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**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

In the Matter of) **UM 1182**
NORTHWEST AND INTERMOUNTAIN)
POWER PRODUCERS COALITION) **PHASE 1**
)
Petition for an Investigation Regarding) **OPENING COMMENTS OF THE**
Competitive Bidding) **NORTHWEST AND INTERMOUNTAIN**
) **POWER PRODUCERS COALITION**
)

INTRODUCTION

Pursuant to Prehearing Conference Memorandum issued in this case on January 26, 2011, the Northwest and Intermountain Power Producers Coalition (“NIPPC”) hereby files its Opening Comments in Phase 1 of this case regarding the Public Utility Commission of Oregon’s (“Commission’s”) request for proposal guidelines (“RFP Guidelines,” or “Guidelines”). For the reasons set forth below, NIPPC does not believe it is necessary at this time to reduce the threshold resource size triggering the applicability of the Guidelines below 100 megawatts (“MW”). NIPPC respectfully requests, however, that the Commission amend the Guidelines to expressly require that the Independent Evaluator (“IE”) be retained through the final shortlist negotiations.

BACKGROUND

NIPPC is a trade association whose members include independent power producers (“IPPs”) active in the Pacific Northwest.¹ NIPPC initiated this docket in 2004 as a request that the Commission update its RFP Guidelines for competitive bidding in generation resource acquisitions,² and the docket ultimately became part of a series of major policy investigations to address resource planning and acquisition. The other dockets included: Docket UM 1056, in which the Commission updated guidelines for integrated resource planning; Docket UM 1066, in which the Commission considered the rate treatment of new generation (market price or cost of service); and Docket UM 1276, in which the Commission considered mechanisms designed to address the bias inherent in the utility resource procurement process that favors utility ownership of generation assets over Power Purchase Agreements (“PPAs”) with third parties.

In August 2006, the Commission updated its RFP Guidelines in Order No. 06-446, issued in this docket. The Guidelines in the 2006 Order (“2006 Guidelines”) required utilities to conduct an RFP and accept bids from IPPs for all major resource acquisitions, which includes resources greater than 100 MW in nameplate capacity and five years in duration. The utilities own self-built proposals could be included as a

¹ NIPPC’s members currently include Calpine, Capital Power Operations (USA) Inc., Constellation Energy Control & Dispatch, EverPower Renewables, Exergy Development Group, First Wind, Fort Chicago U.S. Power /Veresen Inc., Horizon Wind Energy, Invenergy LLC, Ridgeline Energy, Shell Energy North America, TransAlta Energy Marketing, Inc., and TransCanada.

² At that time, the Commission utilized RFP Guidelines adopted in 1991 as a way of augmenting Oregon’s least-cost planning efforts.

benchmark, but must be scored the same as any other bid in the RFP (Guideline 8). The 2006 Guidelines, and the related orders, also required utilities to announce in their bi-annual integrated resource plans (“IRPs”) all self-built benchmark resources they would submit into upcoming RFPs. The 2006 Guidelines called for Commission review of two separate phases of the RFP process – (1) the Commission may approve the utility’s design of the RFP (Guideline 7), and (2) the Commission may approve the utility’s selection of the final short list of bidders (Guideline 13). RFP acknowledgment of the final shortlist has “the same legal force and effect as IRP acknowledgment in any future cost recovery proceeding.” Order No. 06-446, p. 14. Commission approval means “that the final short-list seems reasonable, based on the information provided to the Commission at that time.” *Id.* at p. 15. But “[i]t will not . . . provide a guarantee of favorable ratemaking treatment during rate recovery.” *Id.*

To attempt to promote fairness in the RFP process wherein the utility’s own self-built resources could be among the bidders from which the utility must select the best bid, the 2006 Guidelines require that a third-party IE oversee some of the RFP process. Guideline 5 requires that the Commission select the IE and that the IE take direction from and respond to Commission Staff. Although the IE must contract with and be paid by the utility, Guideline 5 provides that the utility may request recovery of its payments to the IE in customer rates. The IE assists in analyzing the RFP design and overseeing the utility’s initial scoring of the bids (Guidelines 6 and 10), and provides a final report on the shortlist selection for the Commission’s aid in the approval process (Guideline 11). After that, however, the 2006 Guidelines do not require the utility to retain the IE to

oversee or report on the final negotiations. In other words, the 2006 Guidelines do not call for independent documentation or evaluation of the final negotiations that result in either execution of a PPA with an IPP, selection of the utility's benchmark resource, or abandonment of the RFP altogether to pursue other resource options at a later date.

In the years since 2006, the Commission has overseen several RFPs. But in other instances, utilities have side-stepped the process by designing projects such that they fall below the 100 MW cap. *See* Order No. 08-548, at pp. 10, 19-22 (describing three nearby PacifiCorp wind farms sized at 99 MW). At least one utility has initially requested waiver from the Guidelines, only to withdraw the request for a waiver and build the resource without proceeding through the Guidelines. *See Idaho Power Company's Petition for Partial Waiver from Competitive Bidding Guidelines*, UM 1378, pp. 10-11 (April 17, 2008). Just last fall, Portland General Electric Company ("PGE") requested a waiver from the Guidelines in UM 1499 to acquire a wind site for its own development, but subsequently withdrew the request and decided not to proceed with the development at that time. *See* Order No. 10-394.³ NIPPC is aware of only one case where a utility has executed a PPA for a major resource with an IPP in an Oregon RFP conducted under the 2006 Guidelines – the UM 1368 RFP, wherein PacifiCorp selected Duke Energy, Inc.'s Top of the World Wind Project.

Early this year, in Order No. 11-001, the Commission re-opened this docket to investigate revisions to the RFP Guidelines. The Commission stated, "Most of the parties

³ Portland General Electric ultimately withdrew its request for a waiver before Commission determination. The Commission granted a requested waiver after considerable investigation in UM 1374, for PacifiCorp's purchase of the Chehalis gas plant.

in this proceeding [UM 1276] accept the premise that a bias exists in the utility resource procurement process that favors utility owned resources over PPAs.” Order No. 11-001, at p. 2. This is because “owned resources offer a utility an opportunity to earn a return, while PPAs do not.” *Id.* “We too accept the premise that a bias exists in the utility resource procurement process that favors utility-owned resources over PPAs.” *Id.* at p. 5. The Commission found, “This bias is really a logical inference drawn from an understanding of ratemaking practices and the effectiveness of incentives.” *Id.* In short, “[U]nder cost of service regulation, a utility’s ‘profit’ is the opportunity to earn a return on the rate base and by purchasing a PPA in lieu of building a power plant, it is foregoing the potential to earn some amount of profit.” *Id.* (quoting Commission Staff’s Comments).

Although the Commission declined to adopt any of the incentive mechanisms aimed at undoing this bias in UM 1276, it re-opened this docket and solicited comments on improvements to the RFP Guidelines.⁴ The Commission stated, “Although these guidelines have greatly increased confidence that the utility RFP process is being conducted fairly and properly, *we believe further improvements are needed to fully address utility self-build bias.*” *Id.* at p. 6 (emphasis added). The Commission specifically solicited comments on two possible revisions to the Guidelines – (1) reducing the size threshold for Guideline applicability below 100 MW, and (2) retaining the IE through the final shortlist bidder negotiations. *Id.* The Commission also asked the parties to provide an analytic methodology to more completely

⁴ The Commission also noted the possibility of a credit rating agency considering PPAs to be long-term commitments that have debt-like obligations, but ultimately determined that is a matter to be addressed in analyzing a utility’s cost of capital in rate proceedings, not in the competitive bidding process. *Id.* at pp. 2, 6.

address all of the relevant risks and costs associated with a utility-owned and PPA proposal, beyond that currently called for in Guideline 10(d).

Administrative Law Judge Wallace issued the Prehearing Conference Memorandum breaking this re-opened docket into two phases. Phase 1 will address the Commission's two suggested improvements to the RFP Guidelines, and Phase 2 will address the Commission's request for an analytic method to compare PPAs to utility-owned projects. NIPPC provides comment below only on the two issues to be addressed in Phase 1.

COMMENTS

- A. NIPPC believes that there is no need to lower the 100 MW cap so long as the Commission reaffirms its commitment to thoroughly scrutinize utility procurement of major resources without receiving acknowledgement through the RFP Guidelines.**

As stated above, Guideline 1 requires that utilities follow the RFP process for all resource acquisitions over 100 MW and five years in duration. There have been examples of utilities avoiding this requirement. The Commission itself has noted that PacifiCorp did not proceed through the RFP Guidelines when it developed its own three nearby 99 MW wind farms in Wyoming, named Rolling Hills, Glenrock, and Seven Mile Hill. *See* Order No. 08-548, at pp. 10, 19-22. In the renewable adjustment clause proceeding for those projects, the Commission stated, "A utility always bears the burden of proving that it acted prudently in acquiring its resources." *Id.* at p. 19. "When the utility has followed the Guidelines, however, the resulting resource acquisitions are presumed reasonable." *Id.* One of the projects – Rolling Hills – had specifications which proved "markedly inferior" to other Wyoming wind projects. *Id.* The Commission stated, "the failure to solicit competitive bids is a factor that undermines the weight of the

Company's evidence" that the Rolling Hills project was a prudent investment. *Id.* at p. 20. The Commission ultimately concluded the acquisition was not prudent, and excluded its costs from the renewable adjustment clause. *Id.*

The Rolling Hills example demonstrates that the Commission values the RFP process, and that utilities who fail to follow it will have a heightened burden in rate recovery proceedings. In light of the Commission's commitment to the Guidelines, NIPPC is not convinced it is necessary to lower the 100 MW threshold at this time.

B. NIPPC urges the Commission to amend the Guidelines to require utilities to retain the IE through the final shortlist bidding negotiations.

As discussed in more detail below, NIPPC believes that experience with the Guidelines has demonstrated that the utilities have not fully absorbed the spirit of the Guidelines. Further, IPPs need assurance that the RFP process is truly fair, and any concerns with logistics or cost associated with retaining the IE through the final negotiations can be adequately addressed. For those reasons, NIPPC submits that the benefits of retaining the IE through the final selection process far outweigh any potential costs.

1. Utilities' self-build bias colors the RFP process and requires thorough and ongoing Commission vigilance through deployment of an Independent Evaluator for the full duration of the procurement process.

As stated above, the Commission re-opened this docket because the Commission "*believe[d] further improvements are needed to fully address utility self-build bias.*" Order No. 11-001, at p. 6 (emphasis added). That "bias is really a logical inference drawn from an understanding of ratemaking practices [B]y purchasing a PPA in lieu of building a power plant, it is foregoing the potential to earn some amount of profit." *Id.* at p. 5

(internal quotation omitted). The Commission has recognized that benefits for ratepayers do accrue from PPAs, and NIPPC will reserve extensive discussion of that issue until Phase 2 of this docket. Suffice to say, for now, that overcoming the utilities' inherent bias to select its own resource will provide ratepayers with the most cost-effective mix of resources in the long run.

In the years since the Commission revamped its RFP Guidelines in 2006, however, the utilities have demonstrated resistance to embracing the full spirit of the RFP process. There are multiple examples of a utility attempting to evade the process altogether in order to own their generation resources. The Rolling Hills example discussed above is but one of many such instances. For example, Idaho Power completely ignored the Guidelines when it filed a petition for waiver from the Guidelines in April 2008, but then withdrew its petition for a waiver of the Guidelines without obtaining one. Instead, it proceeded through an RFP process that did not comply with the Guidelines, by, among other failings, employing an "independent consultant," rather than an IE who would meet the requirements of the Guidelines. *See Idaho Power Company's Petition for Partial Waiver from Competitive Bidding Guidelines*, UM 1378, pp. 10-11. Idaho Power ultimately selected its own Langley Gulch combined cycle combustion turbine gas plant as the winning bidder in its RFP. *See Idaho Power 2009 Integrated Resource Plan*, LC 50, p. 36 (stating "Idaho Power completed the competitive bidding process in early 2009 and selected the 300 MW CCCT project").

PGE too has in the past demonstrated resistance to proceeding through the RFP process and instead pursuing utility-owned resources. PGE initiated an RFP in 2008 in

UM 1345 for 218 average MW of renewable energy resources available in the 2009 to 2014 timeframe, which proceeded to the final shortlist negotiation stage with an ownership transfer and a PPA option. *See Staff's Final Report of Oregon Independent Evaluator*, UM 1345, p. 3 (Jan. 28, 2009). The IE and PGE disagreed on how to compare the risks inherent in the ownership and PPA options.⁵ Ultimately, PGE did not secure resources through that RFP. As noted above, however, PGE subsequently filed a petition for a waiver of the RFP Guidelines on September 2, 2010, so that it could acquire and develop what it believed to be a very promising 400 MW wind site named Rock Creek in Eastern Oregon. *PGE's Petition for Waiver from Competitive Bidding Guidelines*, UM 1499 (Sept. 2, 2010). According to the Petition, PGE could not wait nine to twelve months to complete an RFP and needed an expedited waiver from the Commission because, at the end of 2010, PGE's exclusive right to acquire the site would expire. *Id.* at p. 3. However, PGE's initial belief that the site was superior to other sites, and apparently all bids into the 2008 RFP, proved to be speculative. PGE withdrew its petition for a waiver in the same month it was filed "[a]s a result of ongoing due diligence regarding this transaction." *PGE's Withdrawal of Request for Waiver from Competitive Bidding Guidelines*, UM 1499 (Sept. 29, 2010).

Perhaps most the most telling demonstration of the utilities' attitude towards the RFP Guidelines was PacifiCorp's voluntary participation in Idaho Public Utilities

⁵ *See id.* (noting the risk of a lower than expected capacity factor, and stating the "ownership option would bear the full impact of this production shortfall, whereas a PPA option would effectively shield customers from most of the cost because the energy price would be fixed"); *compare to PGE's Comments Regarding the Final Report of the Independent Evaluator*, UM 1345 (May 12, 2009).

Commission's investigation into competitive procurement guidelines (Idaho Public Utilities Commission Case No. IPC-E-10-03). The Idaho Commission has no formal RFP guidelines, and re-opened that docket after the Langley Gulch RFP described above. PacifiCorp and Avista are both regulated by the Idaho Commission, but adhere to RFP Guidelines in other states. The Idaho Commission therefore "provide[d] assurance to PacifiCorp and Avista that any guidelines developed or promulgated . . . will apply only to Idaho Power[.]" Idaho PUC Order No. 30999, at p. 5. Yet PacifiCorp continued to participate in the docket and strongly advocated against adoption of guidelines in Idaho which might resemble the Oregon Guidelines. PacifiCorp even recommended that the process should be optional at a Commission workshop after the Idaho Commission exempted the utility from any need to comply.

The utilities' track record since 2006 is also instructive of the need to expand the reach of the Guidelines. While there will obviously be certain self-built projects or acquisitions that will truly be the most cost-effective for ratepayers, it's unreasonable to expect that self-built benchmarks always outperform multiple IPPs' independent bids. NIPPC is aware of only one IPP being selected as the winning provider of a PPA in an Oregon RFP for a major resource held under the Guidelines since 2006. And it is worth noting that in that case – UM 1368 where Duke Energy Inc.'s Top of the World project was awarded a PPA – the Commission ordered that the IE remain through the final negotiations to oversee the process and provide a final report. The IE's presence will limit the opportunity to end the negotiations without selecting an IPP project, or impose

onerous terms in a PPA which would pave the way for selection of a utility-ownership option.

2. IPPs require reassurance that the Commission is committed to fair RFPs where PPAs compete fairly with utility self-builds given regulated utilities' clear preferences.

In light of the utilities' demonstrated dislike for the Guidelines, the IPP community needs assurance from the Commission that it is committed to a fair process. Submitting a bid into an RFP takes substantial time, money, and effort on behalf of an IPP. If the process does not appear fair, the market will be chilled, and IPPs will be discouraged from fully participating.

Given utilities' preference, the final "dark out" period of the RFP process offers too many opportunities for mischief by the utilities. Providing empirical examples of unfair conduct during final negotiations would require an IPP to go on the record and describe a utility's unfair conduct. Because final negotiations are often protected by a confidentiality agreement, providing such information would be nearly impossible in this docket. Further, IPPs who are still involved in the market may not go on the record discussing unfair conduct out of concern that they will not be seriously considered by the utility in future RFPs. However, NIPPC is comfortable representing that retaining the IE through the final negotiation process would not be a deterrent to IPPs. It would provide assurance that the process is being adequately observed, and that the inherent bias of utilities against selecting an IPP project for a major resource acquisition is being addressed. It would result in more confidence in the process within the IPP community.

3. The Commission has prior experience with requiring retention of the IE through the final short-list bidding process.

There is existing precedent for a utility retaining the IE through the final negotiations. In PacifiCorp's 2008 and 2009 renewable RFPs, the Commission encouraged PacifiCorp to retain the IE through the final bidding process. *See* Docket Nos. UM 1368, 1429. PacifiCorp did not submit a benchmark bid into the 2008 RFP. However, PacifiCorp filed its 2009 RFP, which contained a utility benchmark, prior to awarding a contract in the 2008 RFP, and specifically requested that the two RFPs be overlapping RFPs. *See PacifiCorp's Application to Open Docket*, UM 1429, pp. 4-6 (April 28, 2009). The Company proposed to compare shortlist bidders of the 2008 RFP to the bids in the 2009 RFP. *Id.* The Commission encouraged retention of the IE under these circumstances because, in the words of Commissioner Beyer at a public meeting, it was necessary to keep a "cop on the beat."⁶ In UM 1368, the IE prepared a final report on those negotiations, and as noted above PacifiCorp entered into a PPA with an IPP in that RFP.

4. Cost-allocation and logistical concerns should not preclude the Commission from requiring the IE be retained through the final short list negotiations, and NIPPC therefore suggests a reasonable amendment to the Guidelines.

The benefits of retaining the IE through the final bidding process will far exceed the costs. NIPPC requested that PacifiCorp provide it with the costs of retaining the IE

⁶ This colorful analogy is useful; if only that it reminds us that the palpable presence of law enforcement on city streets, while not eliminating the risk of malfeasance, does inhibit it. In addition in the meaning of the analogy, the police do not act unless they have reason to do so; law-abiding citizens have nothing to fear.

through the final negotiations as compared to the costs prior to the final negotiations in the UM 1368 and UM 1429 dockets. NIPPC has attached PacifiCorp's response as Attachment 1 to these comments, and it demonstrates that the incremental costs of IE retention through the final negotiations was only one sixth of the costs of IE service prior to that point.⁷ Assuming the IE acts independently and promotes customers' interests as more than a mere observer, significant savings can be achieved for customers by addressing bias toward self-builds. One sixth is a marginal additive cost to ensure that nothing unfair occurs in the final negotiations, or if something unfair does occur that it will be well documented by an independent and financially indifferent IE. The deterrent effect will promote a fair RFP. It is simply inadequate to leave participants in a future ratemaking proceeding with no recourse but to obtain in discovery the utility's story of why it closed an RFP without awarding a contract, or why it selected a utility ownership option over a PPA in final negotiations.

NIPPC understands the concerns of other parties, however, regarding the additional cost of IE retention through the final negotiations. NIPPC suggests applying delayed accounting principles to IE payment for the incremental time added. In other words, the shareholders of the final selected resource(s) should allocate between them and pay the costs of the IE's additional time. The utility's shareholders would be held to the same standard as the other final bidders, which is consistent with the manner in which the RFP Guidelines should be implemented to place the utility on equal footing with IPP

⁷ In UM 1368, the IE fees were \$313,692.01 prior to final negotiations, and \$50,000 during final negotiations. In UM 1429, IE fees prior to final negotiations were \$200,285.86, and IE fees during final negotiations were \$30,000.

bidders.⁸ Further, NIPPC recognizes that the IE's continued participation is most necessary in an RFP where the final short-list of bidders contains a utility-ownership option. However, the example of the overlapping 2008 and 2009 PacifiCorp RFPs, and the Commission's requirement that the IE remain in those cases also demonstrates that the IE can be needed even in a final negotiation without a utility ownership option. NIPPC therefore recommends that the Guidelines be amended such that the IE must be retained in all final negotiations where a utility-ownership option is included in the short list, but that the Commission may require retention in other cases, as deemed necessary.

NIPPC also suggests that the process for IE involvement in the final phase used in the prior PacifiCorp dockets could be used as a template going forward. The logistics of IE involvement obviously did not prove unworkable because both RFPs resulted in a finally selected major resource. The final product should be a confidential report from the IE on the tenor, topics and fairness of the final bidding negotiations amongst final bidders with contrast to the utility's treatment of its bid-in benchmark resource. The Commission should state that this report will be available to participants in future ratemaking proceedings, subject to reasonable confidentiality protections.

CONCLUSION

For the reasons set forth above, NIPPC does not believe it is necessary at this time to reduce the threshold resource size triggering the applicability of the Guidelines below 100 MW. NIPPC respectfully requests, however, that the Commission amend the

⁸ NIPPC believes this treatment is consistent with the spirit of the existing Guidelines. *See* Opening Testimony of Kelcey Brown-Linnea Wittekind, UE 215, p. 10 (June 4, 2010) ("PGE should be treated as equally as possible in the bidding process").

Guidelines to expressly require that the Independent Evaluator be retained through the final shortlist negotiations. In closing, NIPPC would like to encourage the Commission to reach a speedy resolution in this Phase of the docket so that an IE may be retained in PGE's upcoming RFPs through the final negotiations.

RESPECTFULLY SUBMITTED this 31st day of March, 2011.

RICHARDSON & O'LEARY PLLC



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Gregory M. Adams (OSB No. 101779)
Attorneys for Northwest and Intermountain
Power Producers Coalition

UM 1182

**In the Matter of
NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS
COALITION**

Petition for an Investigation Regarding Competitive Bidding

Phase 1 Opening Comments of the Northwest and Intermountain
Power Producers Coalition
March 31, 2011

Attachment 1
PacifiCorp's Responses to Data Request No. 1 of Northwest and
Intermountain Power Producers Coalition

NIPPC Data Request 1

For each Oregon RFP in which PacifiCorp has retained the independent evaluator (IE) through the final negotiations, please provide the following, with supporting documents where applicable:

- a. Docket number for the RFP.
- b. Name of the independent evaluator.
- c. Amounts paid to the IE specific to work performed through selection of the final shortlist.
- d. Amounts paid to the IE specific to work performed during the final shortlist negotiations. Please provide invoices or bills from the IE, or otherwise document the scope of services rendered for amounts paid.
- e. The name of the winning bidder.

Response to NIPPC Data Request 1

- a. UM 1368 and UM 1429.
- b. Boston Pacific Company Inc.
- c. For UM 1368, the Company paid the IE \$313,692.01. For UM 1429, the Company paid the IE \$200,285.86.
- d. Please refer to Attachment NIPPC 1 for the scope of services rendered.

The Company paid approximately \$50,000 after the selection of the final shortlist in UM 1368 and an additional \$30,000 after selection of the final shortlist in UM 1429. UM 1368 is a better reflection of cost for IE services during final negotiations as it resulted in a third party negotiated contract. Please note that the scope of work for the IE is determined by the Commission because the IE works for and at the direction of the Commission.

- e. The name of the winning bidder in UM 1368 is Top of the World – Duke Energy Inc. Through UM 1429, the Company acquired Dunlap I, which was the benchmark resource in that RFP.



October 16, 2009

Craig R. Roach, Ph.D.
Boston Pacific Company, Inc.
1100 New York Ave NW Suite 490E
Washington, DC 20005

RE: Amendments to Professional Services Contracts between PacifiCorp and Boston Pacific Company, Inc. ("Boston Pacific") for Independent Evaluator Services in Connection with PacifiCorp's 2008R-1 and 2009R Request for Proposals in Oregon Public Utility Commission ("Commission") Docket Nos. UM 1368 and UM 1429 ("Contracts")

Dear Craig:

At its public meeting on July 7, 2009, the Commission approved PacifiCorp's 2009R RFP subject to certain conditions, including the condition that Boston Pacific continue to serve as independent evaluator through the end of the contract negotiation stages for both the 2009R and 2008R-1 RFPs. See Order No. 09-972. To that end, PacifiCorp agrees to amend the Scope of Work as set forth in Exhibit A of the Contracts to include the following task:

For the 2008R-1 Contract, Exhibit A shall be amended to include the following task:

B 15. Monitor Contract Negotiations

Consultant shall oversee contract negotiations among PacifiCorp and bidders. Consultant's oversight will focus on the reasonableness and fairness of the negotiation and selection of any potential bidder in the 2008R-1 request for proposal. Consultant shall monitor contact among the Company and bidders to ensure all parties communicate effectively and that all disputes are resolved quickly

For the 2009R Contract, Exhibit A shall be amended to include the following task:

9. Monitor Contract Negotiations

Consultant shall oversee contract negotiations among PacifiCorp and bidders. Consultant's oversight will focus on the reasonableness and fairness of the negotiation and selection of any potential bidder in the 2009R request for proposal. Consultant shall monitor contact among the Company and bidders to ensure all parties communicate effectively and that all disputes are resolved quickly.

Exhibit B in each of the Contracts for the 2008R-1 and the 2009R include a Pricing Schedule for the work to be performed by Boston Pacific. Those Exhibits indicate that fees for the work listed in the Scope of Work shall not exceed \$220,100 in the 2008R-1 and 221,900 in the 2009R. To reflect the additional work to be provided by Consultant discussed above, PacifiCorp also agrees to amend the 2008R-1 and the 2009R Contracts by increasing the total not to exceed fee set forth in each of the Contracts in Exhibit B by \$25,000 in the 2008R-1 and by \$50,000 in the 2009R.

All other terms, conditions, covenants and warranties set forth in the Contract not amended or modified by this First Amendment shall remain in full force and effect. If this First Amendment is agreeable to Boston Pacific, please indicate your written acceptance by countersigning this letter below.

Sincerely,

Stacey Kusters
Director, Origination

Accepted this 16th day of October, 2009.

Boston Pacific Company, Inc.

Craig R. Roach

Name: Craig R. Roach, Ph.D.
Title: President

cc: OPUC Staff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of March, 2011, a true and correct copy of the within and foregoing **NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION'S OPENING COMMENTS** was served as shown to:

G. Catriona McCracken
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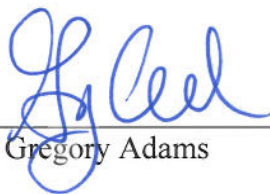
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Signed 
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