PACIFIC POWER
A DIVISION OF PACIFICORP

825 NE Multnomah, Suite 2000
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January 22, 2009

VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY

Oregon Public Utility Commission
550 Capitol Street NE, Ste 215
Salem, OR 97301-2551

Attn: Filing Center

RE: UM 1208 – Oregon Independent Evaluator Comments on PacifiCorp's Request for Acknowledgement of the Revised 2012 RFP Final Shortlist – Public Version

Enclosed for filing in the above-referenced matter is a public version of the Oregon Independent Evaluators ("IEs") Comments on PacifiCorp's Request for Acknowledgement of the Revised 2012 Final Shortlist, dated January 21, 2009 ("IE Report"). This public version has been redacted to remove "Non-Public Information" that falls within the scope of Special Protective Order No. 07-471. The Non-Public version is being filed by Commission Staff on January 22, 2009.

Informal questions on this filing may be directed to Joelle Steward, Regulatory Manager, at (503) 813-5542.

Sincerely,

Andrea L. Kelly
Vice President, Regulation

Enclosures

Cc: Service List - 1208

CERTIFICATE OF SERVICE

I certify that I have cause to be served the foregoing document in OPUC Docket No. UM 1208 by electronic mail and first class mail to the parties on the attached service list unless paper service has been waived.
DATED this 22nd day of January 2009.

Carrie Meyer
Coordinator, Administrative Services

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COMMENTS ON PACIFICORP'S REQUEST FOR ACKNOWLEDGMENT OF THE REVISED 2012 RFP FINAL SHORT LIST

PRESENTED TO
THE OREGON PUBLIC UTILITY COMMISSION

By
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and Accion Group
as the Oregon Independent Evaluator

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January 21, 2009

PART I OF THE REPORT

INTRODUCTION AND SUMMARY

The Oregon Independent Evaluator (IE) was asked by the Oregon Public Utility Commission (Commission) Staff to provide comments on PacifiCorp's request for acknowledgment of its revised Final Short List in the 2012 Request for Base Load Resources (the "2012 RFP").[1]

The Oregon IE consistently has said that the ultimate purpose for PacifiCorp in its 2012 RFP was to assure that ratepayers got the best deal possible in terms of price, risk, reliability, and environmental performance, given market and regulatory conditions. Based on (a) the evidence we provided in the IE's Final Closing Report, (b) our monitoring of the negotiation process with the short listed bidders and (c) our review of the final contract with the winning bidder, we believe PacifiCorp has shown that it has chosen the best possible deal from the 2012 RFP. For that reason, the Oregon IE recommends that the Commission grant the request for acknowledgment.

In addition, we understand that the Commission has set a three-pronged standard for RFP final short list acknowledgment. Again, based substantially on the facts we stated in the IE's Final Closing Report, we believe it would be reasonable to conclude, given a flexible reading of the Commission's acknowledgment of the PacifiCorp 2007 Integrated Resource Plan (IRP), that PacifiCorp now has met this standard.

Finally, because some time has passed since the bid was first submitted, Oregon Public Utility Commission Staff asked two other questions which are meant to test whether the winning bid in the 2012 RFP is out of line with current market or system conditions. While we caution that we do not provide a complete, precise analysis, we find that (a) the price of the winning bid is consistent with current market conditions and (b) current system forecasts, as expected, show the need for the capacity remains.

THE IE's FINAL CLOSING REPORT

On April 8, 2008 Boston Pacific Company, Inc., provided its Final Closing Report on PacifiCorp's 2012 RFP.[2] Based on our full participation in the evaluation of all the bids, we stated that the Oregon IE fully concurred with the selection of the conditional Final Short List.[3]

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[1] *Amended Request for Acknowledgment of Revised Final Short List of Bidders in 2012 Request for Proposal*, Docket No. UM 1208 (December 17, 2008). Boston Pacific Company, Inc. and Accion Group serve jointly as the Oregon IE. Boston Pacific prepared Part I of this report and Accion prepared Part II.

[2] *Final Closing Report on PacifiCorp's 2012 RFP* (April 8, 2008). Boston Pacific and Accion filed separate Final Closing Reports.

[3] Ibid., at 1.

Our Final Closing Report goes into considerable detail on the reasons for our concurrence. Suffice it to say that we found PacifiCorp (a) followed the three-step modeling effort used in its IRP process to evaluate the risk-adjusted cost to ratepayers of all bids as well as the PacifiCorp Benchmarks and (b) used assumptions and results from the 2007 IRP as its starting point for the bid evaluation.[4] Most importantly, we agreed with PacifiCorp that the short list should be dictated by the robustness of the bids – that is, the bids which offered the lowest risk-adjusted cost across a range of assumptions should be the bids chosen for the final short list.[5] Specifically, the three bids on the Final Short List were consistently among the top ranked bids across a wide range of scenarios.[6] This bid evaluation is what leads us to conclude that the winning bid provides the best deal possible for ratepayers.

PacifiCorp began negotiations with the three top-ranked bids on the Final Short List. For reasons explained in the IE's Final Closing Report, [redacted] completed negotiations. We should note that competitive pressure continued in this negotiation with [redacted] because, while the [redacted]; this is additional evidence to us that PacifiCorp found the best deal possible here.

In December 2008, PacifiCorp successfully concluded a negotiation with that bidder. The winning bidder offered [redacted]. Under the negotiated contract ([redacted] (the Agreement)), the [redacted].[7] It is the successful negotiation of the Agreement which prompts PacifiCorp's request for acknowledgment.

The Oregon IE monitored the negotiation of the Agreement.[8] The price for the [redacted] is what we expected based on the bid evaluation. As allowed under the 2012 RFP, a portion of the bid price will be updated on or before the [redacted] by PacifiCorp; this is scheduled for [redacted].

Non-price terms in the Agreement also provide ratepayer benefits. A primary, non-price benefit to ratepayers in the Agreement is the significant risk allocation [redacted]. That risk allocation protects ratepayers substantially against [redacted]. We would point in particular to the Liquidated

[4] Ibid., at 2, 14.
[5] Ibid., at 2.
[6] Ibid., at 20.
[7] *Agreement* at title page and appendix H at 13.
[8] Our review of the Agreement was limited to the question of whether the price and risk in the Agreement were consistent with the IE's previous support for the Final Short List.

Damages sections of the Agreement which provide for possible penalties if [redacted].[9]

THE COMMISSION'S THREE-PRONGED STANDARD

We understand the Commission has ruled that, even though the Commission did not approve the 2012 RFP, PacifiCorp could request acknowledgment of the Final Short List if PacifiCorp showed that it had addressed the deficiencies the Commission had found in the 2012 RFP.[10] The Commission has a three-pronged standard for acknowledging RFPs. Specifically, the RFP (a) must be aligned with an acknowledged IRP; (b) must satisfy the Commission's bidding guidelines; and (c) must be a fair process.[11] With respect to the standards listed as (b) and (c), the IE's Final Closing Report, we believe, shows that these two standards are met by the RFP as actually implemented.[12]

As to alignment with an acknowledged IRP, the matter is a bit more complicated. The 2007 IRP is the version of the IRP relevant for alignment – we say this from the analytic perspective that the 2007 IRP was the starting point for bid evaluation. The Commission acknowledged the 2007 IRP, but made substantial exceptions which, in effect, deleted the sections of the Action Plan calling for base load resources [redacted]. Specifically, original Action Item 7 was deleted; that item called for procurement of a base or intermediate load resource which was evaluated in the IRP as a 550 MW combined cycle plant coming on line in 2012 in the Eastern section of PacifiCorp's area.[13]

However, Commission Staff offered modified language[14] and the Commission said it would have been willing to amend rather than delete those sections of the Action Plan if the Staff's language were acceptable to PacifiCorp.[15] PacifiCorp did not accept the Staff's language because it banned coal-fired resources. Since the winning bidder being considered here is a [redacted] – then the point of contention between Staff and PacifiCorp is not at issue here. If, for that reason, we take a flexible reading of the Commission's Order and make the Staff's language the standard, then the 2012 RFP as implemented could be judged to be aligned with an acknowledged IRP.

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[9] *Agreement* at 81 through 85.
[10] Order No. 06-676 at 3.
[11] Order No. 07-018 at 3.
[12] *IE Final Closing Report* at 26, 33.
[13] Order No. 08-232 at 5.
[14] Ibid., at 10.
[15] Ibid., at 34.

TWO ADDITIONAL QUESTIONS

Commission Staff asked the Oregon IE to address two additional questions about the winning bid. As we understand it, because some time has passed since the bid was submitted, both questions are meant to test whether the winning bid is significantly out of line with current market and system conditions.

Bid Price

The first question we were asked is whether the bid price was still in the competitive range given current market conditions. As to the competitiveness of the price, we made two quick comparisons. First, we compared the [redacted] to the estimated cost of building the Benchmarks for the current 2008 All Source RFP. Two of the Benchmarks were for large, natural gas-fired combined cycle power plants [redacted]. Boston Pacific submitted a detailed review of the Benchmarks to the Commission Staff and PacifiCorp on December 15, 2008.[16] [redacted] The [redacted] of the winning bid appears to compare well to the Benchmark cost. Specifically, based on the asset price in the Agreement, the winning bid would cost $[redacted][18] – about [redacted]% lower than the low-end of the Benchmark costs.

However, we caution that we are not providing a precise, apples-to-apples comparison for several reasons. One such reason is that, as noted, the installed cost for the Benchmarks is forecasted – the entire cost might be higher or lower given actual escalation of costs over time. In contrast, [redacted].[19] Another reason we cannot provide a precise comparison is that the winning bid comes with a [redacted].

Second, under the issue of competitive price, we compared the [redacted] price for the winning bidder to some of the bids just submitted in the 2008 All Source RFP. Again, we caution that it is not possible at this time to provide an apples-to-apples comparison. We chose two bids for comparison. The fist bid we chose for comparison is for an asset purchase and it was submitted by [redacted] – [redacted]. [redacted]. The second bid we chose for comparison is a tolling agreement. The installed cost implied by the offered capacity price is $[redacted]/kW for

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[16] *Analysis of the PacifiCorp Benchmark Bids*, Memorandum to Commission Staff, December 15, 2008, filed on December 30, 2008, following issuance of Special Protective Order No. 08-603.
[17] Ibid., at 2.
[18] *Agreement* (Cover Letter Total [redacted]).
[19] *Agreement* at Cover Letter, 6.

this bid.[20] Again, the installed cost of the winning bid [redacted]) compares well to that for these two bids ($[redacted]/kW and $[redacted]/kW) from the more recent 2008 All Source RFP.

Resource Need

The second question we were asked is whether the capacity from the winning bid is needed given the most recent PacifiCorp load forecasts and recent resource acquisitions. As to the need for capacity, we made two quick comparisons between load forecasts used (a) in the evaluation of the 2012 RFP bids – and thus in the evaluation of the winning bid and (b) those now being used in the evaluation of the bids in the 2008 All Source RFP. The attached Table One compares two forecasts of system coincidental peak load. The first, developed in March 2007, was used for the 2012 RFP. The second developed about one and a half years later in November 2008, is being used for the current, 2008 All Source RFP. As can be seen in Table One there is little difference in the two forecasts – indeed, the more recent forecast is very slightly higher than the older forecast.

With respect to resource forecasts, we first went back to PacifiCorp's resource forecast in the *2007 IRP Update*. As seen in Table 12 of that report, PacifiCorp forecasted a resource need for 2012 of 2,165 MW. Among the generic resources forecasted to fill that need were (a) about 1,096 MW of combined cycle power plants and (b) 915 MW of market purchases (Front Office Transactions).[21]

Since that time, PacifiCorp has acquired the Chehalis combined cycle power plant for 500 MW[22] and, in this proceeding, reveals its intent to acquire, through the winning bid, [redacted]. Together the Chehalis and [redacted] provide [redacted]. Thus, based on the 2007 IRP Update, we would expect that, even after these [redacted] are locked into the resource plan, there would still be a need for something over [redacted] MW of capacity and it would be expected that the capacity would be forecasted to come from market purchases. This is exactly what we find when we look at PacifiCorp's most recent resource forecast. In the forecast provided to the IE as input for the bid evaluation for the current, 2008 All Source RFP, after the Chehalis and [redacted] resources are already accounted for, PacifiCorp forecasts a remaining capacity need in 2012 of [redacted].[23]

[20] The calculation starts with the offered capacity price over the 30-year term of the tolling agreement, then escalates at the pace stated in the offer, and finally computes the present value with a discount rate of [redacted]%.
[21] PacifiCorp, *2007 Integrated Resource Plan Update* at 19.
[22] *An Analysis of Pacificorp's Waiver Request for the Chehalis Power Generating Plant*, Report to Commission Staff, June 18, 2008.
[23] PacifiCorp, *Copy of All Source RFP 2008 Assumptions* (Final 12/15/08 v Z(z).xls) at Tables 1 and 2.

TABLE ONE

PEAK LOAD FORECAST
COMPARISON

YEAR	USED FOR 2012 RFP (MW)	USED FOR 2008 RFP (MW)	DIFFERENCE (%)
2009	9,752	10,116	3.7%
2010	10,261	10,293	0.3%
2011	10,488	10,515	0.3%
2012	10,836	10,849	0.1%
2013	10,989	11,069	0.7%
2014	11,157	11,247	0.8%
2015	11,296	11,512	1.9%

Source: ICNU Data Request 10.2 (March 2007), 10.3 (November 2008) for "Co-incidental Peak in Megawatts"

PART II OF THE REPORT

NEGOTIATIONS WITH CONDITIONAL FINAL SHORT-LISTED BIDDERS

As noted earlier, the 2012 Request for Proposals (RFP) was released for bidder consideration on April 5, 2007. Bids were received by the Independent Evaluators (IEs) in both Oregon and in Utah simultaneously on May 7, 2007. PacifiCorp (PacifiCorp or Company) commenced its evaluation of bids at that time. There were a total of nine projects with twelve options submitted that were treated as separate bids for purposes of evaluation. One bidder withdrew from consideration and the other bids were evaluated. As a result of its evaluation, PacifiCorp selected a two-tier Conditional Final Short-list which included six bids, three primary selections and three back up options.[24] This section of this report presents the views of the Oregon IEs regarding the Company's negotiations with the primary bids selected for the Conditional Final Short-list.

On December 28, 2007 PacifiCorp advised the three bidders of the primary bids selected for the conditional final short-list that they had been selected and requested a conference call to review the requirements needed to enter into contracts.

Initial calls were held with all three bidders, the Company, and the IEs on January 3 and 4, 2008. PacifiCorp informed all the bidders that they had made the conditional final short list, identified all outstanding issues necessary to qualify the bidder, informed the bidders they had 21 days until January 23, 2008, to remove any outstanding conditions and requested a best and final offer from the bidders. The Company also asked bidders who did not provide a complete mark-up of the Pro Forma contract to provide a marked-up version with their best and final offer. Each bidder provided its response and final offer as requested on January 23, 2008, including updated cost information

The three primary bids included:

[redacted]

- [redacted], and
- [redacted].

The Company conducted negotiations with each of these three bidders. The remaining three bids were not considered as economically advantageous as the top ranking bids. The remaining bids were placed on the second tier of the Short-list, with the understanding

24 [redacted].

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PacifiCorp would look to these bids in the event the Company could not meet the needs of the RFP through agreements with any or all of the top tier bids.

Bid H

The first bid, Bid H, proposed the [redacted]. While attractive from a pricing prospective, the offer was non-conforming as that condition would require the Company to [redacted]. Based on this non-conforming condition, PacifiCorp proposed to eliminate this bid from consideration. The IEs agreed that the proposal to [redacted][25]. PacifiCorp requested the non-conforming condition be withdrawn. The bidder refused to amend its bid, therefore, negotiations were terminated. At that time, PacifiCorp fully explained to the IEs its reasons for terminating consideration of the bid.

In November, 2008 the Company sought the agreement of the IEs to re-open negotiations concerning Bid H. PacifiCorp's stated reason for that request was its concern that it was possible that no capacity would be contracted for with the remaining bidders on the short-list and that this bid represented economically attractive capacity. This matter is discussed further under separate heading.

Bid J

Bid J similarly contained conditions that did not conform to the requirements set out in the RFP. This bidder proposed [redacted], from that required in the RFP, [redacted]. The proposed [redacted] terms would have significantly shifted risk to PacifiCorp and its customers. The terms were neither consistent with the requirements set forth in the RFP, nor were they acceptable to PacifiCorp. When asked if the bidder would reconsider its [redacted] terms, the bidder refused to amend its bid, resulting in termination of further negotiations. PacifiCorp fully explained to the IEs the reasons for terminating consideration of the bid, and the IEs agreed with the decision.

[25] See FINAL CLOSING REPORT ON PACIFICORP'S 2012 RFP April 8, 2007 p.3

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Bid D

The final top tier bid, Bid D, was deemed to have met all the RFP requirements, and preliminary negotiations commenced in late March of 2008. Draft agreements were exchanged and discussed beginning in May of 2008.

This bid [redacted]. Accordingly, in order to evaluate both options, the Company commenced [redacted]. Because the bid was submitted by [redacted]. The negotiations were telephonically monitored by the IEs.

The pro forma [redacted] contracts served as the basis for all negotiations. While significant modifications were negotiated to accommodate the specific issues raised by each party, PacifiCorp maintained, to the best of its ability, the relative allocation of risk established in the RFP. Throughout negotiations PacifiCorp sought to maintain both the in-service schedule and cost parameters consistent with the bid submitted and the RFP terms and conditions.

Draft agreements were provided to [redacted] for comment. [redacted] negotiations were being conducted and [redacted] advised to provide [redacted] best bids, or risk being eliminated from consideration. After an initial exchange of documents a series of face-to-face meetings were held with [redacted] the bidder. Several iterations of documents were exchanged. At the conclusion of this phase of the negotiations PacifiCorp selected [redacted], conferred with the IE regarding the basis for its decision, and advised the bidder and the [redacted] of its selection. PacifiCorp's decision was based on sound principles and reflected both the lower cost option, and PacifiCorp's belief that the selected [redacted] was more flexible in its approach. The IE does not take issue with the Company's decision.

Once that selection was made, the Company engaged in final negotiations with the bidder [redacted]. These negotiations were also monitored by the IEs. During these negotiations, final details regarding [redacted], risk allocation, contracting, and reporting procedures were established. The negotiations were comprehensive. The IEs found them to be consistent with practices we have observed in similar negotiations.

Concurrently with the negotiations with the [redacted], the Company required the [redacted] to contract with the [redacted]. The discussions with the [redacted] were not monitored, but resulted in securing agreements on terms PacifiCorp found to be acceptable.

At the conclusion of this phase of the negotiations the final draft [redacted] contracts were submitted to each party's management for review and approval.

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PacifiCorp management determined that the agreement committed PacifiCorp to cost exposures that were unacceptable. Specifically, as drafted, the Company would incur obligations to [redacted]. As a result, the parties re-opened negotiations. PacifiCorp requested that the bidder and [redacted]. PacifiCorp also requested that the bidder and [redacted] provide a revised contract reflecting those changes. The bidder and [redacted] were agreeable, but only if they were granted the right to amend the contract price to reflect the increased risk and any incremental costs they might incur. PacifiCorp agreed to the request for re-pricing the negotiated price. This matter was reviewed with the IEs and we concurred with the Company's approach.

Bidder D provided the Company with a revised contract which relieved PacifiCorp of significant risk exposure [redacted]. In return, the price terms of Bid D that had been agreed on during negotiations were increased in line with the reallocation of risk requested. The parties also agreed to an extension of the [redacted]. The pricing and scheduling remain consistent with the terms submitted in Bid D and reflect the RFP Terms and Conditions.

PacifiCorp found the revised schedule and pricing acceptable and executed final contracts for the [redacted].

RECONSIDERATION OF BID H

In November, 2008, during the time that PacifiCorp was negotiating its contracts with Bid D, it sought the IEs agreement to re-open negotiations with Bid H. The IEs refused to agree to the Company's request. In the alternative, the IEs requested that PacifiCorp again ask if the bidder of both Bids H and J would remove the non-conforming terms contained in their bids. Bid J again stated that it was unwilling to revise its original bid as requested. No further discussions were held regarding Bid J. The Company did seek the IEs approval to continue negotiations with Bid H arguing that the Bid was attractively priced.

Bid H presented several complicating factors. The [redacted] Bid H had been [redacted] since the original bid had been submitted, requiring [redacted]. The non-conforming condition – [redacted] Bid H [redacted]. Also, since the termination of the initial negotiations, PacifiCorp had released the 2008 RFP, which sought supplies for the same period as were solicited for in this RFP.

The IEs were concerned that the PacifiCorp request to re-open negotiations presented significant problems both in terms of compliance with the RFP and [redacted].

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The IEs also believed that the [redacted] could be bid into the 2008 RFP without question or concern. Further, the IEs were of the opinion that Bid H had already been rejected as non-conforming, and the non-conformity had not been removed.

Both the Oregon and Utah IEs refused to agree to PacifiCorp's request that we support the Company's desire to conduct negotiations with Bid H. The IEs did, however, agree to allow PacifiCorp to ask the owner of the facility underlying Bid H if it would remove the offending condition.

[redacted]

After reviewing the original bid, the [redacted] agreed to remove the [redacted] that amendment on the addition of another non-conforming condition. Instead of the [redacted]

PacifiCorp sought the approval of the IEs to enter into an agreement on those terms, arguing that that capacity was needed and that the price was reasonable. The IEs did not however agree with PacifiCorp and PacifiCorp decided not to proceed with Bid H.

As the discussions regarding Bid H were going on, Bid D provided to the Company a revised contract which relieved PacifiCorp of significant risk exposure until such time as [redacted]. In return, the price of Bid D was increased in line with the reallocation of risk requested.

CONCLUSIONS AND OBSERVATIONS

When viewed in the context of this RFP we believe that PacifiCorp conducted its negotiations with each of the three most attractive short-listed bidders fairly. No party was afforded any undue advantage or was granted rights any other party was denied. The negotiations were comprehensive and the interests of PacifiCorp's customers were well represented. The Company cooperated with the IEs and made accommodations for the IEs to monitor all ongoing discussions. All drafts of contracts were available for review by the IE in a timely fashion.

PacifiCorp negotiated fairly and aggressively throughout the negotiation process. PacifiCorp successfully negotiated a series of comprehensive contracts for [redacted] to meet its resource need. Those contracts contain options with the developer and [redacted] that provide value to the Company and its customers.

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When all factors are considered, including the reallocation of risk, PacifiCorp secured an overall price reflective of the initial cost estimate set forth in Bid D, with the potential for additional price reductions as [redacted].[26] We believe the pricing to be consistent with the evaluation parameters agreed upon by the Oregon and Utah IEs and the Company.

The Oregon IE was kept fully advised and engaged throughout the negotiations regarding Bid D, permitting us to determine that the Bid D negotiations were conducted within the standards of the RFP.

[26] As noted in section [redacted]

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