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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

2020 All Source Request for Proposals	Docket No. 20-035-05

INITIAL COMMENTS OF THE UTAH ASSOCIATION OF ENERGY USERS ON PACIFICORP'S PROPOSED SOLICITATION PROCESS

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 has reviewed the testimony and exhibits filed by PacifiCorp and has reviewed PacifiCorp's 2020 All-Source Request for Proposals ("RFP").[1] Based on that review, UAE submits the following comments.

RELEVANT STANDARD

The RFP, and the Commission's evaluation of the RFP, is governed by the Energy Resource Procurement Act ("Act")[2] and the Commission regulations implementing the Act ("Rules").[3] The Act and the Rules impose numerous requirements on the solicitation and

[1] A copy of the RFP is attached as Exhibit RMP___(BWG-1) to the Direct Testimony of Bruce W. Griswold ("Griswold Direct Test.").
[2] Utah Code §§ 54-17-101, et seq.
[3] Utah Administrative Code §§ R746-420, et seq.

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 types and from varying owners/developers.[4] Only if a robust set of bids for market resources is received can bids 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."[5] This same finding must also be made before the Commission can pre-approve procurement of any given resource.[6] These critical statutory requirements are designed to ensure that Utah ratepayers will not be burdened with anything other than the lowest-cost resources available.

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[4] *See* Rule 746-420-3(8)(i) (RFPs must be "designed to solicit a robust set of bids").
[5] 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.
[6] *See* Utah Code § 54-17-302(3)(c)(i).

COMMENTS ON THE RFP

The RFP proposes to acquire up to 1,823 megawatts ("MW") of new proxy solar resources co-located with 595 MW of new proxy battery energy storage system ("BESS") capacity and 1,920 MW of new proxy wind resources that can achieve commercial operation by December 31, 2024.[7] These resource types and capacity volumes reflect the proxy resources in the preferred portfolio of PacifiCorp's 2019 IRP. The RFP also seeks bids for long-lead time resource types, such as pumped storage hydro ("PSH") and nuclear resources, that are not required to meet the December 31, 2024 commercial operation deadline.[8] In the draft RFP, PacifiCorp proposes to accept bids capable of interconnecting with or delivering to any location on PacifiCorp's transmission system in its east or west balancing authority areas. Bid approvals will, however, be subject to certain locational capacity limits.[9] The RFP encourages build-transfer agreements ("BTA") pursuant to which PacifiCorp will own the constructed resource, but PacifiCorp has otherwise indicated that it does not intend to submit any self-build ownership proposals (benchmark resources) and will not accept bids from Berkshire Hathaway Energy Company and its subsidiaries.[10]

PacifiCorp's willingness to accept bids of varying resource types that can deliver to any location on PacifiCorp's transmission system addresses serious concerns that UAE raised with respect to the 2017R RFP,[11] in which PacifiCorp proposed to accept bids from only one resource type (wind) that interconnected to only one segment of PacifiCorp's transmission system. While this RFP does not propose the same types of limitations as the 2017R RFP, which limitations UAE

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[7] *See* Griswold Direct Test. at 2:33-40. *See also* RFP at 1.
[8] *See* RFP at 1.
[9] *See id*.
[10] *See id*. at 9.
[11] *See generally* In the Matter of the Application of Rocky Mountain Power for Approval of Solicitation Process for Wind Resources, Docket No. 17-035-23.

considered to be "facially defective,"[12] the RFP seeks more than three times the capacity sought in the 2017R RFP. Given that the RFP seeks to inject more than 4,300 MW of capacity into the PacifiCorp system by December 31, 2024, the Commission should go to great lengths to ensure that the RFP properly solicits all potentially available resources and properly evaluates all responsive bids.

UAE has identified a number of issues in the proposed RFP that it respectfully asks the Commission to consider when it evaluates the RFP. Those issues are identified below, in no particular order.

The RFP Should Allow Bids from Existing Resources

The RFP proposes to accept only "new green-field resources" and that "PacifiCorp will not accept bids in the 2020AS RFP from existing operating facilities."[13] Neither the RFP nor the testimony submitted by PacifiCorp explains this proposed limitation. UAE can think of no logical reason to prohibit existing facilities from bidding into the RFP or any prudent reason for PacifiCorp to reject a bid solely because it is for an existing generation facility. Existing facilities will be free of some of the financing and interconnection risks associated with green-field resources and, for that reason, may be able to offer lower prices than new resources that will need to be constructed.

Existing facilities are more likely to propose a power purchase agreement ("PPA") than a BTA. While PacifiCorp can include its owned-generation resources in rate base, and thus profits more from BTA-type arrangements than from PPAs, this is not a valid reason to exclude PPA bids or bids from resource categories—like existing facilities—that are more likely to propose a PPA.

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[12] *See* Docket No. 17-035-23, Initial Comments of the Utah Association of Energy Users on Rocky Mountain Power's Proposed Solicitation Process, Docket (Aug. 4, 2017) at 3.
[13] RFP at 1.

Allowing existing resources to bid into the RFP makes it more likely that the RFP will "result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of [PacifiCorp]" and, as such, this Commission should modify the RFP to allow bids from existing resources.

The RFP Should Clarify Issues Related to a Change in Commercial Operation Date from 2023 to 2024

PacifiCorp asserts in testimony that its 2019 IRP called for wind and solar/BESS capacity by the end of 2023 but that, due to the federal government's extension of the production tax credit ("PTC"), the RFP is extending the proposed in-service date to December 31, 2024.[14] The RFP also acknowledges that the federal government has not extended the investment tax credit ("ITC") and the 30% ITC remains set to expire for solar projects that are not on-line by the end of 2023.[15] PacifiCorp states in testimony that "[p]roposals must demonstrate that projects will achieve commercial operation no later than December 31, 2024," but, as a result of the ITC phasing down beginning in 2023, PacifiCorp understands "that solar bids may propose an on-line date in 2023 to capture the full federal investment tax credit benefit."[16] PacifiCorp's proposal to extend the proposed in-service date for all projects to December 31, 2024 may be reasonable, but the proposed in-service date of December 31, 2024 combined with the volume of solar (1,823 MW) and BESS (595 MW) capacity sought by the RFP that will be affected by the ITC phase-down beginning in

[14] Griswold Direct Test. at 2:33-43. *See also* RFP at 1 ("After the 2019 IRP was filed, federal legislation was passed extending the PTC to allow projects that begin construction in 2020 to receive a 60 percent PTC if placed into service by year-end 2024.")
[15] *See* RFP at 1 n.2 ("It is recognized that at the time this RFP is released, the extension of PTC availability will generally only benefit wind resources, given the 30 percent ITC for solar and co-located with BESS capacity continues to sunset at the end of 2023.")
[16] Griswold Direct Test. at 7:140-143. *See also* RFP at 1 ("PacifiCorp assumed new solar resources collocated with BESS resources would need to achieve commercial operation by the end of 2023 to be eligible for the 30 percent investment tax credit (ITC).")0

2023, raises some questions that require clarification from PacifiCorp, including those mentioned below.

Bid Evaluation. It is not clear how PacifiCorp intends to compare bids proposing 2023 in-service dates with bids proposing 2024 in-service dates. PacifiCorp will presumably evaluate the revenue requirement benefits of each bid based on a projection starting on the in-service year for the project (either 2023 or 2024) and will compare the overall benefits of those bids against each other. PacifiCorp should describe how this comparison is proposed to work and what (if any) assumptions PacifiCorp proposes to make about the operation of its system that may affect projects starting in 2023 differently than projects starting in 2024.

Locational Capacity Limits. PacifiCorp has indicated that, in its evaluation of bids, the selection of bids to the short list will be limited based on the location of certain bids. Specifically, PacifiCorp proposes to limit the capacity in a given location to 150% of the capacity targets chosen in the 2019 IRP, as shown in Appendix H to the RFP.[17] PacifiCorp indicates that, for locations in which the 2019 IRP did not select new resources in 2023-2024, it "will limit the total capacity by resource type to be no greater than 150% of the capacity available via enabling transmission upgrades for that location as assumed when developing the 2019 IRP."[18] PacifiCorp should clarify whether the proposed capacity limit for each location is the assumed capacity limit in each location in 2023, or whether extending the in-service date to 2024 should delay the date by which the full capacity limit is met in any given location.

[17] *See* RFP at 8, 25, 277 & Appendix H.
[18] *Id*.

One example of this need for clarity is the date for the interconnection upgrades associated with the Northern Utah Reinforcements identified in the 2019 IRP, and the associated date for the capacity limit for the resources to be added in northern Utah.[19] The 2019 IRP preferred portfolio included significant proxy solar and co-located BESS capacity in Northern Utah by year-end 2023.[20] Appendix H to the RFP sets a limit of 515 MW of resource additions in the Northern Utah area.[21] The 2019 IRP Action Plan identifies certain transmission action items identified as the "Northern Utah Reinforcements," which are intended to increase interconnection capacity for new generation projects that will interconnect in northern Utah.[22] The Northern Utah Reinforcements are intended to support resource additions in northern Utah and the 2019 IRP assumes these resource additions are solar resources. The currently-scheduled reduction in ITC for projects completed after 2023 will likely result in most solar projects that bid into the RFP—including those located in Northern Utah—seeking a 2023 interconnection. The 515 MW Locational Capacity Limit the RFP identifies for northern Utah projects is based in part on the completion of the Northern Utah Reinforcements. PacifiCorp has not, however, expressly indicated that these Northern Utah Reinforcements will be completed by 2023 to assist in the interconnection of solar resources in northern Utah. The 2019 IRP says only that PacifiCorp will complete these projects "in support of 2019 IRP preferred portfolio for resource additions in northern Utah."[23]

Given that the in-service date for projects in the RFP has been modified from 2023 to 2024, PacifiCorp should clarify when transmission projects that support the 2019 IRP will be completed.

[19] *See* 2019 IRP Vol. I at 25; *see also id*. at 169 (referencing "Utah North" reinforcements).
[20] *See, e.g.* 2019 IRP Vol. I at 3, 6; 2019 IRP Vol. II at 279; *see also* RFP Appendix H (showing 2019 IRP preferred portfolio resource locations and locational capacity limits for shortlisted resources).
[21] *See* RFP at Appendix H.
[22] *See* 2019 IRP Vol. I at 25; *see also id*. at 169 (referencing "Utah North" reinforcements).
[23] 2019 IRP Vol. I at 25, 277.

If the Locational Capacity Limit for a certain area identified in Appendix H is proposed to be different in 2023 and 2024, the RFP should make that clear. Likewise, if transmission projects identified in the 2019 IRP to support the preferred portfolio for resource additions may not be completed by the end of 2023, the RFP should also make that clear and explain the ramifications of the same.

Evaluation of Solar Bids. Given the reduction in ITC availability for solar projects that are not completed by the end of 2023, some solar bidders may well specify that the price for their bid is valid only if the project can interconnect by 2023. The RFP proposes to accept bids for projects that have not yet received completed interconnection studies. It is conceivable that a solar project may bid in to the RFP with a 2023 in-service date to capture the full value of the ITC, but that the subsequent interconnection studies for that project may not support a 2023 COD. If those interconnection studies support a 2024 COD, the project would meet the RFP's stated goal of placing the projects in service by December 31, 2024 but may not be consistent with the solar bidder's assumptions about ITC availability when the bid was submitted. The RFP should make clear how PacifiCorp will evaluate a 2023 solar project that is selected to the initial short list, only to later find out that the project cannot interconnect by 2023.

The RFP Should Identify In-Service Dates for PSH and Nuclear Projects

The RFP proposes to accept bids from PSH and nuclear projects with proposed in-service dates after December 31, 2024, but does not identify a deadline for such in-service dates.[24] UAE does not object to PacifiCorp considering PSH and nuclear projects that interconnect after 2024, but if the in-service date for such a project is too far out into the future the project could pose

[24] *See* RFP at 1, 4-5.

unacceptable risks to Utah ratepayers. UAE suggests that the RFP should require such projects to include an in-service date within a reasonable period of time, consistent with a reasonable construction schedule for each project type.

The RFP Should Clarify Certain Minimum Eligibility Requirements

The RFP proposes certain minimum eligibility requirements and asserts that bidders may be disqualified for failure to comply with those requirements.[25] UAE requests clarification and modification of certain of those proposed requirements, as set forth below.

Material Litigation. The RFP asserts that bidders may be disqualified if they are engaged in "current material litigation or ha[ve] threatened material litigation against PacifiCorp."[26] The RFP defines "material litigation" to include "a dispute in excess of five (5) million dollars in which bidder has issued a demand letter to PacifiCorp, the bidder and PacifiCorp are currently in dispute resolution, the bidder and PacifiCorp have an unresolved dispute pending, or bidder has noticed a pending legal action against PacifiCorp."[27] The RFP goes on to note that "[m]aterial litigation excludes bidder complaints before a state public utility commission."[28] The term "material litigation" as defined in the RFP is overly broad. The term should be refined to also exclude regulatory matters pending before the Federal Energy Regulatory Commission ("FERC") that do not seek damages and only seek compliance with, or clarification regarding, PacifiCorp's tariffs.

Site Control. The RFP asserts that bidders may be disqualified for "[f]ailure to provide documentation of site control for the project excluding right-of-way or easements for transmission,

[25] *See* RFP at 14-16.
[26] RFP at 14.
[27] *Id*.
[28] *Id*.

roads, or access to the site."[29] UAE assumes that whether a bidder has provided "documentation of site control" will be evaluated based on the definition of the term "site control" contained in PacifiCorp's Open Access Transmission Tariff ("OATT") approved by FERC. If so, the RFP should so specify. To the extent PacifiCorp proposes to use a different definition of "site control," the RFP should include that definition.

Bid Consistent with Interconnection Request. The RFP asserts that bidders may be disqualified for "[f]ailure of the bid interconnection description and capacity to be consistent with the interconnection request with PacifiCorp Transmission."[30] UAE proposes that this requirement be modified to state that bidders will not be disqualified if they provide confirmation from PacifiCorp Transmission that the difference in capacity or project description in the bid and in the interconnection request do not constitute a "material modification." This type of modification is contemplated elsewhere in the RFP when PacifiCorp addresses bids for renewable projects that will be co-located with BESS. The proposed RFP acknowledges that bidders may have submitted interconnection requests for only the renewable project, and that BESS may have been added to the project at a later date. Of these circumstances, the RFP states that "[b]idders should provide confirmation from PacifiCorp Transmission that the facility's interconnection request or LGIA, if already executed for the proposed renewable resource, will not require a material modification to add a BESS."[31] The RFP correctly allows parties to modify the project to add a BESS after the interconnection request has been submitted, so long as there is confirmation that doing so does not constitute a material modification of the project. UAE requests that the minimum eligibility

[29] *Id*. at 16.
[30] *Id*.
[31] *Id*. at 17.

requirements for bidders should reflect that PacifiCorp will not disqualify bidders for changes to a project if the bid is accompanied by similar assurances.

The RFP Should Clarify Terms Related to Transmission Service

The RFP states proposals "will require firm transmission on PacifiCorp's network transmission system," and asserts that each "PPA, BSA, and BTA will include" a non-negotiable term to address network upgrade costs associated with designating a particular project as a network resource eligible for network integration transmission service.[32] The RFP then includes language to include in each type of contract, which is intended to address a situation in which a request for transmission service and to designate a resource as a network resource may require expensive network upgrades. The proposed term would give PacifiCorp the right to terminate an agreement with a bidder if transmission studies associated with designating the bidder's project as a network resource require network upgrades and if the "estimated cost to PacifiCorp of such network upgrades are in excess of ***XXX million dollars ($X,000,000)***; provided, however, that such termination right under this section shall expire up to ***one hundred and fifty eighty (180)*** [sic] days following the Effective Date . . . ."[33] UAE requests clarification of two points associated with the highlighted language above.

First, UAE assumes that the reference to "one hundred and fifty eighty (180) days following the Effective Date" for PacifiCorp to terminate an agreement under this provision includes a typographical error, and requests clarification in the RFP as to whether this right will expire 150 days or 180 days after the Effective Date.

[32] *Id*. at 22.
[33] *Id*. at 23 (emphasis added).

Second, UAE requests clarification regarding the amount of network upgrades associated with a request to designate a resource as a network resource that PacifiCorp proposes to trigger PacifiCorp's right to terminate under this provision. PacifiCorp should identify its suggested amounts in this non-negotiable provision in each paragraph so that the Commission and stakeholders can determine whether that amount is reasonable, and the RFP should specify the approved amounts.

The RFP Should Clarify Issues Related to Interconnection Reform

UAE understands that PacifiCorp's application to reform its interconnection process and move from a serial queue to a cluster-study process was recently approved by the Federal Energy Regulatory Commission ("FERC") with modifications to the request that PacifiCorp submitted to FERC on January 31, 2020. UAE requests that PacifiCorp provide its interpretation of how FERC's approval of the process, including any modifications to PacifiCorp's initial request, may impact this proceeding, if at all, and any appropriate clarifications should be included in the RFP.

The RFP Should Clarify How the Delivered Revenue Requirement Cost of Each Type of Bid will be Calculated

The RFP explains that the price score for each bid will count for up to 75% of the bid's score, and that to calculate the score, "PacifiCorp will calculate the delivered revenue requirement cost of each bid, inclusive of any applicable carrying cost and net of tax credit benefits, as applicable."[34] PacifiCorp does not explain, however, how it proposes that the "delivered revenue requirement cost of each bid" should be determined or how it proposes to normalize the calculation of the "delivered revenue requirement cost" for PPA bids and BTA bids. For example, PacifiCorp

[34] *Id*. at 27.

should explain what assumptions it proposes to use with respect to ongoing operating and capital costs associated with BTA bids, whether those will be different depending on the generation type and location of the project, and how those will be incorporated into the delivered revenue requirement cost for each bid. The RFP should also explain what assumptions will be made about return on equity, return on rate base, and other factors that affect the revenue requirement cost for a BTA bid. The RFP should also explain what assumptions will be made about the terminal value associated with BTA bids, whether those will be different depending on the generation type and location of the project, and how those will be incorporated into the delivered revenue requirement cost for each bid. Finally, PacifiCorp should explain how it proposes to normalize the revenue requirement cost for a 25-year PPA as compared to a 30-year BTA. Clarifications as to all such issues should be included in the RFP.

The RFP Should Clarify How Different Risk Profiles of Each Type of Bid will be Evaluated

UAE has no inherent bias in favor of BTAs or PPAs; its focus is on cost and risk. It is both a statutory requirement and a critical component of fairness to PacifiCorp ratepayers that BTAs and PPAs be evaluated on a fair and comparable basis. Critical to satisfaction of the public interest standard is comparability to the greatest extent practicable in the evaluation of BTAs and PPAs. "All aspects of a Solicitation and Solicitation Process must be fair, reasonable and in the public interest."[35]

[35] Rule 746-420-3(1)(b)(ii).

There are inherent differences in benefits and risks faced by ratepayers with a company-owned resource as opposed to a PPA. The RFP identifies some of the comparative benefits or costs of BTAs and PPAs, but does not address any differences in risk.

There are many risks imposed on PPA developers that PacifiCorp does not intend to assume for owned resources, including the following:

Curtailment. Under a PPA, PacifiCorp will not pay when energy is curtailed by the transmission operator for reliability or related purposes. In contrast, PacifiCorp will undoubtedly expect to recover the costs of its owned resources without regard to production levels or curtailments. PacifiCorp expects PPA bidders to lose compensation when their resources are curtailed through no fault of their own, while being paid for its owned resources under comparable conditions.

Revenue Requirement Costs. Revenue requirement costs associated with purchasing capacity and energy through a PPA are known and measurable for the life of the PPA. Revenue requirement costs associated with producing capacity and energy for a project acquired through a BTA contain projections that make assumptions about rates of return on equity and rate base that may affect the revenue requirement cost assigned to any particular bid. As noted above, UAE requests that these assumptions be identified in the RFP. Rates of return can go up or down over the 30-year life of a Company-owned project. This means that the revenue requirement costs are more uncertain for BTA bids than they are for PPA bids. UAE requests that the RFP take this greater level of uncertainty into account.

Performance Guarantees. PPAs typically carry performance guarantee provisions that impose liquidated damages on the seller if the project fails to meet certain production targets over the life of the project. Projects acquired through BTAs typically do not carry the same sorts of guarantees for the life of the project. The contractor that builds the project may guarantee performance for a year or two, and the manufacturer's warrantee may ensure performance for several years, but these guarantees do not typically last for the 30-year life of a project. Unlike with a PPA, the ratepayer bears the risk of a Company-owned project failing to meet production expectations after these guarantees expire. UAE requests that the RFP take this unequal level of risk associated with BTA bids and PPA bids into account.

In order to properly compare all resource options, appropriate steps should be taken to identify, quantify and evaluate the way in which different risks may impact ratepayers so that risk-mitigating elements of PPA resources are considered and quantified in the solicitation and evaluation processes.

CONCLUSION

UAE appreciates the opportunity to comment on the RFP and believes that clarifications and the additional information requested above will ensure that bidders have all of the necessary information to ensure that the RFP process will provide a robust response.

DATED this 22nd day of May, 2020.

Respectfully submitted,

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Certificate of Service
Docket No. 20-035-05

I hereby certify that a true and correct copy of the foregoing was served by email this 22nd day of May, 2020 on the following:

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