

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF DESCHUTES

NEWSUN ENERGY LLC, a Delaware limited liability company,

Petitioner,

v.

OREGON PUBLIC UTILITY COMMISSION, an agency of the State of Oregon,

Respondent.

Case No. 22CV21264

**PETITION FOR JUDICIAL REVIEW OR IN THE ALTERNATIVE TO COMPEL AGENCY ACTION PURSUANT TO ORS 183.484 AND 183.490**

(Oregon Administrative Procedures Act, ORS 183.310-183.690)

Statutory Fee: ORS 21.135(2)(a), (e)

Petitioner NewSun Energy LLC (“NewSun”) petitions for judicial review of a final order in other than contested case pursuant to ORS 183.484 or in the alternative to compel agency action pursuant to ORS 183.490, and alleges as follows:

**OVERVIEW OF THE CASE**

1.

This case arises out of the Oregon Public Utility Commission’s (the “PUC” or the “Commission”) Order No. 22-130 (the “Final Order”), issued in *In the Matter of PacifiCorp, dba Pacific Power Application for Approval of 2022 All-Source Request for Proposals*, Docket No. UM 2193 (“UM 2193”). In the Final Order, issued on April 28, 2022, the PUC approved with modifications a pending 2022 All-Source Request for Proposals (the “RFP”) filed by PacifiCorp. The RFP is among the first competitive procurement processes proposed by a regulated utility in Oregon, and approved by the Commission, since Oregon enacted a landmark law last year requiring retail electricity providers like PacifiCorp to deliver 100% clean energy to Oregon

1 consumers by 2040 (House Bill 2021 or “HB 2021”). HB 2021 affects 100% of regulated utility  
2 resource procurement, and the Commission is the sole agency that oversees the resource  
3 procurement process. However, through its failure to ensure that PacifiCorp is taking actions as  
4 soon as practicable to meet its clean energy targets, the Commission has failed to implement its  
5 express obligations under HB 2021. By this Petition, NewSun seeks judicial review of the Final  
6 Order, a determination that the Final Order was invalid because it failed to give effect to key  
7 provisions of the new law, thereby exceeding the statutory authority granted to the PUC, and an  
8 order clarifying the Commission’s obligation to implement those key provisions of the law. In  
9 the alternative, NewSun petitions this Court to compel the Commission to take action to  
10 implement the requirements of HB 2021.

11 2.

12 In June 2021, the 81st Oregon Legislative Assembly passed House Bill 2021, a clean  
13 energy law that requires Oregon’s retail electricity providers to eliminate 100% of their  
14 greenhouse gas emissions by 2040. Governor Brown signed HB 2021 in July 2021, with an  
15 effective date of September 25, 2021. Complying with this law will require a massive  
16 transformation of the electric generation capacity serving Oregon. In just eight years, electric  
17 companies must ensure that their greenhouse gas emissions are **80 percent** below baseline levels  
18 and **100 percent** below baseline in eighteen years. In addition, the electric companies must  
19 demonstrate “continual progress” toward meeting those clean energy targets. ORS  
20 459A.415(4)(e). As a result, virtually all significant power procurement by Oregon’s two  
21 affected regulated utilities, PacifiCorp and Portland General Electric, and in particular all  
22 development of new electric generation facilities, necessarily will be geared toward meeting  
23 electric utilities’ obligations under HB 2021. Significantly, in enacting HB 2021, the Oregon  
24 Legislature clearly identified state policies and priorities relating to the development of this new  
25 generation capacity. Section 2, paragraph 2 of HB 2021, codified at ORS 469A.405(2) requires  
26 “[t]hat electricity generated in a manner that produces zero greenhouse gas emissions also be

1 generated, *to the maximum extent practicable*, in a manner that provides additional direct  
2 benefits to communities in this state in the forms of creating and sustaining meaningful living  
3 wage jobs, promoting workforce equity and increasing energy security and resiliency[.]” The  
4 phrase “to the maximum extent practicable” could mean that 100% of new generation capacity  
5 should be sited in Oregon, in order to benefit state, county, and community economic  
6 opportunities, which could result in billions of dollars of investment and hundreds of millions of  
7 dollars in tax revenue over the next two decades. PacifiCorp’s RFP states a need to procure 1,345  
8 megawatts by the end of 2026, demonstrating the vast scale of procurement underway by utilities  
9 and the urgency of resource procurement to comply with HB 2021.

10 3.

11 As part of the compliance obligations to achieve such a significant reduction in  
12 greenhouse gas emissions so quickly, ORS 469A.415 directs electric companies to develop  
13 “clean energy plans.” A clean energy plan must incorporate emissions goals and demonstrate that  
14 an electric company is making continual progress towards meeting those goals. ORS  
15 469A.415(4). An electric company must develop a clean energy plan concurrent with its  
16 “integrated resource plan” (“IRP”), typically submitted every two years to the Commission,  
17 although a clean energy plan could be prepared separately from an IRP. ORS 469A.415(1); OAR  
18 860-027-0400. ORS 469A.420(2) directs the Commission to acknowledge a clean energy plan if  
19 it is in the public interest, considering any reduction in greenhouse gas emissions, the economic  
20 and technical feasibility of the plan, costs and risks to customers, and any other relevant factors  
21 determined by the Commission.

22 4.

23 However, in addition to its duty to acknowledge clean energy plans within the IRP  
24 process, ORS 469A.415(6) directs the Commission to ensure that electric companies are taking a  
25 **holistic** approach to rapidly reducing greenhouse gas emissions. ORS 469A.415(6) reads:

26 ///

1 “The commission shall ensure that an electric company demonstrates continual progress as  
2 described in subsection (4)(e) of this section and is taking actions as soon as practicable  
3 that facilitate rapid reduction of greenhouse gas emissions at reasonable costs to retail  
4 electricity consumers.”

5 5.

6 Outside of acknowledgment of clean energy plans, ORS 4649A.415(6) requires the  
7 Commission to accomplish two additional goals regarding its oversight of electric companies. It  
8 must ensure that an electric company 1) “demonstrates continual progress [within the planning  
9 period towards meeting its clean energy targets]” and 2) “is taking actions *as soon as practicable*  
10 that facilitate *rapid reduction* of greenhouse gas emissions at reasonable costs to retail electricity  
11 consumers.” (emphasis added).

12 6.

13 Inherent in the Commission’s obligation to ensure electric companies are taking actions  
14 “as soon as practicable that facilitate rapid reduction of greenhouse gas emissions” is the  
15 requirement of ORS 469A.405 that such zero-emission generation is generated “in a manner that  
16 provides direct benefits to communities *in this state . . .*” (emphasis added).

17 7.

18 HB 2021 directly regulates electric utility generating resource procurement. There is no  
19 other place to implement the provisions and policy of HB 2021 than in the procurement process,  
20 which is carefully prescribed by state law in a manner intended to protect utility ratepayers,  
21 including from utility abuses such as monopolizing ownership of renewable energy resources,  
22 and implement state law and policy. *See* OAR Chapter 860, Division 089.

23 8.

24 Under the procurement process, every two years utilities typically file IRPs for review  
25 and acknowledgment by the PUC. OAR 860-027-0400(3). When an acknowledged IRP  
26 identifies a resource procurement need, and in other circumstances, a utility may conduct an RFP  
process. Like the IRP, the RFP process is conducted through a public docket managed by the  
PUC. *See* OAR 860-027-0400. It involves extensive stakeholder input, ultimately resulting in the



1 PUC directing the utility on how the RFP can or should be modified to meet administrative and  
2 statutory rules and guidelines.

3 9.

4 Typically, upon receiving the PUC’s acknowledgement of the RFP, the utility may  
5 choose to proceed with the resource acquisition. The cost of such resource may eventually be  
6 recovered in the utility's electric rates when the resource is used and useful if the expenditure is  
7 reasonable and prudent. *See* ORS 757.210. A procurement that aligns with a commission-  
8 approved RFP provides strong evidence that the expenditure was reasonable and prudent, but a  
9 utility may still acquire unacknowledged resources. *See* ORS 757.210; OAR 860-027-0400.

10 10.

11 These procurements decisions will be reviewed during a utility’s general rate case. But  
12 this retrospective ratemaking review of procurement costs may not occur for several *years* after  
13 the resource acquisition decision was made. And by then it will be too late to ensure that a utility  
14 has complied with HB 2021. The resource procurement decision likely cannot be undone or  
15 redone. The only likely adverse outcome to the utility is that some portion of the resource costs  
16 may be borne by shareholders rather than ratepayers, and further stymieing review is the fact that  
17 the PUC is incentivized to approve a ratemaking to fulfill its statutory obligations. *See*  
18 ORS 469A.120.

19 11.

20 While the speculative threat of future ratemaking scrutiny may influence current utility  
21 actions, it is not the direct regulation of present utility procurement behavior contemplated in HB  
22 2021. In HB 2021, the legislature specifically addressed utility resource procurement decisions,  
23 not retroactive utility ratemaking. Relying on ratemaking to regulate utility procurement is akin  
24 to granting a developer approval to build a skyscraper—and then performing the engineering and  
25 design review on the fully constructed building.

26 ///

1 12.

2 Regardless of how the PUC may characterize it, the practical reality is that the RFP  
3 acknowledgement is the critical step in the utility procurement process. It sets in motion utility  
4 procurement actions that cannot later be undone through the ratemaking process. If the PUC does  
5 not implement HB 2021 in the RFP acknowledgment process, then there is no later step in the  
6 process in which the PUC can directly and proactively oversee the procurement before the  
7 procurement is made.

8 13.

9 The RFP is PacifiCorp’s first major resource acquisition since the enactment of HB 2021.  
10 The Commission “generally requires utilities to issue an RFP for all major resource  
11 acquisitions,” which are “those resources with a duration of over five years with an output of  
12 more than 80 megawatts.” Order No. 20-386, Appendix A at 25.

13 14.

14 Consequently, because PacifiCorp seeks to acquire new major resources post-HB 2021,  
15 the Commission is *statutorily obligated* to ensure that PacifiCorp, regardless of where this  
16 acquisition falls within the IRP, RFP, or ratemaking processes and notwithstanding the fact that  
17 PacifiCorp has yet to develop a clean energy plan, “is taking actions as soon as practicable that  
18 facilitate rapid reduction of greenhouse gas emissions . . . .” And, per ORS 469A.405, the  
19 generation associated with those reductions must provide *direct benefits* to Oregon residents.  
20 The Final Order fails to even attempt to address these requirements, let alone ensure they are  
21 met, resulting in the approval of an RFP that ensures *no* direct benefits to Oregonians, in spite of  
22 significant stakeholder input related to bid scoring and siting criteria.

23 15.

24 The intent of the legislature in enacting HB 2021 could not be clearer. Reducing  
25 greenhouse gas emissions for the benefit of Oregon citizens is an immediate concern, and  
26 Oregon citizens should directly reap any associated economic and resiliency benefits thereof.

1 ORS 469A.405. The legislature has set aggressive, quickly approaching emissions targets.  
2 ORS 469A.410. To achieve those goals, it has directed electric companies to develop clean  
3 energy plans and provided the Commission guidance on how and when to officially  
4 acknowledge those plans. But in addition to clean energy plans, typically developed only every  
5 two years within or shortly after the IRP process, achieving significant emissions reduction  
6 requires *expedient* action, which is why the legislature has directed the Commission to ensure  
7 that electric companies are also making “continual progress” and “taking actions *as soon as*  
8 *practicable* that facilitate rapid reduction of greenhouse gas emissions . . . .” ORS 469A.415(6)  
9 (emphasis added). The development of infrastructure facilities takes many years, and the RFP  
10 sets the stage for development investment decisions, such as whether to invest in Oregon because  
11 of state policies like HB 2021 or abandon investments. Therefore, the RFP process is the natural  
12 venue for the Commission to begin implementation of HB 2021. And the Commission is the sole  
13 authority responsible for ensuring that the state policy is implemented.

14 16.

15 Petitioner challenges the PUC’s Final Order as invalid because it is an agency action that  
16 failed to effectuate legislative policy, is outside the range of discretion delegated to the PUC by  
17 law, and exceeds the statutory authority of the PUC. Additionally, the Commission has  
18 unlawfully refused to act and unreasonably delayed implementing HB 2021.

19 17.

20 Petitioner is entitled to an Order from the Court providing that the PUC is obligated to  
21 administer and enforce the provisions of ORS 469A.405(2). Petitioner is also entitled to an Order  
22 from the Court setting aside the Final Order and modifying the RFP to give effect to and  
23 meaningfully implement the obligations set forth in ORS 469A.405(2) to provide the specified  
24 direct additional benefits to Oregon communities “to the maximum extent practicable,” or,  
25 alternatively, an Order from the Court remanding the Final Order to the PUC with instructions to  
26 consider and meaningfully give effect to ORS 469A.405(2) “to the maximum extent

1 practicable.” Alternatively, Petitioner is entitled to an Order remanding the Final Order to the  
2 PUC for further proceedings because the PUC’s exercise of discretion is outside the range of  
3 discretion delegated to the agency by law and is in violation of ORS 469A.405(2). Alternatively,  
4 Petitioner is entitled to an Order from the Court compelling the PUC to ensure that the RFP will  
5 “facilitate rapid reduction of greenhouse gas emissions” for the benefit of Oregon residents as  
6 expressly required by ORS 469A.415(6) and ORS 469A.405(2).

7 18.

8 This is a serious and urgent matter in light of HB 2021, which will entail billions of  
9 dollars of new infrastructure procurement, hundreds of millions of dollars of tax revenue, and  
10 decisions that soon will be made regarding the location and siting of that infrastructure –  
11 meaning whether construction, operation, and management of such infrastructure benefits  
12 Oregonians, or whether it is sited by the utilities in remote locations out-of-state that do not  
13 achieve the legislative directive of HB 2021 and expose ratepayers to diminished grid reliability,  
14 the majority of which must occur by 2030. Now is the time to address these issues, so that—as  
15 new infrastructure is developed—Oregonians may reap the benefit of the policies adopted by the  
16 Legislature. The deadline for PacifiCorp and Oregon’s other regulated utilities to meet their first  
17 emissions goal is looming. Oregon’s communities cannot wait to reap the benefits of HB 2021.  
18 The Commission, as directed by the legislature, must act *now*.

19 19.

20 Petitioner also seeks, and is entitled to, an injunction staying the Final Order and the RFP  
21 process. Significant procurement of new electric generation capacity necessary to comply with  
22 HB 2021 should not move forward until this Court clarifies the Commission’s responsibility to  
23 implement and enforce the obligations set forth in ORS 469A.405(2) and 469A.415(6).

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1 **THE PARITES**

2 20.

3 Petitioner NewSun Energy, LLC is a Delaware limited liability company that invests in  
4 and has and manages affiliates engaged in the development of renewable energy and non-  
5 emitting generation and capacity facilities, including small power production qualifying facilities  
6 and related activities, in Oregon and throughout the Pacific Northwest. New Sun’s principal  
7 place of business is in Bend, Oregon.

8 21.

9 Respondent Oregon Public Utility Commission is an administrative agency of the State of  
10 Oregon, with the power and jurisdiction to supervise and regulate public utilities and  
11 telecommunications utilities in this state, and with regulatory authority over the resource  
12 procurement of retail electricity providers.

13 **STANDING, JURISDICTION, AND VENUE**

14 22.

15 NewSun has standing pursuant to ORS 183.480(1). That statute provides that “any person  
16 adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to  
17 judicial review of a final order, whether such order is affirmative or negative in form.” ORS  
18 183.480(1). Under ORS 183.310(7), a “party” includes “[e]ach person or agency named by the  
19 agency to be a party” and “[a]ny person requesting to participate before the agency as a party or  
20 in a limited party status which the agency determines either has an interest in the outcome of the  
21 agency’s proceeding or represents a public interest in such result.” Under ORS 183.310(8),  
22 “[p]erson’ means any individual, partnership, corporation, association, governmental  
23 subdivision or public or private organization of any character other than an agency.”

24 23.

25 NewSun has standing as a party to the agency proceeding at issue. NewSun’s motion to  
26 intervene in UM 2193 was granted by the PUC on December 2, 2021. NewSun also filed

1 comments on February 18, 2022, setting forth why the PUC should have modified the RFP to  
2 comply with the new policy obligations under ORS 469A.405(2).

3 24.

4 NewSun also is a person adversely affected or aggrieved by the Final Order. As a  
5 company whose business activities provide direct benefits to communities in Oregon in the  
6 forms of creating and sustaining meaningful living wage jobs, promoting workforce equity, and  
7 increasing energy security and resiliency, NewSun’s activities further the interests that the  
8 legislature expressly wished to have considered in the implementation of HB 2021.

9 25.

10 Additionally, NewSun has been materially disadvantaged by being wrongfully subjected  
11 to an RFP bidding process that gives no weight to, and does not even attempt to measure, the  
12 extent to which submitted proposals provide, or do not provide, the direct benefits to  
13 communities in Oregon that HB 2021 provides should be delivered “to the maximum extent  
14 practicable.” Accordingly, NewSun has suffered an injury to a substantial interest resulting  
15 directly from the PUC’s action and will continue to suffer injury as the RFP process moves  
16 forward. Additionally, NewSun has made millions of dollars of investment in Oregon based on  
17 the state statute and policy in HB 2021. Accordingly, NewSun has such a personal stake in the  
18 outcome of the controversy as to assure concrete adverseness to the proceeding.

19 26.

20 The Court has jurisdiction pursuant to ORS 183.484.

21 27.

22 Petitioner’s petition for review is timely. ORS 183.484(2) provides:

23 “Petitions for review shall be filed within 60 days only following the date the order is  
24 served, or if a petition for reconsideration or rehearing has been filed, then within 60 days  
25 only following the date the order denying such petition is served. If the agency does not  
26 otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th  
day following the date the petition was filed, and in such case petition for judicial review  
shall be filed within 60 days only following such date. Date of service shall be the date on  
which the agency delivered or mailed its order in accordance with ORS 183.470.”

1 28.

2 The Final Order was served on April 28, 2022. Petitioner’s petition for review, appealing  
3 from the Final Order, was filed within 60 days of April 28, 2022.

4 29.

5 Venue is proper in Deschutes County under ORS 183.484(1), which provides  
6 “[p]roceedings for review under this section shall be instituted by filing a petition in the Circuit  
7 Court for Marion County or the circuit court for the county in which the petitioner resides or has  
8 a principal business office.” NewSun’s principal place of business is in Bend, Oregon, where it  
9 maintains its offices and its Principal and CEO Jake Stephens maintains his primary office and  
10 conducts the business of the company.

11 **HB 2021**

12 30.

13 HB 2021, which took effect on September 25, 2021, after the Oregon Legislature passed  
14 the bill in June 2021, is an act “[r]elating to clean energy; creating new provisions; amending  
15 ORS 469A.005, 469A.205, 469A.210, 757.247, 757.603, 757.646 and 757.649; repealing ORS  
16 469A.062; and prescribing an effective date.” Among other provisions, HB 2021 sets deadlines  
17 for when Oregon’s retail electricity providers must reduce or eliminate greenhouse gas emissions  
18 and submit plans to do so.

19 31.

20 ORS 469A.405(2) states “[i]t is the policy of the State of Oregon: \* \* \* That electricity  
21 generated in a manner that produces zero greenhouse gas emissions also be generated, *to the*  
22 *maximum extent practicable*, in a manner that provides additional *direct benefits to communities*  
23 *in this state in the forms of creating and sustaining meaningful living wage jobs, promoting*  
24 *workforce equity and increasing energy security and resiliency.*” (emphasis added).

25 ///

26 ///

1 32.

2 ORS 469A.415(6) states: “The commission shall ensure that an electric company  
3 demonstrates continual progress as described in subsection (4)(e) of this section and is taking  
4 actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at  
5 reasonable costs to retail electricity consumers.”

6 **UM 2193 AND PACIFICORP’S ALL-SOURCE REQUEST FOR PROPOSALS**

7 33.

8 On September 2, 2021, PacifiCorp filed a request that the PUC appoint an Independent  
9 Evaluator to oversee the RFP and request that the PUC open a docket for that purpose. The PUC  
10 did so, opening Docket No. UM 2193.

11 34.

12 Several parties moved to intervene and were granted intervenor status in UM 2193.

13 35.

14 PacifiCorp filed its Final Draft All-Source RFP on January 14, 2022. In response,  
15 NewSun filed comments on February 18, 2022. In its comments, NewSun set forth why, to  
16 comply with ORS 469A.405(2), “procurement must incorporate scoring, preferences, and other  
17 measures to achieve the policy ‘to the maximum extent practicable,’” and that “some amount of  
18 the procurement in this RFP effectively must be in-state, as the only reasonable safe harbor to  
19 complying with the policy.” NewSun made clear that, while there may be various ways to  
20 comply with ORS 469A.405(2), that doing nothing was not appropriate.

21 36.

22 The PUC approved the RFP with modifications in the Final Order on April 28, 2022.

23 37.

24 Outside of a footnote, PacifiCorp makes no mention of HB 2021 or its attendant  
25 compliance requirements in its Final Draft RFP.

26 ///



1 38.

2 Despite the plain purpose of HB 2021, the Final Order does not ensure that PacifiCorp “is  
3 taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions”  
4 as required by ORS 469A.415(6) or that the generation procured to effectuate that reduction  
5 complies with the state-benefit obligations outlined in ORS 469A.405.

6 39.

7 The PUC’s April 28, 2022, order is a final order in other than contested case because it  
8 constitutes agency action in writing not arising from any of the four categories described in ORS  
9 183.310(2)(a). A copy of the PUC’s Final Order is attached hereto as Exhibit A.

10 40.

11 Petitioner challenges the PUC’s Final Order as invalid because it is based on an  
12 erroneous interpretation of the law, is outside the range of discretion delegated to the PUC by  
13 law, and exceeds the statutory authority of the PUC.

14 41.

15 Alternatively, Petitioner challenges the Commission’s unlawful failure to act as expressly  
16 required by ORS 469A.415(6).

17 **FIRST CLAIM FOR RELIEF**

18 **(ORS 183.484—Judicial Review of an Order in Other Than a Contested Case)**

19 42.

20 Petitioner realleges and incorporates by reference paragraphs 1–41 as if fully stated  
21 herein.

22 43.

23 The PUC’s decision in the Final Order to require zero in-state preferences in the RFP and  
24 to require no measures whatsoever to favor projects that provide meaningful living wage jobs,  
25 workforce equity, and increased energy security and resiliency to Oregon communities is based  
26 on an erroneous interpretation of ORS 469A.405(2), which expressly states a policy to

1 implement HB 2021 in a manner that provides additional direct benefits to communities in this  
2 state “to the maximum extent practicable.” Zero cannot be the maximum extent practicable and  
3 conflicts with ORS 469A.405(2).

4 44.

5 The Final Order is outside the range of discretion delegated to the PUC because the  
6 Commission did not have discretion to fail to consider the effects of ORS 469A.405(2) when  
7 expressly required to ensure PacifiCorp’s compliance with emissions targets as required under  
8 ORS 469A.415(6).

9 45.

10 The Final Order exceeds the statutory authority of the PUC, because ORS 469A.405(2)  
11 “embodies a complete legislative policy” to promote in-state siting and hiring, and the Final  
12 Order’s failure to even consider the effects of ORS 469A.405(2) conflicts with that policy.

13 46.

14 Pursuant to ORS 183.484(5)(a), Petitioner is entitled to an Order setting aside the Final  
15 Order and modifying the RFP to give effect to and meaningfully implement the obligations set  
16 forth in ORS 469A.405(2). Alternatively, Petitioner is entitled to an Order from the Court  
17 remanding the Final Order to the PUC with instructions to issue a final order that considers the  
18 effects of ORS 469A.405(2) on the RFP and orders modifications to the RFP to give effect to  
19 and meaningfully implement the obligations set forth in ORS 469A.405(2) “to the maximum  
20 extent practicable.”

21 47.

22 Alternatively, pursuant to ORS 183.484(5)(b), Petitioner is entitled to an Order  
23 remanding the Final Order to the PUC because the PUC’s exercise of discretion is outside the  
24 range of discretion delegated to the agency by law and is in violation of ORS 469A.405(2).

25 ///

26 ///

1 48.

2 Alternatively, pursuant to ORS 183.490, Petitioner asks the Court to compel the  
3 Commission to act as required by ORS 469A.415(6).

4 49.

5 Pursuant to ORS 183.486 and the Court’s inherent authority, Petitioner also seeks, and is  
6 entitled to, an injunction staying the Final Order and the RFP process.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner prays for relief as follows:

9 1. An Order from the Court providing that Oregon Public Utility Commission is  
10 obligated to administer and enforce the provisions of ORS 469A.405(2) and 469A.415(6).

11 2. An Order from the Court setting aside the Final Order and modifying the RFP to  
12 give effect to and meaningfully implement the obligations set forth in ORS 469A.405(2) to  
13 provide the specified direct additional benefits to Oregon communities “to the maximum extent  
14 practicable.”

15 3. Alternatively, an Order from the Court remanding the Final Order to the PUC  
16 with instructions to issue a final order that considers the effects of ORS 469A.405(2) on the RFP  
17 and order modifications to the RFP to give effect to and meaningfully implement the obligations  
18 set forth in ORS 469A.405(2) “to the maximum extent practicable.”

19 4. Alternatively, an Order from the Court remanding the Final Order to the PUC for  
20 further proceedings.

21 5. Alternatively, an Order from the Court compelling the Commission to act as  
22 expressly required by ORS 469A.415(6).

23 6. An injunction staying the Final Order and the RFP process.

24 7. Special findings of fact based on the evidence in the record and conclusions of  
25 law indicating clearly all aspects in which the agency’s order is erroneous.

26 8. Such other relief as the Court deems just and proper.

1 DATED: June 27, 2022.

2  
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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2193

In the Matter of

PACIFICORP, dba PACIFIC POWER

Application for Approval of 2022 All-  
Source Request for Proposals.

ORDER

DISPOSITION: 2022 ALL-SOURCE REQUEST FOR PROPOSALS APPROVED,  
SUBJECT TO MODIFICATION AND CONDITIONS

This order memorializes our decision, made and effective at our April 14, 2022 Special Public Meeting, to approve PacifiCorp, dba Pacific Power's 2022 All-Source Request for Proposals (RFP) subject to several conditions. As explained below, our approval includes several conditions, some of which were modifications to those proposed by Staff or other stakeholders. This order also directs PacifiCorp to take certain actions before its next RFP and directs the Independent Evaluator (IE) to examine additional information before the final shortlist.

**I. INTRODUCTION**

PacifiCorp filed this request to issue a multistate All-Source RFP shortly after filing its 2021 Integrated Resources Plan (IRP) in docket LC 77. As part of its request, PacifiCorp also requested approval of an IE to comply with the requirements of OAR 860-089-0200 and approval of the scoring and modeling methodology pursuant to OAR 860-089-0250(2). We approved PA Consulting as the IE on October 21, 2021.<sup>1</sup>

Under OAR 860-089-0100, electric companies are required to comply with the Commission's competitive bidding requirements in certain conditions. Under OAR 860-089-0250(1), an electric company subject to competitive bidding rules must prepare a draft request for proposals and file it for approval with the Commission. The draft RFP must reflect the scoring methodology and associated modeling described in the associated Commission-acknowledged IRP or else the scoring and modeling methodology must be

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<sup>1</sup> Order No. 21-351, Appendix A at 1, 12 (Oct 25, 2021).

filed in the IE selection docket prior to preparing a draft RFP.<sup>2</sup> On December 3, 2021, PacifiCorp requested a partial waiver of OAR 860-089-0250(2)(a) to allow its scoring and modeling methodology to be approved concurrent with its RFP, and the Commission approved this request on December 14, 2021.<sup>3</sup>

PacifiCorp filed its Final RFP on January 14, 2022, and several stakeholders filed comments in response. The IE filed its report on March 11, 2022, and the Staff filed its report on April 5, 2022, which is attached to this order as Appendix A. In response to the Staff report, both NIPPC and PacifiCorp filed comments, and PacifiCorp included a revised Final RFP that addressed some of the concerns raised in the report and comments. Except where otherwise noted, references to PacifiCorp's RFP refer to the April 11, 2022 version.

Staff proposed 7 conditions for PacifiCorp's RFP, as well as 12 recommendations, the majority of which could be addressed after the RFP is issued. Of these conditions and recommendations, PacifiCorp has agreed to or has otherwise not objected to implementing Staff Conditions 2 and 6 and Staff General Recommendations 2, 3, and 12. At the April 14, 2022 Special Public Meeting, Staff, PacifiCorp, and the IE stated that they had also resolved the concerns with Staff Condition 1 and Staff General Recommendation 1 regarding the IE's access to PacifiCorp's PLEXOS database. During deliberations at the April 14, 2022 Special Public Meeting, four Staff Conditions and eight Staff General Recommendations remained in dispute.

Additionally, NIPPC recommended that the Commission adopt additional changes to the RFP and requirements for addressing bids and process after the RFP is issued. Several of these conditions were either proposed in earlier comments on PacifiCorp's RFP or raised in the report filed by the IE in the Utah Public Service Commission's (PSC) proceeding to consider this RFP.

## II. DISCUSSION

As noted above, Staff, PacifiCorp, and the IE resolved several of Staff's proposed conditions and recommendations prior to the April 14, 2022 Special Public Meeting, and several more conditions and recommendations were not opposed by PacifiCorp or did not otherwise require further discussion. We do not address those conditions and recommendations further and adopt Staff Conditions 1, 2<sup>4</sup>, and 6 and Staff General

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<sup>2</sup> OAR 860-089-250(2).

<sup>3</sup> Order No. 21-469 (Dec 20, 2021).

<sup>4</sup> At the April 14 Special Public Meeting, Staff stated that though it had received no objections to Staff Condition 2, it had revised the language for clarity and not substance. The revised Condition 2 approved at

Recommendations 3 and 12. We also adopt Staff General Recommendation 10. The remainder of this Order discusses those conditions and recommendations that remained in dispute or otherwise required additional discussion. Except as otherwise discussed in this Order, we decline to adopt the conditions and recommendations proposed by NIPPC in its comments.

#### **A. Conditional Firm Bids**

Staff Condition 3 proposes to direct PacifiCorp to allow bids with conditional firm transmission rights to participate in the RFP. Under Staff Condition 3, the risks associated with conditional firm transmission would be mitigated by modeling curtailment of the maximum hours possible for a given contract at peak hours. NIPPC supports Staff's proposal for the purposes of this RFP.<sup>5</sup> PacifiCorp opposes Staff Condition 3, arguing that conditional firm transmission would add risk and uncertainty that are difficult to quantify or manage and notes that if required to pursue this strategy it may allocate the costs and benefits of such bids exclusively to Oregon customers. Additionally, PacifiCorp proposes a revision to Staff Condition 3 in the event the Commission were to permit conditional firm bids that would require any conditional firm bidders to provide the specific conditional firm service and the number of hours and conditions upon which curtailment is allowed.<sup>6</sup>

We appreciate Staff's efforts to address the concerns from stakeholders regarding conditional firm bids, but we decline to adopt Staff Condition 3. This RFP is part of a multistate process seeking resources from across PacifiCorp's geographically vast transmission system, and adding conditional firm bids at this late stage could impact that multistate process in unforeseen ways. Additionally, while we are not addressing cost recovery in this docket, we do have concerns about cost allocation as it relates to conditional firm bid projects and the other states in this process who may not authorize such bids.

Instead, we direct PacifiCorp to provide analysis of potential solutions to include conditional firm bids in the next RFP. PacifiCorp shall also work with Staff regarding the timing and content of this analysis. We expect that this analysis would be presented early enough in the RFP process to ensure that the other states involved in the multistate process may review and resolve any issues associated with conditional firm bids. We agree with Staff and NIPPC that increasing constraints on the transmission system,

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the Special Public Meeting is as follows: "PacifiCorp may not change the benchmark bid modeling inputs and assumptions after filing the benchmark bid scores developed in consultation with the IE pursuant to OAR 860-089-0350(3)(a)."

<sup>5</sup> NIPPC Final Comments on PacifiCorp's Draft 2022 RFP at 7-8 (Apr 11, 2022).

<sup>6</sup> PacifiCorp Comments on Staff Report at 3-4 (Apr 11, 2022).

particularly on the west side of the PacifiCorp system, make it important to begin to more seriously consider alternative transmission products that may deliver a significant portion of the value that some resources offer the system. We appreciate PacifiCorp's point that it will be important to accurately model the capacity value reduction associated with conditional firm or other non-firm transmission products, but we think it appropriate going forward for PacifiCorp to take on this modeling problem in a serious way.

## **B. Alternative Bids**

In its draft and final RFPs, PacifiCorp set a project bid fee of \$15,000 per bid. Over the course of this proceeding, stakeholders have raised concerns that this prevents bidders from submitting multiple bids. In particular, stakeholders argue that PacifiCorp has the advantage of having system information that bidders do not have access to. They argue that allowing alternate bids ensures bidders can provide an array of configurations in the hopes that one may be a good match for PacifiCorp's system and that customers will benefit from an expanded bid pool that provides more options.<sup>7</sup> PacifiCorp argues that there are costs associated with reviewing an additional bid, even when there are only minor changes since that bid has to be modeled individually like any other bid and that clarifying alternative bid details took significant time in the 2020 RFP. Additionally, PacifiCorp argues little additional value for customers emerged from alternatives that simply explored differences in discount rates between the utility and developers.

In its report, the IE recommends that PacifiCorp allow for reduced bid fees for some limited number of bids to address stakeholder concerns while covering additional costs.<sup>8</sup> The IE does not recommend a specific amount for the reduced fee. Staff Condition 4 proposes to allow bidders to submit one free alternative bid for a project at the same location and with the same technology type but with moderately different project attributes from the base project bid. In comments, NIPPC states that it would support Staff Condition 4 but that if the Commission does not accept this condition, it should adopt the IE's recommendation of reduced bid fees. PacifiCorp states that it continues to prefer its proposal but that if the Commission were to adopt Staff Condition 4 that the free alternative should be limited to alternate proposals for the commercial operation date (COD) or term.

We adopt the recommendation of the IE and require PacifiCorp to allow for reduced bid fees for alternate proposals. Specifically, PacifiCorp shall allow for two alternate bids for

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<sup>7</sup> See, e.g., Renewable Northwest Comments at 7-8 (Feb 18, 2022); Swan Lake North Hydro, LLC and FFP Project 101, LLC Comments at 6-7 (Feb 17, 2022); NIPPC Comments on PacifiCorp's Draft 2022 RFP at 6-7 (Feb 18, 2022); NIPPC Final Comments on PacifiCorp's Draft 2022 RFP at 8.

<sup>8</sup> Independent Evaluator Assessment of PacifiCorp's Draft 2022AS Request for Proposals at 17 (Mar 11, 2022) (hereinafter, IE Report).



a project at the same location and with the same technology type with moderately different attributes for a reduced fee of \$5,000 each. We are concerned that Staff's proposal for a fee-free alternative bid would virtually guarantee each bidder submits at least two bids, which could result in a large number of bids at additional cost and time with little benefit. At the same time, we acknowledge that there is an inherent asymmetry in favor of PacifiCorp regarding system information, and that the public interest is served by allowing bidders to propose some alternatives regarding their resources bid into the RFP. The IE's recommendation of reduced bid fees strikes an appropriate balance between these concerns.

### **C. Commercial Operations Date Deadline**

In its January 14, 2022 draft RFP, PacifiCorp set a deadline of December 31, 2026, as the required COD for bids, except for long-lead time resources for which it set a COD of December 31, 2028. The IE examined this issue in its report and recommends that PacifiCorp maintain the requirement for a 2026 COD and the 2028 COD for long-lead time resources but also recommends that PacifiCorp explore ways to accommodate bidders who are unable to meet the COD due to lengthy interconnection times.<sup>9</sup> Prior to the Special Public Meeting to consider this RFP, the Washington Utilities and Transportation Commission (UTC) approved PacifiCorp's RFP with some conditions, including changing the COD for RFP resources to before December 31, 2027.<sup>10</sup>

Staff Condition 5 proposes to adopt December 31, 2027, as the COD consistent with the Washington UTC. In its original comments, NIPPC proposes to set the COD as December 31, 2028, if the Cluster Study shows that interconnection time will extend beyond 2026, arguing that excluding projects with longer CODs will limit the number of bids able to compete against a PacifiCorp-owned option.<sup>11</sup> After the Staff Report, NIPPC states that it continues to support pushing the COD out to 2028 for all resources but that it would support Staff Condition 5.<sup>12</sup> PacifiCorp states that it agreed to a COD of December 31, 2027, but also proposes a non-price score to incentivize bids with a 2026 COD and to require additional project development security for bids with CODs in 2027 and long-lead time resources offering 2028 CODs.<sup>13</sup> PacifiCorp argues that there are a number of risks associated with the longer CODs, including that the RFP is focused on obtaining capacity for the near term through 2026 consistent with the 2021 IRP, that the

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<sup>9</sup> IE Report at 16-17.

<sup>10</sup> *In the Matter of the Petition of PacifiCorp, d/b/a Pacific Power & Light Company, For an Order Approving Proposed Request for Proposal*, Washington UTC, Docket No. UE-210979, Order 02 at 4 (Mar 11, 2022).

<sup>11</sup> NIPPC Comments on PacifiCorp's Draft 2022 RFP at 2-3; NIPPC Final Comments on PacifiCorp's Draft 2022 RFP at 2.

<sup>12</sup> NIPPC Final Comments on PacifiCorp's Draft 2022 RFP at 9-10.

<sup>13</sup> PacifiCorp Comments on Staff Report at 6.

further out in time the COD is the more risk there is related to inflation and cost curves, and that nearer term bidders are more likely to provide bids with higher viability and deliverability.

We adopt Staff Condition 5 as proposed by Staff and as directed by the Washington UTC. The risks that PacifiCorp raises regarding the later COD are real, as are the concerns raised by some stakeholders regarding the long interconnection times on PacifiCorp's system. While we adopt Staff's recommendation without modification for the 2022 RFP, we are concerned about the timing mismatch between the cluster process and the RFP, with long interconnection timelines effectively limiting the RFP to projects that were studied in a prior cluster. This is particularly problematic when the RFP process was accelerated to accommodate bids from projects participating in this year's cluster study process. Therefore, we also direct PacifiCorp to work with Staff and stakeholders on potential solutions to the long interconnection timelines for potential projects for its next RFP.

#### **D. Other PacifiCorp Commitments in Proceeding**

Staff Condition 7 proposes to direct PacifiCorp to revise its RFP to reflect commitments that it made in response to stakeholder feedback on the draft RFP, except where Staff has otherwise made modifications. In response to this proposed condition, PacifiCorp states that it has already done this in its revised final RFP submitted with its comments.<sup>14</sup>

We decline to adopt Staff Condition 7. Instead, we note that we do not have a full record before us of what commitments PacifiCorp made to stakeholders during the course of this proceeding, which makes this condition difficult to enforce. However, where PacifiCorp has made commitments to stakeholders to revise its RFP, our approval of the RFP is made on the assumption that those commitments will be honored and we encourage PacifiCorp to document those commitments and associated revisions as appropriate.

#### **E. Appendix P**

Staff also proposes General Recommendations 6 and 8, which would add certain optional information gathering questions to Appendix P of the RFP. Staff General Recommendation 6 proposes to update Appendix P to request that all projects, including those outside of Oregon, complete the Oregon attestation on labor practices form. Additionally, Staff General Recommendation 8 proposes to require PacifiCorp to report which bidders and which resources on the final shortlist completed a survey comparable to the Washington Equity Survey in Appendix P and that have pro forma contract terms

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<sup>14</sup> PacifiCorp Comments on Staff Report at 6.

with Responsible Contractor Labor Standards and apprenticeship and workforce requirements comparable to those required by Oregon's House Bill (HB) 2021.

For Staff General Recommendation 6, PacifiCorp states that it does not understand the recommendation and requests clarification. PacifiCorp maintains that Appendix P was for informational purposes only and does not otherwise make requests of bidders so updating it with requests would be misplaced. PacifiCorp also states that to the extent Staff was proposing to make Appendix P a minimum eligibility requirement for non-Washington resources or to require non-Oregon resources to complete the Oregon attestation that it would disagree with those proposals.<sup>15</sup> For Staff General Recommendation 8, PacifiCorp states that it is concerned about accepting the multiple, seemingly competing reporting obligations of the Staff's general recommendations. PacifiCorp states that these reporting obligations seem unnecessary but that it is willing to comply with Staff's requests if they are clarified, practical, and not unreasonable.<sup>16</sup>

At the April 14, 2022 Special Public Meeting, Staff clarified that General Recommendation 6 is intended to determine whether projects outside of Oregon would be willing to agree to pro forma terms consistent with Oregon rules but was not proposing to require it for non-Oregon resources. Staff states that this recommendation is intended to help Staff continue learning whether projects outside the state of Oregon are following similar practices to what is required of projects in the state. Following additional comments from Staff at the Special Public Meeting, PacifiCorp states that it would be willing to make changes to Appendix P to address the information Staff wants to collect through additional questions but without specifically requesting that bidders fill out the attestation required for Oregon projects.

We decline to adopt the specific language in Staff General Recommendations 6 and 8 and instead direct PacifiCorp to work with Staff to revise Appendix P to address the intent behind the recommendations. The intent of these questions is to request that bidders provide information on a voluntary basis, without affecting the scoring under the RFP. Providing this information is not a requirement for out-of-state projects not bound by the relevant state law, and PacifiCorp may state that clearly in the language it prepares with Staff.

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<sup>15</sup> PacifiCorp Comments on Staff Report at 8-9.

<sup>16</sup> PacifiCorp Comments on Staff Report at 7-8.

## F. DC Coupling

In its RFP, PacifiCorp proposes to allow only AC-coupled storage bids and no DC-coupled storage bids.<sup>17</sup> According to PacifiCorp, the primary concern with DC couplings is that there are no revenue grade DC meters approved by either PacifiCorp Transmission or the California Independent System Operator (CAISO).<sup>18</sup> Staff General Recommendation 2 proposes to require PacifiCorp to revisit the option of including DC-coupled co-located energy storage bids in its next RFP. NIPPC proposes to require PacifiCorp to allow co-located renewable energy plus storage bids for AC-coupled storage resources and DC-coupled storage resources as part of the current 2022 RFP, noting that even if there are no approved CAISO-approved DC meters at this time that there could be by the 2026 COD.<sup>19</sup> PacifiCorp did not object to Staff General Recommendation 2.

We adopt Staff General Recommendation 2 rather than NIPPC's proposal to allow for DC-coupled storage resources in this RFP. We direct PacifiCorp to explore options for allowing DC-coupled co-located energy storage projects in its next RFP.

## G. Additional Issues for the IE

In its April 11, 2022 comments, NIPPC proposes a number of additional recommendations for the RFP. In particular, NIPPC proposes to require PacifiCorp to use a price/non-price score ratio of 80/20 instead of 75/25, to replace the 90 percent output-based performance guarantee in the Pro Forma Power Purchase Agreement (PPA) with an availability guarantee, and to provide additional clarification on how bids will be assigned price score points. We do not adopt NIPPC's recommendations and instead direct the IE to provide additional analysis or reporting as discussed below.

### 1. Price/Non-Price Score

In comments, NIPPC argues that non-price factors are inherently subjective and could allow for unfair bias in the bid evaluations and a price/non-price score of 80/20 would eliminate more of that bias than PacifiCorp's 75/25 split.<sup>20</sup> At the April 14, 2022 Special Public Meeting, the IE stated that it had considered NIPPC's proposal and that the rationale for an 80/20 ratio is understandable and reasonable, but that 75/25 is also reasonable and that overall the difference between 75/25 and 80/20 did not rise to the

<sup>17</sup> PacifiCorp Final 2022AS RFP at 6 (Apr 11, 2022).

<sup>18</sup> IE Report at 17; PacifiCorp Reply Comments at 7 (Mar 4, 2022).

<sup>19</sup> NIPPC Comments on PacifiCorp's Draft 2022 RFP at 4-5.

<sup>20</sup> NIPPC Comments on PacifiCorp's Scoring and Modeling Methodology for 2022 RFP at 3-6 (Nov 22, 2021); NIPPC Final Comments on PacifiCorp's Draft 2022 RFP at 3.

level of materiality and that it was unlikely that the difference would determine whether a project made it to the final shortlist.

We decline to adopt NIPPC's recommendation. To better understand this issue for future RFPs, however, we direct the IE to examine the final shortlist and provide an analysis of whether an 80/20 price/non-price score would have altered the portfolio of resources selected to the shortlist. This information may help us determine how sensitive the shortlist is to the price/non-price ratio for future RFPs.

## 2. *Performance Guarantee*

NIPPC also urges the Commission to require PacifiCorp replace the 90 percent output-based performance guarantee in the Pro Forma PPA with an availability guarantee arguing that the performance guarantee will make it harder for projects to obtain financing.<sup>21</sup> In comments, Renewable Northwest also states that this performance guarantee may negatively impact a project's ability to obtain financing even after selection for the final shortlist.<sup>22</sup> The IE also acknowledges stakeholder concerns with the use of a performance guarantee for PPAs instead of an availability guarantee and recommends that PacifiCorp explore ways to address these concerns, including potentially relaxing the performance guarantee, through negotiations with projects on the shortlist.<sup>23</sup> At the April 14, 2022 Special Public Meeting, the IE stated that it was ultimately comfortable with the performance guarantee as long as it was a known rule prior to bids being submitted. PacifiCorp argues in comments that these requirements are not new to bidders and that availability guarantees are difficult to administer and do not protect customers from unrealized bidder generation profiles over the term of the PPA.<sup>24</sup> PacifiCorp also acknowledges that the issue could be the subject of negotiation with bidders through the contract procurement process.

We decline to direct to require PacifiCorp to implement an availability guarantee in place of the performance guarantee in its Pro Forma PPA. We acknowledge, however, that stakeholders have raised serious issues for PPA resources, particularly regarding the issue of third-party financiers being unwilling to support the performance guarantee. We also recognize that utility-owned resources are based upon utility forecasts of expected performance, but a utility can later request recovery of actual costs of performance and, absent ratepayer protections, customers could be at risk for paying more than forecasted. On the other hand, PPA performance guarantees mean that the PPA asset owners carry the risk of underperformance. This dynamic could mean that the performance risks are

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<sup>21</sup> NIPPC Final Comments on PacifiCorp's Draft 2022 RFP at 3, 4-5.

<sup>22</sup> Comments of Renewable Northwest at 8.

<sup>23</sup> IE Report at 18.

<sup>24</sup> PacifiCorp Reply Comments at 16.

treated differently for the two types of assets and that customers could bear more risk of utility asset underperformance than PPA asset underperformance. We direct the IE to examine the issue of the performance guarantee versus the availability guarantee and report on the impact of this requirement, particularly as it relates to a potential advantage for owned resources. We reserve the right to judge the reasonableness of PacifiCorp's position on this issue during negotiations, if it is determined that insistence on this provision significantly limited resource choice or tilted the field inappropriately in the favor of utility-owned resources.

### 3. *Price Score Points*

NIPPC argues that the Commission should require PacifiCorp to provide additional clarification on how bids will be assigned price score points, particularly regarding the treatment of different term durations through “term-normalization.”<sup>25</sup> PacifiCorp states that it “will provide all production, price, and degradation schedules as inputs to PLEXOS via [sic] the Bid Preparation Model as described in Appendix A” of its RFP and that “PLEXOS will evaluate resources on a real levelized basis, thereby fairly treating bids of different durations.”<sup>26</sup> PacifiCorp also notes that it has engaged an IE as required by the competitive bidding rules and that NIPPC's concerns regarding fairness are misplaced.

We decline to direct PacifiCorp to provide this additional clarification. We do, however, expect that the IE will provide an analysis explaining this issue and ensuring that it is handled properly throughout the course of the bidding process.

## H. **Voluntary Data Collection**

In its report, Staff proposes a number of general recommendations that would require PacifiCorp to report information related to the RFP bidders or final shortlist. Staff General Recommendation 4 proposes to require PacifiCorp to provide a summary of what projects were ultimately prohibited from selection due to failure to comply with various state mandates. Staff General Recommendation 7 proposes to require PacifiCorp to provide a project summary regarding compliance with various state mandates and laws. Staff states that the purpose of both recommendations was to collect data regarding which projects might meet Oregon's requirements for HB 2021 even if they are not bound by those requirements.

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<sup>25</sup> NIPPC Final Comments on PacifiCorp's Draft 2022 RFP at 3; NIPPC Comments on PacifiCorp's Scoring and Modeling Methodology for 2022 RFP at 6-7.

<sup>26</sup> PacifiCorp Comments at 11 (Nov 29, 2021).

As with Staff General Recommendation 8 above, PacifiCorp states that it is concerned about accepting the multiple, seemingly competing reporting obligations of Staff's general recommendations. Further, PacifiCorp states that additional reporting seems unnecessary but that it would comply with Staff's requests if they were clarified, practical, and not unreasonable.<sup>27</sup>

We recognize that Staff seeks insight into where the different state polices are leading PacifiCorp to make resource decisions that may not be transparent from the scoring and final shortlist and agree that this information would be useful. We also sympathize with PacifiCorp's concerns that it does not fully understand the reporting obligations as proposed by Staff. Rather than adopt Staff General Recommendations 4 and 7 as written, we direct PacifiCorp to work with Staff to propose reporting that will substantially address the information sought by Staff General Recommendations 4 and 7, and to describe a proposed reporting approach on which it has consulted with Staff by the same date we have requested RFP sensitivity design.

#### **I. Quarterly Reporting on Local and State Workers**

Staff General Recommendation 9 proposes to require PacifiCorp to report quarterly after the RFP on the number of local and state workers, number of workers from temporary staffing agencies employed by bidders or subcontractors during the construction phase of winning bids. Staff states that this reporting requirement was inspired by comments from the Oregon and Southern Idaho District Council of Laborers, who argue that there are safety issues related to the use of temporary staffing agencies.<sup>28</sup> PacifiCorp argues that HB 2021 does not require this information, and its RFP team does not have the ability or expertise to monitor contracted resources that it does not own. PacifiCorp also argues that some bidders may consider this information confidential, and the requirement could dampen the competitiveness of the RFP. PacifiCorp states that it does agree to the first part of the recommendation regarding quarterly reporting on local and state workers employed during the construction phase and that these reports will be available upon request.<sup>29</sup> At the April 14, 2022 Special Public Meeting, PacifiCorp also stated that it would need a contractual requirement with bidders as part of the RFP to provide quarterly reporting. At the Special Public Meeting, Staff stated that the recommendation was intended to help it learn more about the use of temporary staffing agencies to secure labor and whether that materially impacts projects.

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<sup>27</sup> PacifiCorp Comments on Staff Report at 7-8.

<sup>28</sup> Staff Report at 22-23 (Apr 5, 2022); Comments of Oregon & Southern Idaho District Council of Laborers at 6-8 (Feb 18, 2022).

<sup>29</sup> PacifiCorp Comments on Staff Report at 5.

We direct PacifiCorp to provide quarterly post-RFP reporting on the number of local and state workers employed by bidders or sub-contractors during the construction phase of winning bids. This requirement is consistent with HB 2021 and will provide some of the information requested by Staff without a significant revision to the RFP at this late stage. We note, however, that PacifiCorp has not provided specific information about how a requirement to request information about use of temporary staffing agencies could dampen competitiveness and stakeholders have raised legitimate questions about safety related to the use of temporary staffing agencies. We encourage PacifiCorp to continue working with Staff to understand the concerns and intent behind Staff General Recommendation 9 and address the issue before the next RFP.

## **J. Emissions Reporting**

Staff General Recommendation 5 proposes to require PacifiCorp to forecast the emissions impact of the final shortlist selection by 2030 using operating assumptions from the 2021 IRP. PacifiCorp states that it does not necessarily object to this recommendation but requests clarification. PacifiCorp explains that the PLEXOS model will operate resources according to its optimization logic and that there will be updates that make the model different from what was modeled in the 2021 IRP and that therefore the operating assumptions or behaviors should not be tied to the 2021 IRP.<sup>30</sup>

We adopt Staff General Recommendation 5. The 2021 IRP was modeled using PLEXOS so PacifiCorp should be able to report emissions from the portfolio incorporating the final shortlist while holding key operational assumptions consistent to those used in the 2021 IRP. This requirement may help address issues that we have experienced in the past where there have been significant shifts in assumptions depending on the resource decision being argued. For example in the 2020 RFP the final short list was in part justified through coal fuel savings after modeling removed the minimum take requirements for coal plants, while in the 2021 IRP coal minimum take requirements for those same plants significantly drove system dispatch and coal fuel savings eroded.<sup>31</sup> It is understood that dynamic data such as forward price curves and load forecasts may be updated between the 2021 IRP and the 2022 RFP. We recognize that there may be technical challenges for PacifiCorp around PLEXOS and the assumptions, and we direct Staff and PacifiCorp to work together to address any such technical challenges of implementing Staff General Recommendation 5.

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<sup>30</sup> PacifiCorp Comments on Staff Report at 8.

<sup>31</sup> *In the matter of PacifiCorp Application for Approval of 2020 All-Source Request for Proposals*, Docket No. UM 2059, Order No. 21-437 at 7 (Nov 24, 2021).



**K. Sensitivities**

At the March 29, 2022 Special Public Meeting for docket LC 77, we directed PacifiCorp to implement a number of additional sensitivities and analyses for its final shortlist. PacifiCorp, Staff, and the stakeholders have not yet defined the specifics for each of these sensitivities and analyses. Staff General Recommendations 11 and 12 propose requirements related to these additional sensitivities and analyses. Staff General Recommendation 11 proposes to require PacifiCorp to continue working with Staff to develop the details and additional data to be provided with the final shortlist and to file a detailed list of the sensitivities and reporting data for Commission approval. This detailed list would be filed at least one week prior to the public meeting to approve it, and this public meeting would be held by November 14, 2022 (with reasonable accommodation for minor shifts in dates, as long as the time for review between filing and the public meeting is not shortened). Staff General Recommendation 12 proposes to require PacifiCorp to file the sensitivities, additional data, and all workpapers at least two weeks before the IE Closing Report on the final shortlist.

We adopt both Staff General Recommendations 11 and 12. Regarding Staff General Recommendation 11, we note that a similar approach employed for the 2020 RFP allowed for a more effective use of time and promoted constructive discussion of the sensitivities before the RFP team was fully engaged in reviewing bids, and we continue to endorse this approach.<sup>32</sup> Additionally, we find that the deadline of November 14, 2022, may be changed without the need to return to the Commissioners, given the delegation of the ability to alter this deadline to the Chief Administrative Law Judge.

Regarding Staff General Recommendation 12, the last RFP final shortlist was more difficult to address because the information required by this recommendation was not provided well in advance of the IE Closing Report and special public meeting for acknowledgment of the final shortlist. Providing this information two weeks prior to the IE Closing Report on the final shortlist should allow for more sufficient time for the Commission, Staff, IE, and stakeholders to review the data and allow for a more efficient discussion and consideration at the public meeting.

**L. Recommendations of the Utah IE**

In its comments on PacifiCorp's final RFP, NIPPC proposes several conditions based on recommendations made by the Utah IE. As of the April 14, 2022 Special Public Meeting, the Utah PSC had not issued an order regarding the RFP or otherwise adopted any of the Utah IE's recommendations.

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<sup>32</sup> *Id.* at 13.

We do not adopt NIPPC's proposed conditions from the Utah IE's report at this time. Approval by the Utah PSC of any of the referenced Utah IE conditions would be consistent with our decision, and we explicitly approve the RFP subject to any of the Utah IE conditions noted by NIPPC subsequently approved by the Utah PSC.<sup>33</sup>

**III. ORDER**

IT IS ORDERED that PacifiCorp, dba Pacific Power's 2022 All-Source Request for Proposals is approved subject to the modifications and conditions described herein.

Made, entered, and effective Apr 28 2022.



**Megan W. Decker**  
Chair



**Letha Tawney**  
Commissioner



**Mark R. Thompson**  
Commissioner



<sup>33</sup> On April 22, 2022, the Utah PSC issued its order regarding the 2022 RFP. Utah Public Service Commission, Docket No. 21-035-52, Order Approving 2022 All Source RFP (Apr 22, 2022).



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RFP Condition 4: PacifiCorp shall allow the submission of one free alternative bid for a project at the same location and with the same technology type but with moderately different project attributes from the 'base.'

RFP Condition 5: PacifiCorp shall change the COD for RFP resources to before December 31, 2027, consistent with recent Order 02 PacifiCorp's IRP docket in Washington.

RFP Condition 6: Amending Appendix P to include, under Facility Job Creation, total employment of fossil fuel construction workers.

RFP Condition 7: Except where Staff has suggested modifications otherwise in the body of this report, PacifiCorp must reflect the commitments it made in response to stakeholder feedback on the Draft RFP.

### **General Recommendations**

General Recommendation 1: Before benchmark bids are due, PacifiCorp shall provide the IE with full access to the PLEXOS model, including all data, assumptions, output, and associated external spreadsheets used by PacifiCorp for both the 2021 IRP and 2022AS RFP modeling. Model access could be provided either through PacifiCorp providing the IE with a fulsome and functional copy of its complete database as well as (one or more) working sessions between PacifiCorp and IE modeling staff to describe how PacifiCorp executes the model, or by the IE having facilitated access to the model at PacifiCorp's offices or remotely.

General Recommendation 2: PacifiCorp should revisit the option of including DC-coupled co-located energy storage bids in its next RFP.

General Recommendation 3: With the FSL, Staff would like to see a list of non-emitting resources that could be procured in addition to the RFP FSL that meet future non-emitting generation need for HB 2021 compliance.

General Recommendation 4: PacifiCorp, as part of the final shortlist selection, to provide a summary of what projects were ultimately prohibited from selection due to failure to comply with various state mandates

General Recommendation 5: PacifiCorp to forecast the emissions impact of the final shortlist selection by 2030 using operating assumptions from the 2021 IRP (LC 77).

General Recommendation 6: PacifiCorp update Appendix P to request that all projects complete the Oregon attestation on labor practices

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General Recommendation 7: PacifiCorp to provide a project summary regarding compliance with various state mandates and laws.

General Recommendation 8: PacifiCorp to report the bids and then selected resources in the FSL that complete (a) a survey comparable to the Washington Equity Survey and (b) that have proforma contract terms with Responsible Contractor Labor Standards and apprenticeship and workforce requirements comparable to those required by Oregon's HB 2021.

General Recommendation 9: Quarterly reporting post-RFP on the number of local and state workers, number of workers from temporary staffing agencies employed by bidders or sub-contractors during the construction phase of winning bids.

General Recommendation 10: Staff will work with PAC in its next RFP and the 2023 IRP to provide both a list and detailed map of all publicly available OASIS and 2021 and 2022 AS RFP (UM 2059 and UM 2193) data and information regarding LGIAs on its system. This should at a minimum include the location, associated interconnection costs and commercial operation dates of all LGIAs on its system.

General Recommendation 11: The 2022AS RFP Final Shortlist is expected to be selected by March 24, 2023. Staff and PacifiCorp should work together in advance of FSL selection to define the FSL sensitivities and additional data that will be provided with the filing of the Final Shortlist. By November 14, 2022, the resulting detailed list of expected FSL sensitivities and recommended reporting data should be brought to the Commission at a public meeting for approval.

General Recommendation 12: PacifiCorp must file the FSL, sensitivities, additional data, and all workpapers in the UM 2193 docket at least two weeks in advance of the IE Closing Report on the FSL.

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## **DISCUSSION:**

### **Issue**

1. Whether the Public Utility Commission of Oregon (Commission) should approve PacifiCorp's Final Draft 2022AS RFP to be issued, with or without any necessary conditions.
2. Whether the Commission should direct PacifiCorp to take the additional actions surrounding the RFP process in this docket and future procurements.

### **Applicable Rule**

The Commission's competitive bidding requirements in OAR Chapter 860, Division 89 apply when an electric utility may acquire a resource or a contract for more than an aggregate of 80 megawatts and five years in length, as specified in OAR 860-089-0100(1).

Under OAR 860-089-0200(1), when an electric utility is subject to competitive bidding requirements, it must engage the services of an independent evaluator (IE) to oversee the RFP process. The duties of an IE are set forth in OAR 860-089-0450. In fulfilling its duties, the IE must be provided with full access to the utility's production cost and risk models and sensitivity analyses.<sup>1</sup>

Requirements for RFPs are set forth in OAR 860-089-0250. Under OAR 860-089-0250(5), the Commission may approve an RFP with any necessary conditions if the Commission finds the RFP meets the requirements of the competitive bidding rules and will result in a fair and competitive bidding process.

### **Analysis**

#### **Background**

PacifiCorp filed its 2021 Integrated Resource Plan (IRP) on September 1, 2021. The next day, PacifiCorp requested that the Commission open a docket for its 2022 all-source (AS) RFP. The RFP filing contained two related action items:

- A request for approval of an independent evaluator (IE) to oversee the RFP process;

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<sup>1</sup> OAR 860-089-0400(6).

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- A request for approval of the scoring and modeling for the RFP.

PacifiCorp requested that the approval of the IE selection and the approval of the RFP's scoring and modeling methodology occur at the October 5, 2021, Public Meeting. However, parties had determined that more time was needed to evaluate PacifiCorp's bid scoring and associated modeling methodologies as it was outside of an IRP. As a result, on October 1, 2021, about a month after filing its RFP, PacifiCorp submitted a new RFP schedule that separated the IE approval and the scoring methodologies into different Public Meetings. Staff supported separating these actions to allow more time for review and stakeholder feedback of the RFP design and scoring and modeling methodology.<sup>2</sup> At the October 21, 2021, Public Meeting, the Commission approved PA Consulting as the IE for this docket, and the approval for the scoring and modeling methodology was later set to the December 14, 2021, Public Meeting.

Since October 21, the Company has made changes to bid scoring and associated modeling methodology. In particular, the Company provided a presentation slide deck<sup>3</sup> and hosted a workshop on bid scoring in conjunction with a storage workshop on November 15, 2021, in accordance with Staff's Recommendation and subsequent Commission Order. The information shared at the November 15 workshop revealed that PacifiCorp had restructured the RFP process and had made substantive changes to what it had originally filed on September 2.

On November 29, 2021, two weeks before the proposed December 14 Public Meeting date to consider approval of PacifiCorp's modeling methodology, the Company filed Reply Comments that included an appendix explaining revisions to the scoring and associated modeling methodology for the 2022 RFP based on the revisions from the November 15 Workshop. While PacifiCorp's filing was in accordance with the docket schedule, up until this point, PacifiCorp had not yet made an official filing outlining details of proposed changes to its methodology. PacifiCorp requested and received a waiver of the requirement in OAR 860-089-0250(2)(a) to receive advance approval of the scoring and modeling methodology before drafting an RFP. See Commission Order No. 21-469. Thus, scoring and modeling issues are reviewed concurrently with the draft RFP.

On January 14, PacifiCorp filed its final draft RFP with the Commission. On February 18, Staff, Swan Lake and Goldendale, The Oregon & Southern Idaho District Council of Laborers (OSIDCL), Northwest & Intermountain Power Producers Coalition (NIPPC), Renewable Northwest (RNW), and NewSun filed comments on the final draft RFP. On

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<sup>2</sup> See Staff Report for the October 21, 2021 Public Meeting.

<sup>3</sup> See Staff's Attachment A of Staff's Comments on Bid Scoring and Associated Modeling Methodology filed November 22, 2022.

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March 4, 2018, PacifiCorp filed its comments in response to parties. Finally, on March 11, the Independent Evaluator (IE), PA Consulting, filed comments with its recommendations in the RFP.

On March 29, the Commission held a public meeting to consider acknowledgement of PacifiCorp's 2021 IRP, from which the Company received direction applicable to its 2022 AS RFP.

Below is Staff's Analysis and associated recommendations for conditions for issuance of the Draft RFP, as well as recommendations associated with a filing of a final short list and future RFPs.

### **Staff Analysis**

Staff finds that PacifiCorp's Draft 2022AS RFP, with the conditions recommended herein by Staff, complies with the Commission's competitive bidding rules (CBR) in OAR Chapter 860, Division 89 that are applicable to this RFP, except as otherwise waived by the Commission. Further, Staff believes that PacifiCorp's Draft RFP, and the associated scoring and modeling methodologies, can be employed in a generally fair and open competitive procurement process that could identify least-cost, least-risk assets, which in turn might confer benefits to ratepayers. In recommending that the Commission approve the RFP Draft, Staff is also recommending approval of the scoring and associated modeling methodologies included in the RFP Draft, with the conditions described throughout this report. Significantly, Staff believes the Company's strategy for providing access to PLEXOS for the Independent Evaluator to perform independent evaluation of benchmark and third-party bids, as required by the competitive bidding rules, is not compliant as proposed.<sup>4</sup> Staff recommends the Commission not approve the Final Draft RFP unless the IE can independently evaluate benchmark and third-party bids by either using or observing the Company's use of PLEXOS to select bids. This is addressed in RFP Condition 1 with further elaboration for direction in General Recommendation 1. If this RFP Condition 1 can be resolved, Staff recommends the Commission approve the Final Draft RFP with the additional seven (7) specific conditions described in the document.

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<sup>4</sup> PLEXOS is a simulation engine used by utilities forecast market prices and variability, conduct operational planning, explore zonal and nodal energy pricing, and conduct medium- to long- term planning. See

<https://www.energyexemplar.com/plexos#:~:text=PLEXOS%20is%20a%20unified%20energy,and%20intra%2Dhourly%20market%20simulations>.



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Staff also uses this report to capture recommendations from the 2021 IRP acknowledgement, those related to activities and reports associated with the filing of the Final Shortlist (FSL), and general recommendations for future RFPs.

Staff thanks PacifiCorp for its responsiveness to concerns expressed by commenters, and recommended improvements from the IE and Staff. In Staff's view, PacifiCorp has made many significant improvements requested by Staff, the IEs, or commenters, and these are reflected in the January 14, 2022 version of the RFP. Staff will not discuss all comments submitted in this docket. In particular, this analysis will not focus on many of the items identified by stakeholders that Staff believes were adequately addressed by PacifiCorp before the January 14 filing.

This report contains two primary sections: one that addresses recommendations for conditions of RFP approval and issuance, and one that encapsulates other issues pertaining to the 2022AS RFP that have been raised to date and that Staff believes need to be addressed after the RFP is issued.

However, the issues in each section are arranged by topic and some recommendations relate to activities that take place after the RFP has been issued. Recommendations are hence labeled as "CBR Compliance" or "RFP Conditions," if Commission decisions are sought prior to issuing the RFP, or "General Recommendations," where Staff believes additional steps that Staff plans to pursue with Company and stakeholders as part of the overall process once the RFP is issued.

Category of Recommendation	Topic	Count	Commission Action Required in this Memo?
RFP Approval & Issuance	RFP Condition	7	Yes
RFP Docket Improvements	General Recommendation	12	No

## **Recommendations for RFP Approval and Issuance**

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### **Independent Evaluation by IE and Compliance with CBRs**

The IE raised two issues regarding whether the bid price scoring methodology is compliant with the CBRs, namely: the ability of the IE to independently score both Benchmark and third-party bids and the use of PLEXOS to generate and provide benchmark bid scores.

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### *Independent Evaluation of Bids by IE*

OAR 860-089-0450 requires that the IE independently score all benchmark bids and all or a sample of market bids to validate PacifiCorp's modeling and shortlist selections. Under OAR 860-089-0400(6), PacifiCorp "must provide the IE and Commission with full access to its production cost and risk models and sensitivity analyses." To satisfy this requirement, PacifiCorp has proposed to provide the IE with comprehensive input and output summaries from its PLEXOS modeling for the IE to review.

As the 2022AS RFP states "The IEs will be involved in development of the RFP and provide oversight to ensure the RFP process is conducted in a fair and reasonable manner." In order to do this, Staff believes the IEs need deeper access to PLEXOS than the Company has said it is willing to provide. In Appendix M, the Company describes the role of the IE and describes the level of access to PLEXOS it is willing to provide. Specifically, item 3 in Appendix M reads:

"Because the PLEXOS portfolio optimization tool is a proprietary model, PacifiCorp is not able to provide the IE with full access; however, PacifiCorp will provide the IE with the Bid Preparation excel file prior to input into PLEXOS, and all other inputs and assumptions in order for the IE to analyze, and validate all important modeling assumptions and inputs utilized by PacifiCorp to perform its portfolio selection, price scoring and ranking of market and benchmark bids. PacifiCorp will similarly provide the IE with any additional assumptions and inputs used in the sensitivity analyses."<sup>5</sup>

Staff raised concerns about the lack of full access to PLEXOS in its February 18 comments. PacifiCorp argued,

"The IE will be able to review all PLEXOS input files used by PacifiCorp to run the optimization model as well as PLEXOS output files showing the resulting marginal benefits used by PacifiCorp to calculate the price score...PacifiCorp will provide the IE with all supporting cost information, any transmission arrangements, and all other information being input to PLEXOS to score the benchmark resource. PacifiCorp will provide supporting files to confirm that it has applied the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids."<sup>6</sup>

In the IE Assessment of the Final Draft RFP, the IE states that PacifiCorp's proposed method will not allow the company to independently score each Benchmark Bid or

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<sup>5</sup> See 2022AS RFP Appendix M

<sup>6</sup> See PacifiCorp Reply Comments. Page 9

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samples of third-party bids because the IE would need to obtain the PLEXOS model and PacifiCorp's system information.

Staff believes that PacifiCorp's proposal does not satisfy the OAR requirements, and more so will not provide Staff and the IE with sufficient ability to validate PacifiCorp's modeling. The PLEXOS model is a complex model with hundreds different inputs and settings that govern each modeling run and it is infeasible to validate shortlisting selections by merely reviewing inputs and associated outputs. To provide Staff and the IE with the ability to truly validate PacifiCorp's modeling, the IE must have the ability to independently execute the model and test certain modeling assumptions and parameters.

Staff, PacifiCorp, and the IE have discussed ways in which the IE may accomplish this, and PacifiCorp proposed two options. In what can be characterized as the "shadowing" option, IE staff would visit PacifiCorp's offices and sit alongside the PacifiCorp modeling team as they conduct the optimization modeling. This option would allow IE staff to observe the modeling in real-time, ask clarification questions as needed, and get comfort with the final shortlist selection.

Staff and the IE believe the shadowing option may be sufficient but may be challenging and inefficient. Typically, modeling processes such as optimizing a portfolio of resources is a multi-day, perhaps multi-week process with many iterations of reviewing results, identifying issues, revising inputs, and executing new runs for further review. The shadowing option would require the IE to be onsite at PAC's offices for a significant amount of time, with some portion of that time being unproductive during extensive modeling runs.

Staff and the IE prefer a second option, in which the IE would execute the PLEXOS model independently from PacifiCorp's modeling, at the IE's own offices. This option would require PacifiCorp providing the IE with its complete, execution-ready PLEXOS database representing the PAC system and all its characteristics. This option would require the IE staff to visit PacifiCorp's offices for 1-2 days to have a working session to overview the PLEXOS database, PacifiCorp's parameters for executing the model, and each bid's representation in the model. After this initial visit, the IE would have the ability to independently execute the model and work toward validating the Company's final shortlisting selections. This option will require close collaboration between PacifiCorp and the IE as PacifiCorp goes through the iterative process of finalizing the optimization, with the Company and the IE advising each other of issues identified and corrected. In this way, the IE would be able to validate as far as possible PacifiCorp's final shortlisting selections fully and independently.

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Staff believes the approach in the 2022AS RFP draft for independent evaluation by the IE of benchmark bids using only Company provided inputs and outputs and select market bids is not sufficient. The Company must provide the IE with the required level of access to PLEXOS such that the IE can conduct independent evaluation of both the benchmark and market bids to be compliant with the PUC's CBR subsections -0400 and -0450. This effectively serves as a threshold issue to RFP approval. Failure to comply with this aspect of the competitive bidding rules should result in non-approval of the Final Draft RFP because the IE would be unable to validate PacifiCorp's modeling and conduct independent evaluation as required in the CBRs.

To approve this RFP, with Appendix M as is, Staff believes it would be approving a scoring and modeling methodology that does not appear to be compliant with CBRs. Staff recommends that Appendix M be revised to either remove the current language referencing limited access to PLEXOS (item 3) or replace it with language reflecting the access level described in General Recommendation 1 below.

### **Staff Recommendations**

***RFP Condition 1: Remove numbered item three (3) in Appendix M or modify it to be compliant with Oregon Competitive Bidding Rules (CBRs).***

***General Recommendation 1: Before benchmark bids are due, PacifiCorp shall provide the IE with full access to the PLEXOS model, including all data, assumptions, output, and associated external spreadsheets used by PacifiCorp for both the 2021 IRP and 2022AS RFP modeling. Model access could be provided either through PacifiCorp providing the IE with a fulsome and functional copy of its complete database as well as (one or more) working sessions between PacifiCorp and IE modeling staff to describe how PacifiCorp executes the model, or by the IE having facilitated access to the model at PacifiCorp's offices or remotely.***

### ***Bid score for Benchmark Resources with PLEXOS***

PacifiCorp's use of PLEXOS to generate bid scores complicates how benchmark resources are scored and the IE and Staff had concerns about whether the scoring method complies with the CBRs. OAR 860-089-0350(1) states:

Prior to the opening of bidding on an approved RFP, the electric company must file with the Commission and submit to the IE, for review and comment, a detailed score for any benchmark resource with supporting cost information, any transmission arrangements, and all other information necessary to score the benchmark resource. The

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electric company must apply the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids.

It further states that if an update needs to be made to any bids, that equivalent updates must be made to the benchmark resource and that before the company has an opportunity to score the other bids it "...must file with the Commission...the final benchmark resource score developed in consultation with the IE...".<sup>7</sup>

The IE noted that the RFP may not be in compliance with Oregon's competitive bidding rules requiring benchmark bids to be scored in advance of opening third-party market bidding, with final scores filed before the scoring of other bids. Staff indicated in its February 18, 2022 comments that it believes the process for using proxy resources as stand-ins to score the benchmark process may be consistent with the intent of the rules, but the Commission may find this approach will not produce a benchmark "score" because PacifiCorp will not have access to "all other information necessary" at the time of scoring the benchmark (i.e., market bid inputs) to assign an accurate benchmark score.

Staff believes PacifiCorp's approach will produce a benchmark score that meets the intent of the competitive bidding rules without jeopardizing the fairness of the process. PLEXOS allows the Company to consider how a resource performs in relation to a portfolio of other resources and score them accordingly. To use PLEXOS to generate benchmark resource scores prior to receiving third-party bids, PacifiCorp must use proxy bids for the portfolio. While the scores will not have a lot of meaning in the context of proxy bids, they may provide guideposts, and more importantly, will signal that the inputs and the benchmark bid characteristics themselves have been established, which Staff believes accomplishes the spirit of the rule. Using the same modeling assumptions for benchmark bids, PacifiCorp will later be able to calculate the actual scores once it gets the market bids in. To the extent possible with PLEXOS, once the benchmark bid scores are established, it will be important for PacifiCorp to keep the same modeling inputs and assumptions for the benchmark bids throughout the RFP in order to mitigate the potential for bias once third-party bids are known.

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<sup>7</sup> OAR 860-089-0350 (2) – 350(3).

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***Staff Recommendation:***

***RFP Condition 2: PacifiCorp may not change the benchmark bid modeling inputs and assumptions after filing the benchmark bid scores prior to receiving market bids.***

***RFP Bidder Requirements***

*Firm vs. Conditional Firm Transmission*

PacifiCorp's Final Draft 2022AS RFP requires that bids must have Long-term firm transmission rights. NewSun, Renewable Northwest, and NIPPC filed comments throughout this docket indicating that PacifiCorp should allow conditional firm transmission products, and to clarify how such products would impact a bid's score. Conditional firm service is "is a type of Long-Term Firm transmission service for which there is a specified Number of Hours per year or specified System Condition in which the Transmission Provider can curtail the reservation prior to curtailing other Long-Term Firm service."

In PGE's 2021 AS RFP docket, Staff has taken the position that conditional firm rights are an acceptable option when the associated curtailment risk is accounted for in modeling and potentially in scoring. In PacifiCorp's RFP Docket, Staff has again expressed that it is open to alternative transmission rights configurations, and would support a similar configuration to what PGE utilized in its 2021 AS RFP.<sup>8</sup> In its response comments regarding RFP scoring and modeling, filed on November 29, 2021, PacifiCorp indicates that it should not be required to allow conditional firm transmission, explaining that transmission is most needed when the system is constrained, and a conditional firm product would create more risk for PacifiCorp's customers. In its comments filed March 4, 2022, PacifiCorp stated that while conditional firm may be an acceptable solution for short-term transactions, it is not appropriate for long-term PPAs or tolling agreements.<sup>9</sup>

In its report, PA concurs with PacifiCorp that Conditional Firm transmission rights are fundamentally "interruptible." They state that, "The purpose of this procurement is for PacifiCorp to obtain reliable generation to meet its capacity needs, and the very times that congestion occurs, and curtailment may occur are likely to be during periods of peak demand, precisely when PacifiCorp is relying on those deliveries." However, in conversations with Staff about the approach used with PGE, the IE indicated that the

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<sup>9</sup> PAC March 4, 2022 Reply Comments, Page 7.

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conservative nature of how to consider capacity associated with projects with conditional firm transmission rights alleviated their discomfort.<sup>10</sup>

Specifically, PGE's approach mitigated the reliability risks of allowing bidders to use Long-Term Conditional Firm transmission by reducing the modeled capacity contribution of these resources. Conditional Firm Bridge transmission rights were required to be modeled as being curtailed for the maximum number of hours allowable under contract, with 50 percent of those hours taking place at the time of PGE's greatest need.<sup>11</sup> For the portion of a resource utilizing Conditional Firm Reassessment service, PGE assigned zero capacity value, citing uncertainty about how these contracts will be utilized by BPA.<sup>12</sup>

Staff is open to alternative transmission rights configurations. Staff would support a similar configuration as PGE, where Long-Term Conditional Firm rights could be accepted but modeled differently and scored lower. Staff recommends that PacifiCorp allow bids with Conditional Firm transmission rights to participate and mitigate the risk of conditional firm transmission by modeling curtailment of the maximum number of hours possible for a given contract. These curtailment events should be modeled as taking place at peak hours to reduce the reliability risk to the greatest extent possible. While this is different than PGE's requirement to model curtailments as occurring only 50 percent during peak hours. Moving toward a model that is more conservative on reliability, especially in this instance where any increased cost to customers from being more cautious is likely to be minimal, would benefit the competitiveness of the RFP without negatively impacting customers.

***Staff Recommendation:***

***RFP Condition 3: PacifiCorp shall allow bids with Conditional Firm transmission rights to participate and may mitigate the risk of conditional firm transmission by modeling curtailment of the maximum number of hours possible for a given contract. These curtailment events should be modeled as taking place at peak hours to reduce the reliability risk to the greatest extent possible.***

***Bid Fee Requirements***

The 2020AS RFP had bid Fee(s) of \$10,000 for each base proposal and one free alternative. Bidders were allowed to offer up to three additional alternatives at a fee of \$3,000 each. The 2022AS RFP Draft makes changes to the bid fees including increasing each bid fee to \$15,000 for each proposal greater than 5 MW; allowing a

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<sup>10</sup> Per March 31, 2022 Staff phone call with the PA Consulting.

<sup>11</sup> Order No. 21-320. Page 23.

<sup>12</sup> Portland General Electric. Docket No. UM 2166. Draft 2021 AS RFP. Appendix N. Pages 11-12.



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sliding scale of \$1,000 per MW for bids less than 5 MW; and one free alternative bid in which bidders can propose alternative diversity hiring, supply and/or contracting strategy.

**Stakeholder Comments:**

Swan Lake and Goldendale, NIPPC, and RNW commented that this is an unreasonable barrier to participation and would affect the diversity of project offerings because bids at the same location offering moderately different bid attributes beyond hiring, supply or contracting strategy would incur multiple bid feeds of \$15,000.

PacifiCorp disputed the idea that multiple bids should be able to bid under a single fee and argued that the bid fee was not a material barrier to entry, as demonstrated by the number of bids and alternate bids received in the 2020AS RFP. It further argues that each bid evaluation, plus the expanded combined analysis, incurs costs that should be reflected in bid fees that cover those costs.<sup>13</sup>

The IE recommends that PacifiCorp explore alternate bid fees for the 2022AS RFP, potentially including bid fees for alternate bids relative to base bids, though at a reduced rate.

Staff agrees with stakeholders that the current bid fee structure has the potential to limit project offerings, but also with the Company and the IE, that evaluation of those offerings is not without cost. Staff agrees with the IE that PacifiCorp should accommodate alternative bids with moderately different bid attributes at a reduced fee. As the Company states, the 2020 AS RFP bid structure was not deemed a barrier to participation, however, as noted by stakeholders, it included a free alternative. Staff would be comfortable if the Company provided a similar alternative bid option as was available in the 2020AS RFP, namely, of allowing one free alternative bid for projects of the same technology type and location, but with moderately different project attributes.

***Staff Recommendation:***

***RFP Condition 4: PacifiCorp shall allow the submission of one free alternative bid for a project at the same location and with the same technology type but with moderately different project attributes from the ‘base.’***

***AC- vs DC-coupled Storage***

The current 2022AS RFP does not allow co-located energy storage bids to be direct current (DC) -coupled. In earlier comments for this docket, both NIPPC and RNW

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<sup>13</sup> PacifiCorp March 4, 2022 Reply Comments. Page 2.



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indicated that the RFP should not limit co-located renewable plus storage bids to alternating current (AC) -coupled storage resources because DC-coupled projects capture efficiencies that AC-coupled projects do not. PacifiCorp provided a detailed response to NIPPC's statements, listing many reasons why it does not want to allow DC coupled renewable plus storage resources, including that key institutions (ANSI and CAISO) have not officially approved revenue-grade DC meters.<sup>14</sup> Further, PacifiCorp indicated that its valuation models and pro forma contracts have already been designed in consideration of AC-coupled systems, and that DC-coupled systems would be more complicated to operate due to the volume of meters involved.

#### Stakeholder Comments:

NIPPC, RNW commented that PacifiCorp is not justified in prohibiting DC-coupled metering because avenues exist for their inclusion. Stakeholders argued that DC revenue-grade meters do exist, and are accepted by the CAISO, despite not being officially recognized by the CAISO Business Practice Manual (BPM). Staff reached out to the CAISO to receive clarification on several of these conflicting points. Staff confirmed that though DC revenue-grade meters do exist and can be used by customers to submit metering data to the CAISO, they are not yet part of the BPM, and it is unknown when they will officially be accepted.

Stakeholders also argued that DC-coupled systems are subject to fewer energy losses than AC-coupled systems, and that DC-coupled systems could potentially allow generators to sell more power into PacifiCorp's system. However, PacifiCorp explained, and Staff confirmed with CAISO, that at this point, DC-coupled systems would be more complicated to design and operate, potentially introducing higher O&M costs.

While Staff agrees that there is a risk that the Company would be implementing a more restrictive RFP by limiting certain bidders, it remains unclear to Staff the level of complexity involved in designing a solar plus storage DC-coupled battery system, and whether the benefits of such a design exceed operating costs.<sup>15</sup> As a result, for the current RFP, Staff is supportive of PacifiCorp's requirement to restrict battery storage bids to AC-coupled systems. However, this issue should be revisited in the next RFP in the event DC-coupled metering systems become more widely accepted and available.

The IE agrees with Staff and believes this is a technical issue that is a matter for PacifiCorp and its system engineers to determine, and that the Company should be allowed to require AC-coupling.

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<sup>14</sup> PacifiCorp's November 29 comments.

<sup>15</sup> Informal estimates of efficiency savings are 3-4 percent based on phone calls with stakeholders.

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***Staff Recommendation:***

***General Recommendation 2: PacifiCorp should revisit the option of including DC-coupled co-located energy storage bids in its next RFP.***

*Off-system resources*

PacifiCorp's 2022AS RFP indicates it will accept Build Transfer Agreement (BTA) proposals only if projects are or will be directly interconnected to PacifiCorp's system. NIPPC and NewSun each commented that off-system BTA projects should also be considered.

Stakeholder Comments:

NIPPC states that PacifiCorp should acquire least cost and least risk bid regardless of whether it is located on PacifiCorp's system.<sup>16</sup> NIPPC argues that off-system BTA should be considered similarly to PPAs and tolling agreements and that they should be allowed if the bid demonstrated it was able to secure firm transmission service to PacifiCorp's system.

NewSun believes that it is important to have visibility to, and allow consideration of, projects that might exist off-system and that they should be subject to evaluation and comparison like other bids.

PacifiCorp disagrees with a requirement that the Company consider owned resources outside of its service territory. It argues there are ample resources within its six-state territory without having to procure resources that require third party transmission service, that off-system resource cannot provide ancillary services, and that such project create balancing risk challenges.

Staff, in conversations with the IE, agrees that it is reasonable for PacifiCorp to only consider BTA that are on system. Staff believes an off-system PPA should not be considered comparable to an off-system BTA where the Company would ultimately be responsible for owning and operating the resource off its system and outside its service territory.

*Required Commercial Operation Date*

One of the minimum filing requirements in the RFP is that bids must demonstrate that they can commercially operate by 2026, though there is a two-year extension to 2028 for long-lead projects like pumped storage hydropower or nuclear facilities.

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<sup>16</sup> NIPPC's February 18, 2022 comments. Page 8.

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Several stakeholders filed comments regarding the 2026 COD. NIPPC and RNW filed comments opposing the 2026 COD requirement, recommending that the interconnection process timeline be changed and that the COD be extended past December 31, 2026.<sup>17</sup> The primary reasoning behind this is that this RFP could see similar problems as the 2020AS RFP, where projects without large generator interconnection agreements (LGIAs) were disadvantaged during the interconnection study process. NIPPC indicated that projects from Cluster 1 have network upgrades at 60 months or more, which means these projects would not be eligible to participate in the 2022 RFP.<sup>18</sup> NewSun argued that the 2026 COD was sufficient to attract bids and that the Company should retain this date.

In reply comments and discussions with the Company and the IE, PacifiCorp pointed to the IRP and its identified capacity need by 2026 as a reason why the COD should not be extended. Further, PacifiCorp indicated:

- Lengthy interconnection times are often associated with substantial transmission upgrades;
- Contacting for projects in 2023 with CODs in 2028 introduces material risk in terms of project delivery and costs as technology cost may decline between 2023 and the next RFP;
- Project meeting a 2026 COD are more mature and have de-risked many development issues; and
- HB 2021 clean energy requirements will likely result in additional RFPs in the near term, allowing more opportunities for project to bid into future RFPs.<sup>19</sup>

Staff has participated in several calls with the Company and other stakeholders to explore this issue. Staff recognizes that PacifiCorp has identified an immediate resource need in 2026 and sympathizes with the argument that committing to projects with a timeframe that is farther out may introduce more risk.

Staff has also had calls with the Company and the IE attempting to understand more about the COD issue. Staff was made aware that some projects were assigned extended interconnection upgrade timelines lasting up to 72 months but in some instances, stakeholders said that projects were able to come online sooner than expected. The concern is that a project would be eliminated from consideration because of the assigned COD where an earlier online date is practically feasible. However, Staff also learned that in these types of situations, it is likely that a 72-month upgrade may include such things as a new transmission line (e.g., new conductors, potential

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<sup>17</sup> NIPPC's and RNW's November 15 comments.

<sup>18</sup> NIPPC's November 15 comments. Page 12.

<sup>19</sup> PacifiCorp's November 29 comments. Page 13.

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substations, and the introduction of siting issues). In this situation, a six-year upgrade is likely to be a generous estimate for how fast the upgrade could be built.

In prior comments, Staff conveyed comfort with a possible middle ground in extending the COD to 2027 while retaining the 2028 date for long-lead resources, including suggestions for sensitivities that might help surface risk. This could give more time for upgrades for projects participating in the 2022 cluster study, alleviating some developer concerns about assigned CODs 72-months out, and would give a longer grace period for transmission or interconnection upgrades. In extending the COD to 2027, Staff suggested the Company could introduce a market price sensitivity in evaluating various bids that measures the risk of delaying COD to 2027.

The IE supported the Company retaining the 2026 COD in order to meeting capacity needs beginning in 2026. However, it was also recognized the value in not eliminating projects due to factors out of their control – such as the assigned interconnection timeframes. The IE suggested considering projects unable to meet the 2026 COD on a case-by-case basis with PacifiCorp Transmission to determine whether an earlier COD might be possible.

This topic was raised before the Washington Utilities and Transportation Commission (WUTC) in Docket UE-210979. On March 11, 2022 the WUTC issued Order 02 Approving Proposed Request for Proposals Subject to Conditions in which PacifiCorp was directed to extend the COD to December 31, 2021.<sup>20</sup>

As Staff was generally comfortable with an extension of the COD and understanding that there are market based alternatives that could address capacity shortfalls, should they come to fruition, Staff recommends the RFP change the COD to December 31, 2027, to be consistent with WUTC's recent Order 02.

***Staff Recommendation:***

***RFP Condition 5: PacifiCorp shall change the COD for RFP resources to before December 31, 2027, consistent with recent Order 02 PacifiCorp's IRP docket in Washington.***

Staff is satisfied with PacifiCorp's response to other issues raised by stakeholders related to Bidder Requirements not otherwise addressed above.<sup>21</sup>

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<sup>20</sup> Washington UTC. [Order 02](#) in Docket No. [UE-210979](#) and [UE-210979 – Errata to Order 02](#).

<sup>21</sup> See March 11, 2022 IE Report for a summary of issues raised by stakeholders related to RFP Bidder Requirements.

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### **Bid Price Scoring Methodologies**

#### *Transmission Costs*

In Staff's December 6, 2021 comments it requested the evaluation of RFP bids include an assessment of the cost of all transmission additions with or without the assumption that PacifiCorp is required to place transmission costs in state-jurisdictional rate base in order to facilitate requests for service from transmission customers. This is inspired by Staff's experience in the 2020AS RFP and the 2021 IRP, whereby certain transmission costs were "discounted" because of assumptions about PacifiCorp transmission build obligations. Gateway South, for example, received a \$1.4 billion cost offset because of the assumed need to construct new transmission to facilitate a Transmission Service Request. Staff has opined on this issue in previous comments and Staff Reports and will not repeat the concerns here. However, it is imperative for the Commission to receive full transparency as to what is at stake in investing in various portfolios. Regardless of the way PacifiCorp has designed its production cost modeling, there must be a full account of costs. As a result, any "discounts," cost offsets, or omitted transmission buildout costs must be presented for consideration alongside PacifiCorp's presentation of its final short list to the Commission for acknowledgment.

Staff believes the bid price scoring must reflect transmission costs not currently captured in the bid prices. Staff recommended PacifiCorp provide the cost of all transmission additions with and without ratepayer support of the underlying transmission and it should give an account of how transmission costs will be treated in the RFP. PacifiCorp agreed to Staff's request and noted it would identify the following assumptions related to network upgrade transmission costs:

- Costs assigned to the developer and not subject to refund.
- Costs assigned to the developer and subject to refund.
- Costs assigned to all transmission customers and assigned to PacifiCorp's retail customers.
- Costs assigned to all transmission customers and assigned to third party transmission customers.

The Company indicated that the "final transmission upgrade assumptions will incorporate updated information based on the latest transmission studies for each project."<sup>22</sup>

Staff appreciates the Company's response to this request and has no additional conditions at this time. However, this is a topic that may come up in conversations related to sensitivities and Staff may provide more direction at that time.

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<sup>22</sup> PAC Reply Comments. Pages 15-16.

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### **Bid Non-Price Scoring, HB 2021, and State-Specific Evaluation**

The 2021 IRP (LC 77) preferred portfolio that informs the 2022AS RFP resource need the was filed before HB 2021 was signed into law. Neither the past IRP nor this RFP are required to demonstrate compliance with the emission targets set forth in what is now Oregon law. However, because this procurement takes place in a policy environment in which HB 2021 is now law, Staff and stakeholders expressed an interest in seeing the 2022AS RFP better reflect certain aspects of HB 2021 such that it might help the Commission signal and direct PacifiCorp regarding HB 2021 compliance.

In addition, Staff sought to understand how the Company would execute non-price scoring as it relates to compliance across multiple states. Staff recommended the Company elaborate on steps it would take to assess state compliance. This would entail that the FSL provide a summary of what projects were ultimately prohibited from selection due to failure to comply with various state mandates. Stakeholders wanted to see the following aspects represented in the RFP bid scoring or FSL:

1. Facilitate or signal a desire to procure clean resources in advance of the need reflected in the 2021 IRP;
2. Prioritizing of projects that provide local benefits; and
3. Prioritization of projects that reflect high labor standards and that support an equitable transition for fossil fuel construction workers.

#### **Stakeholder Feedback:**

On the topic of HB 2021, the Company received comments from RNW, NewSun, and Oregon & Southern Idaho District Council of Laborers' of Laborers' International Union of North America (LiUNA)

RNW and NewSun suggested the Company and the Commission accommodate early compliance and acceleration of least-cost procurement of decarbonization resources that exceeds current IRP-identified need. RNW notes that HB 2021's first compliance year is only eight years away and that the Commission has signaled interest in procurement that aligns with HB 2021 goals, which may reflect procurement goals beyond what is articulated in current IRPs.<sup>23,24</sup> NewSun pointed to the need for utilities to demonstrate continual progress toward HB 2021 goals and the value of procuring available non-emitting resource in the near term.<sup>25</sup>

LiUNA provided 17 recommendations across four categories of issues related to how the RFP could be changed. Specifically, the four categories of issues addressed were:

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<sup>23</sup> Renewable Northwest Comments. Pages 2 and 3.

<sup>24</sup> Order No. 21-460 at 9, Oregon Public Utility Commission Docket No. UM 2166 (Dec. 10, 2021).

<sup>25</sup> NewSun Comments. Page 1.

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- Uniform bidder requirements for higher contractor labor standards, avoiding a state-by-state approach;
- Prioritization of displaced fossil fuel workers and giving preference to bidders maximizing employment and utilization of local workers or in-state contractors;
- Minimum contractor requirements around safety and health standards and associated reporting, and scoring that discourages sub-contractors with a history of safety violations; and
- A scoring preference and inclusion in the RFP eligibility requirements that demonstrate use and acquisition of skilled, local labor.<sup>26</sup>

In their March 4, 2022 response the Company addressed many of the recommendations made by LiUNA. With regards to uniform bid requirements, PacifiCorp noted that the HB 2021 labor standards would apply to projects sited in Oregon. The Company also noted where the RFP requirements or RFP scoring had changed to reflect specific state laws, specifically around uniform minimum bidder requirements. But for the most part the Company noted that would not be reasonable to make bidder requirements or disclosures the same across all states.

With regard to supporting impacted communities and prioritizing certain workers, PacifiCorp asserts it is upon states to set their own specific requirements around such issues as just transition and other social/environmental requirements for projects in their states. And the Company again reiterated that it would not be reasonable to make bidder requirements the same across all states or grant preferences to individual localities, especially as not all communities have fossil fuel workers potentially being displaced.

With regards to minimum contractor requirements, PacifiCorp maintained that different resources should be able to exercise different labor and cost considerations and that it was unclear on how to validate or enforce some of LiUNA's safety requirements. However, the Company also noted key provisions it would add to the RFP to increase minimum contractor requirements to address safety concerns across all proposals.

With regards to local workforce development, PacifiCorp noted that it would be unreasonable to assign points within the procurement that used skilled local labor given that states have different regulatory priorities.

Staff Analysis

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<sup>26</sup> See UM 2193, Comments of Oregon & Southern Idaho District Council of Laborers, February 18, 2022.

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### *HB 2021 Compliance*

The Company references HB 2021 as a potential driver of additional procurement in this RFP.

After PacifiCorp selects the least cost, least risk resources on behalf of all system customers consistent with the resource need identified in the 2021 IRP, PacifiCorp may find it requires additional resources to comply with regulations in one or more of its six states. Following the selection of system resources for the final shortlist on behalf of PacifiCorp's six-state customers, PacifiCorp will consider additional compliance requirements for specific states with clean energy compliance obligations, and potentially add state-specific resources to ensure those compliance obligations are met.<sup>27</sup>

Staff believes the Company should identify projects that might be well suited to help the Company demonstrate continual progress toward meeting HB 2021 goals. To this end, when PacifiCorp files its FSL, Staff would like to see a list of non-emitting resources that could be procured in addition to the RFP FSL that meet future non-emitting generation need for HB 2021 compliance.

### *State Specific Evaluation*

The Company's assessment of whether projects follow state compliance with HB 2021 goals will be monitored by Staff and the IE. To assist in this monitoring, the Company should provide a summary of what projects are prohibited from selection due to failure to comply with various state mandates..

Staff also finds the logic used by WUTC Staff and LiUNA regarding the collection of state specific data from all projects – not just those sited in a specific state – compelling, as it is unknown which projects will eventually be allocated to specific states under the Multi-state Protocol (MSP). To this end PacifiCorp is requesting all resources complete many parts of Appendix P, the Equity Questionnaire.

With regards to the specific recommendations by LiUNA, Staff mostly agrees with PacifiCorp. However, in addition to where the Company has already made changes to the RFP, Staff supports the following LiUNA inspired changes to the RFP or the overall RFP process:

- Track and report with the FSL, the bids that complete (a) a survey comparable to the Washington Equity Survey, (b) that have proforma contract terms with

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<sup>27</sup> PacifiCorp's Draft 2022AS RFP. Page 2.



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Responsible Contractor Labor Standards and apprenticeship and workforce requirements comparable to those required by Oregon's HB 2021,

- Quarterly reporting on the number of local and state workers, number of workers from temporary staffing agencies employed by bidders or sub-contractors during the construction phase of any selected project.
- Amending Appendix P to include under Facility Job Creation total employment of fossil fuel construction workers.

### ***Staff Recommendations***

***RFP Condition 6: Amending Appendix P to include, under Facility Job Creation, total employment of fossil fuel construction workers.***

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***General Recommendation 3: With the FSL, Staff would like to see a list of non-emitting resources that could be procured in addition to the RFP FSL that meet future non-emitting generation need for HB 2021 compliance.***

***General Recommendation 4: PacifiCorp, as part of the final shortlist selection, to provide a summary of what projects were ultimately prohibited from selection due to failure to comply with various state mandates***

***General Recommendation 5: PacifiCorp to forecast the emissions impact of the final shortlist selection by 2030 using operating assumptions from the 2021 IRP (LC 77).***

***General Recommendation 6: PacifiCorp update Appendix P to request that all projects complete the Oregon attestation on labor practices***

***General Recommendation 7: PacifiCorp to provide a project summary regarding compliance with various state mandates and laws.***

***General Recommendation 8: PacifiCorp to report the bids and then selected resources in the FSL that complete (a) a survey comparable to the Washington Equity Survey and (b) that have proforma contract terms with Responsible Contractor Labor Standards and apprenticeship and workforce requirements comparable to those required by Oregon's HB 2021.***

***General Recommendation 9: Quarterly reporting post-RFP on the number of local and state workers, number of workers from temporary staffing agencies***

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***employed by bidders or sub-contractors during the construction phase of winning bids.***

**Power Purchase Agreement and BTA Term sheet Terms and Conditions**

*Performance Guarantees*

RNW raised a concern about PacifiCorp's use of a performance guarantee instead of an availability guarantee for Power Purchase Agreements (PPAs) and the barrier it creates for shortlisted projects, saying it places unreasonable risk on generators associated with normal variability of renewable energy. RNW commented that the "Form PPA includes a performance guarantee of 90% of expected [annual] output,<sup>28</sup> allowing PacifiCorp to terminate the PPA or requiring generators to pay financial penalties if a wind or solar project produces less than 90% of its forecast energy."<sup>29</sup> The concern relates to typical weather variations from year to year and that bidders have no control over these variations.

This issue was also raised by NIPPC in UM 2059,<sup>30</sup> and RNW raised the issue here because it believes the production guarantee has posed challenges for developers negotiating contracts with PacifiCorp following selection to the final shortlist in that RFP.

PacifiCorp states that these terms are not new, have been used in previous RFP, and are akin to what developers encounter when obtaining financing.

The IE recommended that PacifiCorp explore ways to mitigate these concerns through negotiations with shortlisted projects, including potentially relaxing the 90 percent performance guarantee currently included in the PPA term sheet.

Staff does not recommend any RFP conditions regarding this issue but would like to understand whether the production guarantee language included in the Form PPA contract language continues to be problematic for bidders. Staff is particularly interested in whether the challenges can be addressed by modifying the penalties, the performance level, or both. Staff echoes the IE's recommendation and asks that PacifiCorp explore options to mitigate these concerns in contract negotiations.

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<sup>28</sup> See RFP, Appendix E-2.1 at section 6.14 and Exhibit F.

<sup>29</sup> See Renewable Northwest February 18, 2022 Comments. Page 8.

<sup>30</sup> See Comments of the Northwest and Intermountain Power Producers Coalition at 9, Oregon Public Utility Commission Docket No. UM 2059 (May 22, 2020).

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### **General Issues Related to the RFP**

Staff and Stakeholders raised a variety of other issues related to the RFP Draft and the RFP more generally throughout the docket to date, many of which the Company has addressed and have been resolved. There are other issues that were raised by stakeholders in their February 18 comments that Staff notes below. Where the comments apply to the Company, Staff is comfortable with how the Company has addressed the issues unless addressed otherwise elsewhere in this report. Additionally, Staff's offers its perspective on select issues that pertain to the Commission.

NewSun commented that PacifiCorp owned assets should not be permitted to bid in this RFP cycle because there has not been sufficient time to realize the benefits of adding non-utility owned resources post queue-clearing activities. Staff appreciates the value and diversity brought by independent power producers but does not see this as a necessary approach at this time, nor does it see how this might be enforceable.

NewSun commented that "The IE should work for Staff, not the utility" so as to improve transparency, regulation, and to better represent the interests of the Commission in RFP evaluation. Staff appreciates how NewSun characterizes the relationship between the IE and the commission. In Staff's experience, apart from having to lead the solicitation, evaluation and contracting for the IE, this is precisely the way IE is currently supporting Staff and does not see a need for modifications. The only thing Staff would note is to reiterate comments during the IE selection process regarding the importance of stakeholder and Staff involvement in the creation of the IE RFP, participation in the identification of a pool of IE candidates, and the IE evaluation process.<sup>31</sup>

NewSun commented that nuclear resources should be prohibited from participating in this RFP because of issues raised in the 2021 IRP process about inclusion of nuclear and the impact that has on modeling, exposure to potential cost overruns, and other technology risks. PacifiCorp responded indicating that, by definition, this is an 'all-source' RFP and that it should include the review of all resource options. The Company states that such a limitation would conflict with rules and guidelines within its multi-state jurisdiction. Staff does not find sufficient reason to forbid nuclear resources from participation in the 2022AS RFP and adds that because of the limited information about the proposed Natrium nuclear project in PacifiCorp's 2021 IRP, Staff prefers that the Company have the proposed Natrium project compete in and RFP to help bring transparency and comparability to project costs and risks. Staff's ongoing concerns about the Natrium nuclear plant, if the plant is included in the FSL portfolio without bidding into the RFP, revolve around how the inclusion of an uncertain nuclear project in

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<sup>31</sup> See October 11, 2021 [Staff Report in UM 2193](#).

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the Company's FSL portfolio might impact the outcome of the RFP. Staff has provided direction regarding sensitivities to address these concerns.<sup>32</sup>

PacifiCorp responded to a variety of other stakeholder comments and indicated commitments to address the issues raised in its Reply Comments. Unless otherwise indicated in this Report, Staff supports the Company's response and recommends that the RFP reflect the additional commitments made by PacifiCorp in its Reply Comments.

***Staff Recommendation:***

***RFP Condition 7: Except where Staff has suggested modifications otherwise in the body of this report, PacifiCorp must reflect the commitments it made in response to stakeholder feedback on the Draft RFP.***

**Scoring and Associated Modeling Methodology Approval**

In Order No. 21-469, the Commission granted the Company a partial waiver for OAR 860-089-0250(2)(a) waiving the requirement for approval of a proposal for scoring and associated modeling methodology prior to preparing a draft RFP to allow more time for review of PacifiCorp's bid scoring and modeling methodology. This report captures stakeholder and Staff feedback and analysis of the scoring and modeling methodology. The approval of these methodologies is implied within the approval of the RFP Draft with the associated conditions described herein.

The review process to date has highlighted areas for improvements for future RFP review processes regarding the timing of review elements.

**Timing of Scoring and Associated Modeling Approval**

In the IE's assessment of the Final Draft 2022AS RFP<sup>33</sup> the IE evaluated both the Draft 2022AS RFP and the RFP process more broadly regarding compliance with OPUC CBRs. The IE believes the 2022AS RFP process generally complies with the CBRs but raised a concern - that was also raised in the 2020AS RFP - regarding the use of a waiver for Commission approval of the scoring and associated modeling prior to preparing a draft RFP in a set of unusual circumstances shortly after adoption of the CBRs.

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<sup>32</sup> See February 11, 2022 Final Staff Comments in LC 77. Pages 14-18

<sup>33</sup> See March 11, 2022 filing *Oregon Public Utilities Commission Independent Evaluator's Assessment of PacifiCorp's Final Draft 2022AS Request for Proposals* in UM 2193  
<https://edocs.puc.state.or.us/efdocs/HAH/um2193hah173824.pdf>

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As described above in the Background section, the information PacifiCorp shared at the November 15 workshop revealed that it had restructured the RFP process and had made substantive changes to what it had originally filed on September 2. On November 29, 2021, two weeks before the proposed December 14 Public Meeting date to consider approval of PacifiCorp's modeling methodology, the Company filed Reply Comments that included an appendix explaining revisions to the 2022AS RFP scoring and associated modeling methodology as filed on September 2, 2021, based on the revisions from the November 15 Workshop. These changes included the substantial change of eliminating the initial short list process, transitioning to PLEXOS as a pricing mechanism as opposed to PacifiCorp's originally-proposed proprietary models, and other additions to the non-price scoring questions.

On December 3, 2021 PacifiCorp filed for and was ultimately granted a partial waiver of OAR 860-089-0250(2)(a), the rule requiring approval of the scoring and associated modeling methodology.<sup>34</sup> Staff found good cause for this waiver due to the unique circumstances of this docket.

However, the Company received a partial waiver in the 2020AS RFP. And, as was the case in the 2020AS RFP, the IE recommends the Company make every effort to avoid the need to request this waiver and should seek Commission approval of the scoring and associated modeling before preparing a Draft RFP. Staff agrees and believes it is important to have sufficient time for stakeholders and Staff to conduct meaningful analysis on this critical element of the procurement process. The Company is now well informed of the CBR requirements and may be expected to comply with those requirements in the future.

Staff also recognizes that the clean energy targets associated with HB 2021 will likely require more frequent procurement cycles and that there may be a need for flexibility to accommodate rapid procurement without compromising the CBR process. To this end, Staff appreciates the schedule changes PacifiCorp made that accommodated additional review of the scoring and associated modeling included in the Draft 2022AS RFP. That said, Staff recommends PacifiCorp submit bid scoring and associated modeling, which are not part of a Commission-acknowledged IRP, well in advance of its draft RFP.

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<sup>34</sup> See PacifiCorp's *Motion for a Partial Waiver of Oregon Administrative Rule 860-089-0250(2)(a)* filed in UM 2193 on December 3, 2021

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## **RFP Related Issues – Not Applicable to RFP Issuance**

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### **Legacy Large Generator Interconnection Agreement Concerns**

A persistent issue throughout the 2020AS RFP was how projects with Large Generator Interconnection Agreements (LGIAs) had an advantage over projects that did not. This is anticipated to remain an issue in the 2022AS RFP. While PacifiCorp's cluster study process has alleviated the issue of the LGIA queue stalling potentially competitive projects, the LGIA issue has not been completely resolved. To summarize, certain projects with signed LGIAs effectively receive priority in PacifiCorp RFPs because the Company is contractually obligated to interconnect them before other projects with later LGIAs. These projects with signed LGIAs can, in some instances, "crowd out" more competitive projects. Staff continues to monitor the situation where projects with earlier LGIAs may be selected because of their early LGIA status, reducing the competitiveness of the procurement process.

Another concern Staff has is the issue of more competitive projects that might be willing to pay upgrade costs but have no clear way to do so to be able to compete in the RFP. For example, consider "Project A" that has an LGIA and is subject to specific upgrade costs, but there has been little or no advancement in that project for a number of years, yet it continues to hold an LGIA and participates in the RFP. Contrarily, "Project B" can pay for the upgrades and is both commercially ready and cost effective. Staff is still unclear on the details of what valid mechanisms might exist through which "Project B" would be able to replace "Project A" if it is willing and able to pay for upgrade costs if Project B is on the final shortlist and Project A is not. Staff believes this issue should be further explored with the Company and stakeholders throughout the RFP process.

PacifiCorp said that the mechanisms for interconnection customers to share interconnection costs within the PacifiCorp Transmission system are regulated by the OATT, which is regulated by FERC, and "outside the scope of the proposed 2022AS RFP." Staff appreciates that this issue is outside the scope of the 2022AS RFP, and is interested the Company facilitating more transparency for bidders around the issue of existing LGIA and potential opportunities for competitive projects to come online. Staff will work with PacifiCorp and stakeholders to explore the mechanisms through which a bidder may be able to pay for upgrade costs to accelerate construction if higher-queued projects do not move forward, and consider how to include flexibility for such bids in the final short list.

### **Staff Recommendation:**

**General Recommendation 10: Staff will work with PAC in its next RFP and the 2023 IRP to provide both a list and detailed map of all publicly available OASIS**

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***and 2021 and 2022 AS RFP (UM 2059 and UM 2193) data and information regarding LGIAs on its system. This should at a minimum include the location, associated interconnection costs and commercial operation dates of all LGIAs on its system.***

### **Sensitivities and Additional Analysis**

In the 2021 IRP review process<sup>35</sup> and the beginning of the 2022AS RFP review process, Staff and others identified several issues as potentially deserving further analysis and consideration in the 2022AS RFP. These include additional sensitivities to run on the FSL and additional analysis and reporting.

In the Staff Report filed on October 14, 2021, Staff indicated that it expected PacifiCorp to perform a series of sensitivities as it evaluates the value of each bid. Staff continues to support the following sensitivities for the 2022 RFP:

- Report present value revenue requirement (PVRR) resulting from adding a social cost of carbon at a 2.5 percent discount rate applied to emissions from PAC system with and without the Final Short List (FSL) resources.
- Include a 'no market sales' sensitivity.
- Include a tax credit extension sensitivity, with low market prices.

Two of the three above were already implemented in the 2020AS RFP and provided useful analysis in testing the economic resiliency of various resources. Staff expects to work with the Company and IE in refining these sensitivities as the RFP progresses.

In addition to the three sensitivities recommended in the Staff Report filed October 14, 2021, Staff requested an assessment of the cost of transmission additions with or without the assumption that PacifiCorp is required to place transmission costs in state-jurisdictional rate base in order to facilitate requests for service from transmission customers. This is inspired by Staff's experience in the 2020AS RFP and the 2021 IRP, whereby certain transmission costs were "discounted" because of assumptions about PacifiCorp transmission build obligations. Gateway South, for example, received a \$1.4 billion cost offset because of the assumed need to construct new transmission to facilitate a Transmission Service Request. Staff has opined on this issue in previous comments and Staff Reports and will not repeat the concerns here. However, it is imperative for the Commission to receive full transparency as to what is at stake in investing in various portfolios. Regardless of the way PacifiCorp has designed its production cost modeling, there must be a full account of costs. As a result, any "discounts," cost offsets, or omitted transmission buildout costs must be presented for

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<sup>35</sup> See February 11, 2022 [Staff Final Comments in LC 77](#)

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consideration alongside PacifiCorp's presentation of its final short list to the Commission for acknowledgment.

In PacifiCorp's Reply Comments filed on March 4, 2022, the Company agreed to "work with Staff, in coordination with the Oregon IE, to identify sensitivity scenarios to help identify the robustness and incremental impact of the portfolio."<sup>36</sup> Additionally, the Company agreed to provide a transparent accounting of how the Company expects each transmission investment will be financed. Staff appreciates PacifiCorp's offer to provide this useful information. However, Staff additionally requests the Company provide data on the NPVRR of the FSL portfolio *without the application of any cost offsets such as those that were applied to the B2H and Gateway South lines in IRP modeling* if and when PacifiCorp files a request for acknowledgement of a final short list. This additional data point will help inform the conversation around these cost offsets, what their impact will be, and whether they are appropriate.

After reviewing PacifiCorp's IRP in Docket No. LC 77, Staff has additional requests for sensitivities and analyses around the RFP Final Shortlist, including:

- an Offshore wind sensitivity,
- a Natrium sensitivity to assess the risk of acquiring RFP resources under the assumption of Natrium coming online by 2028, if it then does not in fact achieve commercial operation in 2028,
- A sensitivity where the cost offset applied to the Boardman to Hemmingway (B2H) transmission line is removed from the modeling and a discussion of the results, and
- a Jim Bridger 3 & 4 sensitivity where the minimum take is removed after 2030;
- discussion and analysis around the modeling of additional Oregon locations with interconnection capacity for renewable resources, including QF projects.
- labor considerations including additional data comparable to that required by the Washington UTC,<sup>37</sup>
- discussion of ownership diversity in the Final Shortlist,
- reporting of coal dispatch in the FSL portfolio by year, and
- reporting of market sales in the FSL portfolio by year, by market hub.

PacifiCorp was directed to perform some of these sensitivities and analyses, including the Offshore Wind sensitivity and Natrium sensitivity, at the March 29, 2022 Acknowledgement Decision Meeting in Docket No. LC 77. However, the details and parameters of these analyses have not yet been fully explored and defined. Each

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<sup>36</sup> PacifiCorp Comments filed February 18, 2022. Page 15.

<sup>37</sup> See WUTC UE-210979 Staff comments on Pacific Power's Draft 2022 All Source Request for Proposals for Resources filed 2/14/2022 in UE-210979.



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requested sensitivity and analysis will need to be further defined to arrive at a sufficiently clear list of proposed analyses around the 2022 RFP FSL.

In order to arrive at a clearly defined set of sensitivities and other reporting for PacifiCorp to publish with its Final Shortlist, Staff proposes the Commission direct Staff and PacifiCorp to engage in the following next steps.

1. By November 14, 2022, PacifiCorp works with Staff to develop the details and parameters of sensitivities and additional data that should be provided with the 2022AS RFP Final Shortlist.<sup>38</sup> The resulting detailed list of FSL sensitivities and reporting data must be brought to the Commission at a public meeting for approval. The detailed list should be provided at least one week before the public meeting, to allow opportunities for stakeholder input at that meeting. Additional direction may provided by the Commission, if necessary.
2. The FSL, sensitivities, additional data, and all workpapers must be filed in the UM 2193 docket at least two weeks in advance of the IE Closing Report on the FSL.

Based on the experience of the 2020AS RFP, the below recommendation is intended to ensure that PacifiCorp is aware of expectations regarding additional analysis in the RFP, and that the IE has sufficient time to fully assess the FSL, sensitivities, and associated workpapers and data before filing its FSL Report.

#### **Staff Recommendations:**

***General Recommendation 11: The 2022AS RFP Final Shortlist is expected to be selected by March 24, 2023.<sup>39</sup> Staff and PacifiCorp should work together in advance of FSL selection to define the FSL sensitivities and additional data that will be provided with the filing of the Final Shortlist. By November 14, 2022, the resulting detailed list of expected FSL sensitivities and recommended reporting data should be brought to the Commission at a public meeting for approval.***

***General Recommendation 12: PacifiCorp must file the FSL, sensitivities, additional data, and all workpapers in the UM 2193 docket at least two weeks in advance of the IE Closing Report on the FSL.***

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<sup>38</sup> November 21, 2022 is the first day that any bids are due in PacifiCorp's proposed schedule, so deciding on parameters for bid analysis before that date will be helpful.

<sup>39</sup> PacifiCorp Draft 2022AS RFP. Page 12.

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### **Conclusion**

Per Staff's analysis, Staff believes PacifiCorp's Final Draft 2022 All-Source Request for Proposals (2022 AS RFP) should be approved for issuance, subject to the conditions recommended by Staff. Below is a summary of Staff's recommendations:

#### **RFP Conditions**

RFP Condition 1: Remove numbered item three (3) in Appendix M or modify it to be compliant with Oregon CBRs.

RFP Condition 2: PacifiCorp may not change the benchmark bid modeling inputs and assumptions after filing the benchmark bid scores prior to receiving market bids.

RFP Condition 3: PacifiCorp shall allow bids with Conditional Firm transmission rights to participate and may mitigate the risk of conditional firm transmission by modeling curtailment of the maximum number of hours possible for a given contract. These curtailment events should be modeled as taking place at peak hours to reduce the reliability risk to the greatest extent possible.

RFP Condition 4: PacifiCorp shall allow the submission of one free alternative bid for a project at the same location and with the same technology type but with moderately different project attributes from the 'base.'

RFP Condition 5: PacifiCorp shall change the COD for RFP resources to before December 31, 2027, consistent with recent Order 02 PacifiCorp's IRP docket in Washington.

RFP Condition 6: Amending Appendix P to include, under Facility Job Creation, total employment of fossil fuel construction workers.

RFP Condition 7: Except where Staff has suggested modifications otherwise in the body of this report, PacifiCorp must reflect the commitments it made in response to stakeholder feedback on the Draft RFP.

#### **General Recommendations**

In addition to the RFP conditions listed above necessary for the RFP issuance process Staff also recommends the Commission direct PacifiCorp to take the additional actions listed below surrounding the RFP process in this docket and future procurements.

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General Recommendation 1: Before benchmark bids are due, PacifiCorp shall provide the IE with full access to the PLEXOS model, including all data, assumptions, output, and associated external spreadsheets used by PacifiCorp for both the 2021 IRP and 2022AS RFP modeling. Model access could be provided either through PacifiCorp providing the IE with a fulsome and functional copy of its complete database as well as (one or more) working sessions between PacifiCorp and IE modeling staff to describe how PacifiCorp executes the model, or by the IE having facilitated access to the model at PacifiCorp's offices or remotely.

General Recommendation 2: PacifiCorp should revisit the option of including DC-coupled co-located energy storage bids in its next RFP.

General Recommendation 3: With the FSL, Staff would like to see a list of non-emitting resources that could be procured in addition to the RFP FSL that meet future non-emitting generation need for HB 2021 compliance.

General Recommendation 4: PacifiCorp, as part of the final shortlist selection, to provide a summary of what projects were ultimately prohibited from selection due to failure to comply with various state mandates

General Recommendation 5: PacifiCorp to forecast the emissions impact of the final shortlist selection by 2030 using operating assumptions from the 2021 IRP (LC 77).

General Recommendation 6: PacifiCorp update Appendix P to request that all projects complete the Oregon attestation on labor practices

General Recommendation 7: PacifiCorp to provide a project summary regarding compliance with various state mandates and laws.

General Recommendation 8: PacifiCorp to report the bids and then selected resources in the FSL that complete (a) a survey comparable to the Washington Equity Survey and (b) that have proforma contract terms with Responsible Contractor Labor Standards and apprenticeship and workforce requirements comparable to those required by Oregon's HB 2021.

General Recommendation 9: Quarterly reporting post-RFP on the number of local and state workers, number of workers from temporary staffing agencies employed by bidders or sub-contractors during the construction phase of winning bids.

General Recommendation 10: Staff will work with PAC in its next RFP and the 2023 IRP to provide both a list and detailed map of all publicly available OASIS and 2021 and 2022 AS RFP (UM 2059 and UM 2193) data and information regarding LGIAs on its

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system. This should at a minimum include the location, associated interconnection costs and commercial operation dates of all LGIAs on its system.

General Recommendation 11: The 2022AS RFP Final Shortlist is expected to be selected by March 24, 2023. Staff and PacifiCorp should work together in advance of FSL selection to define the FSL sensitivities and additional data that will be provided with the filing of the Final Shortlist. By November 14, 2022, the resulting detailed list of expected FSL sensitivities and recommended reporting data should be brought to the Commission at a public meeting for approval.

General Recommendation 12: PacifiCorp must file the FSL, sensitivities, additional data, and all workpapers in the UM 2193 docket at least two weeks in advance of the IE Closing Report on the FSL.

#### **PROPOSED COMMISSION MOTIONS:**

Approve PacifiCorp's 2022 All-Source Request for Proposal for issuance with the RFP Conditions recommended by Staff.

Direct PacifiCorp to take the steps in Staff's General Recommendations as part of the RFP process.

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