



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

October 29, 2007

Michael Grant
Administrative Law Judge
Public Utility Commission of Oregon
550 Capitol St NE – Suite 215
PO Box 2148
Salem OR 97308-2148

Re: UM 1208 – Submissions from the Oregon Independent Evaluators

Dear Judge Grant:

Enclosed with this letter are three documents that staff is submitting in PUC Docket UM 1208 on behalf of the Oregon Independent Evaluators (Oregon IEs).

The first document, entitled Comments of the Oregon IEs, is a public document that contains no confidential or highly-confidential information.

The second and third documents, which are separately dated Memoranda from the Oregon IEs, each contains highly-confidential Non-Public Information that should only be disclosed and distributed in accordance with your Special Protective Order (Order No. 07-471), issued on October 26, 2007. I am submitting these highly-confidential Non-Public Information Memoranda in the manner specified by the Special Protective Order (i.e. on green paper that is placed within a sealed, marked, envelope).

Finally, please note that I am not serving the Non-Public Information on any other UM 1208 party. Any party desiring to view this highly-confidential information must first comply with the Special Protective Order's requirements and then submit a request for copies of such information directly to the Public Utility Commission's Administrative Proceedings Division.

Sincerely,

Michael T. Weirich
Assistant Attorney General
Regulated Utility & Business Section

MTW:mal/GENV8311
Enclosures
C: All parties

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1208

In the Matter of PacifiCorp's Draft 2012 Request for Proposals § Comments of the Oregon Independent Evaluators §

INTRODUCTION

1. Boston Pacific and Accion Group jointly serve as the Oregon Independent Evaluators (IEs) for PacifiCorp's 2012 Request for Proposals (2012 RFP). The IEs are represented today by Craig R. Roach, Ph.D., President of Boston Pacific Company, Inc.¹ (Boston Pacific), and Harold Judd, Vice President of Accion Group (Accion)².
2. On September 28, 2007, PacifiCorp filed with the Utah Public Service Commission (Utah Commission) the first of three documents in which it requested approval to amend and delay the 2012 RFP³; this first document asked that the Utah Commission approve an amendment to the Protective Order that would limit the range of persons able to review select subsequent confidential filings. On October 2, 2007, PacifiCorp filed the second document in which it described the amendment for which it sought approval and implied some of the justification for the proposed amendment.⁴ On October 17, 2007, PacifiCorp provided to the Oregon IEs the third document⁵; this document purports to offer the full justification for the proposed amendment and request for delay and it was marked as highly sensitive non-public information.
3. In its Amendment filing to the Utah Commission, PacifiCorp summarizes its proposed amendment and request for delay as follows:

The Company's motion requests Commission authorization to amend the 2012 request for proposals with respect to the following: (1) to modify the schedule in Section 2, whereby the proposal response date would change from June 19, 2007 to January 18, 2008, permitting new and existing bidders an opportunity to submit new bids or refresh their existing bids; (2) to eliminate the upfront request for qualifications procedure and

¹ Boston Pacific's business address is 1100 New York Avenue NW, Suite 490 East, Washington, DC 20005.

² Accion's business address is 244 North Main Street, *The Carriage House*, Concord, NH 03301.

³ *Rocky Mountain Power's Motion for Additional Protective Measures and Request for Expedited Treatment*, Docket No. 05-035-47, hereafter "Protective Order filing." A similar filing was made in Oregon on October 23, *Docket No. UM 1208, In the Matter of PacifiCorp's Draft 2012 Request for Proposals PacifiCorp's Motion for Additional Protection*.

⁴ *Rocky Mountain Power's Motion to Amend its 2012 Request for Proposals and Request for Expedited Treatment*, Docket No. 05-037-47, hereafter "Amendment filing."

⁵ Memorandum in Support of Rocky Mountain Power's Motion to Amend its 2012 Request for Proposals, Docket No. 05-035-47, hereafter "Supporting Memorandum."

instead, require submission of an intent to bid form; to modify the qualification requirements so that new bidders will be required to submit qualification appendices with their bids and existing bidders will only need to update qualification appendices if information has changed; and to only require bidders (new and existing) to post acceptable commitment letters or letters of credit within ten business days following notification of their selection to the initial shortlist; and (3) to update the 2012 benchmark resources by including resources located at the existing Lake Side site and/or existing Currant Creek site.

4. **The bottom line of our comments today is that the Oregon IEs oppose PacifiCorp's proposed amendment and request for delay. Our opposition reflects our view that the proposal is unnecessary, unfair to existing bidders, and potentially harmful to ratepayers in both the near- and long-term.**
5. Attached to these public comments is a document which explains in more detail our reasons for opposing the PacifiCorp proposal. It is marked Non-Public Information Subject to Special Protective Order because it relies on protected materials. We will note, however, that a key part of the confidential attachment is a memo Boston Pacific wrote to PacifiCorp, copying Oregon Staff, Utah Staff, and the Utah IE, on August 15, 2007, soon after PacifiCorp first proposed the idea of amending and delaying the 2012 RFP. In that August 15 memo we stated our opposition and the reasons for our position are mostly, if not entirely, identical to those we present today.

PACIFICORP'S 2012 BENCHMARK RESOURCE

6. Let us turn in more detail now to the reasons for the Oregon IE's opposition. In its public filings to the Utah Commission PacifiCorp refers to "certain events" or "significant change in circumstances" which led it to its motion to amend and request to delay the 2012 RFP.⁶ In our view, there is a single event which primarily motivates the PacifiCorp proposals: it is PacifiCorp's doubts about the viability of its 2012 benchmark resource which was based on a 340 MW share of the proposed Intermountain Power Project Unit 3 (IPP3).
7. In our view, PacifiCorp's doubts about the IPP3 benchmark resource are not sufficient justification for the proposed amendment and delay of the 2012 RFP. Most important, by no means does PacifiCorp's loss of its IPP3 benchmark resource mean there are no benchmarks for the RFP.⁷

⁶ Protective Order filing at 2 and Amendment filing at 3.

⁷ The Commission defines a Benchmark as follows in Order No. 06-446 at 5: "We define a Benchmark Resource as a site-specific, self-build option for which there is a commitment to proceed if it is the resource selected through the RFP. This definition does not preclude a utility from designating the market as an alternative comparator during the RFP evaluation process. If no resources are acquired through the RFP because bids are inferior to the evaluation benchmark, we do not expect an emergency selfbuild shortly thereafter."

- a. IPP3 was considered to be a viable benchmark at the time the bids were submitted and, in this sense, it did its job – it established a price threshold to be used in evaluating bids, and thereby, it put pressure on bidders to offer to ratepayers the lowest price, lowest risk, highest reliability, and best environmental performance possible. Indeed, if the bids are reopened (as PacifiCorp proposes) we might expect less attractive offers now that PacifiCorp has so widely publicized its doubts about the viability of IPP3.
 - b. The existing IPP3 benchmark resource may still be used as a point of comparison against other bids for evaluation purposes. We should get the results of that comparison and see how it affects the choice of winning bids before we take additional action.
 - c. In addition, even if IPP3 is put aside, PacifiCorp has two other benchmark resources that it continues to see as viable: (a) a share of a conventional coal fired unit at the existing Jim Bridger site in Wyoming for 527 MW and (b) a 500 MW integrated gasification combined cycle (IGCC) unit at the same site.⁸ PacifiCorp should compare the submitted bids to these two benchmark resources. One way to accomplish this would be by “bridging” the benchmarks, which have on-line dates in 2014, with a forecast of short-term power supply purchases in 2012 and 2013.
 - d. And, finally, another point of comparison on price – another benchmark of sorts – is the estimate of market prices (the “forward price curve”) that PacifiCorp’s RFP states will be used for its bid evaluation for the Initial Shortlist. To be of value here, the forward curve would have to be used to assess both third-party bids and benchmark resources.
8. As to PacifiCorp developing a new benchmark resource based on gas-fired combined cycle plants, without real bid analysis there simply is no need to amend and delay the 2012 RFP so PacifiCorp can go off and develop new benchmark resources for 2012.
 9. To our knowledge, the decision to amend and delay was based on the fact that PacifiCorp doubts the viability of its IPP3 benchmark, not on any substantive analysis of the prices bid as compared to any of the benchmark resources.

FLEXIBILITY ON BIDDER QUALIFICATIONS

10. PacifiCorp does propose a constructive action which we fully support in concept, though we believe PacifiCorp’s proposal is unnecessarily restrictive. PacifiCorp should be more flexible on the qualification requirements for bidders until the point in time that a bidder knows it has been short-listed and is to be engaged in negotiations for a Power Purchase Agreement (PPA) or another agreement. The most important area in need of some flexibility is credit requirements.

⁸ 2012 RFP at Attachment 1.

11. To be more flexible on credit requirements, PacifiCorp proposes that Bank (or other credit support) Commitment Letters and Guarantees be required only after a bidder is chosen for the Initial Shortlist, rather than at the time the bid is submitted. (Actual Letters of Credit and Guarantees are required upon selection as a provider of power.) We believe even more flexibility would be well advised. For example, Letters of Comfort, an early indication of a bank's interest in committing, could be required from bidders at the time the bidder is advised that PacifiCorp wants to start negotiation of PPA terms. Bidders should be advised that once on the Initial Shortlist they will be required to identify credit source and provide Letters of Commitment contemporaneously with the execution of a power purchase or other contract. Actual Letters of Credit would be required only upon Utah Commission approval of the arrangements negotiated.
12. Whatever the flexibility offered, the key point is that PacifiCorp does not have to amend and delay the 2012 RFP to allow this flexibility. We believe PacifiCorp has the ability to allow such flexibility within the rules of the existing RFP.

THE POOL OF EXISTING BIDDERS

13. PacifiCorp states that, by amending and delaying the 2012 RFP it would get a more robust pool of bidders.⁹ This statement gives an unfortunate and inaccurate picture of the robustness of the existing pool of bidders. It is our view that the concern implied here by PacifiCorp would be addressed by flexibility on bidder credit and other non-price qualifications and, as already stated, we believe PacifiCorp has the discretion to be flexible in these ways.
14. Moreover, the amendments and delay could have the exact opposite effect – they could decrease the number and quality of bidders as well as the aggressiveness of their offers. Bidders could drop out because of the delay. Bidders could drop out because they believe the PacifiCorp proposal undermines the credibility of the RFP process.
15. With respect to credibility, PacifiCorp states that, with its proposal, it is providing equal treatment to all bidders.¹⁰ But bidders would be forgiven if they doubt that, if a bidder's proposal was in danger like IPP3, PacifiCorp would have afforded the bidder the same opportunity to stop the entire process until that bidder could pull together another bid with an entirely new technology.
16. Further in this regard, we would not blame a bidder for taking a darker view of PacifiCorp's purpose. In that darker view, bidders might be concerned that after PacifiCorp sees the true viability of its IPP3 bid, it changes its mind about betting on coal plants and now gets a chance to re-bid with gas-fired plants at Currant Creek and

⁹ Amendment filing at 5 "...the Company is hoping to yield a more robust pool of bidders..."

¹⁰ Id., "...all parties are treated equally and given a fair opportunity to participate..."

Lakeside. And PacifiCorp gets that chance regardless of how many other gas-fired plants have already been bid. Similarly, a bidder might wonder why, with viable benchmarks at the Jim Bridger site in 2014, PacifiCorp does not use these benchmarks – and fill in with purchases for 2012 and 2013 – to compare to all existing bids. In short, a bidder might believe PacifiCorp is angling to assure that it “wins” the RFP. It is actions like this by PacifiCorp that undermine credibility.

17. And undermining the credibility of the RFP could have harmful effects well beyond the 2012 RFP. It could undermine future RFPs.
18. As we understand it, the policy of the Public Utility Commission of Oregon (as well as the Utah Commission) is to vet the addition of Major Resources through a competitive process to assure ratepayers get the best deal in terms of price, risk, reliability and environmental performance. With such a policy, driving away bidders by undermining the credibility of the RFP is the last thing that PacifiCorp should be allowed to do. Put simply, you cannot have competition without competitors.

INFORMING THE IRP WITH THE RFP

19. The Commission hoped that the 2012 RFP would inform, and thereby, “improve upon” PacifiCorp’s IRP.¹¹ PacifiCorp’s eagerness to embrace more flexible gas-fired resources might be an example of what the Commission had in mind. However, the full and fair analysis of the existing bids is more likely to achieve the Commission’s competitive bidding goals.

ALTERNATIVE APPROACH

20. For the reasons stated above, we suggest an alternative approach in which PacifiCorp stays the course with the existing 2012 RFP and abandons the attempt to amend and delay it. Specifically, PacifiCorp should freeze the evaluation of credit and all other non-price requirements, and move forward with the full price evaluation of all existing bids. Full price evaluation would include all three benchmarks: (a) all bids and all three Benchmark Resources should be compared to the Forward Curve developed for the Initial Shortlist and (b) all bids and all three Benchmark Resources should be evaluated through the modeling process developed for the Final Shortlist. PacifiCorp would then know the bidders offering the best price deal for ratepayers. If those bidders beat the benchmark resources, PacifiCorp would then finalize on all price and non-price factors with the best bidders and execute contracts.

¹¹ Order No. 07-018 at 7.

1 **CERTIFICATE OF SERVICE**

2 I certify that on October 29, 2007, I served the foregoing upon all parties of record in this
3 proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid
4 first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

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