

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the)	
Application of Rocky)	DOCKET NO. 17-035-23
Mountain Power for Approval)	IE Exhibit No. 1.0 REB
of Solicitation Process for)	Rebuttal Testimony of
Wind Resources)	Wayne J. Oliver
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MERRIMACK ENERGY GROUP
INDEPENDENT EVALUATOR
FOR THE
PUBLIC SERVICE COMMISSION
STATE OF UTAH

Rebuttal Testimony of
Wayne J. Oliver

September 13, 2017

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TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
I.INTRODUCTION AND PURPOSE OF TESTIMONY	Error! Bookmark not defined.
II.ROLE OF THE INDEPENDENT EVALUATOR	4
III.SUMMARY OF THE INDEPENDENT EVALUATOR'S REPORT	5
IV.INTRODUCTION OF THE INDEPENDENT EVALUATOR'S REPORT	12

EXHIBITS

IE Exhibit 1.1 REB	Resume of Wayne J. Oliver
IE Exhibit 1.2 REB	Report of the Utah Independent Evaluator Regarding PacifiCorp's Draft Renewable Request for Proposals (2017R RFP)

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Rebuttal Testimony of Wayne J. Oliver

I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

A. My name is Wayne J. Oliver. I am President and Founder of Merrimack Energy Group, Inc. (“Merrimack Energy”). My business address is 26 Shipway Place, Charlestown, Massachusetts 02129.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to respond to the Commission’s Order of August 22, 2017 to determine whether the RFP “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.” In this testimony, I will discuss my conclusions and recommendations based on the “Report of the Utah Independent Evaluator Regarding PacifiCorp’s Draft Renewable Request for Proposals (2017R RFP)” as submitted on August 11, 2017 in Docket No. 17-035-23. In addition, I will discuss PacifiCorp’s response to my conclusions and recommendations, as presented in PacifiCorp’s Reply Comments of August 18, 2017 and Supplemental Testimony of Rick Link filed on August 31, 2017. I will also respond to any outstanding issues associated

22 with the 2017R RFP and present my overall recommendations and approach for
23 proceeding with this solicitation process.

24

25 **Q. PLEASE PROVIDE AN OVERVIEW OF YOUR PROFESSIONAL**
26 **EXPERIENCE IN THE ENERGY FIELD.**

27 **A.** I have nearly 40 years of experience in the energy industry. During that time, I have held
28 senior level positions as an economist and consultant with government agencies and
29 private sector firms. I was formerly a Founder and Senior Officer of Reed Consulting
30 Group, Inc. I also served as a Director of Navigant Consulting, Inc. after the acquisition
31 of Reed Consulting Group by Metzler and Associates in 1997 and the subsequent
32 formation of Navigant Consulting to integrate a number of consulting firms acquired by
33 Metzler and Associates. I have also been an Assistant Professor in the Economics
34 Department at Northeastern University and an Adjunct Professor in the Finance
35 Department at Babson College, where I taught courses in Risk Management (at the MBA
36 level) and Futures and Options. I have a Masters in Economics. My resume is attached as
37 IE Exhibit 1.1 REB.

38

39 **Q. WHAT IS YOUR EXPERIENCE WITH COMPETITIVE BIDDING PROGRAMS**
40 **AND POWER PROCUREMENT PROCESSES?**

41 **A.** I have served as Project Manager for over 100 competitive bidding assignments in 20 states
42 and 3 Canadian Provinces on behalf of electric utilities, public utility commissions, other
43 power buyers, and public-sector organizations representing a range of different

44 technologies, project structures, and product types, dating back to the late 1980's, including
45 several PacifiCorp solicitation processes. Among the competitive bidding assignments
46 identified above, I have served as Independent Evaluator ("IE") or Independent Monitor
47 ("IM") on over 75 competitive bidding processes for conventional supply, renewable
48 resources and demand-side resources, including a number of all-source solicitations. For
49 these assignments, I have reviewed and evaluated thousands of power supply proposals in
50 the United States and Canada. I have also assisted clients in the design and development
51 of competitive bidding programs, the development of the rules and guidelines underlying
52 the requirements to undertake competitive bidding for power supplies, the development of
53 the Request for Proposals ("RFPs") and evaluation criteria for both power supply
54 (conventional supply options and renewable resources) and Demand Side resource options,
55 and in the negotiation of power contracts. In addition, I have provided technical assistance
56 to utilities and others in evaluating bids in the areas of economic modeling and quantitative
57 assessment of bids, fuel supply arrangements, critical path assessment, credit and financial
58 analysis, and the commercial terms of power supply contracts. I have also worked with
59 power generators in submitting power supply proposals, conducting market assessments,
60 and conducting due diligence assessments for power project acquisition.

61

62

63 **II. ROLE OF THE INDEPENDENT EVALUATOR (IE)**

64

65 **Q. PLEASE SUMMARIZE YOUR RESPONSIBILITIES AS THE INDEPENDENT**
66 **EVALUATOR FOR PACIFICORP'S 2017 RENEWABLE RESOURCES RFP.**

67 **A.** The primary responsibilities of the IE are listed in Section 54-17-203 of
68 the Utah Code and Regulations. These include:

69

- 70 • Actively monitor the solicitation process for fairness and compliance with
71 Commission rules;
- 72 • Report regularly to the Commission and others directed by the Commission;
- 73 • Develop one or more reports addressing (1) the solicitation process; (2) any
74 concerns of the IE related to the solicitation process; and (3) the ultimate results
75 of the solicitation process, including the opinions and conclusions of the
76 Independent Evaluator;
- 77 • Provide ongoing input regarding issues, concerns, and improvements in the
78 solicitation process with the objective of correcting ongoing deficiencies in the
79 solicitation process to the Commission and others directed by the Commission;
- 80 • Render an opinion as to whether the solicitation process is fair and in compliance
81 with Utah Code and Regulations;
- 82 • Testify in any proceeding under Section 54-17-302; and

- 83 • Perform other functions and provide other input and reports as the Commission
84 may direct, including periodic presentations to interested parties regarding the
85 solicitation process.

86 **III. SUMMARY OF THE INDEPENDENT EVALUATOR’S REPORT ON**
87 **PACIFICORP’S DRAFT RFP**

88
89 **Q. PLEASE STATE YOUR OVERALL CONCLUSIONS REGARDING THE 2017**
90 **RENEWABLE RESOURCES RFP.**

91 **A.** My conclusions and support for those conclusions are presented in the August 11, 2017
92 Report of the Utah Independent Evaluator Regarding PacifiCorp’s Draft Renewable
93 Request for Proposals (2017R RFP) filed in this Docket and which is attached as IE
94 Exhibit 1.2 REB. My overall conclusion was that the Draft RFP documents and processes
95 were generally consistent with Utah Admin. Code, Regulations and Statutes pertaining to
96 the requirements for the design and development of the competitive bidding process. The
97 IE believes that PacifiCorp adequately addressed most of the requirements listed in the
98 Statutes. However, under the structure of the Draft RFP it is not certain at this time if the
99 solicitation process will lead to the acquisition and delivery of electricity at the lowest
100 reasonable cost to the retail customers. The IE raised a concern in the report that
101 construction of the transmission facilities proposed could pose risks to bidders and
102 consumers if the transmission facilities are not built on time to allow third-party bidders
103 or the benchmark resources to achieve the Production Tax Credit (“PTC”) benefits. The
104 IE and others suggested revisions to the RFP which should hopefully result in a more

105 competitive, fair and transparent process that will verify the IRP action plan identified by
106 PacifiCorp without extending the solicitation schedule, which could jeopardize the
107 potential benefits to customers associated with the availability of the PTC.

108

109 **Q. PLEASE LIST THE SPECIFIC ISSUES YOU RAISED AND**
110 **RECOMMENDATIONS REGARDING THE DRAFT RFP.**

111 **A.** Based on my review of the Draft RFP relative to the requirements of the Utah Statutes
112 and industry standards the IE identified the following recommended revisions to the
113 solicitation process:

114 1. Expand the eligibility provisions in the RFP to include: (a) removal of the requirement
115 that only new wind projects who can qualify for the full PTC benefits are eligible to bid;
116 (b) Repowering projects that are not under contract at the time of bid submission or
117 contract execution should be eligible to bid; (c) eliminate the requirement in the Draft
118 RFP that bidders must use the proposed Aeolus to Bridger/Anticline transmission
119 facilities or demonstrate they can deliver the power into Wyoming;

120 2. The IE concluded that there are very different risk provisions in the Power Purchase
121 Agreement (“PPA”) and Build Transfer Agreement (“BTA”) which could unduly favor
122 the Benchmark option and/or chill competition based on risk allocation from a
123 comparability standpoint. The IE recommended that PacifiCorp either revise the contracts
124 to create a more balanced risk profile or allow bidders to provide comments and
125 exceptions to the provisions of the contract, without penalty. Bidders should be
126 encouraged to identify provisions that are “deal breakers” and that may affect a number

127 of bidders. This could serve to identify provisions in the contract that should be subject to
128 negotiation;

129 3. The IE also provided recommendations associated with meeting the requirements in the
130 Statutes for equivalent contract terms. The IE recommended that PPA bidders be allowed
131 to offer at their option either a 30-year contract term or a 20-year contract term with up to
132 a 10-year extension at a firm price that would be exercised at the option of the buyer;

133 4. The IE recommends that the Commission grant PacifiCorp's request for a waiver of the
134 bid blinding requirements in the Statute. However, the IE suggests that questions and
135 answers will still be blinded;

136 5. The IE recommended that PacifiCorp allow bidders to submit a base bid and two
137 alternatives for the bid fee of \$10,000 instead of the base bid and one alternative since
138 PacifiCorp is also requesting bidders to include a contractual option for PacifiCorp to
139 acquire the facility either during or upon the end of the term of the PPA;

140 6. Based on the importance of transmission, the IE suggested that PacifiCorp consider either
141 providing a workshop on transmission issues and interconnection requirements and status
142 of transmission options or include a detailed discussion of these issues as part of the
143 Bidders Conference to be held after issuance of the Final RFP;

144 7. The IE suggested that PacifiCorp consider revising its non-price factors to include
145 additional project viability characteristics such as bidder experience, access to generating
146 equipment, financing plan, O&M plan, etc.;

147 8. The IE noted that there was little information regarding credit requirements to allow
148 bidders to reflect the credit requirements in their bid pricing or affect their decision to

- 149 compete, unlike previous PacifiCorp RFPs. PacifiCorp could either include credit
150 requirements based on \$/kW bid or update its previous credit methodology;
- 151 9. The IE suggested including language in Section 5F – Accounting of the RFP to require
152 PacifiCorp to provide documentation to the IE justifying any decision to reject a bid due
153 to accounting issues. The IE suggested adding the following sentence to the end of the
154 second paragraph in this section: “To the extent that PacifiCorp rejects a proposal
155 submitted in this RFP because it triggers capital lease or VIE treatment, PacifiCorp shall
156 provide documentation to the IEs justifying the basis for the decision.”
- 157 10. Task 3B of the IE Scope of Work requires the IE to set up and maintain a webpage or
158 database for information exchange between bidders and PacifiCorp only if directed by the
159 PSC in its Approval of the Solicitation Process. Merrimack Energy has proposed a
160 separate webpage on its website to accommodate this requirement;
- 161 11. The IE suggested that PacifiCorp move the date for submission of the Intent to Bid Forms
162 until after the Bidders Conference, not before the Bidders Conference, as proposed, to
163 allow Bidders the opportunity to base its decision to compete on the information provided
164 at the Bidders Conference, including initial response to questions;
- 165 12. The IE suggested revisions to the Code of Conduct as included in the Draft RFP. The IE
166 noted that the Code of Conduct in the Draft RFP was based on PacifiCorp’s 2016 All
167 Source RFP which did not contain benchmark resources and therefore did not address the
168 role of the benchmark team in the Code of Conduct.

169 **Q. PLEASE DESCRIBE PACIFICORP'S RESPONSE TO THE IE'S SUGGESTED**
170 **REVISIONS TO THE DRAFT RFP.**

171 **A.** PacifiCorp accepted the majority of the suggestions I raised regarding the Draft RFP, as
172 stated in its Reply Comments submitted in this Docket on August 18, 2017. In its Reply
173 Comments, PacifiCorp objected to one of the IE's recommendations regarding eligibility
174 to bid. The recommendation which was the subject of the objection was the proposal by
175 the IE to eliminate the requirement that the bidders must use the proposed Aeolus-to-
176 Bridger/Anticline transmission facilities or demonstrate they can deliver the power into
177 Wyoming. In addition, while PacifiCorp generally accepted the remainder of my
178 recommendations, I believe that it may be necessary to clarify my recommendations in a
179 few areas.

180
181 **Q. PLEASE CLARIFY YOUR RECOMMENDATIONS REGARDING ELIGIBILITY**
182 **REQUIREMENTS**

183 **A.** As the Commission stated in its Order of August 22, 2017, "neither the DPU nor the IE
184 made a specific recommendation with respect to RMP's selection of resource type."
185 While I did not specifically state a recommendation for resource eligibility, I believe that
186 a targeted solicitation is reasonable given the unique circumstances associated with the
187 potential value to customers of procuring additional wind resources at this time to take
188 advantage of the PTC benefits. PacifiCorp is not alone in proposing to solicit proposals
189 for wind-only resources at this time. I am aware of other utilities such as American
190 Electric Power subsidiaries, Xcel Energy, and Alliant Energy Corporation who are

191 proposing to issue or have issued RFPs for wind proposals. Such targeted solicitations or
192 focus on specific resource types are not unusual in the utility industry if there is a unique
193 opportunity or regulatory requirement. For example, Merrimack Energy was recently
194 involved as IE on several solicitations in which the focus was on securing contracts for
195 solar projects to take advantage of the Investment Tax Credit, which was scheduled to
196 expire, to take advantage of the potential benefit of lower costs for customers. Merrimack
197 Energy has also served as IE for targeted solicitations for energy storage projects, gas-
198 fired generation options, demand response options and renewable resources only.

199

200 I also proposed that wind projects that do not necessarily have to connect to the proposed
201 Aeolus-to-Bridger/Anticline transmission facilities or demonstrate they can deliver the
202 power into Wyoming should be allowed to bid. That recommendation was based on my
203 concern that there may not be a sufficient response from eligible wind bidders located in
204 or delivering power into Wyoming. Furthermore, I was concerned that if the results of the
205 solicitation could not be vetted through the IRP during the schedule for the solicitation
206 that it would present a challenge to verify the level of benefits potentially accruing to
207 customers. As I understand, it appears that the schedule for the IRP process in Utah and
208 the results of the RFP should be correlated. Ideally, the solicitation process results would
209 be vetted through the IRP to assess the potential benefits to customers. Otherwise, it will
210 be up to PacifiCorp to justify that the benefits are reasonable and sufficient to
211 accept/approve any proposals.

212

213 I also wish to clarify a few of my other recommendations. For example, PacifiCorp
214 agreed to allow bidders to redline the PPA or BTA to mitigate the difficulty of addressing
215 comparability risk. While I suggested as an option that bidders be allowed to redline the
216 Agreements I also recommended that bidders be allowed to provide written comments
217 with their proposals to assess if there are any “deal breaker” provisions in the contracts.
218 Bidders may be more willing at this point to provide written comments regarding the
219 contract issues or provisions of concern to more fully explain their position rather than
220 providing a red-line copy of the Agreement only. I believe this option for the bidders to
221 provide a separate document with comments should also be allowable and should be
222 included in the RFP.

223

224 A second area I wish to address is the option for bidders to offer an up to 10-year
225 extension offer for a PPA. PacifiCorp correctly noted in its reply comments that there
226 may be accounting implications associated with a 10-year extension option that
227 PacifiCorp will assess in its evaluation. We suggest that PacifiCorp include a statement in
228 the RFP that bidders should assess the potential lease accounting or VIE treatment
229 implications associated with a longer-term contract (i.e. up to 30 years) or contract
230 extension to take the potential financial implications to the buyer into consideration in its
231 decision to offer an extension option.

232

233 **IV. OVERALL RECOMMENDATIONS REGARDING APPROVAL OF**
234 **THE 2017 RENEWABLE RESOURCES RFP**

235

236 **Q. WHAT IS YOUR OVERALL RECOMMENDATION REGARDING**
237 **COMMISSION APPROVAL OF PACIFICORP'S 2017 RENEWABLE**
238 **RESOURCE RFP?**

239 **A.** In my view, I believe it is reasonable for the Commission to approve issuance of the
240 Renewable Resources RFP subject to the final list of recommendations included in this
241 testimony.

242

243 **Q. PLEASE DISCUSS THE BASIS FOR YOUR OVERALL RECOMMENDATION**
244 **THAT THE COMMISSION APPROVE THE RFP SUBJECT TO THE**
245 **RESOLUTION OF THE ISSUES IDENTIFIED IN YOUR TESTIMONY.**

246 **A.** As I indicated in my report on the Draft RFP, the RFP documents and processes are
247 generally consistent with the Utah Admin. Codes, Regulations and Statutes pertaining to
248 the requirements for the design and development of the competitive solicitation process,
249 notably the Disclosures and Requirements listed in Section R746-420-3 of Utah Code and
250 Regulations. In addition, there are a number of safeguards included in the solicitation
251 process which should ensure that all bidders will have access to the same information at
252 the same time with no undue benefit for the benchmark bids. The safeguards included in
253 this solicitation process are identified on pages 31-32 of IE Exhibit 1.2 REB. While the
254 solicitation process may provide a unique opportunity to generate benefits for customers

255 due to the ability of Bidders to secure the benefits of the Production Tax Credits for wind
256 projects and their ability to pass on these benefits to consumers in the form of a lower price,
257 there may also be issues that emerge that could derail the opportunity for such benefits.
258 Whether the RFP will most likely result in the acquisition, production and delivery of
259 electricity at the lowest reasonable cost to retail customers, the potential benefits to
260 customers, and the ability of the process to meet public interest requirements will not be
261 known at the time of issuance of the RFP. However, the IE believes that there are several
262 “off-ramps” which are inherently included in the solicitation process and schedule that can
263 lead either to termination of the solicitation by PacifiCorp or an opinion by the
264 Commission, IE, or other parties to suggest the solicitation process not continue if it
265 appears that the public interest standard will not be met.

266

267 **Q. PLEASE DESCRIBE THE OFF-RAMPS YOU ARE REFERRING TO IN THE**
268 **ABOVE QUESTION?**

269 **A.** There are five off-ramps or key decision points in the solicitation process that could result
270 in a “go or no-go” decision for the solicitation process. The first off-ramp is the response
271 of bidders. If there is not a robust response from bidders resulting in little or no competition
272 for the Benchmark options, this could be one basis for terminating the solicitation process.
273 The second off-ramp will occur at the time of the initial shortlist selection. Bidders selected
274 for the initial shortlist will be required to provide a System Impact Study (“SIS”). If
275 competition is affected because Bidders are not able to secure an SIS, this could also signal
276 lack of competition and jeopardize the process going forward, particularly since PacifiCorp

277 Transmission will likely undertake the studies. The third off-ramp will occur at the time of
278 final shortlist selection and can be informed by the IE reports required at this stage of the
279 process. The fourth off-ramp could be triggered during the period from final shortlist
280 selection to Commission approval based on the status of the application for the
281 transmission line from the Aeolus substation to the Bridger/Anticline substation and
282 PacifiCorp's ability to secure rights-of-ways for the transmission facilities. The final off-
283 ramp will be the approval process associated with Commission review and approval of the
284 proposals selected by PacifiCorp for contract selection and approval. Given the timeframe
285 for this solicitation, all five will occur within a fairly short timeframe.

286

287 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

288 **A.** Yes.