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April 1, 2008

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: In the Matter of PacifiCorp d/b/a/ Pacific Power's Petition for Waiver of the Commission's Competitive Bidding Guidelines Under Order No. 06-446

Enclosed for filing in the above-referenced proceeding are PacifiCorp's Petition for Waiver of the Commission's Competitive Bidding Guidelines Under Order No. 06-446, and PacifiCorp's Motion for Protective Order. A copy of this filing has been served on all parties to PacifiCorp's last general rate case (UE 179), RFP case (UM 1360), and 2007 IRP case (LC 42), as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amie Jamieson".

Amie Jamieson

Enclosures

cc: Service Lists for UE 179, UM 1360, and LC 42

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in the
3 matter of PacifiCorp d/b/a/ Pacific Power's Petition for Waiver of the Commission's
4 Competitive Bidding Guidelines Under Order No. 06-446 on the following named person(s)
5 on the date indicated below by email and first-class mail addressed to said person(s) at his
6 or her last-known address(es) indicated below.

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DATED: April 1, 2008.

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM _____

IN THE MATTER OF PACIFICORP'S
PETITION FOR A WAIVER OF
COMPETITIVE BIDDING GUIDELINES
UNDER ORDER NO. 06-446

PETITION FOR A WAIVER OF
COMPETITIVE BIDDING GUIDELINES

Pursuant to OAR 860-013-0020 and Order No. 06-446 Guideline No. 2, PacifiCorp d/b/a Pacific Power ("PacifiCorp" or "Company") respectfully petitions the Public Utility Commission of Oregon ("Commission") for a waiver of the guidelines governing competitive bidding adopted by the Commission in Order No. 06-446 ("Competitive Bidding Guidelines"). This petition ("Petition") is supported by the following documents that will be filed under confidential seal after a Protective Order has been issued in this docket:

- Confidential Testimony of Stefan A. Bird and
- Confidential Testimony of Gregory N. Duvall.¹

I. INTRODUCTION

PacifiCorp has been presented with a time-limited commercial opportunity to acquire an existing generation plant ("Plant") at a favorable price which will provide significant benefits to PacifiCorp's customers. As described in the Confidential Testimony, the Plant will fill an identified resource need on terms and conditions which are favorable to customers and are consistent with the Company's Integrated Resource Plan ("IRP"). This opportunity, however, is time-limited, and could be lost if PacifiCorp is required to

¹ PacifiCorp is filing a Motion for Protective Order concurrently with this Petition. The testimony— which will be filed after the Protective Order has been issued —will be referred to in this Petition collectively as the "Confidential Testimony."

1 issue a Request for Proposals ("RFP") and conduct a competitive bidding process in
2 accordance with the Competitive Bidding Guidelines.

3 The Company is in the process of completing the 2012 RFP² and has filed the
4 Draft 2008 RFP³ for approval which is seeking up to 2,000 MW of capacity and energy
5 resources on a system-wide basis. Conducting an additional RFP related to this Plant
6 would not materially contribute to the public interest; on the contrary, requiring the
7 Company to adhere to the Competitive Bidding Guidelines in this case would in fact create
8 delay and could potentially result in harm to PacifiCorp's customers by causing the
9 Company to forego a cost-effective resource opportunity. It is PacifiCorp's experience that
10 an RFP process can take between 12 to 15 months or longer to conduct. Thus,
11 adherence to the RFP process would severely limit PacifiCorp's ability to take advantage
12 of this present opportunity. The Competitive Bidding Guidelines allow for exemptions from
13 the RFP process to allow a utility (1) to take advantage of a time-limited resource
14 opportunity that presents unique value to customers, or (2) on a case-by-case basis as
15 appropriate.⁴ Given the short time-frame in which the Plant is available, and the unique
16 characteristics of the opportunity, the Commission should grant this Petition to allow
17 PacifiCorp to move forward quickly to secure this valuable resource for its customers.

18 Communications regarding this Petition should be addressed to:

19 Oregon Dockets
20 PacifiCorp
21 825 NE Multnomah, Suite 2000
22 Portland, OR 97232
23 Phone: 503.813.5542
24 Email: oregondockets@pacificorp.com

Natalie Hocken
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825 NE Multnomah, Suite 2000
Portland, Oregon 97232
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23 ² See Docket UM 1208.

24 ³ See Docket UM 1360.

25 ⁴ See Guidelines 2(a) and (c) of the Competitive Bidding Guidelines. *Re Investigation*
26 *Regarding Competitive Bidding*, Docket UM 1182, Order No. 06-446 at 4 (Aug. 10, 2006).

1 By email (preferred): In addition, PacifiCorp requests that all data requests regarding this
2 Petition be sent to the following:

3 datarequest@pacificorp.com

4 By fax: 503.813.6060

5 By regular mail: Data Request Response Center
6 PacifiCorp
7 825 NE Multnomah, Suite 2000
8 Portland, Oregon 97232

8 Informal questions may be directed to Joelle Steward, Oregon Regulatory Affairs
9 Manager at 503.813.5542.

10 II. BACKGROUND

11 A. PacifiCorp's Recent RFP Activity

12 PacifiCorp's need for incremental system-wide resources to serve its growing
13 customer base and increasing demand for electricity has been well established in its
14 recent IRP filings and other proceedings before the Commission. Customer growth and
15 increasing loads, coupled with environmental requirements and improved reliability
16 expectations from customers, are driving PacifiCorp to enter into power purchase
17 agreements, invest in new utility plants or acquire existing plants, if available.

18 In May 2007, the Company filed its 2007 IRP.⁵ The 2007 IRP is currently pending
19 before the Commission. The resource needs assessment conducted for the 2007 IRP
20 showed a PacifiCorp incremental peak capacity need of over 2,400 MW by 2012.⁶
21 PacifiCorp recently filed its Draft 2008 RFP to fulfill a portion of the Company's capacity
22 and energy resource needs for 2012 through 2016 identified in the 2007 IRP.⁷

23 ⁵ *Re PacifiCorp Application for Acknowledgement of its 2007 Integrated Resource Plan,*
24 *Docket LC 42, Application (May 30, 2007).*

25 ⁶ *Re PacifiCorp Draft 2008 Request for Proposals, Docket UM 1360, Draft 2008 Request for*
Proposals (Feb. 15, 2008).

26 ⁷ *Id.*

1 **B. Opportunity to Acquire the Plant**

2 The Confidential Testimony explains the process by which the Company became
3 aware of the Plant and its actions in responses to requests for information. The parties
4 have negotiated all of the essential terms of a Purchase and Sale Agreement ("PSA") that
5 gives PacifiCorp the exclusive right to acquire the plant while it seeks necessary state and
6 federal regulatory approvals within a time limited period.

7 Given the commercially sensitive nature of the information regarding the
8 Company's opportunity to acquire the Plant,⁸ PacifiCorp will provide general, non-
9 confidential information in this Petition. More detailed confidential information is provided
10 in the Confidential Testimony.

11 **III. DISCUSSION**

12 **A. Standards for Exemptions from RFP Guidelines**

13 In 2006 the Commission adopted Competitive Bidding Guidelines to facilitate the
14 RFP process for major resource acquisitions.⁹ These Guidelines establish detailed
15 procedures for the competitive bidding that are intended to result in a full vetting of all
16 potential resources; however, the Guidelines necessarily result in a time-consuming and
17 expensive process. Accordingly, in adopting the Guidelines, the Commission outlined
18 three circumstances under which a utility is *not* required to issue an RFP.¹⁰

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21 ⁸ PacifiCorp was required to enter into a Confidentiality Agreement with the owner of the
22 Plant under which it agreed not to disclose information regarding the Plant or terms and conditions for
23 its acquisition and related agreements. This agreement has now been incorporated into the PSA.
24 The PSA allows PacifiCorp to disclose information in connection with regulatory filings and
25 documents in sufficient detail to gain approval of the acquisition, but PacifiCorp must disclose the
26 information under terms and conditions that will preserve its confidentiality to the greatest extent
possible.

24 ⁹ *Re Investigation Regarding Competitive Bidding*, Docket UM 1182, Order No. 06-446
25 (Aug. 10, 2006).

26 ¹⁰ *Id.* at 4.

- 1 a. Acquisition of a Major Resource in an emergency or where there is a time-
2 limited resource opportunity of unique value to customers (“Exemption (a)”);
3 b. Acknowledged IRP provides for an alternative acquisition method for a Major
4 Resource;
5 c. Commission waiver on a case-by-case basis (“Exemption (c)”)¹¹.

6 As discussed below, the Petition should be granted under both Exemption (a) and
7 Exemption (c) above.

8 **B. Exemption for Time-Limited Resource Opportunity**

9 In adopting the Competitive Bidding Guidelines, the Commission explicitly
10 acknowledged that a utility might be presented with a time-limited opportunity to acquire a
11 promising resource that did not afford sufficient time to conduct the RFP process.¹² In
12 fact, the Commission contemplated that under such pressing circumstances, the utility
13 might not even have the luxury of requesting a waiver in advance of the acquisition.
14 Accordingly, the Commission simply stated that where such time pressures exist, the utility
15 should notify the Commission *after* the acquisition and provide an explanation as to why
16 the utility was unable to follow the RFP process.¹³

17 The current opportunity *does* afford PacifiCorp with the ability to request a waiver
18 in advance of the acquisition. Nevertheless, PacifiCorp’s acquisition of the Plant falls
19 within the principles underlying the exemption of the RFP process for “time-limited”
20 opportunities that provide a “unique value” to customers. As discussed above, PacifiCorp
21 has negotiated all of the essential terms of a PSA that grants the Company the exclusive
22 right to acquire the Plant while it seeks necessary state and federal regulatory approvals

23 ¹¹ *Id.*

24 ¹² *Id.*

25 ¹³ Under Guideline 2(a), if an acquisition meets the requirements for a time-limited
26 resource opportunity, the utility must file a report with the Commission within 30 days of the
acquisition explaining how the acquisition met the requirements for acting outside the RFP
process. *Id.*

1 within a time limited period. The Confidential Testimony describes why this opportunity is
2 time-limited and the unique value the Plant will provide to PacifiCorp's customers.

3 In PacifiCorp's experience, the time required to complete a formal RFP in
4 accordance with the Competitive Bidding Guidelines will inevitably stretch far beyond the
5 time limit afforded in the PSA. Accordingly, if the Company is required to engage in the
6 formal RFP process, it will be unable to complete the acquisition within the time limit
7 afforded in the PSA and its customers will lose the benefits promised by the acquisition.
8 For these reasons, the Competitive Bidding Guidelines should be waived under
9 Exemption (a).

10 **C. Exemption on a Case-by-Case Basis**

11 In addition to the waiver for time-limited opportunities, the Commission has also
12 stated that the Competitive Bidding Guidelines may be waived on a case-by-case basis.
13 In this case, for all of the reasons supporting a waiver under Exemption (a), and further
14 because the acquisition of the Plant is consistent with PacifiCorp's 2007 IRP and will fill a
15 critical resource need, the Commission should grant PacifiCorp's Petition under
16 Exemption (c) as well.

17 First, the acquisition of the Plant will assist the Company in meeting a critical need
18 for resources. As described in the Confidential Testimony, PacifiCorp has determined that
19 it is unlikely that sufficient comparable resources will be available by 2012 to satisfy the full
20 resource needs contemplated by the 2012 and the Draft 2008 RFPs. Furthermore, based
21 on the resource needs assessment conducted for the 2007 IRP, PacifiCorp's incremental
22 peak capacity need will be over 2,400 MW by 2012. Acquisition of the Plant will assist the
23 Company in meeting this need.

24 Second, the acquisition of the Plant will add valuable incremental generation to
25 backstop the intermittent profile of the Company's growing renewable wind portfolio and
26 offset the loss of flexible system hydro legacy contracts that are due to expire between

1 2009 and 2012.

2 Third, PacifiCorp is just completing the 2012 RFP and recently filed its Draft 2008
3 RFP for capacity and energy resource needs for 2012 through 2016. Conducting yet
4 another RFP for this transaction is not likely to result in the identification of any added
5 resources nor would it materially contribute to the public interest.

6 Fourth, as explained in the Confidential Testimony, the Plant is available to the
7 Company on reasonable terms and conditions. The Plant reduces risk because as an
8 existing resource, the Plant is not subject to permitting and construction cost, schedule or
9 the escalating cost of steel, materials, and labor risks to which the Company would be
10 exposed in a new construction resource alternative.

11 Finally, the information, data, models, and analyses used by the Company to
12 evaluate the acquisition of the Plant demonstrate that acquisition of the Plant is in the
13 public interest and will be beneficial to the Company's customers. Support for the
14 foregoing information is provided in the Confidential Testimony.

15 For these reasons, the acquisition of the Plant is in the public interest and will
16 provide substantial benefits for PacifiCorp's customers. Thus, the Petition should be
17 granted under Exemption (c).

18 III. CONCLUSION

19 As described in this Petition and in the Confidential Testimony, the acquisition of
20 the Plant presents a time limited resource opportunity that provides a reasonably-priced,
21 existing resource that will assist PacifiCorp in meeting the resource needs of its
22 customers. However, due to the time limited opportunity to acquire this Plant if the
23 Company is required to adhere to the RFP process, as provided in the Competitive
24 Bidding Guidelines, the opportunity could be lost. Because the proposed acquisition
25 presents identified value and benefit to PacifiCorp's customers, and because the
26 circumstances satisfy the Commission's requirements for exemption from the Competitive

1 Bidding Guidelines, the Commission should grant PacifiCorp the requested waiver.

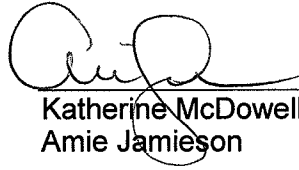
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DATED: April 1, 2008.

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

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IN THE MATTER OF PACIFICORP d/b/a
PACIFIC POWER'S PETITION FOR
WAIVER OF THE COMMISSION'S
COMPETITIVE BIDDING GUIDELINES
UNDER ORDER NO. 06-446

MOTION FOR PROTECTIVE ORDER
Expedited Consideration Requested

Pursuant to ORCP 36(C)(7) and OAR 860-012-0035(1)(k), PacifiCorp d/b/a Pacific Power ("Company") moves for the expedited entry of a Protective Order in this proceeding. Concurrent with the filing of this Motion for a Protective Order ("Motion"), the Company filed a Petition for Waiver of Competitive Bidding Guidelines Under Order No. 06-446. The waiver would apply to the Company's acquisition of the generation plant ("Plant") identified in the Confidential Testimonies of Stefan A. Bird and Gregory N. Duvall that will be filed under seal in this docket once the Commission grants this Motion. The parties to the acquisition of the Plant have negotiated all essential terms of a Purchase and Sale Agreement that gives PacifiCorp the exclusive right to acquire the Plant for a limited time period, assuming any required regulatory approvals are obtained within that time period ("Proposed Transaction"). The Purchase and Sale Agreement is in near final form awaiting completion of disclosure schedules.

The Company requests expedited consideration of this Motion in order to allow parties that execute the protective order to obtain prompt access to the confidential testimony filed in support of the Petition and to expedite any discovery in this proceeding. Good cause exists to issue a Protective Order to protect commercially sensitive and confidential business information related to the Proposed Transaction described herein and described further in the supporting confidential testimony filed in this proceeding. In support of this Motion, the Company states:

1 1. The Commission's rules authorize PacifiCorp to seek reasonable restrictions
2 on discovery of sensitive commercial information and other confidential business
3 information. See OAR 860-11-000(3) (adopting Oregon Rules of Civil Procedure
4 ("ORCP"); ORCP 36(C)(7) (providing protection against unrestricted discovery of "trade
5 secrets or other confidential research, development, or commercial information"). See
6 also *In re Investigation into the Cost of Providing Telecommunication Service*, Docket
7 UM 351, Order No. 91-500 (1991) (recognizing that protective orders are a reasonable
8 means to protect "the rights of a party to trade secrets and other confidential commercial
9 information" and "to facilitate the communication of information between litigants").

10 2. The Company anticipates that parties to this docket may request detailed
11 information regarding the Proposed Transaction. The Company further anticipates that
12 discovery in this proceeding may include, among other things, requests for production of
13 proprietary agreements, documents, and analysis relating to the Proposed Transaction.
14 Discovery in this proceeding could also produce commercially-sensitive load and resource
15 projections, information covered by confidentiality agreements, and other confidential
16 analyses. This confidential business information is of significant commercial value, which
17 could expose the Company and its counterparty to competitive injury if disclosure is
18 unrestricted. Unrestricted disclosure could also be detrimental to the Company's
19 customers and future resource acquisition plans.

20 3. It is substantially likely that Staff and others in this proceeding will seek to
21 discover a large amount of information held by PacifiCorp, including confidential business
22 information. "The Commission's standard blanket protective order is designed to facilitate
23 discovery in cases involving discovery of large numbers of documents." See *In re*
24 *Portland Extended Area Service Region*, Docket UM 261, Order No. 91-958 (1991).
25 Issuance of a protective order will facilitate the production of relevant information and
26 expedite the discovery process.

1 For the foregoing reasons, PacifiCorp requests expedited entry of a Standard
2 Protective Order in this docket.

3 DATED: April 1, 2008.

McDOWELL & RACKNER PC

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Amie Jamieson

7 Attorneys for PacifiCorp

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