

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1208

In the Matter of)	
)	THE CITIZENS' UTILITY BOARD'S
PACIFICORP,)	RESPONSE TO PACIFICORP'S
)	MOTION RE: THE ROLE OF THE
Draft 2009 Request for Proposals pursuant)	INDEPENDENT EVALUATOR
to Order No. 91-1383.)	
_____)	

I. Introduction

The Citizens' Utility Board files this response to PacifiCorp's motion of December 1, 2006, which requested clarification and direction from the Commission on several issues related to the need for and scope of an Oregon independent evaluator (IE) in connection with PacifiCorp's 2009 Request for proposals. In addition, the motion seeks clarification of the UM 1182 Competitive Guidelines, adopted in Order 06-446, as they pertain to the ability of a utility to seek acknowledgement of the RFP short list or seek cost recovery if the RFP itself is not approved. On December 4, Judge Grant granted PacifiCorp's request for expedited treatment and set December 8, 2006, later extended to December 11, 2006, as the deadline for responses.

Specifically, the Company asks the Commission to clarify that: (1) PacifiCorp should retain the Oregon IE irrespective of whether the RFP is conditionally or finally

approved; (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.

In addressing these issues two challenges arise: the first is that the answers are interrelated, and the second is that since the Competitive Guidelines introduced only in August a new concept of acknowledgement through the RFP, the analysis can not borrow from previous cases.

II. Acknowledgement and Cost Recovery

We begin with PacifiCorp's second question first, as we think the answers there may clarify the answers to the other questions. May PacifiCorp seek acknowledgement of the final short list and rate recovery for resources acquired through this RFP even if the RFP is not approved? We think this question is answered in two parts. We believe that PacifiCorp may not seek acknowledgement of an RFP short list from an RFP that has not been approved. We also think that PacifiCorp may seek recovery of any used and useful asset at any time; however, the risk of recovery, or lack thereof, falls squarely on PacifiCorp's shoulders.

In its Order establishing the Competitive Guidelines, the Commission introduced a new resource acknowledgement opportunity for a utility that would allow the utility to seek acknowledgement of the resources that end up in the short list as a result of the RFP.

Order 06-446, p. 14-15. Until this Order, acknowledgement of resources was limited to the integrated resource planning process. Therefore, any interpretation of the RFP short list acknowledgement opportunity is based on a first impression reading of the Order.

Given this, our reading of the Order would strongly suggest that acknowledgement of a short list is not available for a utility when the RFP has not been approved. The entire context of Order 06-446 is the consideration of the standards and process that makes an RFP valid as a fair and reasonable resource acquisition tool. The Competitive Guidelines adopted in the Order addresses numerous aspects of fairness and reasonableness, such as the treatment of utility affiliate bids and utility ownership options (p. 5), the independence of the IE (p. 6), the independent role of the IE to ensure a fair and proper process and the reasonableness of the selections for the short list (p. 12-13), the independent closing report of the IE (p. 14), bidder and stakeholder participation in the process (p. 8), the communication of important project characteristics to bidders (p.9), etc.

Specifically, the guidelines set out the three criteria the Commission uses to determine RFP approval. Guideline 7 says the approval review focuses on three points: (1) the alignment of the utility's RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process. The approval process is simply a determination that the RFP meets these criteria, does not meet the criteria, or would meet the criteria with certain conditions or modifications. Order 06-446, p. 9-10.

We began our analysis by attempting to discern whether acknowledgement of the short list might still be available depending on which of the criteria was cited by the Commission as causing disapproval. However, it seems fairly obvious to us that, no matter which of the criteria might be singled out as the reason for invalidity, the Commission determination that an RFP was not a product of a valid process because it was not fair or reasonable must put a stop to any further use of the RFP, including acknowledgement of the short list at the end of the RFP process. The new acknowledgement in the Competitive Guidelines is a function of a valid RFP. Without a valid RFP, there is no valid short list, and therefore there cannot be acknowledgement of that short list.

The first criterion, alignment of the utility's RFP with its acknowledged IRP, seems to be a logical and necessary prerequisite to the RFP acknowledgement. If the RFP is not consistent with the acknowledged IRP, then, in order for the RFP short list to be acknowledged, the RFP itself must take the place of or supersede the acknowledged IRP. But an RFP is not intended to examine the same issues or be a platform for stakeholder input in the same manner as an IRP process. In other words, an RFP cannot replace an IRP process. If the RFP is inconsistent from the acknowledged IRP then it is game over for any short list acknowledgement.

A similar analysis can be made for the other two criteria. Whether the RFP is part of a fair process and whether it meets the fair and reasonable standard set out in the

guidelines goes a long way toward determining whether the short list is a valid list of reasonable resources. If the RFP fails because of an unfair process or because it did not meet the fair and reasonable guidelines, then the short list is not valid *per se* and no opportunity should be given to request acknowledgement. In our minds, the RFP acknowledgement opportunity is limited only to short lists that are a product of approved RFPs.

The short list acknowledgement is a Commission-created opportunity; the request for cost recovery has existed since the beginning of rate regulation. While the short list acknowledgement opportunity is a product of the Commission's order establishing RFP guidelines, it seems appropriate for the Commission to restrict that opportunity only to approved RFPs. Such is not the case for a request for cost recovery. The utility is free to request cost recovery for any investment it makes in the system. Cost recovery itself will be dictated by issues of prudence, which includes the benefit-to-customers concept, and of the used and useful statutory standard found in ORS 757.355. The Commission seems unlikely to limit the request for cost recovery only to those resources acquired through an approved RFP, but the lack of an approved RFP certainly will become a factor in the cost recovery proceeding. The utility will be free to request cost recovery, but will bear the entire risk of disapproval during a rate case.

III. Independent Evaluator Questions

There are two questions concerning the Independent Evaluator in PacifiCorp's filing. First, whether the Company should engage the IE even if the RFP is not approved or is conditionally approved. The second, is whether the Company should get cost

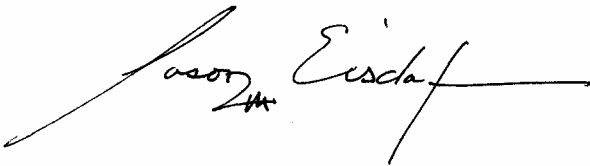
recovery for the IE if the RFP is approved, not approved, or conditionally approved.

If the Commission agrees with our reasoning in Part II, above, then it stands to reason that, if the RFP is not approved, then an IE is of no further assistance. The Commission will already have said that the RFP is invalid in that it has failed the fairness and reasonableness standards in the Competitive Guidelines. No further expense should be undertaken in furtherance of an invalid RFP. If the Company attempts to rectify the RFP in response to a Commission order that disapproves an earlier RFP, then the process can begin anew. If the RFP is conditionally approved, then, of course, the IE should continue its participation in the process. In fact, as the parties and the Commission have set the stage in UM 1208, conditional approval anticipates the IE conducting subsequent review to help determine whether final approval should be granted.

As stated above, if the Commission were to find that the RFP was not consistent with its three criteria of approval and the RFP is disapproved, then the IE has no further role. Only a subsequent utility filing of a new RFP can restart the process. The utility may recover the costs of the IE up until the time the Commission disapproves the RFP. If the Commission conditionally approves the RFP and the IE continues to work on the case, even if the Commission ultimately disapproves the RFP after the IE analysis, the utility may recover the IE costs. And, of course, if the Commission ultimately approves the conditionally approved RFP, the utility may recover its IE costs. In summary, and assuming a Commission-overseen process to engage the IE in the first place, the utility may recover its IE costs as long as the IE is providing a benefit to customers. The IE provides a benefit to the customer if the IE makes the RFP a better process or if the IE

helps persuade the Commission to disapprove a faulty RFP. The IE does not benefit the customer if the IE continues to work and incur costs on an RFP that has already been disapproved by the Commission.

Dated this 11th Day of December 2006
Respectfully submitted,

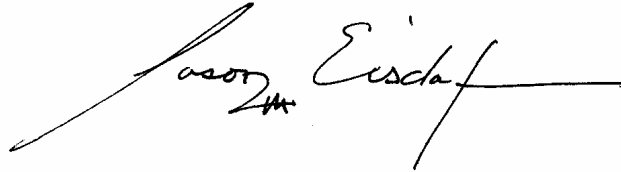
A handwritten signature in black ink that reads "Jason Eisdorfer". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Jason Eisdorfer #92292
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2006, I served the foregoing Response to PacifiCorp’s Motion of the Citizens’ Utility Board of Oregon in docket UM 1208 upon each party listed below, by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending 2 copies by U.S. mail, postage prepaid, to the Commission’s Salem offices.

Respectfully submitted,



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W=Waive Paper service C=Confidential HC=Highly Confidential

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