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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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IN THE MATTER OF THE APPLICATION  
OF ROCKY MOUNTAIN POWER FOR  
APPROVAL OF SOLICITATION PROCESS  
OF WIND RESOURCES

Docket No. 17-035-23

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**INITIAL COMMENTS OF THE UTAH ASSOCIATION OF ENERGY USERS ON  
ROCKY MOUNTAIN POWER'S PROPOSED SOLICITATION PROCESS**

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The Utah Association of Energy Users (“UAE”) hereby files its initial comments on the Solicitation Process proposed by PacifiCorp in this docket. UAE appreciates the opportunity to submit comments on the proposed RFP. UAE’s counsel and consultants have reviewed the testimony and exhibits filed by PacifiCorp, attended the technical conference in this docket, and reviewed PacifiCorp’s proposed request for proposals (“RFP”). The available time has not permitted a comprehensive review of the proposed RFP or its lengthy attachments. Moreover, many of the details of PacifiCorp’s plans were not revealed until PacifiCorp filed its “Energy Vision2020 Update” two days ago as an “Informational Filing” in the IRP docket, 17-035-16, which UAE has not yet had an opportunity to review in detail. Nevertheless, UAE has identified several significant concerns. As proposed, the RFP will not attract a broad array of bids

sufficient to permit comparison and selection of the most cost-effective options as contemplated by Utah's Energy Resource Procurement Act<sup>1</sup> (the "Act"). Rather, the proposed RFP will result in very few complying bids and essentially ensure that PacifiCorp's benchmark resources will be the only available options.

UAE respectfully submits that the proposed RFP is not consistent with the Act and the RFP cannot properly be approved unless changes are made to maximize the likelihood that bids from a wide array of available resources will be received. Only then can PacifiCorp, the independent evaluator, ratepayers or the Commission identify and select resources that are likely to produce the lowest costs and risk for ratepayers as contemplated by the Act.

#### **Background on the Utah Energy Resource Procurement Act**

The Act, and the Commission regulations implementing the same<sup>2</sup> ("Rules"), impose numerous requirements on the solicitation and procurement of significant energy resources by public utilities in this State. UAE, along with others, actively participated in negotiating and supporting adoption of the Act in 2005. UAE's goal, then and now, is to make electric utility resource solicitations and procurements fair and competitive so that the most cost-effective resources can be identified and procured for the benefit of Utah ratepayers. UAE perceived a strong need for the Act because historically PacifiCorp has routinely selected itself to build or own virtually all new major generating resources.

Part 2 of the Act includes requirements for a solicitation process. The intent of Part 2, and the Rules implementing it, is to ensure a robust array of bids from all available resource

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<sup>1</sup> Utah Code §§ 54-17-101, et seq.

<sup>2</sup> Utah Administrative Code §§ R746-420, et seq.

types and from varying owners/developers.<sup>3</sup> Only if a robust set of bids for market resources is received can any proposed utility self-build options be fairly compared and evaluated. The ultimate goal of the Act and the Rules is to ensure that the resources with the lowest reasonable cost to customers can be identified and procured, regardless of the nature or ownership of the resources.

Before a utility's proposed solicitation process can be approved by the Commission, the Act requires the Commission to first determine that the proposed solicitation process "will *most likely* result in the acquisition, production and delivery of electricity *at the lowest reasonable cost* to [the utility's] retail customers."<sup>4</sup> This same finding must also be made before the Commission can pre-approve procurement of any given resource.<sup>5</sup> These critical statutory requirements are designed to ensure that Utah ratepayers will not be burdened with anything other than the lowest-cost resources available.

### **The Proposed Solicitation is Inconsistent with the Act**

The proposed solicitation process in this docket is facially defective; it is not even intended to produce a robust set of diverse resource options from which PacifiCorp, the independent evaluator, ratepayers or the Commission could compare benchmark bids and PPA bids to determine which resources are "most likely [to] result in ... the lowest reasonable cost" to customers. As proposed, the solicitation will only accept bids of a single resource type (wind) located in a small geographical area of one state in PacifiCorp's six state utility footprint

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<sup>3</sup> See Rule R746-420-3(8)(i) (RFPs must be "designed to solicit a robust set of bids").

<sup>4</sup> Utah Code § 54-17-201(2)(c)(ii)(A) (emphasis added). Other relevant factors, such as risk and reliability, are also to be considered, *id.*, but ensuring the lowest reasonable cost for customers is central to the Commission's public interest determination under the Act.

<sup>5</sup> Utah Code § 54-17-302(3)(c)(i) (emphasis added).

(Wyoming). As such, it cannot possibly satisfy the intent or requirements of the Act for pre-approval.

The RFP imposes severe limitations on the type, location and potential owners of resources that can submit qualifying bids, and will severely restrict the universe of possible resource options in a manner inconsistent with the pre-approval requirements of Parts 2 and 3 of the Act—which focus on solicitation and acquisition of the lowest-cost resources among a wide array of options in response to capacity and energy needs identified through a utility’s long-range (IRP) planning process.<sup>6</sup> The proposed solicitation in this docket is not designed to meet resource needs identified through a planning process.<sup>7</sup> Rather, PacifiCorp is pursuing what it claims to be a time-limited opportunity to secure wind resources that qualify for federal production tax credits, both by repowering 12 of PacifiCorp’s 13 existing wind resources (that originally cost PacifiCorp ratepayers over \$2 billion, and with over 2/3 of their service lives remaining on average) (“**Repowering**”),<sup>8</sup> and by procuring significant new wind resources and several new local areas transmission segments in Wyoming (“**New Wind/Transmission**”) (all such resources collectively, the “**Proposed New Resources**”).<sup>9</sup> PacifiCorp projects that the Proposed New Resources will result in long-term costs to customers that may be modestly lower than the projected cost of resource acquisition alternatives identified in its resource planning

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<sup>6</sup> See, e.g., Utah Code § 54-17-301.

<sup>7</sup> As explained in more detail in section 3, below, PacifiCorp’s Proposed New Resources are not, under any stretch of the imagination, based on resource needs identified through the IRP planning process.

<sup>8</sup> See Energy Vision 2020 Update, Docket 17-035-17, dated August 2, 2017; and PacifiCorp’s 2016 FERC Form 1, page 410.

<sup>9</sup> See Energy Vision 2020 Update, Docket 17-035-17, dated August 2, 2017; and PacifiCorp’s 2016 FERC Form 1, page 410.

processes (the “**Prevailing Resources**”)—which rely primarily on demand side management and market transactions for many years.

The Act contemplated the possibility of time-limited opportunities of this sort that are not responsive to needs identified in the long-range planning process. Part 5 of the Act gives PacifiCorp the option to seek Commission waivers of the solicitation and/or resource approval processes and requirements if a utility has identified “a time-limited commercial or technical opportunity that provides value to the customers.”<sup>10</sup> A utility that successfully obtains a waiver of the Parts 2 and 3 solicitation and procurement processes may proceed to acquire the identified resources, but will not receive pre-approval or any presumption of prudence as to the acquisition.<sup>11</sup> Had PacifiCorp requested such waivers, the Commission could have solicited input on and made determinations as to whether the alleged time-limited opportunities are sufficiently compelling to warrant the requested waivers. PacifiCorp could then have determined whether to pursue those opportunities, subject to later prudence review.

PacifiCorp’s proposal in this docket is inconsistent with the intended course for a time-limited opportunity. PacifiCorp is attempting to cram a square peg into a round hold in a rushed effort to secure pre-approval of resources without evaluation of other competitive options. The proposed solicitation process is inconsistent with the intent and requirements of Parts 2 and 3 of the Act and should not be approved.

Because the RFP as proposed by PacifiCorp permits bids from only a small segment of available resource options, it cannot possibly give the Commission the information it would need to determine whether the selected resources will “most likely” result in the identification of the

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<sup>10</sup> Utah Code § 54-17-501(1)(b).

<sup>11</sup> *Id.*, § 54-17-501(10).

“lowest reasonable cost” resources available. At best, the RFP *might* lead to determinations (in Dockets 17-035-39 and 17-035-40) that the cost to customers for the Proposed New Resources as projected by PacifiCorp is slightly lower over time than the cost as projected by PacifiCorp for the Prevailing Resources. That is a far cry from the requirements of Parts 2 and 3 of the Act for a determination that the selected resources will “most likely” result in the “lowest reasonable cost” resources in comparison to all other available resource options. The Commission will be in a position to determine whether any given resource is most likely the most cost-effective resource *only* if the scope of the solicitation is increased to include all resource types—renewable and non-renewable; west side and east side; all owners/developers; and with and without new transmission upgrades in various locations. The findings required in Parts 2 and 3 of the Act simply cannot be made with PacifiCorp’s proposed limitations of the RFP to specific Wyoming wind resources only.

### **Summary of Major RFP Concerns**

In addition to the facially defective nature of the proposed RFP, UAE has identified several significant concerns with the proposed RFP. UAE respectfully submits that additional time and evaluation is necessary to develop an RFP properly designed to solicit a robust set of bids and permit a proper determination as to the most cost-effective options. Nevertheless, based on the brief time that UAE and its consultants have had to review the RFP to date, a number of significant concerns have been identified, which are discussed briefly below.

**1. The RFP Should Allow Bids from all Resource Types, Owners and Locations.**

As noted above, a proper determination that the RFP will most likely lead to identification of the lowest-cost resources is possible only if the RFP is opened up to all

resources, all locations, all developers, and other transmission upgrades. It would be fundamentally unfair to Utah ratepayers if PacifiCorp were allowed to acquire new resources of the significance and cost without first rigorously testing the market, unrestricted by geography or resource type, and especially troubling given PacifiCorp's admission that it has no need for incremental resources in the near term. PacifiCorp notes that significant benefits will accrue to the State of Wyoming as a result of the Proposed New Resources. While UAE has no objection to such benefits to Wyoming, it opposes acquisition of such a significant amount of new resources without first testing the market to determine whether the Proposed New Resources are less expensive than other available resources, considering both short term and long term impacts as contemplated by the Act.<sup>12</sup> Without such a demonstration, nobody can possibly know whether lower cost resources might be available elsewhere—such as in southern Utah. If market bids demonstrate that the lowest cost resources are located in Utah, for example, Utah ratepayers would benefit not only from lower rates, but Utah would also receive significant economic and other benefits, including the possibility of transmission investments to relieve congestion that currently limits access to Utah's extensive solar resources. PacifiCorp's proposed RFP must be expanded to include all available resources, including those freed up by transmission investments elsewhere, to avoid unfair impacts on Utah citizens and ratepayers.

**2. PacifiCorp's Actions Have Not Been Not Consistent with the Act.**

UAE has concerns with the way in which PacifiCorp has aggressively pursued efforts to construct and own significant new wind and transmission resources that have not been shown to be needed and cannot be shown to be the lowest-cost options. It appears that, while regulators,

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<sup>12</sup> Utah Code §§ 54-17-201(2)(c)(2)(B), 54-17-302(3)(c)(ii).

ratepayers and potential competitors were not notified of PacifiCorp's plans until well into 2017, PacifiCorp was quietly developing its plans well before the end of 2016 to invest billions of dollars in new transmission and wind rate base assets. Indeed, PacifiCorp apparently spent over \$111 million in 2016 to acquire wind assets and options on wind assets designed to meet an assumed "safe harbor" for federal production tax credits<sup>13</sup>, acquired strategic wind sites, and submitted interconnection requests to its transmission function (relying on six previously unannounced transmission infrastructure projects in Central Wyoming that PacifiCorp's merchant alone apparently knew might be expanded. It appears that PacifiCorp alone had reason to believe the congestion would be relieved with new transmission assets. Had PacifiCorp timely notified regulators, developers and other stakeholders of its plans in 2016 when PacifiCorp made over \$111 million in wind turbine purchases, there might be a chance today for a fair and competitive solicitation process that could lead to identification of the most cost-effective resources available under the timeline proposed by PacifiCorp. Unfortunately, everyone but PacifiCorp (including its merchant function) appears to have been deprived of a fair opportunity to compete in this RFP for these new resources, in contravention of the intent and purposes of the Act and the Rules, and contrary to the best interest of Utah ratepayers.

Under the Act, an affected electrical utility must secure approval of any significant energy resource decision "*before* [it] may construct or enter into a binding agreement to acquire the significant energy resource."<sup>14</sup> Here, PacifiCorp entered into purchase agreements at a cost of millions of dollars for wind turbine equipment long before it notified the Commission of its

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<sup>13</sup> See PacifiCorp's 2016 FERC Form 1, page 216. PacifiCorp reported total investment in "Wind Repowering/New Development/Safe Harbor Equipment Purchases" of \$111,124,301 as of December 31, 2016.

<sup>14</sup> Utah Code § 54-17-302 \_\_\_ (emphasis added).



intent or sought approval. This type of pre-purchase cannot qualify for pre-approval under Section 3 of the Act, nor form the proper basis for approval of an RFP under Part 2.

### **3. The Proposed New Resources Are Not Consistent with the IRP.**

Evaluation of PacifiCorp's 2017 IRP will occur in another docket, 17-035-16. For purposes of this docket, however, it is important to note that PacifiCorp's Proposed New Resources cannot in any manner be considered resources evaluated or selected through a proper, public IRP process. Evaluation and selection of the Proposed New Resources were done solely by PacifiCorp, in secret and in a vacuum. This concern was aptly described by the Oregon Public Utility Commission staff in comments submitted to the Commission regarding PacifiCorp's 2017 IRP:<sup>15</sup>

The Commission expects the IRP process to be transparent and to allow for stakeholder input to the Company's preferred portfolio choice, as well as all the analysis the Company performs to reach this choice. In this IRP cycle, the Company essentially completed the public input process of seven public meetings, beginning in June 2016 and going through the end of the year. The Company then produced a draft Action Plan reflecting no new resource acquisition, as the Company's analysis projected no need for Additional resources in order to serve load reliably.

It was only at the end of this process that the Company drastically altered its Action Plan to include both the repowering of 905 MW of existing Company-owned wind resources (Wind Repowering) and the purchase of 1,100 MW of new wind with the associated new transmission line (New Wind) that would enable transport of the New Wind power. These proposed capital investments are projected to cost approximately \$3.5 billion. Despite the significance of these costs and unfamiliarity with the projects themselves in the context of the IRP, stakeholders had little to no time to review because it was brought to the table at the very end of the process.

Staff is uncertain as to why the Company waited so long to introduce such major resource acquisitions, but in any case, Staff is concerned that the lack of stakeholder review violates a core IRP principle that fosters an open and participatory process and thus may pose a risk to ratepayers. The late inclusion of such a significant set of investments has deprived Staff and other stakeholders of the opportunity to preview that capital addition

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<sup>15</sup> A copy of the Oregon Commission Staff's comments is attached hereto.

proposal and ask the Company questions prior to the filing of the IRP. Staff is further concerned with the late addition of these two Action Items (New Wind and Wind Repower) because the Company has no need to justify these resource acquisitions and makes no claim to have a need – it presents this \$3.5 billion acquisition purely as a long-term economic benefit to customers over the course of twenty years.

Given that PacifiCorp allowed no substantive public evaluation of or input into its Proposed New Resources as part of the 2017 IRP process, no credibility can be given to any notion that the Proposed New Resources were selected as least cost/least risk resources pursuant to an IRP planning process.

#### **4. The Proposed New Resources Entail Significant Ratepayer Risk.**

Acquisition of PacifiCorp’s Proposed New Resources would create significant risks for ratepayers. PacifiCorp’s own evaluation shows only modest projected benefits (in comparison to its own cost projections for the Prevailing Resources). Moreover, in claiming long-term economic benefits of its planned investments, PacifiCorp did not limit its focus to the 20-year IRP planning horizon. Rather, PacifiCorp’s evaluation of its “preferred portfolio” in the 2017 IRP relies, in part, on speculative benefits associated with some of the proposed new investment stretching at least 14 years beyond the 20-year IRP planning period.<sup>16</sup>

PacifiCorp itself acknowledges that the New Wind/Transmission resources will not be economical if natural gas prices remain low—which is certainly possible, and predicted by many. In addition, PacifiCorp’s proposal for long-term fixed-price renewable resources is wholly inconsistent with the “fixed-price risk” arguments that it advanced aggressively, and that the Commission accepted, at least in part, in Docket 15-035-53. It appears that PacifiCorp may

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<sup>16</sup> See e.g., 2017 IRP at p. 210. (“The results for the OP-REP and OP-GW4 cases include benefits for the wind repower project through 2050, accounting for the significant incremental energy benefits beyond the IRP planning period when the life of repowered wind resources is extended.”)

worry about fixed cost price risk for ratepayers only when someone other than PacifiCorp will own the resources.

It is also not clear that the touted production tax credits for repowered projects will necessarily be realized. PacifiCorp is relying upon an IRS “notice” (#2016-31) that does not carry the weight of a statute or regulation, and that could be changed or challenged in court. Furthermore, qualification for production tax credits relies on an independent appraisal of the value of retained assets after repowering is completed. As such, the repowering of over \$2 billion of existing wind assets that have only been serving RMP’s ratepayers for less than 10 years based solely upon the uncertain reward of tax credits appears to pose unreasonable risks on ratepayers. And, while PacifiCorp requires bidders to demonstrate that they will qualify for 100% of the federal production tax credits—and will require bidders to carry the risk of non-qualification—ratepayers will presumably be expected to bear that risk for any resources owned by PacifiCorp.

The prefiled testimony of Rick Link in this docket indicates that PacifiCorp’s benchmark options will not be firm bids, but rather cost estimates,<sup>17</sup> including 30-year, pro-forma estimates for operation, maintenance and capital expenditures. This will allow PacifiCorp to bid estimates—while presumably expecting ratepayers to bear the risk of the actual, unknown costs. As discussed in more detail below, other bidders are required to bid firm prices for the entire life of the PPA. It will be difficult to fairly evaluate benchmark bids that reflect general estimates in comparison to firm bids from other parties.

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<sup>17</sup> See Exhibit RMP\_\_ (RTL-1) Page 10 of 13 (“Benchmarks will utilize safe harbor PTC qualified equipment. Company will have a separate RFP process to secure firm fixed pricing to engineer-procure-construct the balance of plant. Benchmarks will include 30-year pro-forma estimates for operations, maintenance and on-going capital expenditures.”)

**5. The Proposed RFP Will Not Allow Evaluation of Bids and Benchmarks on a Fair and Comparable Basis.**

UAE has no inherent bias in favor of utility-built resources (benchmarks) or bids from others (bids). UAE focus is on cost. It is both a statutory requirement and a critical component of fairness to PacifiCorp ratepayers that benchmarks and bids be evaluated on a fair and comparable basis. The proposed RFP does not satisfy this requirement. If PacifiCorp succeeds in treating its benchmark bids preferentially to other bids, the result will be bias in favor of the benchmark bids.

Critical to satisfaction of the public interest standard is comparability to the greatest extent practicable in the evaluation of benchmarks and bids. This standard is emphasized in Commission Rules: “All bids must be considered and evaluated against the Benchmark Option on a *fair and comparable basis*.”<sup>18</sup> Moreover, “[a]ll aspects of a Solicitation and Solicitation Process must be fair, reasonable and in the public interest.”<sup>19</sup>

There are many inherent differences in benefits and risks faced by ratepayers with a benchmark resource as opposed to a bid. PacifiCorp plans to submit benchmark resources as to which virtually all significant risks will be borne by ratepayers. This is in stark contrast to the requirements imposed on PPA bidders; bidders must assume all project development and operational risks. Examples of risks imposed on PPA bidders but that PacifiCorp does not intend to assume for its self-build benchmark options include the following:

- a) PPA bidders are subject to delay damages for each day the project is late past the “Scheduled Commercial Operation Date” (PPA at 17).

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<sup>18</sup> Commission Rule R746-420-3(8)(i) (emphasis added)

<sup>19</sup> *Id.*, R746-420-3(1)(b)(ii).

b) PPA bidders are subject to cancellation of the entire PPA if the facility does not achieve commercial operation by the “Guaranteed Commercial Operation Date”. (PPA at 17).

c) If any turbines have not been fully completed when the Facility achieves final completion, there is no option for the PPA seller to cure the shortfall and the turbines cannot later be completed as part of the project, nor can the turbines be completed and the output sold to third parties. (PPA at 17).

d) Under a PPA, PacifiCorp will not pay for any energy curtailed by the transmission operator, whether curtailed for reliability purposes or by the market operator or Transmission Service Provider for general curtailment, reduction, or redispatch of generation in the area, or even if an event of Force Majeure prevents either Party from delivering or receiving Net Output (PPA at 24). In contrast, PacifiCorp will undoubtedly expect to recover the costs of its benchmark resources without regard to production levels, curtailments, or events of Force Majeure. This requirement is particularly onerous on bidders given that PacifiCorp wants to add up to 1,270 MW of new wind resources behind an already constrained flowgate (Bridger West), which may well lead to significant increases in curtailments for reliability reasons. PacifiCorp expects PPA bidders to lose compensation when their resources are curtailed through no fault of their own, while being paid for its benchmark resources under comparable conditions

e) PPA rates “shall not be subject to change for any reason” for the life of the PPA (PPA at 29), while PacifiCorp can ask for rate changes to reflect changes in benchmark resource costs at any time.

f) PPA bidders are subject to liquidated damages for failure to achieve Guaranteed Availability, without regard to actual output of the plant, on top of both foregone energy payments under the PPA plus the cost of replacement energy. These liquidated damages are assessed to the PPA bidder even if the actual energy output of the plant exceeds the expected energy output in that year. PacifiCorp does not intend to pay liquidated damages for its benchmark resources, no matter how poorly the resources perform.

g) PPA bidders face expensive security requirements, project milestones, multiple types of liquidated damages, and other requirements, which PacifiCorp's benchmarks will not face.

h) PacifiCorp reserves the right to reject a bidder if any requirements outlined in the RFP "are not met to the satisfaction of PacifiCorp, as determined in its sole discretion." This provision will chill bidding and is inappropriate in light of PacifiCorp's inherent bias in favor of investing in benchmark resources, and given the statutory requirements for Commission and independent evaluator involvement.

UAE recognizes that many of the issues addressed above are inherent anytime a resource procurement process involves utility benchmark options and market bids. However, to properly compare all resource options, appropriate steps must be taken to identify, quantify and evaluate the way in which different risks may impact ratepayers. UAE encourages the Commission to solicit advice from the independent evaluator and other parties and professionals in order to minimize, to the greatest extent possible, biases in favor of utility-owned resources, and to

properly recognize the risk-mitigating elements of PPA resources in the solicitation and evaluation process.

**6. The RFP as Proposed Will Unnecessarily Chill Bidding.**

Several of the 31 reasons listed by PacifiCorp on pages 8-9 of the RFP for rejecting bids are unfair, chilling and inappropriate and should be eliminated or revised, including the following:

a) #3: “A new resource that will not qualify for the full PTC.” This requirement is unnecessary and unreasonable, as the PTC accrues to the PPA bidder and failure to qualify for the full PTC will not affect firm PPA bids.<sup>20</sup>

b) Reason # 9: “The bidder, or an affiliate of bidder, is in current litigation with PacifiCorp or has, in writing, threatened litigation against PacifiCorp, respecting an amount in dispute in excess of one hundred thousand dollars.” This requirement is particularly unreasonable. In the normal course of business, business must sometimes resort to litigation to enforce rights—particularly against a monopoly. Some major renewable energy developers in the region are currently in litigation with PacifiCorp seeking enforcement or clarification of rights and obligations. PacifiCorp should not be permitted to disqualify what may be a significant subset of regional renewable energy developers simply because they (or their affiliates) have resorted to, or ever “threatened,” litigation of any type against PacifiCorp. There is no reasonable justification for this requirement and it is directly inconsistent with the interests of PacifiCorp’s ratepayers.

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<sup>20</sup> This provision also appears contradicted by information provided at the Pre-Issuance Bidders’ Conference on May 31, 2017 (Exhibit PacifiCorp\_\_ (RTL-1), Rick Link, page 8), that “Projects do not necessarily have to qualify for production tax credits (PTC’s); however, benchmark resources are expected to be PTC-eligible...”

c) Reason #11: “Project not in Wyoming.” As noted above, an RFP that limits projects to Wyoming will not provide the information necessary to support approval of any resource under Part 3 of the Act and will not protect the interests of ratepayers.

d) Reason # 12: “Failure to provide completed interconnection system impact study (SIS) in bid proposal.” This requirement is particularly onerous and unreasonable. Potential bidders (other than PacifiCorp Merchant) had no way of knowing that PacifiCorp would announce a new 500 kV transmission line and multiple new 230 kV transmission lines that would open new opportunities for project interconnections that did not previously exist. When PacifiCorp announced its intention to potential bidders on May 31, there were only approximately 135 days left until the October 13 deadline when PacifiCorp proposes that bids must be submitted. This effectively precludes anyone from bidding that had not already requested a system impact study for interconnection to a constrained transmission line (that nobody but PacifiCorp and its affiliates knew would be upgraded). The timeline for obtaining a completed SIS under PacifiCorp’s OATT is well in excess of 135 days.<sup>21</sup> PacifiCorp, with advance knowledge of the proposals for new wind and transmission resources, may be the only potential bidder, or one of a very small universe, who can satisfy this requirement. There is ample time before the 2020 completion date for projects to secure the necessary interconnection studies. This

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<sup>21</sup> PacifiCorp’s OATT (Large Generator Interconnection Procedures) contemplate a timeline for completing an Interconnection SIS of a minimum of about 200 days. In reality, the process is often much longer.



requirement will preclude receipt of an array of competitive bids, is unreasonable, and should be eliminated.

e) Reason #14: Proposal presents unacceptable level of development risk (at PacifiCorp's sole discretion). Again, PacifiCorp should not be permitted to chill participation by threatening to reject bids at its sole discretion based on unquantifiable and discretionary reasons.

f) Reason #26: Any matter impairing the bidder, the specified resource or the generation of power or environmental attributes of the renewable resource. (at PacifiCorp's sole discretion). For the same reason as above, this "sole discretion" right of PacifiCorp should be deleted.

g) Reason #30: "Failure to submit an operations and maintenance agreement materially compliant with Appendix K for proposals involving PacifiCorp ownership or operational control upon commercial operation or substantial completion date". This requirement would force bidders to offer an O&M contract for a plant they will not own. This will unnecessarily increase the cost of bidding to cover operational risks, a requirement not imposed on benchmark resources.

h) Reason # 31: "Any matter impairing bidder, specified resources or the generation of power or non-power attributes therefrom" (at PacifiCorp's sole discretion). This "sole discretion" provision should also be rejected.

Elsewhere in the RFP, PacifiCorp "[r]eserves the right, without limitation or qualification and in its sole discretion, to reject any or all bids" (RFP at 10). As with other similar requirements, statements as to PacifiCorp's "sole discretion" should be removed. In addition,

references to the role of the Commission and the independent evaluators should be emphasized, and any provisions purporting to allow PacifiCorp to reject bidders for virtually any (or no) reason should be removed. At most, these types of issues should be listed as matters to be considered in awarding bids, as opposed to PacifiCorp's alleged right to reject any bid for any reason.

**7. The Projected Economic Benefits of the Proposed New Resources Do Not Justify a Hurried or Incomplete RFP Process.**

The speed with which PacifiCorp proposes to issue its RFP and procure wind and transmission resources is a significant concern. PacifiCorp may argue that the RFP changes proposed by UAE (and others) are not feasible and would jeopardize the claimed time-limited opportunities. It is not in the interest of captive ratepayers for PacifiCorp's timing and actions to preclude a thorough evaluation of the Proposed New Resources, along with all other potential resource options. The risk of losing the opportunity to acquire the Proposed New Resources—particularly given that they are not needed and have only minor projected benefits—should be of far less concern to ratepayers than the consequences of allowing a flawed solicitation and procurement process to proceed. Simply stated, the minor economic benefits projected by PacifiCorp are nowhere near sufficiently compelling to warrant making ratepayers take a \$4 billion risk on Proposed New Resources without first confirming that those resources are the most economical resources in comparison to *all* other potential resource options. Such confirmation is unavailable absent a robust set of market bids for all potential resources.

UAE understands that the economic justification for PacifiCorp's Proposed New Resources are intended to be addressed in Dockets 17-035-39 and 40. However, given the minor, and risky, economic benefits projected by PacifiCorp in comparison to its projected costs

for the Prevailing Resources, UAE submits that there is no justification for a rushed RFP process that will preclude a supportable determination of the least-cost options for ratepayers.

PacifiCorp's economic projections are projections for one discrete set of possible resources as opposed to another discrete set. They do not in any way reflect analysis of all available resources. Moreover, there are sound reasons to carefully evaluate PacifiCorp's projections and proposals. PacifiCorp would clearly prefer to invest \$3 - \$4 billion in new rate base assets rather than relying on the Prevailing Resources, where most future needs will be met for year through energy efficiency, market purchases and other means that will not provide PacifiCorp with significant new investment opportunities. A utility's inherent bias in favor of investing capital over purchasing power provides a sufficient basis for skepticism of its proposed resource portfolio--especially one not designed to meet demonstrated needs and with only minor projected economic benefits that may or may not be realized over a long period of time.

There are other reasons to be skeptical of PacifiCorp's proposal. Approval of the proposed new transmission resources would finally, after decades of trying, allow PacifiCorp to get its proverbial nose under the tent with construction of over \$700 million of the Gateway West transmission project, which PacifiCorp has never been able to justify economically. Moreover, if one sub-segment is built, making an economic case for other Gateway West sub-segments will likely become easier. Furthermore, because most of the vast amounts of wind energy to be injected into the new sub-segment will be stranded east of Bridger, which will require significant curtailment of the Bridger unit,<sup>22</sup> the economic case for Gateway South will likely also be

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<sup>22</sup> The proposed Gateway West D2 project will relax a local area nomogram for WECC Path TOT 4A and TOT 4B, and will theoretically increase the capacity across TOT 4A and TOT 4B by 750 MW, but much or all of this expanded local area transfer capability will largely be of limited use because constraints west

stronger. There is a real possibility that the nearly \$4 billion in projected costs for the Proposed New Resources will be just the beginning of massive additional unnecessary capital investments, which would put ratepayers at significant risk of higher rates.

**8. The Proposed New Transmission Segment Has Not Been Properly Vetted through the Required OATT Process.**

PacifiCorp’s proposed new transmission “sub-segment” will not reduce congestion in moving power out of Wyoming to meet PacifiCorp’s loads. At best, it will move additional wind energy from one part of rural southern Wyoming to another. In comments filed by PacifiCorp in the Oregon IRP docket, PacifiCorp admitted that the proposed new transmission will not increase transfer capability west of Jim Bridger, a chronically congested path and the only path by which the new Wyoming resources could reach Utah loads.<sup>23</sup>

In proposing this new 500 kV sub-segment and multiple 230 kv transmission lines, PacifiCorp has not followed the transmission planning requirements outlined in Attachment K of its open-access transmission tariff (“OATT”). PacifiCorp has never publicly defined as a proposed transmission project the “sub-segment” that it now proposes. PacifiCorp calls its proposed project “sub segment D2” of the proposed Gateway West project. However, no such “sub-segment” of Gateway West has been defined or studied as required by Attachment K to PacifiCorp’s OATT. Segment D of Gateway West has always been defined as a single segment, and the new proposed sub-segment has never been publicly proposed or studied in the past.

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of Bridger/Anticline will trap the new wind generation in remote Wyoming, far from load. The only way for the new wind to get to load in most hours will be for PacifiCorp to curtail coal generation at Jim Bridger, one of the lowest cost resources in PacifiCorp’s generation portfolio.

<sup>23</sup> PacifiCorp Reply Comments, Oregon Docket LC-67, July 28, 2017, at 35.

Attachment K further requires that projects designed to address local needs only—like the proposed Gateway West sub-segment D2—must follow a “Local Transmission System Plan” developed through a two-year planning process, with extensive public review and input. PacifiCorp has not presented a remote 500 kV Wyoming line in its Attachment K Local Area transmission planning process.<sup>24</sup> Also, while PacifiCorp claims economic benefits associated with relieving local area congestion, it has not performed any economic congestion studies as required by Attachment K. Moreover, since the party requesting this new transmission segment is PacifiCorp’s merchant function, a question arises as to whether PacifiCorp transmission is in compliance with not only the OATT Attachment K requirements, but also the OATT Standards of Conduct.<sup>25</sup> The Federal Energy Regulatory Commission, which regulates the bulk electric grid, focuses on ensuring non-discriminatory open access and establishment of clear regulatory requirements and processes designed to limit the ability of incumbent transmission monopolies to discriminate in favor of their merchant affiliates and against non-affiliated owners/developers of power generation facilities. The appearance of such discrimination here is troubling and has a clear potential to lead to costly litigation before the Federal Energy Regulatory Commission.

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<sup>24</sup> Attachment K indicates that such local transmission plans should inform the next IRP. In contrast, here PacifiCorp is trying to use the IRP process to justify a \$750 million “local” transmission project outside of the Attachment K planning process.

<sup>25</sup> One could easily assume that PacifiCorp’s transmission and merchant functions must have cooperated to plan and announce the building of multiple transmission lines and segments that would primarily benefit PacifiCorp, while bypassing transmission planning obligations in Attachment K and proposing RFP terms to severely limit competition in favor of PacifiCorp-owned resources, suggesting a failure to maintain separation of functions as required by FERC.

**9. PacifiCorp’ Proposed Treatment of Transmission Costs Unduly Discriminates in Favor of Benchmark Bids.**

PacifiCorp acknowledges that, when evaluated on a stand-alone basis, neither the proposed new Wyoming wind resources nor the proposed new transmission resources are economic on their own.<sup>26</sup> Yet, PacifiCorp claims that the combination of these two uneconomic projects somehow will produce (minor) benefits to ratepayers. This dubious claim can best be tested by opening the RFP to all resources, wherever located.

PacifiCorp recently made what it calls an “informational filing” in the 2017 IRP docket, 17-035-16. UAE has not yet had an opportunity to review this filing in any detail. However, the filing includes the following description of the six elements of its proposed new transmission investment:

*The new transmission investment includes six major elements: (1) the 140-mile, Aeolus-to Anticline 500 kV line...; (2) the five-mile Anticline to Jim Bridger 345 kV line...; (3) installation of a voltage control device at the Latham substation; (4) a new 16-mile 230 kV transmission line parallel to an existing 230 kV line from the Shirley Basin substation to the proposed Aeolus substation, including modifications to the existing Shirley Basin substation; (5) the reconstruction of four miles of an existing 230 kV line between the proposed Aeolus substation and the Freezeout substation including modification as required at the Freezeout substation; and (6) the reconstruction of 14 miles of an existing 230 kV transmission line between the Freezeout substation and the Standpipe substation, including modifications as required at the Freezeout and Standpipe substations.*

Page 4 (emphasis added). The italicized transmission components described in subsections (4)-(6) above do not appear to have anything to do with Gateway West, and appear rather to be proposed extensions of PacifiCorp’s 230 kV transmission system designed specifically to support PacifiCorp’s planned benchmark resource bids. This is significant because PacifiCorp

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<sup>26</sup> “The new wind resources are not economic without the Transmission Project, which is needed to relieve existing congestion and to interconnect and integrate new PTC-eligible wind resources in high-wind areas of Wyoming. The Transmission Project is not economic without incremental, cost-effective wind resources. This interdependence requires developing these projects together.” [Source??]

proposes to evaluate all bids before considering any costs of the so-called “Gateway sub-segment 4b”. This would mean that PacifiCorp’s benchmark cost estimates would not include the full cost of interconnection of the benchmark resources, whereas PPA bidders will need to include all projected interconnection costs in making their firm bids. The result would be inappropriate discrimination in favor of benchmark resources.

**10. PacifiCorp’s Repowering Proposals Should be Bid into the RFP.**

Although the economics of PacifiCorp’s Repowering proposal will be evaluated in Docket 17-035-39, UAE believes a few aspects of the Repowering Proposal should be considered in this docket. PacifiCorp’s projected benefits of Repowering, while better than those for the New Wind/Transmission, are still relatively minor and subject to significant risks. Fairly minor changes in PacifiCorp’s assumptions could make the Repowering uneconomic. Moreover, as with the New Wind/Transmission, the economics of Repowering has not been effectively compared to other available resources.

In the context of the 2016 Portland General Electric (“PGE”) integrated resource plan, PGE reached a very different conclusion about the economics of repowering its Bigelow wind project. In comments filed with the Public Utility Commission of Oregon, PGE explained:

Repowering would require a significant rate base investment relative to the magnitude of its contributions to meeting the capacity and REC needs identified in PGE’s 2016 IRP. Additionally, compared to RPS Early Action, an investment in repowering brings little additional energy and a correspondingly smaller reduction to carbon emissions.

In considering a Biglow repowering scenario, it is important to note that PGE would remove existing equipment that has roughly ten years of service, and likely little, if any, salvage value. The Company would need to recover the remaining undepreciated cost. At the end of 2016, the total remaining undepreciated cost for Biglow Canyon was approximately \$450M.

PGE does not recommend that RPS actions be decided purely on the basis of maximizing PTCs in isolation of other considerations. PGE does not find repowering to be a compelling alternative to Early Action.<sup>27</sup>

UAE shares some of the concerns expressed by PGE. In any event, in order to properly assess the economics of Repowering, it should be evaluated as one of many available resource options in comparison to all other available options. PacifiCorp should thus be directed to bid each proposed Repowering project into the expanded RFP to be evaluated along with all other options on a fair and comparable basis.

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<sup>27</sup> Portland General Electric Company's Final Reply Comments, Public Utility Commission of Oregon, Docket LC-66, at 22. Three of the wind projects that PacifiCorp originally proposed for repowering are in Washington (Marengo 1 and 2) and Oregon (Leaning Juniper). Leaning Juniper is roughly 20 miles from PGE's Biglow Canyon wind plant that is the subject of the above comments. PacifiCorp's recent supplemental information filing indicates that Goodnoe Hills has also been added to the proposed repowering portfolio. The Goodnoe Hills project is only seven miles from PGE's Biglow Canyon plant.



**11. The Proposed New Resources Will Significantly Complicate MSP Efforts.**

RMP's IRP suggests that both the PacifiCorp East region (PACE) and the PacifiCorp West region (PACW) are roughly equal in capacity load resource balance in summer peak conditions. However, given that the full 1,600 MW of the Wyoming Jim Bridger resource is physically located in PACW (i.e., Oregon), there is actually an approximate 2,000 MW resource deficit in PACW and an approximate 2,000 MW resource surplus in PACE. Yet, the proposed new resources are all located on the east side<sup>28</sup>. Not only is the prudence of such an approach questionable, it will also significantly complicate ongoing multi-state cost allocation (MSP) negotiations, in which cost allocation approaches under consideration include assignment of fixed portions of existing resources to each region or state, and voluntary subscription to future resources.

**12. Other RFP Suggestions and Considerations.**

UAE is dubious about PacifiCorp's apparent position that broader social and economic consequences or detriments of using tax benefits to justify the premature scrapping of resources with two thirds of their economic lives remaining to produce marginal efficiency gains should be ignored.

Given significant differences in benefits and risks of bids and benchmarks as discussed above, they cannot be evaluated against each other on a "fair and comparable basis" as required by Utah law unless the significance of these differences is recognized or addressed through assignment of values to the different risks or by taking appropriate steps to reduce these differences. For example, PacifiCorp could be required to submit a "not-to-exceed" benchmark

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<sup>28</sup> See 2017 Integrated Resource Plan, Volume 1, April 4, 2017 at pages 91-92

cost estimate that it will be required to live with, like bidders. The independent evaluator and other parties may have other reasonable suggestions for evaluating bids and benchmark resources on a comparable and fair basis. Similarly, PacifiCorp could be required to sell or allow use of PacifiCorp's sites, interconnection rights and safe-harbor equipment by other bidders.

The 20-year term for the proposed PPAs—compared to a much longer life of comparable PacifiCorp-owned resources—is also a concern. Models used to compare resources of comparable lengths are imperfect in facilitating apples-to-apples comparisons under such circumstances. Steps should be taken to avoid such incomparability. For example, bidders could be encouraged to offer a fair market value purchase option at the end of the term, which might facilitate a fair comparison. UAE encourages the Commission to solicit input on this (and other) issues from the independent evaluator, parties, and professionals to ensure a fair and reasonable process.

### **Conclusion**

UAE appreciates the opportunity to submit these initial comments and looks forward to continued involvement in this process. The Act contemplates approval of a solicitation and a resource only if they are consistent with the Act and otherwise in the public interest. UAE respectfully submits that the RFP as proposed is inconsistent with intent and requirements of the Act and not in the public interest, given that it is not designed to permit a comprehensive evaluation of available resource options.

The Commission has several available options under the Act, including extending the timeline for review and approval of the solicitation process, holding a hearing to receive

evidence to help it make an informed determination, rejecting PacifiCorp's proposed RFP altogether, or recommending modifications for a properly designed RFP that can properly lead to approval of a resource under the Act.<sup>29</sup> UAE respectfully asks the Commission to hold a public hearing in this matter, and otherwise to avail itself of the available options in order to ensure development of a proper RFP that will facilitate the public interest considerations promoted by the Act and ensure that Utah customers will be forced to bear the costs of only those resources that have properly been shown to be the most economical.

DATED this 4<sup>th</sup> day of August 2017.

HATCH, JAMES & DODGE



/s/ \_\_\_\_\_

Gary A. Dodge  
Attorneys for UAE

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<sup>29</sup> U.C.A. §§ 54-17-201 (2)(a), (e), (f)

Certificate of Service  
**Docket No. 17-035-23**

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served by email this 4<sup>th</sup> day of August 2017 on the following:

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/s/ \_\_\_\_\_