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May 21, 2008

VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
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Re: Docket No. UM 1374

Enclosed for filing in the above-referenced docket are an original and five copies of PacifiCorp's Reply Comments. A copy of this filing has been served on all parties to this proceeding as indicated on the attached service list.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amie Jamieson". The signature is fluid and cursive, with a large initial "A" and "J".

Amie Jamieson

Enclosure

cc: Service List

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1374 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

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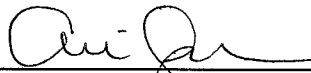
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DATED: May 21, 2008.



Amie Jamieson
Of Attorneys for PacifiCorp

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1374**

4 In the Matter of:

5 PACIFICORP, dba PACIFIC POWER &
6 LIGHT COMPANY

7 Petition for Waiver of Competitive Bidding
8 Guidelines Under Order No. 06-446

PACIFICORP'S REPLY COMMENTS

9 **I. INTRODUCTION**

10 On April 1, 2008, PacifiCorp d/b/a Pacific Power ("PacifiCorp" or "Company") filed a
11 Petition for a Waiver of Competitive Bidding Guidelines ("Petition") with respect to the
12 guidelines adopted by the Public Utility Commission of Oregon ("Commission") in Order
13 No. 06-446 ("Competitive Bidding Guidelines" or "Guidelines"). PacifiCorp requested the
14 waiver because it has been presented with a time-limited opportunity to acquire an existing
15 generation plant ("Plant") that would provide significant benefits to PacifiCorp's customers.
16 If PacifiCorp were to adhere to the Competitive Bidding Guidelines, it would likely lose the
17 opportunity to acquire the Plant.

18 In support of its Petition, PacifiCorp provided confidential testimony demonstrating
19 that the acquisition of the Plant is in the best interest of PacifiCorp's customers. This
20 testimony describes the Plant and related agreements, how the Company evaluated the
21 acquisition, why the acquisition is time-sensitive, why the acquisition is in the public interest,
22 and why the acquisition is superior to other resources currently available through the
23 Company's RFPs. The Company has also provided the parties with a copy of the
24 confidential purchase and sale agreement and has responded to parties' data requests with

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1 requested workpapers and analyses. Based upon this documentation,¹ Commission Staff in
2 its Opening Comments filed on May 14, 2008, has preliminarily concluded that:

- 3 1. The Plant is a time-limited resource acquisition opportunity;
- 4 2. PacifiCorp's system needs additional generation;
- 5 3. Based on available evidence, the resource opportunity is superior to potential
6 resource acquisitions offered in PacifiCorp's 2012 Request for Proposals
7 ("RFP")² or may be offered in the 2008 RFP,³ and
- 8 4. Waiving the Competitive Bidding Guidelines and allowing PacifiCorp to
9 acquire the Plant provides value to the Company's Oregon customers and
10 promotes the public interest.⁴

11 Accordingly, Staff recommends that the Commission approve the Petition.⁵

12 In addition to Staff, the Industrial Customers of Northwest Utilities ("ICNU") and
13 Northwest and Intermountain Power Producer's Coalition ("NIPPC") filed comments in
14 response to the Petition. Although ICNU and NIPPC present divergent proposals, their
15 arguments are similarly flawed in that they both fail to recognize the distinction between the
16 waiver process under the Competitive Bidding Guidelines and the prudence review process
17 for cost recovery of the resource. As a result, ICNU suggests that the Commission reserve
18 the questions presented by this waiver proceeding—whether the proposed acquisition is
19 time-sensitive or a unique opportunity for ratepayers—for a future prudence proceeding.
20 NIPPC takes the opposite approach. In arguing that the Commission conduct an exhaustive

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22 ¹ Staff noted in its Opening Comments that it has not yet fully evaluated PacifiCorp's
responses to data requests.

23 ² The 2012 RFP was for up to 1700 MW for the 2012 to 2014 time period.

24 ³ The 2008 RFP will be for the 2012 to 2016 time period.

25 ⁴ Staff's Opening Comments at 2–3.

26 ⁵ *Id.* at 3.

1 investigation into the proposed acquisition during its review of the Petition, NIPPC is, in
2 effect, suggesting that the Commission conduct a prudence review during this waiver
3 proceeding.

4 The Company does not recommend accepting either the NIPPC or ICNU
5 recommendations. The Competitive Bidding Guidelines clearly intend that in cases such as
6 the one presented, a waiver is appropriate—even necessary—to ensure that the utility has
7 the opportunity to act in the public interest by acquiring a cost effective and unique resource.
8 Any remaining questions as to the prudence of the acquisition are properly considered at a
9 later stage.

10 Accordingly, PacifiCorp recommends that the Commission reject both ICNU's and
11 NIPPC's proposals as antithetical to the Competitive Bidding Guideline waiver process and
12 approve the Petition as recommended by Staff.

13 II. DISCUSSION

14 A. Legal Standard

15 Oregon law requires that utilities bear the burden of showing that a proposed rate is
16 just and reasonable,⁶ and that the Commission may not include a utility expense in rates if
17 the expense is not prudent.⁷ Thus, before the Commission includes the costs associated
18 with a major resource acquisition into rates, it will conduct a thorough investigation into the
19 transaction in order to determine whether the utility's decision to acquire the resource was
20 reasonable based on the information that was available when the utility took the action.⁸

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⁶ ORS 757.020, 757.210.

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⁷ *Re PacifiCorp Application for Approval of Revised Tariffs to Reflect New Net Power Costs*,
25 Docket UE 134, Order No. 02-820 at 5 (Nov. 20, 2002).

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⁸ *Id.*

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1 Prudence reviews take place in contested case hearings that provide intervening parties the
2 opportunity to produce evidence and argument on the prudence of the utility's actions.⁹

3 On the other hand, the review required by PacifiCorp's Petition is much more limited
4 and is completely separate from the prudence review process.¹⁰ The Competitive Bidding
5 Guidelines were designed to implement the goals set forth in the initial 1991 guidelines,
6 which goals were slightly revised by the current Guidelines. Of importance was the goal to
7 provide "a means to identify and acquire least-cost resources which are available in the
8 increasingly competitive electric generation marketplace."¹¹ To that end, the Commission
9 has adopted a detailed RFP process for major resources acquisitions.¹²

10 At the same time, one of the Guidelines' stated goals is that they "not unduly
11 constrain utility management's prerogative to acquire new resources."¹³ Accordingly, the
12 Guidelines explicitly provide for a waiver of the RFP process in the case of a resource that is
13 a "time-limited resource opportunity of unique value to customers," referred to as
14 "Exemption (a)."¹⁴ In fact, under Exemption (a), a utility is only required to file a report with
15 the Commission within 30 days *after* a Major Resource acquisition explaining how the
16 requisite conditions are met for acting outside of the RFP requirement. As explained in
17 PacifiCorp's Petition for Waiver, because the Company believed it had sufficient time to

18 ⁹ See ORS 757.210 (Commission shall conduct a hearing on a utility's proposed rate
19 increase upon complaint filed by a party).

20 ¹⁰ See, e.g., *In the Matter of PacifiCorp, dba Pacific Power & Light Company Draft 2012*
Request for Proposals, Docket UM 1208, Order No. 06-676 at 3 (Dec. 20, 2006)(Commission agreed
21 with NIPPC, Staff and ICNU that PacifiCorp could seek cost recovery of any resources acquired
through a non-approved RFP indicating that the lack of an approved RFP does not automatically bar
cost recovery.)

22 ¹¹ *Re Competitive Bidding by Investor-Owned Electric Utility Companies*, Docket UM 316,
23 Order No. 91-1383 (Oct. 18, 1991).

24 ¹² *Re Investigation Regarding Competitive Bidding*, Docket UM 1182, Order No. 06-446 at 2
(Aug. 10, 2006).

25 ¹³ *Id.* at 2.

26 ¹⁴ *Id.*

1 request a waiver of the RFP guidelines *in advance* of acquisition of the Plant, the Company
2 provided testimony supporting a waiver based on the standards set forth under Exemption
3 (a) (time limited resource opportunity of unique value to customers).¹⁵ In adopting the
4 exceptions to the RFP requirements, the Commission explicitly stated that it is committed to
5 resolving requests for waiver quickly “using less than a full contested case process.”¹⁶
6 Importantly, the Commission noted that this abbreviated process is appropriate “as we are
7 not making any ratemaking decisions when we waive an RFP requirement.”¹⁷ In other
8 words, whether or not the Commission waives an RFP requirement, the utility will be
9 required to prove that its actions taken with respect to the acquisition were reasonable and,
10 accordingly, that the expense incurred was prudent.

11 **B. Response to ICNU’s Comments**

12 INCU takes no position on whether the Commission should waive the Competitive
13 Bidding Guidelines with respect to the Petition,¹⁸ but instead proposes that the Commission
14 should reserve the questions of whether the proposed acquisition is prudent, in the public
15 interest, time sensitive, and a unique opportunity for customers for a future proceeding.¹⁹

16 PacifiCorp agrees with ICNU that the Commission should determine the prudence of
17 the acquisition in a future proceeding. However, ICNU’s proposal that the waiver
18 determination be deferred to the prudence review should be rejected for two reasons. First,

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20 ¹⁵ *Re PacifiCorp Petition for Waiver of Competitive Bidding Guidelines Under Order*
21 *No. 06-446, Docket UM 1374, Petition for a Waiver of Competitive Bidding Guidelines at 5 (Apr. 1,*
22 *2008). The Company also filed a request for waiver under Exemption (c) (Commission waiver on a*
23 *case-by case basis) based on the same showing as was offered under Exemption (a).*

24 ¹⁶ *Re Investigation Regarding Competitive Bidding, Docket UM 1182, Order No. 06-446 at 5*
25 *(Aug. 10, 2006).*

26 ¹⁷ *Id.*

¹⁸ *Re PacifiCorp Petition for Waiver of Competitive Bidding Guidelines Under Order*
No. 06-446, Docket UM 1374, Comments of the Industrial Customers of Northwest Utilities at 1
(May 14, 2008).

¹⁹ *Id.*

1 ICNU is suggesting that the Commission side step the question presented by a request for
2 waiver under the Competitive Bidding Guidelines, thus depriving PacifiCorp of the guidance
3 it seeks in its Petition. The Company has presented the Commission with all the information
4 it needs to make the required determinations and there is therefore no reason to delay this
5 decision.

6 Second, ICNU's proposal would improperly distort the prudence review process by
7 imposing an unwarranted "higher" prudence standard on resources for which a waiver of the
8 Competitive Bidding Guidelines was sought. This position is both illogical and unfair. While
9 the time-limited and unique value elements are required for a waiver under Exemption (a),
10 they are not prerequisites for cost recovery of a resource. ICNU's proposal would bootstrap
11 these elements into the Commission's prudence determination and create a more
12 burdensome showing for resources that were the subject of Exemption (a). Nothing in the
13 Commission's rules, orders, or Competitive Bidding Guidelines imply that this result is
14 appropriate.

15 Moreover, under ICNU's proposal, it is possible that the Commission could find that a
16 particular acquisition was prudent, but that, as it turns out, the opportunity was not as
17 "unique" as might normally be required for a waiver under Exemption (a). At the prudence
18 review state, such an after-the-fact finding would be entirely moot. And if ICNU is
19 suggesting that the utility be "punished" by the Commission disallowing the cost of the
20 resource in such a case, the Commission should emphatically reject the notion. This policy
21 would benefit neither utilities nor their customers. On the contrary, rather than risk such a
22 severe result, the utility would likely forgo any resource opportunity that would require waiver
23 of the Competitive Bidding Guidelines, whether or not the resource appeared at the time to
24 comply with the requirements for waiver. In the end, customers would lose out and the
25 policy goals underlying the waiver process would be defeated.

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1 Contrary to ICNU's statement that there is insufficient evidence to determine whether
2 the Plant is time-limited and a unique value, PacifiCorp has presented ample evidence of
3 both elements. Notably, Staff has not requested additional information or identified
4 deficiencies in PacifiCorp's confidential testimony or data responses. PacifiCorp urges the
5 Commission to reject ICNU's proposal.

6 **C. Response to NIPPC's Comments**

7 Like ICNU, NIPPC blurs the distinction between the waiver process and prudence
8 review. However, instead of proposing that the waiver process be delayed to the prudence
9 review, NIPPC proposes that the Commission conduct a thorough prudence review-like
10 investigation during the waiver process. NIPPC's approach is equally flawed.

11 NIPPC states that because of the time and information limitations of this proceeding,
12 it cannot definitively state that the Plant is a good value for PacifiCorp's customers.²⁰ NIPPC
13 therefore states that the Commission should solicit the advice of an Independent Evaluator
14 ("IE") to determine whether the Plant is a time-limited opportunity of unique value.²¹
15 PacifiCorp has no objection to a limited review of PacifiCorp's and NIPPC's confidential
16 testimony by an IE in order to advise staff on the issue of whether the resource presents a
17 time-limited opportunity of unique value. However PacifiCorp objects to the level of analysis
18 proposed by NIPPC because that level of analysis is appropriate for a prudence review—not
19 the more abbreviated process contemplated by the Guidelines. The essence of the waiver
20 provision is to allow a utility to bypass the lengthy Competitive Bidding Guidelines and defer
21 decisions on prudence and ratemaking treatment so that the utility can take advantage of a

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24 ²⁰ *Re PacifiCorp's Petition for Waiver of Competitive Bidding Guidelines under Order 06-446,*
25 Docket UM 1374, Comments of Northwest and Intermountain Power Producer's Coalition at 11
26 (May 14, 2008).

²¹ *Id.*

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1 time-limited resource. It is therefore inappropriate to impose a prudence-type review in this
2 proceeding as NIPPC suggests.

3 In addition, PacifiCorp has provided the Commission with sufficient information to
4 find that the Plant is time-limited and of unique value to customers and this can be reviewed
5 by an IE on a limited basis without the level of analysis proposed by NIPPC. PacifiCorp
6 notes that NIPPC's concern that it does not have enough information to determine whether
7 the Plant is a time-limited opportunity of unique value may have more to do with NIPPC's
8 inexperience with the Commission's prudence reviews than with the information provided by
9 PacifiCorp in this proceeding. PacifiCorp provided virtually the same level of detail and
10 analysis in this case as it provides to the Commission in cost recovery proceedings.
11 PacifiCorp is not aware of NIPPC's participation in such a proceeding and NIPPC may
12 therefore be unaware of what the Commission generally requires. In addition, NIPPC has
13 not identified any information lacking in PacifiCorp's production that would allow NIPPC to
14 complete its review. Considering that PacifiCorp provided generally the same level of
15 detailed analysis that it provides in prudence reviews and NIPPC has not identified where
16 PacifiCorp has failed to provide specific information, NIPPC's claims are unpersuasive.

17 **III. CONCLUSION**

18 PacifiCorp recommends that the Commission approve the Petition, as proposed in
19 Staff's Opening Comments.


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21 DATED: May 21, 2008

MCDOWELL & RACKNER PC

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Amie Jamieson

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Attorneys for PacifiCorp

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