

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1208

In the Matter of PacifiCorp Draft 2012  
Request for Proposals

STAFF'S RESPONSE TO PACIFICORP'S  
MOTION FOR CLARIFICATION

Staff of the Public Utility Commission of Oregon (staff) supports PacifiCorp's "motion for clarification" (Motion). However, staff would like to advise the Commission of one additional matter related to the Motion to ensure the Commission finds it acceptable.

PacifiCorp requests an Order from the Commission clarifying that: (1) PacifiCorp should retain the Oregon "independent evaluator" (IE) irrespective of whether the RFP is conditionally or finally approved<sup>1</sup>; (2) PacifiCorp may seek acknowledgement of the final short-list and rate recovery for resources acquired through this RFP if the RFP is not approved; and (3) PacifiCorp should recover appropriately incurred Oregon IE fees through deferred accounting irrespective of whether the RFP is conditionally or finally approved. *See* Motion at 2-3. While Staff supports the Motion, another possible issue arises should the Commission grant the company's request.

Assuming the Commission grants PacifiCorp's request, and PacifiCorp retains the Oregon IE, it is possible PacifiCorp may decide after a period of time, during which the Oregon IE is conducting its review, to *not* seek acknowledgement of the final short-list. In this circumstance, it is unclear whether the Commission would prefer, or not object to,

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<sup>1</sup> Staff believes Order No. 06-446 makes it abundantly clear that PacifiCorp should retain an IE regardless of whether the Commission approves its RFP. *See, e.g.*, Order at 6: "We conclude an IE should be used for all RFPs... We want an independent overseer of the process."

PacifiCorp's retention of the Oregon IE through all activities necessary for the IE to prepare and submit its final Closing Report to the Commission.<sup>2</sup>

Staff is of the opinion that PacifiCorp should retain the Oregon IE through the submission of its Closing Report under these circumstances. Even should PacifiCorp not seek acknowledgement of the short-list, the IE's final Closing Report would be helpful in a future rate case proceeding to determine whether the company's actions in acquiring resources were prudent. For example, a final Closing Report would be useful in determining whether the solicitation process was fair and properly conducted.<sup>3</sup>

Staff offers two additional thoughts on this matter. First, if the utility may decide whether or not to retain an IE during the bidding process in the event it decides not to seek acknowledgment of the final short-list, the utility may choose to retain the IE's services only if the Closing Report is likely to be favorable (and otherwise terminate the IE contract). Second, uncertainty related to the IE's continuing role during the bidding process could adversely affect the ability to attract competent IEs in the future.

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<sup>2</sup> There is no question PacifiCorp must retain the IE if the company seeks acknowledgement of its final short-list. *See* Order No. 06-446 at 14: "The IE will participate in the RFP acknowledgement proceeding."

<sup>3</sup> Staff further notes that in its Reply Comments submitted October 13, 2006, it generally observed:

Staff finds the Oregon IE's role remains relevant if the Commission does not approve PacifiCorp's 2012 RFP and the company nevertheless proceeds with the RFP process. If in six to eight years from now PacifiCorp seeks to put into rates the resources it selected through the process, the Commission will be faced with determining whether those resources were prudently acquired. In doing so, the Commission will consider the concerns that led to its rejection of the RFP. The Oregon IE's activities, including assessment of RFP design and a Closing Report, will help inform the Commission's decision.

Further, the Commission's competitive bidding order directs that the IE be involved in any proceeding to consider acknowledgment of a utility's final short-list of resources, prior to negotiations. The order is silent on whether the Commission will grant a utility's request for an acknowledgment proceeding if the Commission declines to approve the RFP. As PacifiCorp notes in its reply comments (at 11), the acknowledgment process addresses consistency with the utility's acknowledged IRP Action Plan. *See* Order No. 06-446 at 14-15."

*See* Staff's Reply Comments at 4.

Staff is authorized to represent that PacifiCorp agrees that, should its Motion be granted but it later decides not to seek acknowledgement of the final short-list, having an Oregon IE Closing Report would be useful and helpful. As such, barring Commission direction otherwise, PacifiCorp has stated it would retain the Oregon IE under these circumstances for the purpose of obtaining the Closing Report.

Accordingly, staff takes this opportunity to apprise the Commission of this possible scenario arising should the Commission grant PacifiCorp's Motion, to delineate its intended resolution, and to ask the Commission to advise should it disagree or have another preferred outcome.

DATED this 11th day of December 2006.

Respectfully submitted,

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Attorney General

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1 **CERTIFICATE OF SERVICE**

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3 I certify that on December 11, 2006, I served the foregoing upon all parties of record in  
4 this proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid  
5 first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

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