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September 19, 2006

Via Electronic and U.S. 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 the original and two copies of the Opening Comments of the Industrial Customers of Northwest Utilities ("ICNU") in the above-referenced docket.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely,

/s/ Ruth A. Miller
Ruth A. Miller

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Opening Comments of the Industrial Customers of Northwest Utilities upon the parties on the service list via Electronic Mail and U.S. Mail, postage-prepaid.

Dated at Portland, Oregon, this 19th day of September, 2006.

/s/ Ruth A. Miller
Ruth A. Miller

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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 2009 Request for Proposals pursuant to)	NORTHWEST UTILITIES
Order No. 91-1383.)	
_____)	

I. INTRODUCTION

Pursuant to Administrative Law Judge Grant’s Ruling and Prehearing Conference Memorandum, the Industrial Customers of Northwest Utilities (“ICNU”) submits the following opening comments regarding PacifiCorp’s 2012 request for proposal (“RFP”). ICNU recommends that the Oregon Public Utility Commission (“OPUC” or “Commission”) reject the RFP because it is not in alignment with its acknowledged integrated resource plan (“IRP”).

ICNU also has significant concerns regarding whether the RFP fully complies with the Commission’s competitive bidding requirements or will result in a fair bidding process. ICNU does not believe it would be appropriate for the Commission to definitively rule on the overall fairness of PacifiCorp’s RFP or consistency with the competitive bidding rules until an independent evaluator (“IE”) is hired and can thoroughly review the RFP. ICNU supports the Commission Staff’s proposed process for hiring an Oregon-specific IE, because it provides ICNU with an opportunity to raise its

concerns regarding the fairness of the RFP and the competitive bidding rules after the IE completes its review.

II. BACKGROUND

In 2005 PacifiCorp filed, and then withdrew, its proposal for a 2009 RFP. Re PacifiCorp, Docket No. UM 1208, Ruling and Memorandum (Nov. 2, 2005).

PacifiCorp's 2009 RFP sought to acquire up to 525 MWs of resources. Shortly after being acquired by Mid-American Energy Holdings Company ("MEHC"), PacifiCorp informed the Commission Staff that it would file a new RFP in July 2006. PacifiCorp then filed its 2012 RFP on July 11, 2006.

The 2012 RFP proposes that PacifiCorp acquire an extremely ambitious amount of power, 1775 megawatts ("MW"), over a three-year period (2012-2014). This is more than three times the amount of resources PacifiCorp planned to acquire in its 2009 RFP. Although PacifiCorp may decide to contract for more or less power, the RFP represents a decision by PacifiCorp to build and/or purchase an unprecedented amount of resources largely to serve Utah load growth.

PacifiCorp filed its 2012 RFP and sought to comply with the requirements of the Commission's 1991 competitive bidding order, Utah's new competitive bidding/pre-approval statute, and Washington's competitive bidding rules. Subsequent to the filing of its RFP, the Commission issued Order No. 06-446 adopting new competitive bidding rules for Oregon utilities. Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 (Aug. 10, 2006). The Commission found that

its new competitive bidding requirements would “apply to all pending and future RFP proceedings.” Id. at 15.

The new competitive bidding rules established a two stage review of the RFP process: 1) a review of the RFP before the bidding process starts; and 2) a review of the competitive bids after PacifiCorp selects a short list of resources. Regarding the pre-bidding review, the Commission solicits public comment on the utility’s draft RFP and issues an order focusing on: 1) the alignment of the RFP with the utility’s acknowledged IRP; 2) whether the RFP satisfies the Commission’s new competitive bidding guidelines; and 3) the overall fairness of the utility’s proposed bidding process. Id. at 9. The process proposed by the Commission envisions the parties participating in the utility’s drafting of the RFP, and having the benefit of working with and reviewing an Oregon IE’s analysis and comments prior to the RFP being filed with the Commission.

On August 30, 2006, PacifiCorp filed a compliance filing amending its RFP. PacifiCorp made limited changes to address the differences between the 1991 and the 2006 competitive bidding rules.

III. COMMENTS

The sheer size of the resources PacifiCorp is planning on acquiring in this RFP is unprecedented. PacifiCorp is planning on increasing the size of its resources in its eastern control area by approximately 25% over a three-year period. PacifiCorp will likely seek to have Oregon ratepayers pay for a portion of this huge amount of new resources that will provide little, if any, benefits to Oregon. PacifiCorp may attempt to

shift significant costs to Oregon customers, even in the unlikely event that PacifiCorp's load forecasts and planning reserve margins prove to be accurate.

In addition to the large amounts of resources PacifiCorp is seeking to acquire, this proceeding is significant and unique because the RFP is inconsistent with PacifiCorp's acknowledged IRP. The departure from its acknowledged IRP appears to be driven by the change in direction at PacifiCorp following the acquisition by MEHC. MEHC, in contrast to the previous ownership, appears to be focusing its efforts on building or acquiring new resources to include them in rate base. PacifiCorp's new commitment to rate base resources is demonstrated by the Company's plans to stop its historic practice of relying in part on market resources; to acquire resources that have never been reviewed in an IRP; and to acquire base load generation that may exceed its capacity needs.

This proceeding is also important because it is the first RFP that the Commission will review under the new competitive bidding rules. ICNU believes that the Commission should make every effort to require PacifiCorp to comply with the new rules. The Commission should very carefully review PacifiCorp's plans to compare all bids to "self-build" options.

1. The Commission Should Not Address Prudence or the Reasonableness of PacifiCorp's Resource Plans

ICNU urges the Commission to only address whether the RFP is consistent with its acknowledged IRP and not to address issues related to prudence and rate treatment. Neither the Commission nor the parties have sufficient information at this

time to judge issues related to prudence. ICNU also notes that utility actions that are consistent with an acknowledged IRP are not guaranteed favorable ratemaking treatment, and utilities can obtain rate recovery for resources that were prudently acquired in a manner inconsistent with their acknowledged IRP. Re the Investigation Into Least-Cost Planning for Resource Acquisitions by Energy Utilities in Oregon, OPUC Docket No. UM 180, Order No. 89-507 at 7 (Apr. 20, 1989).

2. PacifiCorp's RFP is Inconsistent with Its Acknowledged IRP

The Commission should conclude that PacifiCorp's RFP is not in alignment with its acknowledged IRP because PacifiCorp is planning to acquire resources that were not acknowledged in the Commission's most recent order addressing the Company's 2004 IRP. PacifiCorp is planning on building or purchasing 1775 MWs of base load thermal resources. In contrast, the Commission found in PacifiCorp's last IRP that the Company had at most demonstrated a need for 600 MWs of thermal resources. PacifiCorp also appears to be departing from its acknowledged IRP in choosing not to continue its practice of purchasing at least 700 MWs of short-term market transactions, and its attempt to acquire or build resources that have never been considered or acknowledged in an IRP.

In January 2006, the Commission issued an order acknowledging PacifiCorp's 2004 IRP. Re PacifiCorp, LC 39, Order No. 06-029 (Jan. 23, 2006) ("Order No. 06-029"). In its 2004 IRP, PacifiCorp had requested that the Commission acknowledge its plans regarding new renewable, demand side management, combined heat and power, short term market transaction (described as front office transactions),

standby generator, load control, and thermal resources. The thermal resources consisted of a 550 MW flexible natural gas combined cycle combustion turbine for the summer of 2009 and a 600 MW high capacity factor pulverized coal plant for the summer of 2011. In its January 2006 order, the Commission declined to acknowledge either of those two thermal resources, specifically finding that “PacifiCorp’s IRP does not make the case that there is a need for two large thermal resources on the East side of the system by . . . 2011.” Id. at 50. The Commission did not dismiss the possibility that PacifiCorp might need one thermal plant, but found that “[g]iven the deficiencies identified in the IRP analysis, however, we cannot tell when such a plant might be needed.” Id.

PacifiCorp is planning to acquire up to four thermal resources constituting 1775 MWs in 2012, 2013 and 2014. In contrast, the Commission’s IRP order only acknowledged the possibility that PacifiCorp would likely need one 550-600 MW thermal resource, and could not identify when the resource would be needed. There is no rational or reasonable way in which the RFP can be viewed as being consistent with the IRP acknowledgement that was issued earlier this year. That alone gives the Commission ample cause to reject the proposed RFP.

PacifiCorp’s RFP also appears to abandon the resource acquisition plans in its acknowledged IRP. For example, PacifiCorp no longer appears to be planning on relying upon the 700 MWs of eastern control area front office transactions that were included in its IRP. Similarly, it is unclear whether PacifiCorp is counting on its planned acquisitions of renewable, cogeneration and demand side management resources to meet its load. For example, the Company estimates of its future resource/load balance only

include a small portion of the 1400 MWs of the RFP wind and renewable power that was in the acknowledged IRP. See PacifiCorp Response to ICNU DR 3.1-1; Order No. 06-029 at 3. ICNU is not challenging the prudence or reasonableness of these decisions; however, the Commission should find that these actions are not in alignment with PacifiCorp's acknowledged IRP.

3. PacifiCorp Has Not Demonstrated A Need to Acquire Significant New Resources Beyond 600 MWs

PacifiCorp fails to demonstrate the Company's need for all the thermal resources that are included in its RFP. The information provided by PacifiCorp in this proceeding calls into question whether PacifiCorp has justified the acquisition of any new resources, let alone four large generating resources.

PacifiCorp's own documents demonstrate that the Company does not need to acquire 1,775 MWs to meet load growth in the eastern control area. Based on information in its yet to be filed 2006 IRP, PacifiCorp asserts that its eastern resource deficit will be 463 MWs in 2012 and 1,243 MWs in 2016. PacifiCorp Response to ICNU DR No. 3.1-1 (Table 1). Notably, this resource deficit is far less than 1,775 MWs. Moreover, those estimates are faulty because they are based on assumptions that the Commission has questioned and departed from in the portions of PacifiCorp's 2004 IRP that were acknowledged by the Commission.

PacifiCorp may attempt to inflate its resource deficit and justify its RFP by excluding the 700 MWs of front office transactions that the Commission acknowledged in the Company's last IRP. The front office transactions were included in PacifiCorp's

IRP because the Company has historically relied upon the market to serve a portion of its load. Although PacifiCorp is not required to follow its IRP and rely upon the front office transactions to meet load, it is important to recognize that, if PacifiCorp did so, then the Company's resource deficit is substantially less than the amount of capacity it is seeking to build or acquire in the RFP process.

PacifiCorp's forecasted resource deficit also relies upon a 15% planning margin that has been questioned by the Commission. The Commission specifically stated that "[w]e also find flawed, the analysis the Company used in support of its 15% planning margin." Order No. 06-029 at 50. This margin is based on the aggressive assumption that the margin should never dip below 15% in a single hour of any year, and does not consider demand side options to reduce energy needs. Id. at 46.

The Commission was correct not to acknowledge PacifiCorp's 15% planning margin because a lower planning margin of no more than 10-12% is far more reasonable. For example, in PacifiCorp's recent avoided cost filing, the Company relied upon a less than 10% reserve to determine the sufficiency of capacity and to set the rates available for Qualifying Facilities ("QFs"). PacifiCorp should not be allowed to use higher reserves to establish the need for resources that the Company is planning to build, while using lower reserves to determine if QFs can avoid those same resources.

Reliance upon a more reasonable planning margin would significantly reduce (and largely eliminate) PacifiCorp's claimed resource deficit. For example, PacifiCorp estimated that its resource deficit in 2012 would be 264 MWs if it assumed a

12% planning margin and 132 MWs with a 10% planning margin. PacifiCorp Response to ICNU Data Request No. 2.2 (2006 IRP projections).

The need to acquire new resources could be further reduced if PacifiCorp planned on acquiring the other resources in PacifiCorp's acknowledged IRP. Earlier this year, the Commission warned PacifiCorp that it might be prudent for the Company to delay for a couple years any plans to acquire its next large thermal resource. Order No. 06-026 at 51. The Commission noted that PacifiCorp had not fully analyzed other resource options, including distributed generation, transmission expansions and demand side management. Id. at 50. For example, the Commission concluded that "the IRP does not sufficiently address the relative cost and risks associated with investing in transmission assets that would enable" PacifiCorp to rely on other resources. Id. at 56. PacifiCorp is reviewing transmission investments as part of its current 2006 IRP process, but the Company does not appear to include these in its RFP. Similarly, it is unclear whether PacifiCorp is relying on its planned renewable resources to meet eastern load.

Finally, PacifiCorp's resource deficit is based on its current load growth forecasts. For example, PacifiCorp's estimated Utah coincidental peak load in 2015 is now 5,504 MWs, down from an estimated 6,427 in the 2004 IRP. PacifiCorp's Response to ICNU DR Nos. 3.1-2 and 3.2-2. That is a nearly 1,000 MW reduction of the forecasted Utah load in only two years. Similarly, projections regarding Utah load growth have decreased more than 700 MWs by 2012. Id.

PacifiCorp may assert that overall load growth in the east has increased; however, PacifiCorp's forecasts are based on extreme spikes in Idaho and Wyoming

loads that are unverified and highly suspect. The entire 2012 eastern resource deficit can be attributed to a mysterious increase in the Wyoming and Idaho peak demand. In addition, for the past few years, PacifiCorp's Utah load growth forecasts have been challenged by Utah parties as overly aggressive. See, e.g. Re PacifiCorp, UPSC Docket No. 04-035-42, Direct Testimony of Andrea Coon (Dec. 3, 2004). The fundamental reality is that PacifiCorp's load growth forecasts are highly variable, unreliable, and do not warrant the acquisition of unprecedented amounts of new thermal resources.

4. Specific Concerns with PacifiCorp's RFP

ICNU has identified some initial concerns with the specific details of the RFP that should be carefully reviewed by an Oregon IE. Over the course of this proceeding, ICNU is likely to identify additional issues.

ICNU is concerned with how PacifiCorp will calculate the credit of bidders and whether this factor will result in a bias in favor of a self-build option. For example, the IE should consider whether the bidders understand how the credit ratings will be set, if the credit rating factor will penalize independent power producers, and whether PacifiCorp's calculation of the credit rating of bidders should be based on the assumption that the bidder has submitted a winning bid and has been awarded a contract.

Non-price factors in PacifiCorp's RFP represent 30% of the overall scoring. An Oregon IE should review whether this overall percentage is too high, and whether the scoring criteria are fair. For example, 10% of the scoring is based on the willingness of a bidder to enter into a pro forma contract. Similarly, 10% of the scoring is based on the bidder's development, construction and operational experience. ICNU

assumes that PacifiCorp's self build options will score high on these criteria, and recommends that these factors be carefully reviewed to ascertain whether they unfairly bias the bidding process.

In addition, the IE should carefully review PacifiCorp's proposed IGCC resource and the risk factors that the Company will consider when evaluating potential resources. Based on ICNU's initial review of the RFP, PacifiCorp's proposed IGCC resource appears to be biased toward a self-build option and does not appear to offer an independent power producer the opportunity to build on the Company's site. In addition, IGCC is an unproven technology that includes cost estimates that significantly exceed traditional coal plants. PacifiCorp is currently investigating the potential costs associated with IGCC technology. Thus, it may be premature for PacifiCorp to include a self-build IGCC option when there is little certainty associated with the costs and risks of this new technology.

Other issues ICNU recommends that the IE review, include, *inter alia*: 1) PacifiCorp's use of a new computer model to test the bids; 2) the Company's self imposed code of conduct to ensure fair bid evaluation; 3) the proposed contract terms; 4) whether the scoring criteria or other factors are biased in favor of self-build resources; 5) any issues related to bidding by former affiliates; 6) whether it is appropriate to include 2006 IRP information in the competitive bidding process; and 7) whether PacifiCorp's self-build cost estimates are reasonable.

IV. CONCLUSION

ICNU recommends that the Commission issue an order rejecting PacifiCorp's RFP because it is not in alignment with its acknowledged IRP. The Company is proposing to acquire resources that have not been acknowledged by the Commission and the Company has not demonstrated that it has a need to acquire such resources. In addition, ICNU recommends that the Commission defer final resolution of whether the RFP is fair and consistent with the Commission's new competitive bidding rules until after the parties have had an opportunity to work with and review a final report from an Oregon IE.

Dated this 19th day of September, 2006.

Respectfully submitted,

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