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March 31, 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 Opening Comments, Phase 1

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

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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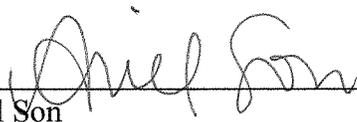
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DATED: March 31, 2011



Ariel Son
Coordinator, Regulatory Operations

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1182 (1)

In the Matter of
PUBLIC UTILITY COMMISSION OF
OREGON,
Investigation Regarding Competitive
Bidding.

**PACIFICORP'S OPENING
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 (PacifiCorp or Company) respectfully submits
4 these opening comments.

I. BACKGROUND

A. PacifiCorp's Experience under the Guidelines

7 On August 10, 2006, the Commission issued Order No. 06-446, adopting
8 competitive bidding requirements for new supply-side resource acquisitions applicable to
9 Oregon's investor-owned utilities (Guidelines). Guideline 1 requires electric utilities to
10 issue requests for proposals (RFPs) for all "Major Resources" which are defined as
11 resources with durations greater than five years and quantities greater than 100
12 megawatts (MW). Germane to these comments, Guideline 5 requires an independent
13 evaluator (IE) to be used in each RFP "to help ensure that all offers are treated fairly."

1 Since the issuance of Order No. 06-446, PacifiCorp has conducted six¹ RFPs
2 under the Guidelines with IEs chosen by and working under the direction of the
3 Commission. In two of these RFPs (UM 1368 and UM 1429), pursuant to Commission
4 order, the IE was retained through the negotiations of the final shortlist. In all six RFPs,
5 without exception, each IE report concluded that the Company’s RFP process was
6 conducted in a fair and transparent manner. Overall, the Company’s experience under the
7 Guidelines has been generally positive, although the Company continues to have
8 concerns over the length of the RFP process under the Guidelines.

9 **B. Further Improvements to Guidelines and RFP Process Going Forward**

10 In Order No. 11-001, the Commission reopened this proceeding to further
11 examine the Guidelines, noting that “[a]lthough these guidelines have greatly increased
12 confidence that the utility RFP process is being conducted fairly and properly, we believe
13 further improvements are needed to fully address utility self-build bias.”² To that end,
14 Order No. 11-001 invites comments on the following three issues: (1) whether the role of
15 IE should be expanded by retaining the IE through the utility’s negotiations and final
16 resource selections; (2) whether the threshold for a major resource should be lowered to
17 include more projects in the competitive bidding process in order to further mitigate
18 utility self-build bias; and (3) the analytic framework and methodologies that should be
19 used to evaluate and compare resource ownership to purchasing power from an

¹ Since the issuance of Order No. 06-446, PacifiCorp has issued the following RFPs under the Guidelines: 2008R-1 RFP (UM 1368); 2009R (UM 1429); 2012 RFP (UM 1208); 2008 All Source (issued twice) (UM 1360).

² See Order No. 11-001, p.6.

1 independent power producer.³ As indicated in the Prehearing Conference Memorandum,
2 the parties agreed to divide this proceeding into two phases; this phase addresses the
3 Commission's first two issues.

4 The Guidelines have provided a useful framework for the Company to seek
5 acknowledgement of RFP final shortlists prior to entering into a major resource decision.
6 Moreover, the Company supports continued examination and potential modification of
7 the Guidelines going forward, to the extent such change results in improvements to the
8 RFP process that ultimately benefit customers by reducing costs. The following
9 comments are informed by PacifiCorp's experience and lessons learned in conducting a
10 series of RFPs since the issuance of the Guidelines.

11 II. COMMENTS ON COMMISSION'S ISSUES

12 A. Should the role of the IE be expanded by retaining the IE through the 13 utility's negotiations and final resource selections?

14 I. Current Role of IE

15 Prior to discussing the merits of an expanded IE role, it is helpful to review the
16 current role of the IE as defined under several applicable Guidelines. Pursuant to
17 Guideline 6, "[t]he utility will consult with the IE in preparing the RFPs, and the IE will
18 submit its assessment of the final draft RFP to the Commission when the utility files for
19 RFP approval."⁴ Guideline 10 addresses the role of the IE in the competitive bidding
20 process, including when the RFP includes utility ownership options:

21 ***

22 b. *The IE will oversee the RFP process to ensure that it is*
23 *conducted fairly and properly ...*

³ See Order No. 11-001, p.6.

⁴ *Id.* at 7

1 d. If the RFP allows affiliate bidding or includes ownership
2 options, the IE will independently score the utility's Benchmark
3 Resource (if any) and all or a sample of the bids to determine
4 whether the selections for the initial and final short-lists are
5 reasonable. In addition, the IE will evaluate the unique risks
6 and advantages associated with the Benchmark Resource (if
7 used), including the regulatory treatment of costs or benefits
8 related to actual construction cost and plant operation differing
9 from what was projected for the RFP.

10 e. Once the competing bids and Benchmark Resource (if used)
11 have been scored and evaluated by the utility and the IE, the
12 two should compare results. The utility and IE should attempt
13 to reconcile and resolve any scoring differences. If the two are
14 unable to agree, the IE should explain the differences in its
15 Closing Report.

16 Order No. 06-446 at pp. 12-13 (emphasis added).

17 Under Guideline 11, the IE prepares a Closing Report for the Commission after
18 the utility has selected its final shortlist of bids. If a utility chooses to seek
19 acknowledgment of the final shortlist under Guideline 13, the IE participates in that
20 process.⁵ Significantly, Guideline 13 provides that “acknowledgment” has the same
21 meaning as assigned to that term in Order No. 89-507. In that order, the Commission
22 indicated that “[a]cknowledgment of a plan means only that the plan seems reasonable to
23 the Commission at the time the acknowledgment is given. . . . favorable rate-making
24 treatment is not guaranteed by acknowledgment of a plan.” *Id.* at p.11. Thus, the IE’s
25 current role ends after it advises the Commission regarding the reasonableness of the
26 utility’s selection of a final shortlist. From that point, the Commission reserves its
27 prudence review and determination for a later ratemaking proceeding.

⁵ See Order No. 06-446 at p. 14.

1 2. *Expanded Role of IE*

2 PacifiCorp does not support expansion of the role of the IE through the
3 negotiation phase. The value of the IE’s current role through the acknowledgement of
4 the final shortlist is that the IE provides information to inform the Commission’s decision
5 on acknowledgement of the final shortlist, if the Company chooses to seek
6 acknowledgement. Retaining an IE post-completion of the acknowledgement process for
7 the final shortlist raises the question of what further determination would be made by the
8 Commission at the conclusion of the negotiations. Currently, the acquisition of a
9 resource is not addressed again until the prudence determination in a general rate case,
10 which could be several years later. If the Commission considers expansion of the IE’s
11 role through a utility’s negotiations and final resource selection, the Company expresses
12 the following concerns based on its extensive RFP experience.

13 (i) Scope and Process. PacifiCorp’s initial concern is the lack of
14 clarity regarding the potential scope of an IE’s role during negotiations and final resource
15 selection. For example, it is unclear whether the IE would be directed to simply observe
16 negotiations and provide a final report to the Commission or if the IE would act as an
17 advocate for bidders.⁶ If the IE was asked to provide a report, it is unclear what objective
18 metrics the IE would utilize to determine if the RFP process was conducted in a “fair and
19 reasonable” manner or conclude that the outcome is or is not in customers’ best interest.
20 Additionally, there should be clarity about a process for addressing the results and/or

⁶ In the Company’s amended contracts for the expanded role of the IE as directed by the Commission for UM 1368 and UM 1429, the IE’s role was defined as follows: “Consultant shall oversee contract negotiation among PacifiCorp and bidders. Consultant’s oversight will focus on the reasonableness and fairness of negotiation and selection of any potential bidder in the RFP. Consultant shall monitor contact among the Company and bidders to ensure all parties communicate effectively and that all disputes are resolved quickly.”

1 recommendations reached in the IE’s report. It is the utility’s responsibility to negotiate
2 in good faith on behalf of customers. Moreover, it is the utility’s decision to either enter
3 into a transaction or terminate discussions with a bidder. As discussed above, the proper
4 forum for addressing such prudence issues is in the context of a rate proceeding – not at
5 the time a transaction is executed.

6 If an IE participates or observes a RFP negotiation process and deems that it was
7 not conducted in a fair and reasonable manner according to the IE’s metrics, it is unclear
8 to PacifiCorp whether the Commission will establish a process by which the utility can
9 challenge the IE’s conclusions and/or recommendations. Since the prudence review may
10 not occur for several years, the Company is concerned that the delay between an IE report
11 on negotiations and the prudence determination could create additional risk and
12 uncertainty for the utility. This is especially concerning since resource contracts are
13 typically not contingent on Commission approval

14 PacifiCorp’s primary objective in negotiating commercial terms is to achieve low-
15 cost risk-adjusted outcomes for customers. Based on this objective, the Company is
16 unclear as to what precisely the IE would be asked to determine other than whether
17 negotiations were conducted in a fair and professional matter. As discussed above, the
18 Commission has clearly indicated that prudence determinations regarding the utility’s
19 decision to enter a transaction is outside the scope of RFP proceedings and therefore, the
20 Company assumes that 1) the IE would not be asked to make such prudence
21 recommendations 2) the IE’s scope of work would be clearly defined and would not
22 delay the already lengthy RFP process, and 3) that the IE’s scope of work would justify
23 the additional cost to customers.

1 Furthermore, the Company is uncertain if an IE would be involved through
2 negotiations if only a benchmark (utility self-build option) was selected on the final
3 shortlist. Generally, with the benchmark the engineering, procurement and construction
4 contract would already be negotiated and submitted as part of the best and final offer by
5 the utility. In any event, if the objective of this proceeding is to further examine the
6 Guidelines to address a perceived self-build bias, it seems the proposed expansion of the
7 IE's role in the negotiation and final resource selection process would be unnecessary in
8 the case where RFPs did not have a benchmark resource.

9 (ii) Logistics and Negotiation Environment. PacifiCorp is also concerned
10 about the logistical challenges associated with involving an IE in all negotiation
11 discussions. High-stakes negotiations often occur at sporadic times in an *ad hoc* fashion
12 and it may be very difficult to accommodate the inclusion of an IE every time
13 counterparties engage in discussions. Additionally, the presence of an IE may create a
14 chilling effect during key points of negotiation. For example, when negotiating contract
15 terms counterparties are extremely sensitive about which terms they may be willing to
16 modify or compromise and under what criteria. Because the same IEs and bidders often
17 appear in other proceedings throughout the country, bidders may be reluctant to expose
18 their compromise positions for fear that such exposure may diminish their leverage in
19 future negotiations.

20 (iii) Costs. PacifiCorp is also concerned about the additional cost of including
21 an IE through the final selection process. Based on the Company's experience,
22 PacifiCorp estimates that extending the role of the IE through the final selection process
23 would add an additional 15-20 percent to the total cost of an IE's engagement. Guideline

1 5 indicates that “the IE must be independent of the utility and likely, potential bidders.”
2 It further indicates that “the IE will contract with and be paid by the utility” and that
3 “[t]he utility may request recovery of its payments to the IE in customer rates.” In other
4 words, the IE does not represent bidders or the utility, and although the utility contracts
5 with the IE, the IE’s fees are ultimately paid by customers through rates because they are
6 the intended beneficiary of the services. With that relationship in mind, the Company
7 does not believe there is sufficient added value for customers to be achieved by extending
8 the IE’s role when weighed against the potentially substantial increase in costs.

9 **B. Should the threshold for a major resource be lowered to include more**
10 **projects in the competitive bidding process in order to further mitigate utility**
11 **self-bid bias?**

12 PacifiCorp believes the current size threshold for “major resources” (durations
13 longer than five years and quantities greater than 100 MW) sufficiently captures resource
14 acquisitions that benefit from the structure provided under the Guidelines. The Company
15 does not support a proposal that would alter or further refine the major resource definition
16 at this time.

17

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III. Conclusion

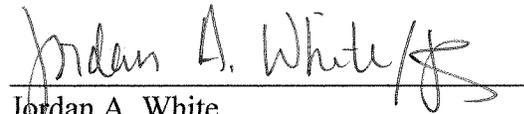
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PacifiCorp appreciates the opportunity to provide these comments and looks forward to working with the Commission, its staff and stakeholders to further refine, develop and enhance the request for proposal process for the benefit of customers.

DATED: March 31, 2011.

A handwritten signature in black ink that reads "Jordan A. White" followed by a stylized flourish.

Jordan A. White
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Pacific Power
PacifiCorp