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VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
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Re: Docket No. UM 1208

Enclosed for filing in the above-referenced matter are PacifiCorp's Opening Comments. A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Katherine A. McDowell".

Katherine A. McDowell

Enclosures
cc: Service List

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

3 **UM 1208**

4 In the Matter of PacifiCorp's Draft 2012
5 Requests for Proposals

PACIFICORP'S OPENING COMMENTS

6 I. Introduction

7 PacifiCorp respectfully submits the following Opening Comments seeking approval
8 of its draft 2012 Request for Proposals (RFP) under the guidelines adopted in *In the*
9 *Matter of an Investigation Regarding Competitive Bidding*, Order 06-446, UM 1182
10 (August 10, 2006) ("RFP Order").

11 In Guideline 7 in the RFP Order, the Commission adopted a three-part approval
12 standard: (1) alignment of the utility's RFP with its acknowledged IRP; (2) the RFP's
13 adherence to the Commission's competitive bidding guidelines; and (3) the overall fairness
14 of the bidding process. RFP Order at 9-10. The Commission should approve PacifiCorp's
15 2012 RFP on the basis that it satisfies each of these standards.

16 II. Comments

17 A. PacifiCorp's 2012 RFP Is Aligned with PacifiCorp's IRP.

18 1. Background on the Commission's RFP/IRP Alignment Standard.

19 The Commission's RFP/IRP alignment standard was recommended by Staff in its
20 Straw Proposal in UM 1182. Staff made two important points about this standard. First,
21 Staff explained that it was a continuation of the approval standard set forth in Order 91-
22 1383, the Order in which the Commission adopted Oregon's original competitive bidding
23 guidelines. See Staff Opening Comments, UM 1182, at 8.

24 In Order 91-1383, the Commission explained that for an RFP to be consistent with
25 the utility's IRP, the IRP had to set forth the utility's intention to solicit competitive bids and
26

1 the size of the supply block, with any significant differences between the RFP and the IRP
2 documented and explained to the Commission. Order 91-1383 at 11.

3 The Commission has flexibly applied its historic IRP consistency standard. For
4 example, the Commission approved both PacifiCorp's RFP 2003A and PGE's Port
5 Westward RFP on the basis that they were consistent with filed (but not yet
6 acknowledged) IRPs. See *In re PacifiCorp RFP*, Order 03-356, UM 1079, at 2; *In re PGE*
7 *RFP*, Order 03-387, UM 1080, at 2.

8 Second, Staff's comments specifically addressed the key point of intersection
9 between the IRP and RFP, bid scoring and evaluation. In this area, Staff argued that the
10 RFP/IRP alignment standard required use of RFP modeling and analytics, but not dogged
11 adherence to the IRP Action Plan. Staff makes this clear in the following response to the
12 comments of the Public Interest Groups (CUB, NVEC, RNP) in UM 1182:

13 "The fundamental philosophical difference becomes apparent
14 when comparing the Public Interest Groups' stated goal of
15 competitive bidding to Staff's stated goal. The Public Interest
16 Groups indicate that the subject of this proceeding, and the
17 goal of the competitive bidding process, is the implementation
18 of the utilities' IRP Action Plans. Staff, on the other hand,
19 indicates that the RFP process is a means to promote and
20 improve the resource actions identified in the utility's IRP
21 Action Plan. The Public Interest Groups emphasize Action
22 Plan implementation, whereas Staff emphasizes the potential
23 improvement towards attaining the portfolio of resources with
24 the best combination of expected costs and risks. The
25 difference is slight, but Staff believes that it accounts for the
26 key differences between our positions on competitive bidding.
The Public Interest Groups' focus on Action Plan
implementation results in a resource-type approach to
competitive bidding and an emphasis on comparing actual bid
prices to IRP input assumptions.

* * * * *

23 "Staff believes competitive bidding should be viewed as more
24 than Action Plan implementation. The utility and ratepayers
25 should be open to the possibility that the competitive bidding
26 process can provide a better combination of resources than
was envisioned in the IRP Action Plan. Contrary to the Public
Interest Groups' assertion, Staff's recommended approach to
competitive bidding emphasizes consistent decision criteria

1 and the exercise of judgment over mechanical implementation
2 or model crank-turning. The Commission's prudence standard
3 requires timely analysis and evaluation. As Staff indicated in
4 its opening comments, Commission acknowledgement of a
5 final RFP short-list should require a showing by the utility that
6 it has evaluated a full range of resources and selected a final
7 short-list consistent with achieving the primary goal of the
8 IRP." Staff Reply Comments at 7-9.

9
10 In the RFP Order, the Commission expressly agreed with Staff's position on the
11 relationship between an RFP and the IRP:

12 "[W]e agree with Staff that the Request for Proposal (RFP)
13 process is a 'means to promote and improve the resource
14 actions identified in the utility's IRP Action Plan.' See Staff
15 Reply Comments at 7. Changes occur from the time an Action
16 Plan is acknowledged to when an RFP is released. The
17 changes may be simple, due to merely passage of time, or
18 dramatic, such as the Western power crisis in 2000. While a
19 utility's Action Plan establishes a roadmap, it is not in the
20 customer's best interest for any utility to march lockstep
21 without any deviation from the plan. We have found that
22 flexibility is important in meeting the [RFP] goals set out
23 above." RFP Order at 2.

24 The Commission also set goals for the RFP process that are relevant to the
25 RFP/IRP alignment standard. First, the Commission stated that RFPs should
26 "complement" the IRP process, a word choice that implies flexibility. RFP Order at 2.
27 Second, the Commission stated that the RFP process should not "unduly constrain utility
28 management's prerogative to acquire new resources," which is consistent with the RFP
29 promoting general IRP goals instead of implementing specific IRP actions *Id.*

30 In summary, the Commission's RFP/IRP alignment standard: (1) requires a
31 sequencing where the RFP follows the IRP; (2) does not require that the RFP strictly
32 adhere to the IRP Action Plan; instead the RFP must promote and improve the resource
33 actions identified in the utility's IRP Action Plan; (3) requires explanation of significant
34 deviations from the IRP Action Plan, which are permitted as necessary to achieve the
35 IRP's primary goal of selecting the least cost, risk adjusted resource portfolio; and (4)

1 promotes use of IRP modeling and analytics to evaluate bids. PacifiCorp's 2012 RFP
2 meets all of these components of the alignment standard.

3 2. PacifiCorp's 2012 RFP is Aligned with the IRP.

4 First, PacifiCorp's 2012 RFP follows and is designed to fill the large east-side
5 supply-side resource needs identified in PacifiCorp's 2004 IRP, satisfying the sequencing
6 requirements of the RFP/IRP alignment standard. The 2004 IRP included 2,043 MW of
7 identified new large, thermal resource additions on the east-side of the Company's system
8 by 2014, see 2004 IRP at 9, Table ES.1, in addition to 700 MW of short-term market
9 purchases, *id.* at 52-53, for total resource need of 2,743 MW (exclusive of renewable
10 resources and demand side management). The 2004 IRP Update reduced the projected
11 east-side resource additions total to 1,775 MW by 2014. 2004 IRP Update at 34,
12 Table 4.4. In conjunction with the 2012 RFP, and as a part of PacifiCorp's 2006 IRP,
13 PacifiCorp updated its load-resource balance analysis. PacifiCorp is now projecting a
14 need for new resources additions of 1,640 MW in 2014, increasing to 2,048 MW by 2016.
15 In the 2004 IRP and thereafter, PacifiCorp has thus projected a need for new east-side
16 resources ranging from between 1,640 MW and 2,743 MW. PacifiCorp's 2012 RFP
17 brackets the lower-end of this range by seeking new resources between 1,600 and
18 2,290 MW by 2014.

19 Second, PacifiCorp's 2012 RFP promotes and improves upon the actions identified
20 in PacifiCorp's 2004 IRP Action Plan, responding appropriately to the Commission's Order
21 on the IRP and changes that have occurred in the 18 months since that Action Plan was
22 proposed.

23 The 2004 IRP Action Plan proposed two large thermal resources for the east-side
24 of PacifiCorp's system, a 550 MW resource in 2009 (a proxy gas resource) and a 600 MW
25 resource in 2011 (a proxy coal resource). In otherwise acknowledging the 2004 IRP, the
26 Commission did not acknowledge these specific resources stating "that it might be

1 reasonable to wait a couple of years until IGCC technology is further developed before the
2 Company commits to its next large thermal resource.” *In re PacifiCorp’s 2004 Integrated*
3 *Resource Plan*, Order 06-029 at 51 (2006) (“IRP Order”). The Commission reasoned that
4 PacifiCorp could delay the resource decision by a combination of steps, including an
5 assumption that interruptible contracts would continue past 2006 and potential
6 transmission improvements or expansion.

7 The Commission did recognize “the need for one such plant on the East side of
8 PacifiCorp’s system in the near future.” *Id.* at 50. Thus, the Company’s acknowledged
9 plan reflects a resource need of approximately 2,143 MW (2,743 MW – 600 MW). And,
10 contrary to the interpretation of some parties, the Commission did *not* refuse to
11 acknowledge coal as a future resource type. Instead, the Commission expressly refused
12 to acknowledge a preference for or indicate a blanket prudency concern about either gas
13 or coal resources. *Id.* at 50, 51. Indeed, the portfolio acknowledged in the IRP Order
14 contains a coal plant proxy for 2014. See 2004 IRP at 9, Table ES.1.

15 Since the 2004 IRP, the Company changed its planning assumption on
16 interruptible contracts as suggested by the Commission and committed to certain
17 transmission upgrades. These changes and others, designed to “promote and improve”
18 on the 2004 Action Plan reduced PacifiCorp’s shorter-term resource need and permitted
19 PacifiCorp to eliminate the 2009 resource and delay the 2011 resource to 2012. See IRP
20 Action Plan Update at 34. This effectively postponed the proposed acquisition of a large,
21 thermal resource by three years and, in turn, permitted an IGCC resource to become a
22 more viable option. IRP Order at 50, n 8 (noting that 2004 IRP Update addressed certain
23 of Commission’s concerns by eliminating the 2009 resource and delaying the 2011
24 resource until 2012). The 2012 RFP reflects these Commission-directed improvements to
25 the 2004 Action Plan.

26

1 The 2012 RFP is designed to promote and improve on the 2004 Action Plan in
2 another significant way. In the IRP Order, the Commission suggested that the Company
3 could fully explore trade-offs among resource options, including coal and IGCC “within the
4 RFP process by providing flexibility for bidders regarding on-line date, contract length,
5 resource type and technology.” *Id.* at 51. Consistent with this suggestion, the 2012 RFP
6 is flexible and seeks a wide range of proposals in terms of resource type, technology,
7 ability to build resources to specified criteria on the Company’s sites, and contract length.

8 Third, PacifiCorp’s 2012 RFP materially deviates from the 2004 IRP Action Plan
9 only as necessary to accomplish the goal of the IRP, which is a least cost, risk adjusted
10 resource plan. See IRP Order at 1 (the “primary goal” of the IRP process is “a resource
11 plan that is least cost to the utility and its ratepayers and consistent with the long-run
12 public interest.”) The key analytical change from the IRP embedded in the 2012 RFP is the
13 inclusion of a 700-MW resource block to be filled with long-term, asset-backed resources,
14 a block that the 2004 IRP assumed would be met with short-term market purchases
15 (referred to as “Front Office Transactions”).

16 PacifiCorp elected to include this resource need in the 2012 RFP as a part of a
17 move back toward a resource strategy that more comprehensively uses stable, cost-based
18 resources as a hedge against high market prices, consistent with prior planning practices.
19 This change was precipitated by the fact that market prices have increased significantly
20 since the 2004 IRP, causing questions from stakeholders in Utah and elsewhere about
21 continued reliance on short-term transactions to meet long-term resource needs. See
22 Comments of Committee of Consumer Services on RFP 2012 at 2 (August 16, 2006) (“In
23 previous comments to the Commission, the Committee has expressed serious concerns
24 over the risk posed by the significant volume of short-term market transactions included in
25 PacifiCorp’s acquisition strategy, and we provide our rationale. In our comments to the
26 Commission regarding PacifiCorp’s IRP Update, the Committee urged the Company to

1 firm these requirements with stably priced power as soon as possible. Therefore,
2 consistent with our desire to reduce market and gas price risk, the Committee supports the
3 size of the solicitation.”)

4 The 2012 RFP’s change in approach to Front Office Transactions from the 2004
5 IRP is necessary to meet the least cost, risk-adjusted goal of the IRP. This is also an
6 issue on which the Commission should “consider the impact of multi-state regulation,
7 including requirements imposed by other states for the RFP process,” as expressly
8 contemplated by Oregon Guideline 7, outlining Oregon’s RFP approval standard. Such
9 consideration is reciprocal under SB 26, Utah’s Energy Resource Procurement Act. See
10 Utah Code 54-17-202(2) (If an affected electrical utility is subject to regulation in more than
11 one state regarding the acquisition, construction, or cost recovery of a significant energy
12 resource, in making the rules required by Subsection (1), the commission may consider
13 the impact of the multistate regulation including requirements imposed by other states as
14 to: (a) the solicitation process; (b) cost recovery of resources; and (c) methods by which
15 the affected electrical utility may be able to mitigate the potential for cost disallowances.)

16 Fourth, the analytics of the 2012 RFP are more aligned with PacifiCorp’s IRP than
17 in any previous RFP because PacifiCorp will be using its IRP models to analyze and
18 evaluate the bids. Specifically, PacifiCorp plans to use both its Planning and Risk Model,
19 which was used in the 2004 IRP, and its Capacity Expansion Model, which is being used
20 to develop its 2006 IRP. Thus, the portfolio modeling and decision criteria used to select
21 the final short-list of bids will be consistent with the modeling and decision criteria used to
22 develop past and future PacifiCorp IRPs. This includes the modeling of CO2 risk and
23 other environmental factors. In addition, the sources of input data used in the models to
24 evaluate bids and the Company benchmark are consistent with those used in the IRP.

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1 B. PacifiCorp's 2012 RFP Adheres to the Commission's Competitive Bidding
2 Guidelines.

3 Less than three weeks after the Commission issued its RFP Order, PacifiCorp
4 made a comprehensive compliance filing in this case, designed to conform PacifiCorp's
5 2012 RFP as much as possible to the Commission's newly announced competitive bidding
6 guidelines. See PacifiCorp Compliance Filing (August 30, 2006). PacifiCorp sought non-
7 retroactive application of the RFP Order in only two areas, the requirement that an Oregon
8 Independent Evaluator (IE) review the RFP design and on the issue of bid fees. Based
9 upon the Commission's decision at its September 19, 2006 public meeting on selection of
10 an Oregon IE and the use of a conditional approval process, PacifiCorp's former request
11 now appears largely moot. On the latter request, PacifiCorp has amended the 2012 RFP
12 to permit parties to propose alternative bids for a single resource under the same bid fee.
13 See 2012 RFP, Section 2(F).

14 Given the fact that this RFP was on file with the Commission for almost a full
15 month when the RFP Order was issued, fairness dictates that the Commission liberally
16 construe the compliance standard in this case. Even under a strict approach, however,
17 PacifiCorp submits that the 2012 RFP, as amended on August 30, 2006, satisfies this
18 standard.

19 C. PacifiCorp's 2012 RFP Will Produce a Fair Bidding Process.

20 The Commission should conclude that PacifiCorp's amendments to conform the
21 2012 RFP to the Commission's competitive bidding guidelines constitute a prima facie
22 demonstration that the 2012 RFP bidding process will be fair. Additionally, the
23 Commission can also rely on the following evidence of the fairness of the 2012 RFP:

- 24 • In originally drafting the RFP, PacifiCorp incorporated all design changes
25 recommended by the IE from RFP 2003A. This RFP thus improves upon
26 RFP 2003A, which the Commission approved as fair. *In re PacifiCorp RFP*,
 Order 03-356, UM 1079.

- 1 • PacifiCorp originally prepared the draft RFP as the 2009 RFP and received
2 feedback and comments from stakeholders, bidders and the Utah IE. In
3 drafting the 2012 RFP, PacifiCorp incorporated suggestions from all of these
4 parties on the 2009 RFP.
- 5 • PacifiCorp held bidder and stakeholder conferences in June 2006 on the
6 2012 RFP. In response to comments from these conferences, PacifiCorp
7 made numerous changes to the design of the RFP, reflected in PacifiCorp's
8 final draft 2012 RFP filed on July 11, 2006.
- 9 • Since the draft 2012 RFP was filed, PacifiCorp has met with the Utah IE and
10 received feedback on the RFP. PacifiCorp included various changes to the
11 2012 RFP in its August 30, 2006 compliance filing in response to the Utah
12 IE's comments, including modifications to the pro forma contracts to be more
13 flexible and resource neutral. See 2012 RFP, Attachments 3, 5 and 6
14 (accepting all of IE's comments on APSA; amending PPA provisions on force
15 majeure, development risk, delay damages, unavailability and replacement
16 power, lenders' rights and consequential damages; amending tolling service
17 agreement in similar manner.) As a result, the Utah IE has now opined that
18 these contracts are "within the bounds of industry norms." Report of the
19 Independent Evaluator Regarding PacifiCorp's 2012 RFP at 5 (August 30,
20 2006) (IE Report).
- 21 • Oregon Guideline 6, requires that a "utility must allow bidders to negotiate
22 mutually agreeable final contract terms that are different from ones in the
23 standard form contracts." RFP Order at 7, quoting Guideline 6. In
24 compliance with this Guideline, PacifiCorp amended the 2012 RFP to
25 expressly permit modifications to the pro forma contracts that benefit or are
26 neutral to the Company and its customers without deducting points from
bidders in the screening process. See 2012 RFP, Section 5(A) at p. 36.
- Oregon's competitive bidding guidelines require the IE to evaluate third-party
bids and benchmark resources on a comparable basis, and specifically direct
the IE to "evaluate the unique risks and advantages associated with the
Benchmark Resource (if used), including the regulatory treatment of costs or
benefits related to the actual construction and plant operation differing from
what was projected for the RFP." RFP Order at 12, quoting Guideline 10(d).
PacifiCorp has amended the 2012 RFP to comply with this requirement. See
2012 RFP, Attachment 4 at p. 147.
- In compliance with Oregon Guideline 8, PacifiCorp has amended the 2012
RFP to require that the Company provide the IE and the Oregon Commission
with a detailed evaluation of each Benchmark Resource, including supporting
cost information, before bids are received. See 2012 RFP, Section 1(A) at p.
2. The IE will also evaluate a sample of bids to determine whether the
selection of the initial and final short-lists is reasonable.
- PacifiCorp proposed an internal code of conduct to apply to the 2012 RFP.
See 2012 RFP, Attachment 20. In response to comments from the Utah IE,
PacifiCorp agreed to include two additional provisions: (1) to ensure the
integrity of potential updates to the Benchmark Resources, a provision

1 prohibiting the bid evaluation team from relying on the benchmark team for
2 technical assistance during the RFP process; and (2) a provision requiring
3 the IE's presence at every conversation between the Company and bidders,
even after the final short-list is derived, subject to a reasonableness standard
designed to prevent this provision from impeding the RFP schedule.

- 4 • In response to stakeholder requests for flexibility on the level and type of
5 security required and transparency in the credit evaluation process,
6 PacifiCorp amended the 2012 RFP with a credit matrix that contains its
proposed credit requirements for bidders and credit methodology. 2012 RFP
at Appendix B, pp 51-60.
- 7 • In response to Oregon Guideline 9, the 2012 RFP now precludes
8 consideration of debt imputation for PPAs in developing the initial short-list.
9 RFP Order at 11. To the extent the issued is considered in the selection of
the final bids, the Company recognizes that it could be required to seek an
opinion from a ratings agency to substantiate a debt imputation claim.
- 10 • As the Commission has encouraged, the 2012 RFP offers bidders the option
11 of bidding on a project using a PacifiCorp site. See RFP Order, at 6 ("we
12 adopt Staff's suggestion that the utility be encouraged to offer its site for third-
party development, as PacifiCorp proposed in its RFP for resources in 2012,
docket UM 1208.")
- 13 • At the Commission's September 19, 2006 public meeting, the Commission
14 adopted Staff's recommendation on selection of an Oregon IE. As a result,
15 the 2012 RFP will have two IEs, one selected by Utah and one selected by
Oregon. Given the presence of two IEs overseeing the RFP process, it is
16 difficult to see how the 2012 RFP could be anything less than completely fair
and transparent.

17 III. Conclusion

18 For the reasons stated above, PacifiCorp requests approval of its 2012 RFP.

19 DATED: September 19, 2006.

MCDOWELL & ASSOCIATES PC

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22 _____
Katherine A. McDowell
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23 Attorneys for PacifiCorp
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in Docket
3 UM 1208 on the following named person(s) on the date indicated below by email and first-class mail
4 addressed to said person(s) at his or her last-known address(es) indicated below.

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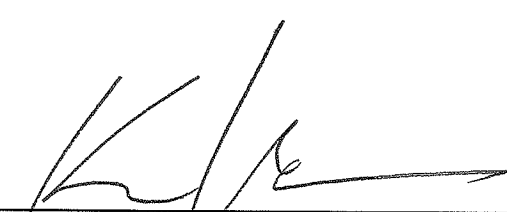
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26 DATED: September 19, 2006.


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