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June 25, 2009

Via Electronic and US Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PACIFICORP, dba PACIFIC POWER Application to
Open Docket and Appointment of an Independent Evaluator for a 2009
Request for Proposals for Supply-side Renewable Resources.
Docket No. UM 1429

Dear Filing Center:

Enclosed please find the Comments on behalf of the Industrial Customers of
Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely,

/s/ Brendan E. Levenick
Brendan E. Levenick

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Comments on behalf of the of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, and via electronic mail.

Dated at Portland, Oregon, this 25th day of June, 2009.

Sincerely,

/s/ Brendan E. Levenick
Brendan E. Levenick

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1429

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER)	COMMENTS OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
Application to Open Docket and Appointment)	UTILITIES
of an Independent Evaluator for a 2009)	
Request for Proposals for Supply-side)	
Renewable Resources.)	
_____)	

I. INTRODUCTION

Pursuant to Administrative Law Judge Hardie’s June 18, 2009 Ruling, the Industrial Customers of Northwest Utilities (“ICNU”) submits these comments urging the Oregon Public Utility Commission (“OPUC” or the “Commission”) to reject or conditionally approve PacifiCorp’s (or the “Company”) proposed 2009 renewable request for proposal (“2009R RFP”). The 2009R RFP proposes to include a benchmark resource and immediately follows the Company’s 2008 Renewable RFP (“2008R-1 RFP”), in which the Company has obtained a number of bids and has obtained Commission acknowledgment of its bid shortlist. The existence of overlapping RFPs for the same resource types and similar time periods, plus the inclusion of a benchmark resource in PacifiCorp’s 2009R RFP, may significantly harm the integrity of both RFPs and further erode the Company’s less than stellar reputation among potential bidders. The Commission should only approve the 2009R RFP upon the condition that PacifiCorp agrees to remove its benchmark resource.

II. BACKGROUND

On March 4, 2008, PacifiCorp filed to open a new docket for its 2008R-1 RFP. The Company filed its draft 2008R-1 RFP on April 28, 2008, and comments were submitted by Staff, the Oregon Independent Evaluator, and Renewable Northwest Project. PacifiCorp also submitted comments and revised the 2008R-1 RFP.

On September 23, 2008, the Commission approved the 2008R-1 RFP, with conditions. PacifiCorp requested, and the Commission approved the Company's request, to modify the 2008R RFP on January 21, 2009. The 2008R-1 RFP was issued to the market on October 6, 2008, and bids were due on February 27, 2009.

The 2008R-1 RFP sought bids for up to 500 megawatts ("MW") of renewable resources with an on-line date of 2011. Resources needed to be sized between 100 MWs and 300 MWs, have a minimum term of five years, include renewable energy credits, and comply with applicable renewable portfolio standards.

PacifiCorp selected a shortlist of bids in the 2008R-1 RFP, and requested Commission acknowledgement of its shortlist on April 24, 2009. PacifiCorp revised its shortlist on May 15, 2009. The Oregon IE prepared a final closing report recommending acknowledgement, but raised some concerns, including that the Company may be biased toward build own transfer ("BOT") bids. On June 11, 2009, Staff filed a report, recommending that the Commission acknowledge PacifiCorp's shortlist, or in the alternative, delay acknowledgement until PacifiCorp provides a clear indication that the Company intends to aggressively pursue the shortlisted bids. Staff's alternative recommendation was based on a concern about the impact of the new 2009R RFP upon

the 2008R-1 RFP. Subsequently, the Commission acknowledged PacifiCorp's shortlist. Re PacifiCorp, Docket No. UM 1368, Order No. 09-247 (June 23, 2009).

PacifiCorp filed to open a new proceeding to review its 2009R RFP on April 28, 2009, and filed its draft 2009R RFP on June 5, 2009. PacifiCorp revised the 2009R RFP on June 11, 2009. The 2009R RFP intends to solicit up to 500 MW of renewable resources (with no resource larger than 300 MWs) for the 2010 to 2012 period. The 2009R RFP will overlap with the 2008R-1 RFP, which solicited the same type of resources for the 2009 to 2011 time period. The significant difference between the RFPs is that PacifiCorp will include a benchmark resource in the 2009R RFP. PacifiCorp justifies the issuance of duplicative RFPs in order to allow the Company to potentially obtain lower cost resources in the current economy.

The Oregon IE submitted its assessment of the 2009R RFP on June 19, 2009. The Oregon IE expressed concern that: 1) PacifiCorp may delay negotiations in the 2008R-1 RFP; 2) bidders may be harmed because they are required to rebid into a second RFP; 3) PacifiCorp's efforts may be viewed "as doing nothing more than 'testing' the market, as opposed to being real commercial opportunities;" and 4) the inclusion of a benchmark resource could harm bidder confidence. Oregon IE Report at 7-9 and at Attachment One at 1-3 (June 19, 2009). The Oregon IE recommended that the Commission approve the 2009R RFP, with the following conditions: 1) the Company must commit to work in good faith to negotiate with the shortlisted bids in the 2008R-1 RFP within three to six months of July 2009; and 2) the Commission should notify PacifiCorp that if it rejects the 2008R-1 RFP bids "in favor of a Company benchmark

PAGE 3 – COMMENTS OF ICNU

without sufficient justification” that “the Company will face substantial public skepticism and should be ready to prove that its benchmark was a clearly superior offer to the shortlisted 2008R-1 bids.” Id. at 8-9.

III. COMMENTS

ICNU recommends that the Commission conditionally approve the 2009R RFP based upon PacifiCorp removing its proposed benchmark resource. The issuance of the 2009R RFP may cause harm to renewable energy bidders and the independent market for renewable energy development. ICNU is concerned that PacifiCorp may not be concerned with obtaining the lowest cost renewable resource for ratepayers, but may instead be using the RFP process to gain valuable competitive information, harm the competitive market for renewable energy, and substitute a Company-owned benchmark resource for lower cost alternatives. The Commission should not allow Oregon utilities to take actions which will harm the renewable energy market, as has already occurred to the competitive market for thermal resources.

The Oregon IE has recognized some of the flaws with the 2009R RFP and noted that the RFP may harm competition. The Oregon IE, however, appears to have recommended inadequate solutions, which include requiring PacifiCorp to aggressively negotiate with the shortlist in the 2008R-1 RFP and subjecting the Company to additional scrutiny if its benchmark is the winning bid. These remedies are unlikely to address the fundamental problem: the mere existence of an overlapping RFP with a benchmark resource may impair the competitive market for renewable energy. Moreover, the Commission should not wait until PacifiCorp has selected its benchmark resource as the

winning bid, but should take the reasonable and moderate preventative action of prohibiting the Company from including a benchmark resource in the 2009R RFP.

1. Overlapping RFPs Should Be Disfavored

The Commission should be reluctant to approve overlapping RFPs because they are likely to harm bidders by imposing additional burdens and costs, and potentially reduce the number and quality of bids in future RFPs. Overlapping RFPs may be justified if the utility can demonstrate clear ratepayer benefit, including a reasonable belief that lower cost bids will be received in the new RFP. PacifiCorp has not yet presented such evidence.

If the Commission approves PacifiCorp's 2009R RFP, then bidders that have already bid into the 2008R-1 RFP will face a practical obligation to submit new bids in the 2009R RFP. PacifiCorp has advised the bidders in the 2008R-1 RFP that they have the option to bid into the new RFP, which seeks bids for the same resources and largely the same time period. As a backup, the Oregon IE has recommended that bidders in the 2008R-1 RFP submit bids into the 2009R RFP. Rebidding into the new 2009R RFP is not a simple matter, but is likely to impose significant costs and time commitments upon bidders. Winning bidders in the 2008R-1 RFP may also be harmed because losing bidders may now have the opportunity to re-bid against them.

Ultimately, PacifiCorp's ratepayers will suffer if PacifiCorp damages the competitive market for renewable energy. PacifiCorp already has a reputation of using the RFP process for thermal resources to benefit itself and harm independent power producers. Examples include: 1) PacifiCorp's favoring its affiliates in the West Valley

lease; 2) attempts to discontinue a thermal RFP once its benchmark resources would not win the bidding process; 3) waiving the competitive bidding rules to acquire Chehalis; 4) using an arbitrary 99 MW sizes for wind projects to circumvent Oregon's competitive bidding rules; and 4) implementing its most recent thermal RFP in a manner that resulted in limited participation. These past actions are consistent with the Commission's recognition that utilities are biased in favor of their own generation resources.

While there has been lackluster participation in PacifiCorp's recent thermal RFPs, the problems with PacifiCorp's past RFPs did not appear to prevent robust bidding in the renewable 2008R-1 RFP. In fact, the Oregon IE characterized the responses to the 2008R-1 RFP as "excellent." Oregon IE Comments at 4 (June 19, 2009). Continued strong participation in future renewable RFPs is not guaranteed, and the Commission should carefully guard against Oregon utilities damaging the renewable energy competitive market. Oregon utilities are planning to acquire massive amounts of new renewable energy, and the costs will be significantly higher if the competitive market for renewable energy experiences the same problems that have occurred in the competitive thermal market.

PacifiCorp justifies the use of overlapping RFPs to provide the Company with the flexibility to select the least cost resource, and because the second RFP may allow "the Company to be proactive in a competitive procurement environment and gain potential renewable generation and construction cost advantages stemming from the current economic climate." PacifiCorp Application to Open Docket at 5 (April 28, 2009).

Essentially, PacifiCorp appears to suggest that the current economic climate may result in lower cost alternatives bidding into the new RFP.

Under the right circumstances, concern about market changes may justify issuing overlapping RFPs. PacifiCorp, however, has not provided any actual evidence or support for its suggestion that lower cost resources may bid into the 2009R RFP. Bids were due in the 2008R-1 RFP by February 27, 2009, well after the current economic recession started. Given the harm to bidders and the resulting potential harm to the competitive renewable energy market associated with overlapping RFPs, PacifiCorp should be required to provide greater support for any claims regarding the potential for lower cost resources to bid into a new RFP.

2. PacifiCorp Should Be Required to Exclude a Benchmark Resource in the 2009R RFP

ICNU's primary concern is that PacifiCorp's real reason for proposing the new 2009R RFP is to include a Company owned benchmark resource. ICNU is not opposed to PacifiCorp ever including a benchmark resource in a renewable energy RFP; however, the unique facts of this case militate in favor of excluding a benchmark resource.

PacifiCorp has a reputation of not being supportive of the competitive bidding process and adopting creative strategies to circumvent a fair bidding process. Regardless of the Company's justifications for its past actions in the competitive bidding process, any Commission decision should be cognizant of how the Company is viewed. Some bidders may not participate in future renewable RFPs if they believe that

PacifiCorp will not treat them fairly, or if they believe the RFP is merely a tool to gain regulatory support for the Company's decision to select its own resource. Although the 2008R-1 RFP may be biased in favor of build own transfer units, PacifiCorp did not include a benchmark resource, and there was a large number of diverse bids. This healthy participation may change if bidders do not have confidence that their bids will be fairly reviewed and have a reasonable chance of being selected.

PacifiCorp is not seeking to simply include a benchmark resource in a standard RFP, but has proposed to include a Company-owned option immediately following a yet to be completed RFP for the same resources. Allowing PacifiCorp to issue two overlapping RFPs will have the potential to unfairly benefit PacifiCorp at the expense of bidders and the renewable energy market. PacifiCorp is a competitor of many of the renewable energy bidders, and the issuance of this new RFP with a benchmark resource gives the appearance that PacifiCorp used the 2008R-1 RFP process to gain market information to benefit its own generation resource in the 2009R RFP, instead of a serious attempt to solicit bids.

IV. CONCLUSION

The Commission should not permit PacifiCorp to propose an overlapping renewable RFP that includes a self-build benchmark resource. Issuing overlapping RFPs will likely harm bidders that participated in the 2008R-1 RFP and could harm the competitive renewable energy market. This harm would be justified if the new RFP would likely result in lower bids because of changed circumstances; however, PacifiCorp appears to be proposing the new 2009R RFP in order to include its own benchmark

resource and not to obtain lower cost bids. ICNU recommends that the Commission approve the 2009R RFP based on the condition that PacifiCorp exclude its benchmark resource. If PacifiCorp's real motivation for the 2009R RFP is that the Company believes there are lower cost renewable resources, then the Company should not object to the removal of the benchmark resource.

Dated this 25th day of June, 2009.

Respectfully submitted,

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/s/ Irion A. Sanger

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