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April 22, 2011

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Oregon Public Utility Commission
550 Capitol Street NE, Ste 215
Salem, OR 97301-2551

Attn: Filing Center

RE: UM 1182(1) – Pacific Power’s Reply Comments, Phase 1

PacifiCorp d/b/a Pacific Power (“PacifiCorp or the Company”) encloses for filing its Reply Comments on Phase 1 in the above-referenced docket.

Please contact Joelle Steward, Regulatory Manager, at (503) 813-5542 for questions on this matter.

Sincerely,


Andrea L. Kelly
Vice President, Regulation

Enclosure

cc: Service List – UM 1182

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1182

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation Regarding Competitive
Bidding

PACIFICORP'S REPLY COMMENTS
PHASE 1

1 Pursuant to Public Utility Commission of Oregon (Commission) Order No. 11-
2 001 and the Prehearing Conference Memorandum issued in this proceeding on January
3 26, 2011, PacifiCorp d/b/a Pacific Power (the Company) respectfully submits these Reply
4 Comments in response to the Opening Comments of Commission Staff, Portland General
5 Electric Company (PGE), Idaho Power Company (Idaho Power), the Citizens' Utility
6 Board of Oregon (CUB), the Industrial Customers of Northwest Utilities (ICNU), NW
7 Energy Coalition (NWEC), Renewable Northwest Project (RNP), and the Northwest and
8 Intermountain Power Producers Coalition (NIPPC) (collectively the Parties) filed on
9 March 31, 2011.

10 **I. Reply Comments**

11 **A. The IE Should Not be Retained Through the Negotiations and Final**
12 **Resource Selection.**

13 **1. The Parties Agree that Expanding the Role of the IE Will Increase**
14 **Costs.**

15 The first issue addressed in the Parties' Opening Comments was whether the
16 Commission's competitive bidding guidelines in Order No. 06-446 (Guidelines) should
17 be revised to expand the role of the independent evaluator (IE) by retaining the IE
18 through negotiations and final resource selection. For the reasons set forth in PacifiCorp's

1 Opening Comments, PacifiCorp agrees with Staff, PGE, and Idaho Power that the
2 Commission should not expand the role of the IE under the Guidelines. As Staff explains,
3 and no Party has contested, expanding the role of the IE will increase the cost of
4 conducting a request for proposals (RFP).¹ RNP noted that the incremental cost of
5 retaining the IE through negotiation in Docket UM 1368 was approximately 16 percent of
6 the total cost of the IE.² Due to the nature of resource procurement, the cost of the IE in
7 the RFP conducted in Docket UM 1368 may not be representative of the cost in future
8 RFPs. Docket UM 1368 was a straightforward renewable resource RFP that immediately
9 followed another renewable resource RFP using the same IE. Because the IE had already
10 worked with the Company and the models and many of the bidders were the same, only
11 minor review from the IE was necessary. This decreased the overall time and expense the
12 IE would otherwise likely have incurred if it were a new RFP and IE. An all-source RFP
13 includes all resources that can be dispatched or scheduled on a firm basis into or in the
14 Company's balancing authority area. This requires more complicated modeling and a
15 variety of resources, resulting in a more complex evaluation and negotiation that would
16 likely result in higher costs than cited by RNP.

17 **2. The Parties Advocating Expanding the Role of the IE Have Not**
18 **Adequately Justified the Cost with a Corresponding Benefit.**

19 **a. Expanding the Role of the IE Will Not Affect Alleged Utility**
20 **Bias and is Likely to Harm Customers.**

21 Given these additional costs, the issue is whether such costs would be justified by
22 any benefits associated with retaining the IE through negotiations. To the contrary,

¹ Staff's Opening Comments at 3.

² Opening Comments of Renewable Northwest Project at 5.

1 Staff's experience showed that the benefit of extending the IE's role was limited.³
2 Importantly, Staff also noted that the IE's participation in negotiations could result in an
3 outcome that is less advantageous to customers than would be the case without the IE.⁴
4 PacifiCorp, PGE, and Idaho Power also explained that the IE's participation in
5 negotiations presents significant drawbacks that could ultimately harm customers. The
6 IE's expanded participation could add additional time to the already lengthy RFP
7 process,⁵ which not only adds costs but may deter independent power producers (IPPs)
8 from participating in RFPs.⁶ The expanded participation of the IE could also chill
9 negotiations.⁷

10 The Parties that support continuing the role of the IE through negotiations do not
11 provide an adequate justification for the additional cost and risk nor do they discuss the
12 benefit or the potential harm to customers that would result from expanding the role of
13 the IE. Based on the comments of CUB, RNP, ICNU, and NIPPC, it is not entirely clear
14 who would benefit from including the IE in negotiations and how the party or customers
15 would benefit. For example, CUB states that it generally supports the concept of
16 expanding the IE's role through negotiations, but does not explain how the IE's
17 participation through the final bid selection would benefit customers.⁸

18 NIPPC, RNP, and ICNU claim expanded participation of the IE will prevent a
19 utility's self-build bias from influencing negotiations and will allow the IE to identify

³ Staff's Opening Comments at 2.

⁴ Staff's Opening Comments at 2-3.

⁵ Opening Comments of Portland General Electric at 7; Idaho Power's Opening Comments at 3.

⁶ Idaho Power's Opening Comments at 3.

⁷ Opening Comments of Portland General Electric at 8.

⁸ CUB Opening Comments at 2.

1 utility abuses after the identification of the shortlist.⁹ These Parties offer few specifics
2 regarding alleged abuses or how such behavior would result in harm to customers. NIPPC
3 does, however, offer two activities that it claims the presence of the IE will prevent. First,
4 NIPPC claims that the IE's presence will prevent the utility from ending negotiations
5 without selecting an IPP project.¹⁰ To PacifiCorp's knowledge, no party has ever
6 complained of a utility abusing the negotiation process to allow the utility to pursue its
7 benchmark resource.¹¹ Moreover, since the Guidelines were adopted, the only RFP in
8 which a utility ultimately decided to pursue its benchmark resource after terminating
9 negotiations with IPPs was in the case of Dunlap 1—in which the IE participated through
10 the final negotiations. Thus, there is not even indirect evidence of utility behavior that
11 would justify expanding the role or the cost of the IE. As such, RNP's, ICNU's, and
12 NIPPC's unsupported claims of utility bias impairing negotiations with final short-list
13 bidders should be disregarded.

14 Second, NIPPC raises a concern that a utility could impose onerous terms in a
15 power purchase agreement (PPA) to facilitate selection of the benchmark resource.¹² The
16 results from RFPs conducted under the Guidelines and the Guidelines themselves
17 undermine NIPPC's unsupported claims. The Guidelines require utilities to provide

⁹ Opening Comments of the Northwest and Intermountain Power Producers Coalition at 10-11; Opening Comments of Renewable Northwest Project at 4; Opening Comments of ICNU at 4.

¹⁰ Opening Comments of the Northwest and Intermountain Power Producers Coalition at 10.

¹¹ NIPPC claims that it cannot provide empirical examples of unfair conduct during final negotiations because negotiations are often confidential and IPPs may fear retaliation by the utilities. NIPPC's inability to provide even generally-described examples is actually evidence of the nonexistence of unfair conduct.

¹² Opening Comments of the Northwest and Intermountain Power Producers Coalition at 10-11.

1 standard form contracts with the draft RFP to the Commission.¹³ The PPA contracts are
2 not approved by the Commission; however, the IE reviews the PPAs to determine if they
3 are reasonable and consistent with their experience in the then current market. It is the
4 Company's responsibility to ensure that the transaction that the Company is entering into
5 balances cost and risk and is in customers' best interest. To the extent that a utility seeks
6 to include additional terms or modify the terms based on negotiations, or in conducting
7 due diligence learns information that results in the failure of negotiations or modification
8 of the PPA, the utility will be required to support its position during a prudence review.

9 RNP relies heavily on its experience in California to advocate for the inclusion of
10 the IE in negotiations. As RNP notes, however, in California the IE's final report is part
11 of the package presented to the California Public Utilities Commission for pre-approval.¹⁴
12 This process is not comparable because the California utility is seeking preapproval of
13 the resource at the time of execution of the PPA and not during the ratemaking process.
14 Expanding the role of the IE is unnecessary where a utility does not have the option to
15 seek pre-approval of the contract and must instead support its final resource decision to
16 the Commission at the time of ratemaking. If a utility pursues the benchmark resource
17 after terminating negotiations with an IPP, the utility's decision will be subject to
18 challenge at the time of ratemaking. The current process provides utilities an incentive to
19 pursue low-cost, risk-adjusted outcomes on behalf of customers. Expanding the role of
20 the IE would not provide added benefit for customers or incentive to utilities, and will
21 instead increase the costs of RFPs and possibly undermine negotiations to the detriment
22 of customers.

¹³ Order No. 06-446 at 7.

¹⁴ Opening Comments of Renewable Northwest Project at 3.

1 **b. RNP and NIPPC Propose Significant and Detrimental Changes**
2 **to the Role of the IE.**

3 RNP and NIPPC also propose significant and detrimental changes to the role of
4 the IE from an “Independent Evaluator” to a mediator or customer advocate. For
5 example, RNP states that the IE’s participation in negotiations would “mitigate some of
6 the very ‘worst’ negotiating behavior on *both* sides of the transaction,” reassure parties
7 that the negotiations are fair, and test new concepts useful to the parties’ negotiations.¹⁵
8 RNP appears to advocate the IEs participate in negotiations as a mediator. Introducing the
9 IE as a mediator that provides feedback to parties during the course of the negotiations
10 would have an even more significant chilling effect on negotiations than if the IE
11 participated as an observer.

12 NIPPC’s claim that the IE should “promote[] customers’ interests as more than a
13 mere observer” also raises questions as to the IE’s true role in negotiations.¹⁶ NIPPC’s
14 stated support for expanding the role of the IE is so the IPP community can be assured of
15 a fair RFP process.¹⁷ However, active participation and advocacy by an IE in
16 negotiations would actually work against a fair RFP process. Guideline five requires that
17 the “[t]he IE must be independent of the utility and likely, potential bidders.” If the IE is
18 biased in any way, there is a very real risk that the two negotiating parties are no longer
19 on equal footing which in-turn could lead to increased contract risk to customers.

20 In sum, expanding the role of the IE through negotiations would provide no
21 benefit to customers, and instead may harm customers by further extending the time for

¹⁵ Opening Comments of Renewable Northwest Project at 4.

¹⁶ Opening Comments of the Northwest and Intermountain Power Producers Coalition at 13.

¹⁷ Opening Comments of the Northwest and Intermountain Power Producers Coalition at 11.

1 and the costs of conducting an RFP. Expanding the IE is also contrary to two goals of the
2 Guidelines: (1) to not unduly constrain utility’s management’s prerogative to acquire
3 new resources and (2) to be flexible, allowing the contracting parties to negotiate
4 mutually beneficial exchange agreements. If the Commission finds that the presence of
5 an IE through negotiations is necessary due to the particular circumstances of an RFP, it
6 can order the IE to continue through the process as it did in Dockets UM 1368 and UM
7 1429. To date, PacifiCorp has successfully negotiated contracts with bidders that benefit
8 customers. To PacifiCorp’s knowledge, no such bidder has expressed concern regarding
9 the course of those arms length negotiations. PacifiCorp therefore requests that the
10 Commission not change the Guidelines to expand the scope of the IE’s involvement in
11 the RFP process.

12 **B. The Threshold for a Major Resource Should Not be Lowered, but the Parties**
13 **Should Engage in a Workshop to Establish Criteria for a Single Major**
14 **Resource.**

15 **1. The Parties Generally Agree that the Threshold for a Major Resource**
16 **Should Not Be Lowered.**

17 The second issue addressed in the Parties’ Opening Comments was whether the
18 threshold for “Major Resource” should be lowered to include more projects in the
19 competitive bidding process. PacifiCorp agrees with the majority of the Parties that
20 lowering the threshold is unnecessary. RNP is the only Party that suggested lowering the
21 threshold for solar, geothermal, and perhaps biomass resources to possibly 20MW to
22 30MW.¹⁸ RNP has presented no basis for changing the Commission’s finding in Order
23 No. 06-446 that a 100MW threshold was appropriate for all types of resources. Any

¹⁸ Opening Comments of Renewable Northwest Project at 7.

1 benefits of requiring an RFP process for resources of this size are outweighed by the
2 increased costs and time associated with doing so.

3 **2. The Parties Agree that the Commission Should Establish Criteria to**
4 **Define a Single Major Resource, but the Current Proposals are Not**
5 **Sufficiently Developed.**

6 Many Parties agree that the Commission should establish criteria to define a
7 single Major Resource; however, a workshop with the Parties to further develop the
8 criteria would be constructive in promoting consensus around a set of definitive criteria.
9 Additionally, while Parties in this docket have focused on the need to establish criteria to
10 ensure that utilities do not size projects to avoid the Guidelines, PacifiCorp notes that the
11 definition of a single resource is of broader importance. PacifiCorp has first hand
12 experience with IPPs disaggregating qualifying facilities (QFs) into smaller projects to
13 obtain an avoided cost rate under the Public Utilities Regulatory Policies Act of 1978
14 (PURPA) that the QF could not receive without arms length negotiation if the projects
15 had been treated as a single project.¹⁹ While changes to the Guidelines would not directly
16 address size criteria for QFs, the fact that IPPs have purposely sized projects with
17 PURPA size limitations in mind shows that the issue of the definition of a single resource
18 is likely to be an issue in multiple contexts, and all Parties will benefit from the
19 Commission providing clarity on the definition of what constitutes a single resource. The
20 definition of a single Major Resource should consist of explicit criteria to provide utilities
21 with appropriate guidance for determining when they must issue an RFP. Both Staff and

¹⁹ *Re Application of PacifiCorp d/b/a Rocky Mountain Power for a Determination Regarding a Firm Energy Sales Agreement between Rocky Mountain Power and Cedar Creek Wind, LLC*, Idaho PUC Case No. PAC-E-11-04, Reply Comments of Rocky Mountain Power at 8 (Apr. 8, 2011).

1 Idaho Power identified criteria for establishing what constitutes a single resource.²⁰
2 Other Parties propose certain project characteristics that could be developed into criteria,
3 such as the timing of the acquisition, on-line date, common dispatch regimes, interrelated
4 financial arrangements, and electrical connectivity.

5 PacifiCorp generally supports the criteria identified by Idaho Power (common
6 ownership, common location, and common licenses or permits with the provisions that
7 phases more than one year apart are considered distinct resources and options for future
8 expansion will not be included when calculating capacity) with a few clarifications. First,
9 due to the fact that the site associated with wind projects and solar projects can be large
10 as compared to sites associated with other resource types, it is critical to appropriately set
11 forth definitions that avoid unintended consequences. For example, it is not uncommon
12 for wind-powered generation resources to be located on many sections within one or
13 more township and range. Second, in the event the Company has an existing site or
14 generation facility that can economically be upgraded or increased in size without
15 violating the Guidelines then the criterion should not apply. In this instance, it would be
16 incumbent upon the utility to demonstrate the prudence of its decision.

17 The Company anticipates it will be able to support Staff's second criterion
18 (common construction contract) after information is obtained from all parties as to their
19 interpretation regarding the definitive meaning. PacifiCorp does not, however, support
20 Staff's third and fourth criteria. Staff's third criterion appears to be based on a Business
21 Energy Tax Credits (BETC) requirement.²¹ Specifically, this criterion states: "If facilities
22 will be completed in phases over time, the utility must demonstrate that each of the

²⁰ Staff's Opening Comments at 4; Idaho Power's Opening Comments at 5.

²¹ See OAR 330-090-0120(2)(b)(B)(iii).

1 phases of the facility would independently qualify as a single utility.”²² This criterion
2 may work in the BETC framework, but is irrelevant in Staff’s proposed framework
3 because it does not present a substantive criterion to determine whether a project is a
4 single resource. Staff’s fourth criterion consists of a “catch-all” provision for other
5 factors. Such a provision would not provide utilities with sufficient clarity and regulatory
6 certainty.

7 Because the Parties have not had the benefit of discussing these criteria or
8 commenting on a specific list, PacifiCorp recommends that an additional workshop be
9 held for the Parties to work to develop a single list of Major Resource criteria.
10 PacifiCorp’s position is that whatever criteria the Commission adopts should apply
11 equally to the utility, all bidders and even to QFs. Without consistent application of such
12 criteria, customers are at risk of having the higher utility bar translate into bidder leverage
13 to increase costs and/or the risk that failed bids will simply disaggregate into multiple
14 smaller projects to take advantage of QF status.

15 **3. CUB’s Proposal to Require All-Resource RFPs Should Be Rejected.**

16 CUB proposes that the Commission require bids to be solicited on an all-resource
17 basis.²³ No other Party has made this recommendation, and PacifiCorp recommends that
18 the Commission reject it. First, the proposal is outside the scope of this proceeding and
19 the Commission explicitly did not adopt a guideline to require a utility to conduct an all-
20 resource RFP.²⁴ Second, requiring utilities to conduct all-resource RFPs will make the
21 RFP process significantly more time consuming, cumbersome, and expensive while

²² Staff’s Opening Comments at 4.

²³ CUB Opening Comments at 2.

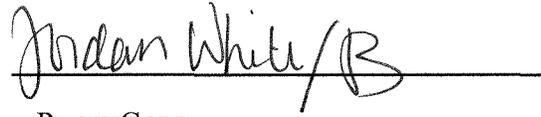
²⁴ See Order No. 06-446 at 4.

1 providing no countervailing benefit to customers. The current process in which the
2 parties and the Commission examine the utility's integrated resource plan (IRP), which is
3 then used to develop RFPs for the specific categories of resources included in the IRP, is
4 a more effective way to acquire resources. Developing a short-list for an all-resource RFP
5 will be considerably more difficult, as the bids will include resources that cannot be
6 compared for purposes of resource acquisition. For example, if the utility's IRP reflects a
7 need for both renewable resources and a flexible resource, it would be unreasonable to
8 conduct those RFPs together because the vast majority of renewable resources (wind and
9 solar) in the recent past have been variable energy resources, and *vice versa*. In this
10 example, if a renewable resource can meet the performance and other criteria of a flexible
11 resource RFP then a bid associated with that renewable resource would be welcomed into
12 the RFP. In addition, different resource types have different development cycles, major
13 equipment supply dynamics and different construction critical paths. It would be
14 inappropriate to set in motion a procurement process that has a timeline set to
15 accommodate the longest lead-time resource type. Establishing criteria for a single Major
16 Resource will address the concerns raised by the Parties without making the resource
17 acquisition even more expensive and cumbersome, as CUB's proposal would do.

18 **II. Conclusion**

19 For the reasons discussed above and in PacifiCorp's Opening Comments,
20 PacifiCorp recommends that the Commission not modify Guidelines to expand the role of
21 the IE or lower the threshold of Major Resource. PacifiCorp recommends that the Parties
22 work together to establish appropriate criteria for defining a single Major Resource.

DATED: April 22, 2011.

A handwritten signature in black ink that reads "Jordan White/B". The signature is written in a cursive style and is positioned above a solid horizontal line.

PACIFICORP

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document, in Dockets UM 1182, on the date indicated below by email and/or US Mail, addressed to said parties at his or her last-known address(es) indicated below.

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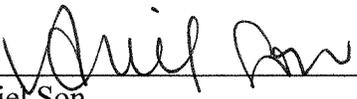
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DATED: April 22, 2011



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