

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1374

In the Matter of)	
)	
PACIFICORP)	COMMENTS OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
Petition for Waiver of the Commission’s)	UTILITIES
Competitive Bidding Guidelines)	
_____)	

I. INTRODUCTION

Pursuant to the schedule adopted by Administrative Law Judge (“ALJ”) Kirkpatrick, the Industrial Customers of Northwest Utilities (“ICNU”) submits the following comments regarding PacifiCorp’s petition to waive the Oregon Public Utility Commission’s (“OPUC” or the “Commission”) competitive bidding guidelines. ICNU does not take a position on whether the Commission should waive the competitive bidding guidelines, but instead proposes certain conditions that should be imposed if the waiver is granted. ICNU recommends that, if the competitive bidding rules are waived, then the Commission should not resolve any factual or ratemaking issues until a future ratemaking proceeding. The Commission should specifically rule that it will address issues regarding whether the proposed acquisition is prudent, in the public interest, time sensitive, or a unique opportunity for ratepayers in a future proceeding.

II. BACKGROUND

In August 2006, the Commission adopted competitive bidding rules providing that a utility must issue an RFP for all major resources which have a duration

of five years and a size greater than 100 megawatts (“MW”). Re an Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446, Appendix A at 1 (Aug. 10, 2006). The Commission identified exceptions to the RFP requirement, including the acquisition of a major resource: 1) in an emergency or time-limited resource opportunity of unique value to ratepayers; 2) the resource is inconsistent with an alternative acquisition method in an acknowledged integrated resource plan; and 3) on a case-by-case basis. Id. The guidelines state that when presented with a time-sensitive resource opportunity, the utility should file a report within 30 days of the resource acquisition. Id. When requesting a waiver on a case-by-case basis, the guidelines indicate that the Commission will resolve the waiver request within 120 days after taking oral and written comments. Id.

On April 1, 2008, PacifiCorp filed a petition requesting the Commission waive its competitive bidding rules to acquire an existing generation plant (“Plant”). After a protective order was granted, PacifiCorp provided confidential testimony and workpapers to the parties.¹⁷

PacifiCorp has requested that the Commission waive the requirement to acquire a major resource in an RFP on two separate grounds. First, PacifiCorp states that the waiver should be granted because the resource is a “time-limited resource

¹⁷ PacifiCorp has labeled nearly all information regarding this Plant as confidential. However, most of the basic details regarding this Plant may have been publicly identified in the trade press and public filings made by the Company at the Federal Energy Regulatory Commission. PacifiCorp should amend its filings to unredact non-confidential information because the Company is only permitted protect those portions of documents that are trade secrets or other confidential research. It is inappropriate to require the parties and the Commission to continue to treat certain information as confidential if the Company has made the information publicly available.

opportunity” that reflects a “‘unique value’ to customers.” PacifiCorp Petition at 5. Alternatively, PacifiCorp requests waiver on a “case-by-case” basis. Id. at 6. In support of its case-by-case basis waiver, PacifiCorp alleges that: 1) the acquisition will meet a critical resource need; 2) the Plant will help integrate renewable resources; 3) a new RFP is not likely to identify new resources; 4) the Plant is available on reasonable terms and conditions; and 5) the acquisition of the Plant is in the public interest and beneficial to ratepayers. Id. at 5-6.

On May 1, 2008, ALJ Kirkpatrick adopted a procedural schedule that all parties agreed upon, which includes party comments, PacifiCorp reply comments, and a Staff public meeting memo. The schedule does not provide for the filing of testimony, or any evidence by Staff or intervenors, and there is no evidentiary hearing or briefs.

III. COMMENTS

ICNU does not take a position on whether the Commission should grant PacifiCorp’s request to waive the requirement to acquire new major resources in an RFP. It is PacifiCorp’s responsibility to prudently plan, develop, and acquire the necessary resources to serve their customers at the overall least cost.

If the Commission waives the requirements of its competitive bidding rules to allow PacifiCorp to acquire a major resource without issuing an RFP, then the Commission should not resolve any factual issues or set any precedent regarding ratemaking issues. Other than PacifiCorp, no party has submitted any testimony, nor will there be any evidentiary hearing or legal briefs. The Commission has insufficient information before it to make factual findings or address legal issues regarding whether

the acquisition of the Plant was prudent, in the public interest or constitutes a net benefit for ratepayers. Similarly, there is insufficient evidence to make a factual finding that the resource is a time sensitive, unique opportunity for ratepayers, or to rule on any other factual and legal conclusions included in PacifiCorp's petition for waiver.

The factual and ratemaking issues related to PacifiCorp's resource acquisition should be addressed at the time PacifiCorp seeks to recover any costs associated with any resource. PacifiCorp should be required to not only prove that the resource acquisition meets the Commission's traditional prudence requirements, but that it was appropriate for the Company to acquire the resource outside of the competitive bidding process. PacifiCorp should be required to demonstrate that the Plant was in fact a time sensitive resource opportunity that represents a unique value to customers. In addition, PacifiCorp should be required to prove that the Plant was needed to meet a critical resource need, that the Plant could not have been acquired in a RFP, that the terms and conditions are reasonable, and that the Plant benefits ratepayers. Essentially, PacifiCorp should be required to prove in an evidentiary proceeding the factual issues that it now claims are the grounds for obtaining a waiver of the competitive bidding rules.

IV. CONCLUSION

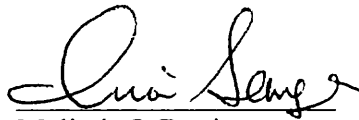
If an order is issued granting a waiver of the competitive bidding guidelines, it should specifically conclude that all parties may raise all factual and legal issues associated with the proposed acquisition in a future rate proceeding. The Commission does not have sufficient evidence and will not have heard appropriate legal arguments that would be necessary to make any specific conclusions that the proposed

acquisition is a time sensitive, unique opportunity for customers, meets a critical resource need, benefits ratepayers, or is otherwise in the public interest. All these issues should be addressed in a fully litigated proceeding if PacifiCorp ultimately acquires the Plant and attempts to include it in rates.

Dated this 14th day of May, 2008.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

A handwritten signature in black ink, appearing to read "Irion Sanger", written over a horizontal line.

Melinda J. Davison

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May 14, 2008

Via Electronic and U.S. Mail

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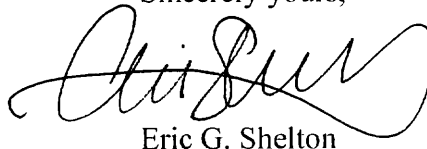
Re: In the Matter of PACIFICORP Petition for Waiver of the Commission's
Competitive Bidding Guidelines
Docket No. UM 1374

Dear Filing Center:

Enclosed please find the original and one (1) copy of the Comments of the
Industrial Customers of Northwest Utilities ("ICNU") in the above-referenced docket.

If you have any questions, please do not hesitate to give me a call. Thank you for
your assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Eric G. Shelton", with a stylized, flowing script.

Eric G. Shelton

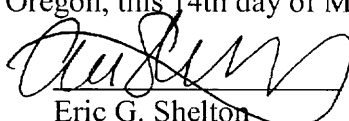
Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Comments on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the official service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, and via electronic mail.

Dated at Portland, Oregon, this 14th day of May, 2008.


Eric G. Shelton

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