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February 6, 2009

Via Electronic and US Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PACIFICORP Draft 2009 Request for Proposals pursuant to
Order No. 91-1383
Docket No. UM 1208

Dear Filing Center:

Enclosed please find an original and one courtesy copy of the Highly Confidential Opening Comments on behalf of the Industrial Customers of Northwest Utilities (“ICNU”) in the above-referenced docket. As stated above, ICNU is providing highly confidential versions of its Opening Comments.

The confidential pages and exhibits are inserted in separate envelopes and sealed pursuant to Protective Order No.06-444, and will be distributed only to those parties that have signed the order.

The highly confidential information pages and exhibits are inserted in separate envelopes and sealed pursuant to Special Protective Order No.07-471, and will be distributed only to those parties that have signed the order. Also enclosed is a complete Redacted Version of the Opening Comments.

Thank you for your assistance and please do not hesitate to give me a call if you have any additional questions.

Sincerely yours,

/s/ Brendan E. Levenick
Brendan E. Levenick

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Highly Confidential Opening Comments on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the official service list shown below for UM1208, via U.S. Mail. A Redacted Version of the testimony and exhibits was served via electronic mail.

Dated at Portland, Oregon, this 6th day of February, 2009.

/s/ Brendan E. Levenick
Brendan E. Levenick

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1208

In the Matter of)	
)	
PACIFICORP)	OPENING COMMENTS OF THE
)	INDUSTRIAL CUSTOMERS OF
Draft 2012 Request for Proposal)	NORTHWEST UTILITIES
)	
)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits the following opening comments regarding PacifiCorp’s (or the “Company”) 2012 request (“Request”) for acknowledgement of its final short list in its 2012 request for proposal (“RFP”). ICNU recommends that the Oregon Public Utility Commission (“OPUC” or the “Commission”) not acknowledge PacifiCorp’s final shortlist because it is inconsistent with PacifiCorp’s integrated resource plan (“IRP”) and the Company has not adequately addressed the deficiencies in its RFP. Acknowledgement is also unwarranted because the RFP has been fraught with numerous difficulties and problems.

Regardless of whether the Commission acknowledges PacifiCorp’s shortlist, the Company’s management has the responsibility to acquire the lowest cost resource to meet its resource needs. The Commission’s acknowledgement, or lack thereof, should not be a factor in the Company’s decision whether to enter into a contract with a shortlisted resource. Among other things, PacifiCorp must evaluate the risks, the price, resource size and resource type of any shortlisted resources with other known or

foreseeable options, and carefully reevaluate its expected future loads. The Commission should make it clear that it will resolve all these issues related to the reasonableness and prudence of any acquisition in a future rate proceeding.

These comments represent ICNU's preliminary views on PacifiCorp's Request. ICNU has not had sufficient opportunity to review PacifiCorp's data responses or the Staff report filed on February 5, 2009. Pursuant to the schedule set by Chief Administrative Law Judge Grant, reply comments are due on February 20, 2009, and ICNU may raise additional issues.

II. BACKGROUND

PacifiCorp filed and requested approval of its draft 2012 RFP on July 11, 2006. It was impossible for the 2012 RFP to fully comply with the Commission's new competitive bidding guidelines because they were issued one month after the publication of the RFP. Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 (Aug. 10, 2006). PacifiCorp filed revisions and modifications to its 2012 RFP on October 4, 2006, and November 1, 2006.

The Commission denied approval of the 2012 RFP. Re PacifiCorp Draft 2012 RFP, Docket No. UM 1208, Order No. 07-018 (Jan. 16, 2007). The Commission found that the RFP was "not aligned with the company's acknowledged integrated resource plan (IRP), and that PacifiCorp has failed to justify the need for 1,109 megawatts (MW) of base load resources." Id. at 1. Specifically, the Commission found that PacifiCorp: 1) failed to demonstrate a need for two large thermal resources on the east side of its system; and 2) failed to establish that base load resources are best suited to

fill PacifiCorp's resource needs. Id. at 4-6. The Commission was also concerned about PacifiCorp's intention to become energy surplus. Id. at 6-7. The Commission concluded that PacifiCorp could proceed with its RFP and request acknowledgment of its resource shortlist, but would need to address these deficiencies in the future. Id. at 10. The Commission previously concluded that PacifiCorp "might be able to obtain acknowledgment of a short list if it can demonstrate the final choice of resources is aligned with its acknowledged IRP." Re PacifiCorp Draft 2012 RFP, Docket No. UM 1208, Order No. 06-676 at 3 (Dec. 20, 2006).

PacifiCorp issued its 2012 RFP to the market on April 5, 2007. In the Fall of 2007 it became clear to the Company that its benchmark resources would not be the winning bids. On October 2, 2007, PacifiCorp filed a motion in Utah to delay and revise the RFP. PacifiCorp sought to include new benchmark resources at its Currant Creek and/or Lake Side plant sites. After opposition from many Oregon and Utah stakeholders, PacifiCorp elected to continue with the original 2012 RFP.

On April 1, 2008, PacifiCorp filed a petition requesting the Commission waive its competitive bidding rules to acquire the 520 MW Chehalis gas fired generating resource in Washington. The Commission granted PacifiCorp's petition. Re PacifiCorp Request to Waive the Competitive Bidding Guidelines, Docket No. UM 1374, Order No. 08-376 (July 17, 2008).

On December 4, 2008, PacifiCorp requested that the Commission acknowledge its resource shortlist. PacifiCorp amended its acknowledgement request on December 17, 2008. The short list includes only one resource, the 607 MW Lakeside II

plant. Re PacifiCorp Draft 2012 RFP, Docket No. UM 1208, Amended Request for Acknowledgement, Filing Letter page 1 (Dec. 17, 2008); PacifiCorp 2008 IRP Update at 9 (Dec. 18, 2008); UM 1208 Final Short-List Acknowledgment, Staff Report at 4, fn 11 (Feb. 4, 2009). The parties have had less than two months to review and conduct discovery on the Company's short list acknowledgement, and the acknowledgement process does not provide the right to submit testimony or hold an evidentiary hearing.

III. LEGAL STANDARD

PacifiCorp's Request is the first request for the Commission to acknowledge a baseload resource short list under the new competitive bidding guidelines. Unlike a utility request for approval of its draft RFP, the guidelines do not provide specific and detailed standards for acknowledgement of a utility RFP shortlist. Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 (compare guideline 7 (RFP approval) with guideline 13 (RFP acknowledgement)).

The Commission has stated that a shortlist acknowledgment proceeding should focus on whether the final shortlist is consistent with the near-term resource acquisitions identified in its acknowledged IRP. Id. at 15; Re PacifiCorp Draft 2012 RFP, Docket No. UM 1208, Order No. 06-676 at 3. In addition, if the draft RFP was not approved, the Commission has stated that it expects the utility to address the deficiencies in the draft RFP. Re PacifiCorp Draft 2012 RFP, Docket No. UM 1208, Order No. 07-018 at 1.

The Commission's order allowing a utility to seek acknowledgment of a resource shortlist also provides guidance regarding the impact of such an order.

Acknowledgment of a utility shortlist does not “provide a guarantee of favorable ratemaking treatment during rate recovery.” Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 at 15. The Commission stated that acknowledgment would be similar to acknowledgment of a utility IRP, which is “a conclusion that the final short-list seems reasonable, based on the information provided to the Commission at that time.” Id. Unfortunately, based on the limited information provided by PacifiCorp, the Company’s final shortlist is unreasonable.

IV. COMMENTS

1. The 2012 RFP Process is Flawed

A review of the 2012 RFP in its totality demonstrates that the 2012 RFP suffers from significant deficiencies and that the Commission should be very cautious and skeptical of any resulting shortlist. This is the first utility request for baseload resource shortlist acknowledgement, and this process should not serve as the model for future RFP proceedings. From the start, the RFP has been troubled by PacifiCorp’s attempt to acquire more resources than it needs, and the appearance that the Company is determined to only acquire self build or turnkey resources.

These flaws may have resulted in the RFP being [REDACTED]

[REDACTED].
Confidential PacifiCorp Amended Request for Acknowledgement at 3. [REDACTED]

[REDACTED]. Highly Confidential Oregon
Independent Evaluator’s Final Closing Report at 15. [REDACTED]

[REDACTED]

[REDACTED] PacifiCorp's recent decisions to size and build 99 MW wind facilities to avoid competitive bidding, to purchase Chehalis without a competitive bid, and the Company's aborted attempt to delay the 2012 RFP after its benchmark resources lost their viability raise skepticism about the legitimacy of the RFP process. There may be a lack of confidence in the power development community about whether the Company intends to conduct a fair bidding process. This lack of acceptable bids in the shortlist further demonstrates the weakness of this RFP.

PacifiCorp shortlist includes one resource, an asset purchase and sale agreement with a natural gas fired combined cycle combustion turbine plant on PacifiCorp's existing Lake Side site in Utah. This is a particularly ironic result as PacifiCorp sought to modify the 2012 RFP in the fall of 2007 to permit the inclusion of a self build resource at the Lake Side plant. PacifiCorp Notice of Withdrawal of Rocky Mountain Power's Motion to Amend its 2012 RFP at 1-2 (Nov. 28, 2007).

PacifiCorp's request for the Commission to acknowledge a one bid shortlist also appears to be contrary to the purpose of the competitive bidding rules. The Commission adopted the guidelines proposed by Commission Staff, which recommended that a final short list was to contain "several options for putting together the preferred incremental portfolio." Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Staff Opening Comments at 10. Staff recommended that the Commission should not acknowledge a single bid because that "would constitute pre-approval of the

resource and alter the traditional role of the Commission.” Id. The Commission should reject PacifiCorp’s Request because the Company’s short list does not include several resource options and is the type of shortlist that Staff recommended that the Commission not consider in an acknowledgment proceeding.

2. PacifiCorp’s Shortlist is Inconsistent with the Company’s Acknowledged IRP

PacifiCorp’s Request should also be denied because the shortlist is inconsistent with PacifiCorp’s acknowledged IRP action plan. The Commission can easily decline to acknowledge this resource based on the conclusion that PacifiCorp has not met the requirement that the final short-list must be consistent with the near-term resource acquisitions identified in its acknowledged IRP. Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 at 15.

The Commission acknowledged, with exceptions, PacifiCorp’s 2007 IRP. Re PacifiCorp, Docket No. LC 42, Order No. 08-232 (April 24, 2008). Among the exceptions were that the Commission declined to acknowledge PacifiCorp’s action plan items 7, 8, 9 and 11, which were the Company’s plans to acquire up to 2,050 MWs of baseload resources on the east and west side of the system by 2014. Id. at 34-35. Action item 7 was the plan to procure a 550 MW baseload/intermediate load resource in the east by the summer of 2012. Id.

PacifiCorp requests that the Commission approve its shortlist, despite the fact that there is no acknowledged action plan. Re PacifiCorp Draft 2012 RFP, Docket No. UM 1208, PacifiCorp Amended Request for Acknowledgement at 8. PacifiCorp

argues that its shortlist is consistent with Staff's recommended changes to the action plan and that the "Commission noted, however, that it would have acknowledged those Action Items with Staff's proposed modifications." Id. The Oregon IE takes a similar approach recommending "a flexible reading of the Commission's Order" acknowledging the Company's 2007 IRP. Oregon IE Comments at 4.

The Commission should not attempt to reconstruct whether the shortlist is consistent with whatever action items that the Commission "would have acknowledged" in early 2007. Action items 7, 8, 9, and 11 proposed to acquire four baseload and intermediate load resources of 2050 MWs from 2012 to 2014. Re PacifiCorp, Docket No. LC 42, Order No. 08-232 at 30-33. Staff did not believe that the Company should acquire two resources in the east in 2012, and disagreed with the Company's plan to acquire a new baseload resource in the west by 2011-12. Id. at 30-33. Staff recommended that action items 7, 8, 9 and 11 remove any language regarding specific resource amounts, and be replaced with generic language that PacifiCorp procure unknown amounts of non-coal resources. Id. Staff also recommended that the Company should refine the size and the types of resources "after updating DSM and renewable resource analyses, accounting for changes in resources, and refining load forecasts." Id. at 32.

Although Staff recommended that the PacifiCorp should plan to acquire one thermal resource on the eastern system in 2012, Staff did not agree that the Company needed to acquire the proposed 600 MW base load plant in the west. Id. Since the Commission acknowledged the 2007 IRP, PacifiCorp has acquired the 520 MW Chehalis

plant on the western side of its system. While Chehalis is electrically connected with the west, its acquisition may allow PacifiCorp to construct transmission to allow Wyoming resources currently serving the west to meet load needs in the east. Thus, it is unclear if Staff would have found the plan to construct an east side resource in 2012 reasonable if Staff had been aware that PacifiCorp would acquire Chehalis. In addition, as will be addressed below, it is unclear if PacifiCorp has updated its planned resource size and type based on updates that incorporate its new resources and load forecasts.

The simple fact is that the Commission did not acknowledge PacifiCorp's action items, and the Commission should conclude that it cannot acknowledge the shortlist because there is no IRP action plan to compare the shortlist. It would be too difficult to take a "flexible" approach in attempting to determine what the Commission "would have" ruled in early 2007, especially in light of changed circumstances. Given the dramatic changes in the current economic climate, and uncertainty surrounding future financing costs, load growth and the market price of power, such a flexible reading of the Commission's order could open up a "can of worms."

3. PacifiCorp Has Failed to Address the Deficiencies in its RFP

PacifiCorp has not demonstrated that it has satisfactorily addressed the fundamental concerns raised by the Commission when it denied the Company's request to acknowledge its draft 2012 RFP. The concerns regarding PacifiCorp's resource need and what type of resources the Company should plan to acquire remain valid, and warrant rejection of the Company's one bid shortlist.

PacifiCorp's has only provided cursory information regarding the deficiencies in its draft 2012 RFP. Although it is possible that the Company needs an additional resource on the eastern side of its system, there is insufficient information in this proceeding for the Commission to conclude that it is reasonable to assume the Company needs Lakeside II. Regardless of whether the Commission acknowledges the Company's shortlist, the Commission should thoroughly review the issue of the Company's need in a future prudence review if PacifiCorp consummates the Lakeside II or any other new baseload resource.

PacifiCorp avoids the issues raised in the Commission's order that denied acknowledgement of the draft RFP by stating those concerns are no longer relevant. The Company notes that the draft RFP was based on a comparison with the Company's 2004 IRP, and the Company now has a new IRP. Re PacifiCorp Draft 2012 RFP, Docket No. UM 1208, Amended Request for Acknowledgement at 8-9. The Company states that the "the deficiencies identified in the Draft RFP were primarily the product of unfortunate timing and have since been made moot with the acknowledgement of the 2007 IRP." Id. at 9.

PacifiCorp's Request does not attempt to address the fundamental concerns raised by the parties and the Commission. The Commission did not reject the 2012 RFP upon the grounds that the 2004 IRP was outdated, rather it was rejected because there were legitimate concerns that PacifiCorp was seeking to acquire too many resources—specifically baseload resources—which may not be the best options to meet the Company's summer peaking and seasonal needs, and PacifiCorp may have limited

ability to sell the associated energy surplus. Re PacifiCorp Draft 2012 RFP, Docket No. UM 1208, Order No. 07-018 at 4-10.

The Company has not demonstrated that it needs to acquire the Lakeside II resource. Despite the short time to review the Company's Request, the incomplete information available and the lack of a formal process to test the veracity of the Company's claimed resource need, the Company's own documents provide significant questions about the Company's resource needs.

It is unclear whether the Company has taken into account the current U.S. economic recession. For example, on December 4, 2008 the Company filed a GRID study in Oregon as part of UE 199, which was based on the load forecast in use throughout 2008. Just a few days later, the Company filed a new study in Utah, with a new 2009 load forecast. While GRID output reports do not reveal peak demands, it does show monthly energy | [REDACTED] [REDACTED]. ICNU sought additional information regarding PacifiCorp's resource needs, but was informed by PacifiCorp that the Company did not have the information or had not conducted the analysis. PacifiCorp responses to ICNU data requests 11.3 to 11.6.

PacifiCorp may be replacing market transactions with baseload resources. [REDACTED] Re PacifiCorp, Utah Public Service Commission Docket No. 08-035-95, Exhibit GND 2.1. The Company could be planning on as little as 341 MWs of eastern market purchase in

2012. PacifiCorp 2008 IRP Update at 37 (Dec. 18, 2008). In addition, much of the assumed need is a 12% reserves requirement. Id.

If most of the resource “need” is for reserves and market power replacements, then PacifiCorp’s own actions appear to be creating the need for eastern resources. Given the current economic conditions, this is a very risky strategy. If the forecasts the Company uses turn out wrong, then the Company may be saddled with an unnecessary, high cost resource. A more flexible strategy of continuing with its current amount of market purchases and reducing its planning reserve margins may have far less risk because it affords the Company time to avoid a potentially costly mistake. A more prudent strategy may be to acquire peaking resources via purchased power agreements to replace purchases being lost and to provide reserve capacity.

Essentially, PacifiCorp has not shown that it needs to acquire a new baseload resource on the eastern side of its system by 2012. Regardless of whether the Commission acknowledges the shortlist, any Commission order should not preclude parties from raising these issues in any future prudency review.

4. The Commission Should Not Address Issues Related to Shortlist Bid Prices

The Commission should defer considerations of whether the shortlist bid price is competitive, especially in light of current market conditions. The issue of short list bid pricing does not appear to be an issue that the Commission stated it would consider in a short list acknowledgement proceeding, and it is not an issue PacifiCorp requested resolution of. The Oregon IE provided a brief one page analysis of this issue

upon the request of the Commission Staff, but there is insufficient information to resolve this issue in this proceeding.

The Oregon IE made “two quick comparisons” of the short list bid price with the Company’s benchmarks and the bids just submitted in the 2008 all source RFP. Oregon IE Comments at 5. The Oregon IE states that “we caution that it is not possible at this time to provide an apples-to-apples comparison.” Id. The Oregon IE’s bid price analysis does not review the entire relevant market | [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The Oregon IE report and much of the data included in it were only provided to ICNU on January 23, 2009, and there is simply insufficient time and no record upon which to review issues related to the bid price.

In addition to the resource price and availability, there are numerous other issues that are relevant to whether PacifiCorp should enter into a contract with a shortlist resource, but cannot be adequately investigated in an acknowledgment proceeding. For example, | [REDACTED]

[REDACTED] Re PacifiCorp, Utah Public Service Commission Docket No. 08-035-95, Confidential Testimony of Stefan Bird at 19-22. The Commission has insufficient information to resolve these types of questions and should defer their resolution to a future prudency review.

V. CONCLUSION

The Commission has numerous grounds upon which not to acknowledge PacifiCorp's Request. These include:

- The overall RFP process is flawed and does not warrant acknowledgement of the first baseload resource shortlist under the Commission's new competitive bidding guidelines;
- There is no acknowledged IRP action plan to compare this shortlist to;
- The Commission's competitive bidding guidelines were not intended to be used for acknowledgement of a single bid shortlist; and
- PacifiCorp has not shown that it has the capacity deficit that this resource would fill, or that a baseload resource is the best option to meet the Company's resource needs.

The bottom line is that there is no reason for the Commission to acknowledge the Company's shortlist at this time, or to cloak this particular RFP with whatever respectability accompanies such a finding. The Commission should decline to acknowledge the Company's RFP, and withhold judgment on issues related to the Company's resource needs, resource type, and resource pricing until PacifiCorp seeks to include any costs in rates.

Dated this 6th day of February, 2009.

Respectfully submitted,

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Of Attorneys for Industrial Customers
of Northwest Utilities

Attachment 1

This page redacted.

UM-1208/PacifiCorp
January 30, 2009
ICNU 11th Set Data Request 11.3

ICNU Data Request 11.3

Please provide a copy of the GRID L&R export files from the 2009 GRID model test year currently in use by the Company in Utah Docket No. 08-035-38. (Please note, this is a request for the actual documents rather than simple permission to use the documents.)

Response to ICNU Data Request 11.3

The requested GRID L&R export files have not been prepared by the Company.

UM-1208/PacifiCorp
January 30, 2009
ICNU 11th Set Data Request 11.4

ICNU Data Request 11.4

Please provide a copy of the GRID L&R export files from the 2009 GRID model test year used by the Company in Docket No. UE 199. (Please note, this is a request for the actual documents rather than simple permission to use the documents.)

Response to ICNU Data Request 11.4

The requested GRID L&R export files have not been prepared by the Company.

UM-1208/PacifiCorp
January 30, 2009
ICNU 11th Set Data Request 11.5

ICNU Data Request 11.5

Please reconcile the November 2008 load forecast provided by the Company in its response to ICNU 10.3 to the L&R coincident peak data exported from the 2009 test year in Utah Docket No. 08-035038. Since both forecasts were done around the same time (November 2008) please explain why there is such a substantial difference in the 2009 coincident peak demands.

Response to ICNU Data Request 11.5

The requested reconciliation has not been prepared by the Company. Please refer to the Company's response to ICNU Data Request 11.3.

UM-1208/PacifiCorp
January 30, 2009
ICNU 11th Set Data Request 11.6

ICNU Data Request 11.6

Please provide L&R balances for the 2012 RFP resource showing the sufficiency/deficiency based on the methodology the Company uses for avoided costs. In other words, please demonstrate that the 2012 RFP resource is needed under the methodology (and current forecast assumptions) used by the Company for the avoided cost sufficiency/deficiency analysis.

Response to ICNU Data Request 11.6

The need for the 2012 RFP resource was based on the 2007 IRP and has continued to be supported by the 2007 IRP Update and the ongoing 2008 IRP. The Company did not rely upon the avoided cost methodology to establish the need for the 2012 RFP resource.