these market changes.

As noted on pages 10 and 11 of this report, the Scope of Work prepared by the Commission for the Independent Evaluator identifies specific requirements for the IE to confirm whether or not the solicitation process was undertaken in a fair manner. The following overall conclusions associated with the 2012 Base Load solicitation process will address these requirements, among others.

Conclusions

- The solicitation process was undertaken in a fair, equitable and unbiased manner by the Company with the oversight of the IE at all stages of the process.

- The RFP process was a highly transparent process, providing detailed information about the requirements for bidding, the products requested, the evaluation methods and methodology, the evaluation process, bid evaluation criteria (both price and non-price), the weights for the criteria, information required of the bidder, requirements of the bidder for submitting its proposal, the schedule for undertaking the process, and risk parameters of the Company as identified in the RFP and related contracts. In conjunction with the role of the IEs throughout the process, in our view the transparency of the process significantly exceeds industry standards for other competitive bidding processes.

- The bidder outreach and communication activities implemented by PacifiCorp were designed to encourage broad participation from the market. PacifiCorp maintains a large database of potential suppliers and informed those suppliers of the development and issuance of the RFP. Furthermore, throughout the process, bidders were informed through conferences, workshops, and Commission hearings.

- The level of response to the RFP exceeded bidding requirements and was sufficient to provide a competitive process throughout. However, nearly all bids had conditions attached or were classified as non-conforming (e.g. the bidder did not propose delivery into the PacifiCorp control area). The selected resource was a lowest cost option and did not possess the specific risks to development that other resources faced.

- The solicitation process led to the ultimate selection of only one resource for 2012 capacity in the amount substantially less than that requested in the RFP. This was attributed to failure of the two other resources selected for the short list to demonstrate a willingness to overcome conditions placed on these bids. The IE suggested that a back-up list of resources should be maintained in case bidders are not willing to move forward with their projects. Although we recommended that a back-up list of resources should be maintained, it is important to note that there were also conditions associated with each of the back-up bids that would have been challenging to overcome.

- The competitive solicitation process is closely linked to the Integrated Resource Planning process. This includes significant input from other market participants and interested parties in the assessment of the need for power and the amount to be bid, input assumptions, modeling methodologies, and resource selection process. While we have identified a few minor deviations from the established methodology (use of a different risk measure than previously utilized in the IRP and use of a different metric to rank bids in the Step 1 process), these deviations had no impact on the final resource ranking and selection.

- 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 throughout the process, even during conference calls with bidders.

- The Code of Conduct and communication protocols were well developed and clearly identified in the RFP and were taken very seriously by PacifiCorp. Members of the bid teams were subject to training on the protocols prior to receipt of bids and were informed of the importance in following the protocols. We were not aware of any violations of PacifiCorp's Code of Conduct and communication protocols. The Company appeared to diligently follow the Code of Conduct and did not deviate from the requirements.

- The IE can document that the confidentiality requirements of the exchange of information between PacifiCorp, the IE and the bidders were maintained. For the most part, the IEs initiated communications with the bidders directly, rather than the company to maintain bid blinding. The IE has kept documentation to verify the communication process.

- The Bid Pricing Sheets (Form 1) were clear and transparent and led to consistent information provided by all bidders. PacifiCorp's efforts to also offer a workshop with bidders to review and explain the Bid Pricing Sheets was a positive step for ensuring that bidders fully understood the information they were asked to provide.

- PacifiCorp offered a range of resource 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 in the RFP.

- PacifiCorp offered their own sites to Bidders which provided several options for bidders to consider in structuring their proposals. This is not a common practice in competitive bidding processes.

- The Benchmark resources provided the same information required of all bidders. Furthermore, the Benchmark team provided detailed back-up information to the IE on the cost and operating characteristics of the benchmark resources and responded to all questions about the resources. The IE audited and validated the information and concluded that the cost and operation information was conservative and complete and was not intended to provide a "low ball" cost estimate.

- PacifiCorp evaluated the benchmark resources consistently with other bids in the Step 2 and Step 3 phases of the price evaluation, even though PacifiCorp had withdrawn the benchmarks. The benchmark resources were not subject to the Step 1 price and non-price analysis.

- 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 analysis are state of the art and provide very comprehensive and complete evaluation results.

- While the IEs did not have direct access or control over 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. Thus, the IE can confirm that we did have access to all data, model results, input assumptions and other information necessary to render a thorough evaluation of the quality and comprehensiveness of the process. There were no occasions where we felt PacifiCorp was not responsive to our requests for information. Furthermore, given the nature of the models used by PacifiCorp, it was the view of the IEs that requesting that PacifiCorp run other cases and reviewing and questioning the results of the evaluation was more effective and timely than if the IEs attempted to run the models ourselves or undertake a totally independent evaluation.

- Merrimack Energy has concluded that the models and methodologies used are very detailed and comprehensive, accurately accounting for all costs associated with the evaluation. The modeling methodologies are state of the art and are among the most comprehensive and effective methodologies utilized in all the solicitation proceses in which we have participated. Furthermore, the price evaluation methodology is designed as an integrated evaluation process for Steps 2 and 3 which reflects the impact on total system cost associated with different resources and portfolios considered.

- The level of documentation supporting the resource evaluation and selection process was very detailed and significant. The Company provided the detailed back-up documentation to the IEs during the Step 2 and Step 3 evaluations.

- 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, and providing bidders with bid numbers even though the bidders had not been pre-qualified.

- All bids were required to provide consistent information, including the benchmark resource. The Term Sheet process proved to be an excellent step to ensure that all bids provided consistent information and were fairly and consistently evaluated.

- PacifiCorp did not follow the evaluation process as identified in the RFP. As we have reported, PacifiCorp decided to include all eligible proposals on the short list. As a result, PacifiCorp did not prepare and submit a non-price evaluation of the bids. While the IE can confirm that the price evaluation was consistently undertaken, the non-price evaluation was not. However, since PacifiCorp decided to select all eligible proposals for the short list (after the two month delay in the process in summer/fall of 2007) the IEs were not opposed to this decision. We recommend that in future RFPs, the entire process should be completed as listed in the RFP.

- Credit issues proved to be important throughout the process. While we felt security requirements, schedule for posting security and security levels were reasonable and consistent with industry standard, one short listed bidder refused to honor the security posting schedule (even though the bidder agreed to the level of security required). The IEs agreed with the Company's decision to reject the suggested approach by the bidder to post security because it added significant risk to consumers.

- The IE confirms that the negotiations between PacifiCorp and bidders were conducted in a fair and consistent manner, with no undue biases toward any bidder. PacifiCorp negotiated fairly but aggressively throughout the negotiation process. PacifiCorp was able to negotiate an option with the developer and EPC contractor that provides value to the Company and its customers and has undertaken a procurement process (in combination with the 2008 solicitation process) that allows the company to reflect changes in the market in its resource decision process. In addition, PacifiCorp has secured a reduced price from the initial cost estimate with the potential for addition price reductions.

- The negotiation process was overly lengthy, in our view. However, we are not certain of the reasons for such a lengthy negotiation process. Reasons for the length of the process could include the time required to select potential EPC contractors, the stress on PacifiCorp staff given the other major initiatives on-going at the Company, or challenges in resolving key contract provisions. PacifiCorp had originally indicated to the IEs that the contract would be filed with the Commission in September, 2008. Subsequently, the Company indicated the filing date would be the week before Thanksgiving. Finally, the filing took place in early December.

- 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. Approximately 45 questions were submitted and responses provided.

- 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. This included the allowance for indexing of capacity or capital costs, contract provisions designed to balance risk, and the recognition that contract negotiations would address both price and non-price factors.

- 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 bid selection phase of the process rather than in the initial evaluation phase is a positive step for encouraging third-party bidder participation and putting projects from third-party bidders on a more equal footing with utility cost of service options since the application of imputed debt is not included in the bid evaluation and selection process.

- The information provided by the Benchmark resource options was totally consistent with the information required of third-party bids.

- 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.

- The RFP document contained a few 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.

- The Step 1 evaluation was not completed as outlined in the RFP. The non-price evaluation was not completed or the results were not provided to the IEs and the price evaluation did not include the analysis of the benchmarks. Furthermore, the IE's concerns at the beginning of the process were realized since all bids were higher cost that 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. While blinding was valuable and effective for the question and answer period, the value was limited in the evaluation stage of the process.

- 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 change, with EPC contractors unlikely to offer a fixed price proposal in the early stages of the bidding process.

- 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.

- In our view, timeframe for completing the solicitation process was much longer than necessary, marked by several delays, including the time for securing the commitment letters, two month delay to propose new benchmarks, and longer than expected negotiation process.