





825 NE Multnomah, Suite 2000
Portland, Oregon 97232

September 11, 2006

Via Email: lisa.c.schwartz@state.or.us

Lisa Schwartz
Senior Analyst
Oregon Public Utility Commission
550 Capitol Street N.E. Suite 215
Salem, Oregon 97301-2551

**RE: PacifiCorp's Reply Comments on Selection of Independent Evaluator (IE)
for 2012 Request For Proposal (RFP) in Docket No. UM 1208
CORRECTED VERSION OF REPLY COMMENTS
(Originally filed as OPUC tracking no. 3632)**

Earlier today, PacifiCorp electronically filed Reply Comments in the above referenced Docket. PacifiCorp respectfully requests that you replace that filing with this corrected version. We apologize for any confusion this may have caused.

PacifiCorp appreciates the opportunity to submit written comments in response to the comments submitted by CUB, ICNU and NIPPC.

1. The Commission Should Approve Merrimack as the Oregon IE.

PacifiCorp supports approval of Merrimack as the Oregon Independent Evaluator (IE). Merrimack was selected by the Utah Commission through a RFP process. Merrimack's selection was based upon its experience in serving as an IE, including experience in RFPs involving large baseload resources, similar to RFP 2012. Merrimack is very well versed in RFP 2012 because it was originally selected as IE for RFP 2009 and it has participated in all aspects of RFP 2012 to date. As required by the Commission's RFP Guidelines, Merrimack is thus "independent of the utility and likely, potential bidders," and also "experienced and competent to perform all IE functions identified in [the Oregon] Guidelines." *In re Investigation Regarding Competitive Bidding*, Order 06-446 at 6, quoting Guideline 5 ("RFP Order").

ICNU, CUB and NIPPC do not directly challenge the independence of Merrimack from PacifiCorp or potential bidders or the competency of Merrimack to perform the IE function. Instead, these parties challenge Merrimack's independence from the Utah Commission and question whether Merrimack can effectuate the RFP Guidelines and general energy policies set by the Oregon Commission. PacifiCorp submits that the Oregon Commission can ensure that Merrimack performs the IE role contemplated by the Oregon Guidelines by directing PacifiCorp to execute a contract with Merrimack

covering these functions, a contract which would be subject to Oregon Commission review and approval. Under Oregon RFP Guideline 10, the role of the IE is not to carry out Oregon's general energy policies, but instead is to "oversee the RFP process to ensure that it is conducted fairly and properly." RFP Order at 12, quoting Guideline 10(b). If Merrimack is contractually bound to perform according to the directions of both the Utah and Oregon Commissions, the Oregon Commission can clarify the proper role of the Oregon IE and effectively address the contentions of bias from ICNU, CUB and NIPPC.

2. If Merrimack is Not Approved as the Oregon IE, the Commission Should Select a New Oregon IE in a Manner that Minimizes Disruption of the Current RFP Schedule, Thus Minimizing Future Risk to PacifiCorp's Customers.

Under the Commission's competitive bidding guidelines in place when PacifiCorp filed the final draft RFP 2012 on July 11, 2006, the Commission had 60 days to review and approve the RFP. The Commission adopted this same timeline for review in its RFP Order in Guideline 7. See RFP Order at 9, quoting Guideline 7 ("The Commission will target a decision within 60 days after the filing of a final draft RFP.")

To permit the Commission additional time to review the RFP, PacifiCorp requested a 90-day review period when it filed the RFP. In agreeing to the current schedule in the case, PacifiCorp agreed to extend the review period by approximately two weeks.

PacifiCorp's primary concern about selection of a separate Oregon IE is that it could cause significant delays in the current RFP schedule. That schedule contemplates issuance of the 2012 RFP in November 2006 and final resource selection by September 2007. Once the final resources are selected, PacifiCorp is required to participate in a 180-day resource pre-approval process under Utah law, which would not result in resource approval until March 2008. Thus, assuming the RFP is issued as presently scheduled, construction on new resources would not begin before March 2008. This time frame only provides a 51 month construction timeframe to meet a June 2012 start date. In today's construction market, a number of Engineering-Procurement-Construction Contractors have indicated that 54 months is needed. Any delay may impact the ability for the company and the market to meet the June 2012 on-line date.

Because the large base-load resources sought by PacifiCorp in RFP 2012 have a long construction lead time, between 4-5 years at best, even short delays in the current RFP schedule could reduce or eliminate the resource options available to PacifiCorp from the market to meet the 2012, and perhaps, 2013, on-line dates. The reduction of options may increase the cost/risk profile of the resources procured from this RFP. Therefore, PacifiCorp submits that it is important to maintain the current RFP schedule without any further delay.

PacifiCorp recognizes that compliance with the new Oregon RFP Guidelines is important to Oregon stakeholders. However, strict compliance with Guidelines around selection and functions of the Oregon IE should not come at the cost of complete non-compliance

with the timing provision of Guideline 7, which requires a 60-day review process. This is especially true given the fact that PacifiCorp has already voluntarily extended the review period by 45 days.

3. Oregon Can Select a New IE Without Disrupting the Current RFP Approval Schedule.

The Commission can select an Oregon IE and minimize the disruption to the existing schedule by directing that IE to perform all tasks set forth in the Guidelines on a going-forward basis. The Commission can do this by granting PacifiCorp's request for non-retroactive application of that aspect of Guideline 6 which requires the IE to comment on the design of the RFP. *See PacifiCorp's Compliance Filing re: RFP 2012, dated August 30, 2006, at page 6.* The Oregon IE could still "oversee the RFP process to ensure that the RFP process is conducted fairly and properly." *See RFP Order at 12, quoting Guideline 10.* The Utah IE has already filed extensive comments on the design of the RFP, which have been supplied to the Oregon parties.

Alternatively, if the Oregon Commission concludes that the Oregon IE must overlap with the Utah IE on every IE function (including those which have already been completed by the Utah IE), PacifiCorp recommends that the Commission adopt an expedited RFP process for a new IE with the goal of having the new IE in place by October 26, 2006, the date that RFP 2012 is now set for Oregon Commission approval. To ensure the independence and competency of the IE, PacifiCorp believes that the Oregon IE should be selected through an RFP process, rather than the Commission selecting one of the specific firms proposed by ICNU or NIPPC. PacifiCorp is neutral as to whether the RFP should be conducted by Staff or whether PacifiCorp should conduct the RFP under the direction of Staff.

The Commission could approve the RFP at the October 26, 2006 public meeting, conditioned upon execution of the Oregon IE's contract and the Oregon IE's review of the RFP for any material design issues that call into question the fairness of the RFP. PacifiCorp suggests that the Commission require accomplishment of these tasks within 6 weeks, or by December 7, 2006. Assuming no material design flaws are found, the approval would become final. If such a design issue is found, PacifiCorp would be required to amend the RFP to address this issue to satisfy the approval condition. In this manner, RFP 2012 could move forward on its present schedule even with an Oregon IE design review component.

PacifiCorp appreciates the process suggestions of NIPPC on this matter and submits that the above approach does not differ materially from that proposed by NIPPC and endorsed by CUB, except that it permits the RFP to move forward on schedule concurrently with the Oregon IE's "fatal flaw" design review.

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If you have any questions, please do not hesitate to contact Stacey Kusters at 503.813.5351 or Laura Beane at 503.813.5542.

Sincerely,

A handwritten signature in black ink that reads "Andrea Kelly p.r.". The signature is written in a cursive style with a large initial 'A' and a trailing flourish.

Andrea Kelly
Vice President, Regulation
PacifiCorp

I hereby certify that on this 13th day of September, 2006 I caused to be served, via overnight delivery, a true and correct copy of PacifiCorp's Reply Comments on Selection of Independent Evaluator (IE) for 2012 Request For Proposal (RFP) in Docket No. UM-1208 (Corrected Version) to those parties who have not waived paper service.

RENEWABLE NORTHWEST PROJECT 917 SW OAK STE 303 PORTLAND OR 97205 ann@rnp.org	SUSAN K ACKERMAN PO BOX 10207 PORTLAND OR 97296-0207 susan.k.ackerman@comcast.net
LAURA BEANE PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 laura.beane@pacificorp.com	OREGON DEPARTMENT OF ENERGY PHILIP H CARVER 625 MARION ST NE STE 1 SALEM OR 97301-3742 philip.h.carver@state.or.us
MELINDA J DAVISON – DAVISON VAN CLEVE PC 333 SW TAYLOR, STE. 400 PORTLAND OR 97204 mail@dvclaw.com	JASON EISDORFER -- CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org
OPUC DOCKETS CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 dockets@oregoncub.org	RFI CONSULTING INC RANDALL J FALKENBERG PMB 362 8351 ROSWELL RD ATLANTA GA 30350 consultrfi@aol.com
PACIFICORP NATALIE HOCKEN 825 NE MULTNOMAH #1800 PORTLAND OR 97232 natalie.hocken@pacificorp.com	NW INDEPENDENT POWER PRODUCERS ROBERT D KAHN 7900 SE 28TH ST STE 200 MERCER ISLAND WA 98040 rkahn@nippc.org
DEPARTMENT OF JUSTICE JANET L PREWITT 1162 COURT ST NE SALEM OR 97301-4096 janet.prewitt@doj.state.or.us	OREGON PUBLIC UTILITY COMMISSION LISA C SCHWARTZ PO BOX 2148 SALEM OR 97308-2148 lisa.c.schwartz@state.or.us
ESLER, STEPHENS & BUCKLEY JOHN W STEPHENS 888 SW FIFTH, SUITE 700 PORTLAND OR 97204-2021 stephens@eslerstephens.com	DEPARTMENT OF JUSTICE MICHAEL T WEIRICH REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 michael.weirich@doj.state.or.us
NORTHWEST ENERGY COALITION STEVEN WEISS 4422 OREGON TRAIL CT NE SALEM OR 97305 steve@nwenergy.org	



Peggy Ryan
Supervisor, Regulatory Admin