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November 23, 2009

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, dba PACIFIC POWER Request for
Approval of Draft 2008 Request for Proposals.
Docket No. UM 1360

Dear Filing Center:

Enclosed please find the original Comments on behalf of the Industrial Customers
of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

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 Comments of the Industrial Customers of Northwest Utilities upon the parties, shown below, on the official service list by causing the foregoing document to be deposited, postage-prepaid, in the U.S. Mail, or by service via electronic mail to those parties who have waived paper service.

Dated at Portland, Oregon, this 23rd day of November, 2009.

/s/ Brendan E. Levenick
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1360

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER)	COMMENTS OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
Application for approval of a solicitation)	UTILITIES
process for flexible resources starting in)	
2012 through 2017.)	
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits the following comments recommending that the Oregon Public Utility Commission (“OPUC” or the “Commission”) deny PacifiCorp’s request for approval to resume its 2008 request for proposal (“RFP”). PacifiCorp’s 2008 RFP is inconsistent with the Commission’s competitive bidding guidelines because it is based on a combination of stale and outdated information as well as selective updates to incorporate changes based on the Company’s unacknowledged 2008 integrated resource plan (“IRP”). PacifiCorp should be required to file a new RFP consistent with its 2008 IRP after the Commission issues an order regarding the 2008 IRP early next year. The Commission should be skeptical of the timing of PacifiCorp’s request review whether the Company is restarting its RFP in order to proceed with its Lakeside 2 facility rather than any actual changes in the market or needs for new resources. Finally, if the Commission does not reject the revised 2008 RFP, the Commission should, at a minimum, postpone its consideration

until the parties and the Oregon IE can more thoroughly review and analyze the basis for the alleged need for new resources.

II. BACKGROUND

Similar to many of PacifiCorp's competitive bidding efforts (and its efforts to avoid the competitive bidding requirements), the 2008 RFP has a troubled and controversial history. PacifiCorp originally requested that the Commission open a new docket to review the 2008 RFP on December 24, 2007. PacifiCorp made multiple revisions to the 2008 RFP.

ICNU submitted opening and final comments in opposition to the 2008 RFP. ICNU pointed out that: 1) PacifiCorp had failed to justify a need to acquire 2,000 MWs of new baseload resources; 2) it was inconsistent with its last acknowledged IRP; 3) the Company was improperly treating its benchmark resources as self build options; and 4) it was unfair for the bid fees to offset the costs of the Utah independent evaluator ("IE") but not the Oregon IE. The Oregon Staff supported the 2008 RFP, based on the Commission adopting about 27 conditions, some of which were designed to partially address concerns raised by ICNU.

The Commission approved the 2008 RFP, imposing nearly 30 conditions. Re PacifiCorp, Docket No. UM 1360, Order No. 08-310 (June 5, 2008). Conditions required by the Commission included: 1) limitations on acknowledgment of the Company's claimed 2,000 MW resource need; 2) changes to credit requirements; 3) that RFP approval does not imply endorsement of the Company's benchmark resources; and

- 4) exploration of changes to the success fee regarding funding of the Oregon IE. Id. at 3-
5. PacifiCorp issued the 2008 RFP to the market in late 2008.

On February 27, 2009, after bids had been received, PacifiCorp submitted a notice of suspension of its 2008 RFP. PacifiCorp cited the dramatic global economic downturn, the reduction in customer loads, and the reductions in the price of commodities as grounds for suspending the 2008 RFP. Essentially, PacifiCorp recognized that it did not need the amount of resources requested as soon as it had originally claimed. The economy is still in recession in Oregon, resulting in continued loss of PacifiCorp load.

On May 29, 2009, PacifiCorp filed its new 2008 IRP. The schedule has been revised, and the IRP will now be reviewed at the Commission's February 2, 2010 Open Meeting. PacifiCorp should have a decision regarding the acknowledgment of its 2008 IRP within a few months.

On November 2, 2009, PacifiCorp filed a request to resume its 2008 RFP. PacifiCorp alleges that there may be more favorable bids, and that there are indications that the recession has slowed and economic conditions may improve. PacifiCorp has proposed changes to the 2008 RFP, including: 1) the change of the on-line date for new resources from 2012 to 2014; 2) the changes to the Company's benchmark resources; and 3) potentially significant changes to the bidding and pricing process. The Company has proposed a single benchmark, which is a combined cycle natural gas plant at Lake Side, Utah. PacifiCorp has now acquired the rights to build the Lake Side 2 plant. Despite the significance of these changes, PacifiCorp describes them as "nonmaterial." PacifiCorp Request to Resume at 3. ICNU disagrees.

PacifiCorp requested expedited consideration requesting that the Commission “approve the resumption and the re-issuance of the 2008 RFP.” Id. at 6. The Company provides no justification for why expedited treatment is necessary or why the Company could not have filed the revisions to its 2008 RFP earlier. The Commission is considering the revised 2008 RFP at its November 24, 2009 Open Meeting, which is only about three weeks from when the Company filed its request to resume its RFP. ICNU has been provided one page of analysis from the Oregon IE regarding the reissued 2008 RFP; however, the Oregon IE does not appear to have submitted any written analysis regarding most of the issues raised in these comments.

III. LEGAL STANDARD

The Commission adopted new competitive bidding guidelines, which govern PacifiCorp’s 2008 RFP. Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 (Aug. 10, 2006). The 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 Commission’s competitive bidding guidelines do not squarely address the unique circumstances in this proceeding in which the Company withdraws and then

seeks to reissue a revised RFP nearly one year later. PacifiCorp has proposed significant changes to its RFP (including the change in the on-line date for new resources based on the filed 2008 IRP and the Lake Side 2 benchmark), and the Company is specifically requesting that the Commission approve the “re-issuance” of the changed 2008 RFP. Since PacifiCorp has essentially issued an entirely new RFP, the Company should be required to demonstrate that the revised 2008 RFP meets all the Commission’s competitive bidding requirements for any RFP. There are important legal and procedural issues raised in this filing that should be carefully considered by all parties and the Commission. Expedited consideration is not appropriate here.

IV. COMMENTS

ICNU recommends that the Commission reject PacifiCorp’s revised 2008 RFP, and allow the Company to resubmit a new RFP after the Commission issues an order regarding its 2008 IRP. The revised 2008 RFP does not comply with the Commission’s competitive bidding guidelines because the Company based it upon an IRP which has not been reviewed or acknowledged by the Commission. In addition, PacifiCorp may have filed the revised 2008 RFP in order to develop its own self build resource rather than take advantage of any change in economic conditions. The parties should be allowed to gather additional information regarding the self build option before the RFP is allowed to proceed.

The 2008 RFP proposes to seek bids for new thermal resources as early as 2014, which is based on its filed 2008 IRP. PacifiCorp Request to Resume at 3. Since

the 2008 IRP has not been ruled on by the Commission, there can be no dispute that the 2014 date for a new resource is not aligned or consistent with an acknowledged IRP.

The 2014 new thermal resource date in the Company's 2008 IRP is not uncontroversial and there is no guarantee that the Commission will acknowledge it. The Company's proposal in its 2008 IRP to acquire a new combined cycle combustion turbine ("CCCT") in 2014 has been challenged by the Commission Staff. Specifically, "Staff believes that the Company has not provided the analysis to support the acquisition of its CCCT . . . given the significant changes in customer load." Re PacifiCorp, Docket No. LC 47, Staff Draft Comments at 2. Staff noted that PacifiCorp is forecasting healthy 2.1% annual energy growth, while PacifiCorp's actual loads through July 2009 declined by 5.2%. Id. at 1. Staff's estimates did not account for the significant loss in PacifiCorp's Oregon load, which is expected to occur before the end of the year. PacifiCorp's claimed need for a new thermal resource by 2014 is suspect, and the Commission should not acknowledge the 2008 RFP without a clear demonstration that the Company needs the resource.

While PacifiCorp's resource needs, future economic conditions and expected loads do not appear to support the need for a new resource, PacifiCorp has proposed to include the Lake Side 2 resource as its new benchmark resource. ICNU is concerned that PacifiCorp may be seeking to resume the 2008 RFP now because the Company has determined which resource it wants to acquire and build rather than any changes in the market or need to serve future loads. The circumstances surrounding the Company's acquisition and use of the Lake Side 2 project also warrant a more thorough

review before the Company is allowed to include this resource as a benchmark. Delaying the new RFP until after an order regarding the Company's 2008 IRP will allow the parties and the Oregon IE to review this issue.

PacifiCorp has also proposed a number of changes to how bidders will submit their bids and the type of information that is included. PacifiCorp's Request to Resume at 4-5. PacifiCorp claims these changes were made based on the "experience and lessons learned" in a previous RFP. Id. at 4. ICNU has not seen the specific changes to the RFP, and three weeks is insufficient time to analyze and review any changes, particularly with the current press of business and the holidays. In addition, ICNU believes these types of changes should only be made after the bidding community and the Oregon IE have had an opportunity to provide written comments.

In addition, the change to include the Lake Side 2 facility and to the bidding process appear to be inconsistent with the Commission's competitive bidding guidelines. The competitive bidding guidelines contemplate the Oregon IE reviewing the draft RFP, the parties being able to conduct discovery and review the Oregon IE's report—all prior to the RFP even being filed with the Commission. Docket No. UM 1182, Order No. 06-446 at 9. PacifiCorp is seeking to short cut this process, and has proposed a significant modification to the RFP in a manner that does not allow the parties or the Commission an adequate opportunity to review the change.

The Commission should also reject the revised 2008 RFP on the grounds that it is inconsistent with the competitive bidding requirement regarding the overall fairness of the utility's proposed bidding process. PacifiCorp has proposed major and

significant changes after a significant delay in the RFP. There have been dramatic changes in the overall economy, which impact the Company's need for new resources. Instead of revising its outdated and no longer accurate RFP, the Company should withdraw the 2008 RFP and propose a new draft RFP after obtaining guidance from the Commission regarding its future resource needs and input from the parties and the Oregon IE on all the specific changes it is considering.

V. CONCLUSION

ICNU recommends that the Commission deny PacifiCorp's request to resume and reissue its revised 2008 RFP. PacifiCorp should be required to comply with the competitive bidding guidelines and submit a revised RFP that is consistent with the Commission's final order regarding the Company's 2008 IRP. In addition, the Company's Lake Side 2 benchmark resource should be more thoroughly reviewed, and expedited review should be denied.

Dated this 23rd day of November, 2009.

Respectfully submitted,

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