McDowell & Associates PC

KATHERINE A. MCDOWELL
Direct (503) 595-3924
katherine@mcd-law.com

October 4, 2006

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. UM 1208

Enclosed for filing in the above-referenced matter are PacifiCorp's Reply 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,

Katherine A. McDowell

Enclosures
cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1208

In the Matter of PacifiCorp's Draft 2012 Requests for Proposals	**PACIFICORP'S REPLY COMMENTS**

In this filing, PacifiCorp respectfully replies to the Opening Comments of Staff of the Public Commission of Oregon (Staff), the Industrial Customers of Northwest Utilities (ICNU), Citizens' Utility Board (CUB), Renewable Northwest Project (RNP), Oregon Department of Energy (ODOE) and Ecumenical Ministries of Oregon (EMO) on PacifiCorp's draft 2012 RFP. Concurrently with this filing, PacifiCorp is filing a revised version of the 2012 RFP which incorporates design revisions proposed in the parties' Opening Comments.

1. PacifiCorp's 2004 IRP and PacifiCorp's 2012 RFP are Aligned in Seeking Least Cost, Least Risk Resources for PacifiCorp's Customers.

Many of the parties assert that the 2012 RFP is inconsistent with PacifiCorp's IRP because the RFP and PacifiCorp's 2004 IRP Action Plan differ in various respects. The RFP/IRP alignment standard, however, focuses on whether the major objectives of the two processes are in sync, not whether all of the implementation detail matches. *In re Investigation Regarding Competitive Bidding*, Order 06-466 at 2 (2006) ("RFP Order") (the RFP should function to "promote and improve" the utility's IRP Action Plan, not "march lockstep" to it; recognizing that flexibility in the interpretation of the alignment standard is important in meeting Commission-stated RFP goals).

The "primary goal" of the IRP process is a "resource plan that is least cost to the utility and its ratepayers and consistent with the long-run public interest." *In re PacifiCorp's 2004 Integrated Resource Plan*, Order 06-029 at 1 (2006) ("IRP Order"). The goals of the RFP process are to "[c]omplement Oregon's integrated resource planning process," by

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

providing "the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints," without "unduly constrain[ing] utility management's prerogative to acquire new resources." RFP Order at 2 (quoting RFP goals 1-3).

The 2012 RFP is aligned with PacifiCorp's 2004 IRP because both are designed to accomplish the same, Commission-articulated goal: to produce least cost resources, on a risk adjusted basis. Many of the comments urge the Commission to reject the 2012 RFP as inconsistent with the IRP simply because it contains conventional coal benchmarks. This is a misapplication of the Commission's IRP/RFP alignment standard, designed to accomplish goals other than those that currently define Oregon's IRP and RFP processes.

Under the terms of the 2012 RFP, the Company will select a super-critical, pulverized coal resource (bid or benchmark) only if it is the least cost resource, taking into account the $8/ton base-case carbon adder and considering a three-tier carbon sensitivity analysis. The 2012 RFP uses an identical approach to assessing carbon risk as PacifiCorp's 2004 IRP. In reviewing the 2004 IRP, the Commission expressly acknowledged the sufficiency of this approach, rejecting the suggestions of many of the parties who now oppose this RFP to increase the base-case carbon adder. IRP Order at 37 ("We agree with Staff that the sensitivity analyses required by Order 93-695 indicate how portfolios may perform under potential CO_2 regulation scenarios.")

The inclusion of super-critical, pulverized coal benchmark resources in the 2012 RFP is fully consistent with PacifiCorp's 2004 IRP; indeed, the exclusion of coal resources from the 2012 RFP would be inconsistent with meeting the Commission's least cost goals for both the IRP and RFP processes, especially given the data in the 2004 IRP that demonstrated that conventional coal was an important component of all of the least cost, least risk portfolios considered.

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

2. The Multi-State Issues Implicated by the 2012 RFP Require the Commission to Adhere to a Least Cost, Least Risk System Resource Approach or Seek Changes in the Revised Protocol From the MSP Standing Committee.

If the Commission deviates from the least cost, least risk standard in reviewing the 2012 RFP because of environmental objections to conventional coal, this would mark a significant change in Commission precedent, both long-standing (the Commission's IRP policy order, *In re Least-Cost Planning for Resource Acquisitions by Energy Utilities in Oregon*, Order 89-507 (1989)) and newly-issued (the RFP Order). It would also be inconsistent with Section XII of the Revised Protocol approved by the Oregon Commission, which provides that "PacifiCorp shall plan and acquire new resources on a system-wide least cost, least risk basis." *In re Investigation of Inter-Jurisdiction Issues*, Order 05-021, Attachment A at 12 (2005). Indeed, in approving the Revised Protocol, the Commission specifically noted, "With adoption of the Revised Protocol, PacifiCorp agrees to continue planning and operating its generation and transmission system on an integrated basis to achieve a least cost/least risk resource portfolio for its customers." Order 05-021 at 3.

Under Section XIII of the Revised Protocol, proposed changes or amendments to the Revised Protocol—such as a change or exception to the least cost, least risk standard or the requirement PacifiCorp plan and acquire resources on a system basis—are handled through the MSP Standing Committee. *Id.* at Attachment A at 13. The Revised Protocol provides that: "Prior to departing from the terms of the Protocol, consistent with their legal obligations, Commissions and parties will endeavor to cause their concerns to be presented at meetings of the MSP Standing Committee and interested parties from all States in an attempt to achieve consensus on a proposed resolution of those concerns." *Id.* at 14.

The Commission's competitive bidding guidelines expressly acknowledge that RFP approval "may consider the impact of multi-state regulation, including requirements imposed by other states for the RFP process." RFP Order at 7 (quoting Oregon RFP Guideline 7). The Company's regulators and customers in Utah support the inclusion of super-critical,

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

pulverized coal resources in the 2012 RFP under the Revised Protocol's least cost, least risk standard. *See* Comments of Committee of Consumer Services, at 1-2, Docket No. 05-035-47 (August 16, 2006); Comments of Division of Public Utilities, at 4-5, Docket No. 05-035-47 (August 16, 2006); Comments of Utah Association of Energy Users, at 6, Docket 05-035-47 (August 16, 2006); *see also In re Acknowledgment of PacifiCorp's IRP 2004*, Report and Order, Docket No. 05-2035-01 (July 21, 2005). Stakeholders outside of Oregon have also expressed concerned about continued or increased reliance on the short-term market to meet long-term resource needs, which is the effective result of Oregon delaying or blocking this RFP. *See* Comments of Committee of Consumer Services, at 2, Docket 05-035-47 (August 16, 2006).

Deference to the concerns of other states is especially appropriate with the 2012 RFP because it addresses a resource need for PacifiCorp's east-side states, with those states bearing the primary share of the associated reliability risks and cost responsibility and all of the plant siting issues. At a minimum, such deference requires the Commission to issue conditional approval to permit the 2012 RFP to move forward while the Commission initiates a concurrent process with the MSP Standing Committee to permit Oregon to pursue an energy policy that excludes new pulverized coal plants, even if they are the least cost option on a risk adjusted basis.

3. New Emissions Laws in California Do Not Render PacifiCorp's IRP/RFP Carbon Risk Assessment Model Insufficient.

CUB, RNP, ODOE and EMO all point to two new emissions laws in California, AB 32 and SB 1368, to argue against the 2012 RFP. These parties assert that these laws have rendered conventional coal plants obsolete, that they directly impact the economics and risks of the conventional coal benchmark resources in the 2012 RFP and that similar legislation is a distinct possibility in Oregon.

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

California's new emissions laws present the sort of risk contemplated by the base-case carbon adder and required sensitivity runs in PacifiCorp's IRP and in the 2012 RFP. Because the actual impact of these laws on PacifiCorp is covered by this modeling with head room to spare, they do not require a change to PacifiCorp's approach to carbon risk assessment.

SB 1368 is an emissions performance standard law designed to effectuate a rulemaking at the California Public Utilities Commission, Docket No. R06-04-009, on greenhouse gas regulation. Because PacifiCorp's service territory in California is very small, the law has little direct impact on PacifiCorp. First, the law contains an exception for an electrical corporation that provides electric service to 75,000 or fewer retail end-use customers in California, which are subject to the regulation of other commissions on these issues and permits them to file alternative compliance plans. *See* Division 4.1 of the Public Utilities Code, Chapter 3, Section 8341(D)(9). Second, whether or not this exception applies, the law covers power supplies to serve PacifiCorp's customers in California, which comprised only 1.7% of PacifiCorp's 2005 retail sales.[1] Third, because this law covers only long-term power resources (i.e. 5 years or more), it does not impact the ability of PacifiCorp to sell coal-backed products into the short- and medium-term markets. *See* Division 4.1 of the Public Utilities Code, Chapter 3, Section 8340(J) "Long Term Financial Commitment."

AB 32 proposes a California economy-wide cap on emissions by 2012, which is likely to result in a load-based emissions cap on electricity supplies to serve California customers. *See* Health & Safety Code, Division 25.5, Section 38561(a) and in reference to California Public Utilities Commission rulemaking R06-04-009. Such a cap would not necessarily preclude new pulverized coal plants as long as they are sufficiently offset by other resources

---

[1] In 2005, retail sales to ultimate consumers within the PacifiCorp system were 49,646,202 megawatt-hours, with California's ultimate customer's share being 836,674 megawatt-hours or approximately 1.7%. In 2005, PacifiCorp had an average of 34,420 residential customers and 43,906 ultimate customers within the state of California.

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

in the portfolio to allow overall compliance with the cap. PacifiCorp's significant new wind resource additions (which rely on PacifiCorp's thermal base load units for firming), will play a balancing role to new conventional coal in any future cap and trade regime.

In summary, state specific legislation on emissions such as California's SB 1368 and AB 32 is not likely to have a major impact on PacifiCorp unless the legislation is enacted in a state in which PacifiCorp serves significant load. The 2012 RFP is designed to acquire resources to serve primarily east-side customers, where there is currently no legislative activity on emissions regulation. Because of the profound economic impacts associated with adoption of such legislation (including rate increases), the enactment of such a law would be a significant policy decision for this state and a significant departure from traditional least-cost planning. Such legislation may also be unnecessary, because the Commission may propose changes or amendments to the Revised Protocol under Section XIII to respond to environmental objections to conventional coal resources. For this reason, PacifiCorp disagrees strongly with parties who assert that the Commission should assume that California-style emissions regulation is already in place in Oregon while reviewing this RFP.

4. PacifiCorp has Amended the 2012 RFP in Three Significant Respects to Encourage Greater Resource Diversity As Proposed By Staff and Others.

Notwithstanding the fact that the 2012 RFP seeks a broad range of resources, transaction types and durations, Staff asserts that PacifiCorp has not complied with the resource diversity requirement in Oregon RFP Guideline 9 because the 2012 RFP requires a minimum resource length of 10 years. In a related argument, CUB and RNP assert that PacifiCorp should solicit "bridge" resources to determine whether cost-effective, medium-term resources are available to fill PacifiCorp's resource needs, to permit greater maturation of the technology around IGCC plants and carbon sequestration before PacifiCorp makes long-term resource decisions.

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

While PacifiCorp does not agree that lowering the minimum resource term to five years is required to comply with Oregon RFP Guideline 9, it has nonetheless accepted the suggestion of Staff, CUB and RNP to amend the 2012 RFP to solicit resources with this shorter minimum duration. In the IRP Order, the Commission indicated that in approving an RFP for large thermal resources, it would expect PacifiCorp to explore coal plant delay scenarios, which could be done as a part of the "RFP process by providing flexibility for bidders regarding on-line date, contract length, resource type and technology." IRP Order at 51.

As noted in PacifiCorp's Opening Comments, PacifiCorp has already accomplished this directive to some extent through the 2004 IRP update which removed the proposed 2009 gas resource and pushed back the 2012 pulverized coal resource, changes which, in turn, made a 2014 IGCC resource possible. This new amendment to the RFP should permit PacifiCorp to continue to assess the practicality of delay/bridging scenarios in the 2012 RFP as suggested by the Commission. The amendment is at Section I.B of the amended 2012 RFP, filed concurrently with these Reply Comments.

PacifiCorp has added a second amendment to RFP 2012 to encourage resource diversity and to respond to ICNU's general concerns about the weighting of non-price factors. PacifiCorp originally proposed to make compliance with proforma contracts in the 2012 RFP a non-price factor in selecting the initial short-list, with a 10% weighting. In response to concerns that this compliance factor might discourage bidders from offering flexible and innovative proposals, particularly those relying on PPAs, PacifiCorp has decided to eliminate it. Instead, PacifiCorp proposes to draw the initial short-list with an 80% weighting of price (instead of 70%) and a 20% weighting of non-price factors (instead of 30%, including 10% for compliance with proforma contracts). This amendment is at Section 5 of the amended 2012 RFP.

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

In a final amendment designed to promote the goal of resource diversity in the 2012 RFP, in response to the concerns expressed by Staff and ODOE, PacifiCorp has agreed to change its bid evaluation modeling in the 2012 RFP to better account for the 1,400 MW of renewable resources it has committed to acquire through other competitive bidding processes. PacifiCorp will reserve 1,400 MW for renewable resources in the bid evaluation modeling, adding these resources to the planned resource category. In this way, the 2012 RFP modeling ensures that PacifiCorp will take into account the full portfolio of renewable resources which PacifiCorp has committed to acquire, without the challenges associated with conducting a renewable RFP now for the 2012-2014 timeframe. This amendment is at Section I.A of the amended RFP.

5. PacifiCorp Needs the Resources Sought by the 2012 RFP to Ensure a Reliable, Least Cost, Least Risk Resource Portfolio.

The 2012 RFP seeks a range of resources for PacifiCorp's east-side system, between 1,600 MW and 2,290 MW by 2014. The 2004 IRP identified a total resource need on the east-side of 2,743 MW by 2014, including 700 MW of front-office transactions (FOTs). The 2012 RFP thus seeks resources in the lower end of the range identified in the 2004 IRP.

Staff and ICNU argue that the large resource need identified in the 2004 IRP was not acknowledged because the Commission refused to acknowledge the Company's 15% planning margin in its IRP Order. Use of a 12% planning margin, however, only reduces the identified 2006 IRP total east-side resource needs to 1,048 MW in 2012, 1,410 MW in 2014 and 1,808 MW in 2016, still well within the range covered by the 2012 RFP. In its acknowledgment order, the Commission recognized that lowering the reserve margin was insufficient to eliminate the need for a large thermal plant in the near future on PacifiCorp's east-side. IRP Order at 50.

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

Staff, ICNU, CUB and RNP also challenge the size of this RFP on the basis that it includes 700 MW of resources that the 2004 IRP assumed would be met through FOTs. The 2004 IRP included FOTs as a planned resource for the first time in PacifiCorp's IRP history. The Company conducted only limited evaluation of FOTs on a comparable basis with other resources, and did so without fully evaluating the risks associated with greater reliance on the short-term market to meet long-term resource needs. In response to increasing market prices and stakeholder concerns about price and reliability risks associated with planned reliance on the short-term market to meet long-term load obligations, PacifiCorp has: (1) included this resource need within the 2012 RFP; and (2) changed its approach to FOTs in the 2006 IRP to treat these resources on a comparable basis with other resources, adjusted for risk.

The change in approach to FOTs is designed to "promote and improve" the goal of PacifiCorp's IRP, which is to produce the lowest cost, lowest risk resources for customers. In this context, one need only look back five years in Oregon history to see the potential high costs of reliance on the short-term market to meet long-term needs, as well as the negative reactions of customers when asked to bear a portion of these costs. *See In re Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs*, Order 02-469 at 9-10 (2002) (customer opposition to PacifiCorp's excess power cost recovery based on allegations that, inter alia, PacifiCorp acted imprudently in relying on short-term market to replace 500 MW of power after sale of Centralia plant and in failing to properly forecast Utah load growth). Because PacifiCorp ultimately bears the recovery risks associated with under building or over building resources, its economic interests are fully aligned with customers in assuring the accuracy of its resource need projections. *Id.* at 2, n.1 and 9, n.7 (noting that Commission's deferred accounting mechanism allowed PacifiCorp to recover only 50% of its excess power costs and reduced PacifiCorp's recovery to account for the Utah load growth issue).

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

6. PacifiCorp Has Complied With All Merger Commitments Relevant to this RFP.

CUB and RNP assert that PacifiCorp may not have complied fully with MEHC/PacifiCorp Oregon Commitments 31 and 32 in conjunction with this RFP. PacifiCorp has formed an IGCC working group and has held several meetings and workshops with stakeholders in compliance with Oregon Commitment 31. The IGCC working group plans to address all items specifically listed in Oregon Commitment 31, including carbon risk allocation.

Under Oregon Commitment 32, MEHC and PacifiCorp agreed to study the economics and viability of an IGCC option and present the results of this study as a resource alternative to inform the resource selection and RFP process under consideration in Docket No. 05-035-47. PacifiCorp also agreed to file the results of the study and the draft RFP with the Oregon Commission for review and public comment Concurrently with this filing, PacifiCorp is filing the results of the study in compliance with Oregon Commitment 32.

7. The Commission Should Conditionally Approve the 2012 RFP.

In the Opening Comments, many parties raised issues that exceed the scope of the RFP approval process set forth in the Commission's RFP Order. In its Opening Comments, Staff proposed a conditional approval framework to provide assurances to parties that approval of this RFP does not constitute pre-approval of the resources to be acquired in the RFP. *See* RFP Order at 10 (noting that Commission may approve an RFP with "certain conditions and modifications.") PacifiCorp appreciates Staff's proposal and submits that the Commission should conditionally approve this RFP, clarifying the relatively limited scope and meaning of RFP approval under the Commission's RFP Order. *See* RFP Order at 9-10 (clarifying that Commission approval of an RFP is simply a determination of whether the RFP meets the approval criteria in Oregon RFP Guideline 7 and does not imply any ratemaking determination.)

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

Conditional approval is an appropriate option for this RFP, which admittedly raises difficult and contentious issues for the Oregon parties. By conditionally approving the RFP, the RFP can move forward under its current schedule with the following results: an Oregon IE can be selected and participate in the RFP design review; PacifiCorp will obtain the market information necessary to inform its resource selection process (including information on medium-term bridge resources); the Commission or PacifiCorp can initiate a process with the MSP Standing Committee to address the energy and climate policy issues implicated by this RFP; PacifiCorp will complete its 2006 IRP and make its results available to further inform the RFP process; and PacifiCorp will return to the Commission for acknowledgment of the final short-list as contemplated by Oregon RFP Guideline 13.

Conditional approval will allow the Commission to make a substantive decision on this RFP in the context of the RFP acknowledgment process, with current and complete market information, including information on available resource type, duration and price. Similar to the RFP approval process, the RFP acknowledgment process requires the utility to explain whether its final short-list is consistent with its acknowledged IRP. PacifiCorp will complete its 2006 IRP before the acknowledgment process and the 2006 IRP will provide important evidence on whether the 2012 RFP "promotes and improves" the least cost, least risk goals of the 2004 IRP. This evidence will consist of updated load and resource balance projections (including results of a review of the planning margin), preferred portfolio composition (including comparative analysis of different resource options) and updated risk assessments (including fuel prices, market prices and environmental regulation). The Commission has previously relied on information from filed but not yet acknowledged IRPs in this manner in approving RFPs. *See In re PacifiCorp RFP 2003-A*, Order 03-356 at 2 (2003).

On the other hand, an outright rejection of the 2012 RFP leaves the difficult issues raised by this RFP unresolved without any clear path for resolution. The Commission should

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204

use the conditional approval process contemplated by Oregon RFP Guideline 7 and suggested by Staff to avoid this impasse scenario.

DATED: October 4, 2006.

MCDOWELL & ASSOCIATES PC

Katherine A. McDowell

Attorneys for PacifiCorp

CERTIFICATE OF SERVICE

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

Susan Ackerman
PO Box 10207
Portland, OR 97296-0207
susan.k.ackerman@comcast.net

Philip H. Carver
Oregon Department of Energy
philip.h.carver@state.or.us

Melinda J. Davison
Davison Van Cleve
333 SW Taylor, Ste 400
Portland, OR 97204
mail@dvclaw.com

Citizens' Utility Board of Oregon
dockets@oregoncub.org

Randall J. Falkenberg
RFI Consulting Inc.
8351 Roswell Rd – PMB 362
Atlanta, GA 30350
consultrfi@aol.com

Jason Eisdorfer
Citizens' Utility Board of Oregon
jason@oregoncub.org

Robert D. Kahn
NW Independent Power Producers
7900 SE 28th St Ste 200
Mercer Island, WA 98040
rkahn@nippc.org

Janet L. Prewitt
Department of Justice
janet.prewitt@doj.state.or.us

Renewable Northwest Project
917 SW Oak Ste 303
Portland, OR 97205
ann@rnp.org

Michael T. Weirich
Department of Justice
michael.weirich@doj.state.or.us

John W. Stephens
Esler Stephens & Buckley
888 SW Fifth Ave Ste 700
Portland, OR 97204-2021
stephens@eslerstephens.com

Steven Weiss
NW Energy Coalition
steve@nwenergy.org

Lisa C. Schwartz
Oregon Public Utility Commission
PO Box 2148
Salem, OR 97308-2148
lisa.c.schwartz@state.or.us

DATED: October 4, 2006.

Katherine A. McDowell
Of Attorneys for PacifiCorp

McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204