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May 7, 2008

Tracy Kirkpatrick
Administrative Law Judge
Public Utility Commission of Oregon
550 Capitol St NE – Suite 215
PO Box 2148
Salem OR 97308-2148

Re: UM 1360 – Submissions from the Oregon Independent Evaluators

Dear Judge Kirkpatrick:

Enclosed with this letter is a document that staff is submitting in PUC Docket UM 1360 on behalf of the Oregon Independent Evaluators (the Accion Group). The Accion Group's document entitled, "Oregon Independent Evaluator's Supplemental Assessment of PacifiCorp's 2008 All Source RFP Design" is a public document that contains no confidential or highly-confidential information. Please note that I am serving this document on the other UM 1360 parties via electronic mail only.

Sincerely,

Michael T. Weirich
Assistant Attorney General
Regulated Utility & Business Section

MTW:nal/GENX7793

Enclosure

C: All parties w/enc. via electronic mail only

THE OREGON INDEPENDENT EVALUATOR'S SUPPLEMENTAL
ASSESSMENT OF PACIFICORP'S
2008 ALL SOURCE RFP DESIGN

Submitted by



May 6, 2008

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On April 11, 2008, Accion Group Inc. (Accion), in its role as the Oregon Independent Evaluator (IE) for the PacifiCorp (PacifiCorp or the Company) 2008 All Source RFP, submitted its report concerning the adequacy, accuracy and completeness of solicitation materials submitted by PacifiCorp in Docket Number UM 1360. On April 25, 2008, PacifiCorp submitted reply comments and revised RFP materials. Several interveners also submitted comments regarding the PacifiCorp proposed RFP structure and documentation.

In this Supplemental Report Accion addresses several of those comments and certain of the changes included in PacifiCorp's Revised RFP filing.

Intervener Comments

LS Power, an intervener, acknowledges in its comments that "PacifiCorp has a need to protect itself against the credit of counterparties, and the requirement that non-investment grade bidders post certain levels of security". LS Power also maintains that "the amount of security required by PacifiCorp in the Final Draft RFP is unreasonably high and will limit bidder participation in the RFP".

Prior to preparing its April 11, 2008 Report, Accion reviewed the methodology used by the Company to determine the credit support required from non-investment grade bidders. In that report Accion found it to be reasonable and consistent with the methodology used in PacifiCorp's last RFP. Accion also reviewed the credit requirements of several recently conducted RFPs in other jurisdictions. Each was unique. Several had credit requirements that were more stringent than the credit terms proposed by PacifiCorp. We found that soliciting utilities used different bases for establishing their credit requirements and the timing of when credit support had to be posted. Each was designed to address the risks identified by the soliciting utility. When considered in comparison to credit requirements in similar RFPs, we concluded that PacifiCorp's credit terms were not unduly restrictive.

We note that Merrimack Group, the Utah IE, also reviewed the credit terms contained in PacifiCorp's RFP and did not take issue with either the amounts of credit support that needed to be posted or the schedule on which such support needed to be provided.

LS Power also claims that "the levels of security required could present a significant cost to bidders and a built-in bias towards self-build projects".

We considered these concerns separately. Regarding the cost to bidders, it is undeniable that providing security assurances will be a cost to a bidder. While credit requirements have an impact on bidders' decisions to participate in the RFP, credit requirements are necessary to provide a level of protection to ratepayers and shareholders. In our review we found the balance between cost to bidders and the level of security provided to ratepayers and shareholders to be reasonable.

With regard to whether the credit terms create an unfair advantage for self-build options or for benchmark resources we cannot share LS Power's concern. While the risk borne by shareholders is different than the risk borne by bidders, risk exists. With a self-build project, the Company continues to be subject to cost disallowances throughout the life of the unit. The Commission has the authority to determine that a facility is no longer used or useful, or if it was constructed or operated in an imprudent fashion. Unlike bidders, shareholders are not permitted to directly include a risk premium reflecting possible disallowances. While not precisely equivalent to the posting of security, any advantage which may be created is significantly mitigated from the prospective of ratepayers and does impose on shareholders the cost of providing that "insurance" in the form of increased costs of capital.

Rather than increase risk to ratepayers by reducing the security requirement for bidders, we urge the commission to consider other approaches to equalizing the risk to ratepayers a self-build proposal presents. For example, the Commission could make a self-build unit subject to rate base disallowance equal to a bidder's credit support in the event of any in-service delay, or operational deficiency of a nature or type equivalent to

an event which would trigger a draw on a bidder's credit collateral for a bidder having a credit rating equal to PacifiCorp's credit rating when certification is completed.

Additionally, LS Power "finds the timing of the credit security very troublesome". LS Power states that "for most independent power producers who take the project finance approach, the risk profile presented by these levels of security is not reasonable. The effect of this requirement will do more than increase a bidder's costs, it will outright eliminate many otherwise qualified competitive bidders". LS Power argues, "...that a more appropriate level of security would be to require 10% to be posted prior to financial closing with the remaining 90% to be posted when project financing is achieved".

Accion does not believe LS Power's position to be in the best interests of Oregon ratepayers. First, PacifiCorp's requirement is consistent with practices we have observed in other recent RFPs. Next, LS Power's approach would leave PacifiCorp and its customers exposed to significant risk of non-performance during a period when a non-investment grade counterparty is unfunded. In the event that a developer cannot secure project funding, a task solely in the control of the developer, the risk to the Company and its customers matures and its costs are realized. Accordingly, Accion believes that deferring the posting of credit support or collateral as proposed by LS Power to be inadvisable.

PacifiCorp RFP Revisions

In its revised RFP filing, PacifiCorp incorporated many of the suggestions made by Accion in its April 11, 2008 report. However, two items require additional comment.

In discussions with PacifiCorp, Accion suggested that PacifiCorp develop and publish credit matrices specifically for intermediate and summer peaking proposals. The Company was amenable to that suggestion, and indicated it would clarify its RFP accordingly. In the revised RFP, the Company set out a formula by which credit requirements for bids in the intermediate and summer peak categories would be

computed. The revised draft explains the formula for intermediate load resources credit support requirements as follows:

Percentage equals capacity factor adjustment multiplied by price type adjustment, where the capacity factor adjustment is the bidder's capacity factor divided by 60%, and price type adjustment is the average of the monthly super-peak price divided by the monthly on-peak price, or 1.03 for PACW and 1.08 for PACEU.

While this formula is clear, bidders will be unable to determine their credit requirement prior to submitting bids. The reason for this is that the capacity factor of their specific unit on the PacifiCorp system cannot be determined until the submitted bid is evaluated and the unit is simulated in the Company's dispatch model. To remedy this, the Company has agreed to disclose the average capacity factor of intermediate load resources currently on the PacifiCorp system, and to provide an appropriate example. We would also suggest that the Company be required to adopt, as the maximum required credit, the amount of credit support required calculated by using the capacity factor published.

In its initial draft RFP, the Company indicated that it was prepared to reduce credit requirements for bids of less than a ten-year duration. The IE recommended the Company describe the process it would utilize to calculate the reduction in credit requirements for such bids. The revised draft does not address this issue. The IE continues to believe that this matter needs clarification, and urges the Company to incorporate language in the final RFP describing how credit requirements for bids of less than ten years may be adjusted.

In its April 11th report, Accion recommended that, "the RFP should state whether PacifiCorp will accept any change of law risk, or if there is any opportunity to negotiate allocation of that risk after the final short list is identified. If PacifiCorp will entertain proposals for allocation of change of law risk, the PPA should include a change of law provision". In its revised RFP, PacifiCorp failed to incorporate this recommendation. To avoid future misunderstanding or misinterpretation, language specifically addressing

this issue should be incorporated. As noted in our earlier report, change in law provisions are not universally included in PPAs and tolling agreements, but they are not uncommon, particularly in light of the uncertainties facing the power industry today.

1 **CERTIFICATE OF SERVICE**

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3 I certify that on May 7, 2008, I served the foregoing upon all parties of record in this
4 proceeding by delivering a copy by electronic mail to:

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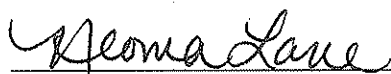
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