

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1208

In the Matter of	)	
	)	ORDER
PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY	)	
	)	
Draft 2012 Request for Proposals.	)	

**DISPOSITION: SELECTION PROCESS FOR OREGON INDEPENDENT  
EVALUATOR APPROVED; CONDITIONAL RFP  
APPROVAL OPTION ESTABLISHED**

On July 11, 2006, PacifiCorp, dba Pacific Power & Light Company, filed its draft 2012 Request for Proposals (RFP) for Base Load Resources with the Public Utility Commission of Oregon (Commission). The RFP seeks up to four base load resources during the period 2012-2014, totaling 1,775 megawatts (MW). The company's Benchmark Resources consist of a 600 MW supercritical (pulverized) coal plant at the Hunter site in Utah in 2012, a 340 MW share in a supercritical coal plant in Utah known as the Intermountain Power Project (IPP) Unit 3 in 2012, a 750 MW supercritical coal plant at Jim Bridger Unit 5 in Wyoming in 2013, and a 250 MW to 600 MW Integrated Gasification Combined Cycle (IGCC) coal plant in 2014.

Shortly after PacifiCorp made its filing, the Commission issued new competitive bidding requirements for new supply-side resource acquisitions applicable to Oregon's investor-owned electric utilities. *See* Order No. 06-446. Among other things, these guidelines require the use of an independent evaluator (IE) to oversee the RFP Process and to ensure that it is conducted fairly and properly. To meet this requirement, PacifiCorp proposed the use of the IE hired by the Public Service Commission of Utah (Utah Commission) pursuant to the Utah Energy Resource Procurement Act. PacifiCorp explained that the Utah Commission hired Merrimack Energy Group, Inc. to actively monitor the solicitation process for fairness and compliance with Utah state law.

Other parties to this investigation objected to the use of the Utah IE. These parties argued that it is reasonable that Oregon have its own IE to serve its needs for PacifiCorp's 2012 RFP, given the magnitude of the investment that will be undertaken through this process, issues related to multi-state allocation of resources, and differential treatment of the company's 2004 IRP by the Oregon and Utah Commissions. For those reasons, the Commission Staff (Staff) proposed the Commission adopt a selection process for an Oregon IE. To minimize the delay in the RFP review, Staff also recommended the Commission include, as a potential outcome, conditional RFP approval that would allow the Commission to reconsider any initial approval of the RFP following an assessment by the

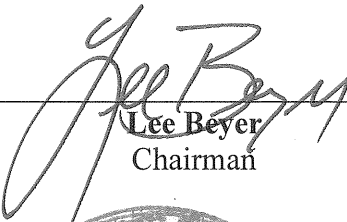
Oregon IE. Staff's recommendations are set forth in its September 11, 2006 Staff Report, attached as Appendix A and incorporated by reference.

At its September 19, 2006, Public Meeting, Staff amended its Proposed Commission Motion to clarify what issues Staff and parties could raise following conditional approval. The Commission approved Staff's proposed Commission motion as amended. If the Commission conditionally approves the RFP, Staff and parties will be allowed to raise (1) issues previously raised that remain unresolved by the Commission; (2) significant flaws in RFP design identified by the Oregon IE; or (3) significant flaws in RFP design identified by Staff or parties based on the Oregon IE's assessment.

**ORDER**

IT IS ORDERED that Staff's proposed selection process for an Independent Evaluator for Oregon for PacifiCorp's 2012 Request for Proposals for Base Load Resources, and Staff's proposed conditional RFP approval process, is approved.

Made, entered, and effective SEP 26 2006.

  
\_\_\_\_\_  
**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
\_\_\_\_\_  
**Ray Baum**  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

## ITEM NO. 6

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: September 19, 2006**

REGULAR  X  CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

DATE: September 11, 2006

TO: Public Utility Commission

FROM: Lisa Schwartz *LS*

THROUGH: *Li* Lee Sparling, *EB* Ed Busch and *BBT* Bonnie Tatom

SUBJECT: PACIFICORP: (Docket No. UM 1208) Staff recommendation for Independent Evaluator for 2012 Request for Proposals for Base Load Resources.

**STAFF RECOMMENDATION:**

Staff recommends the Commission approve staff's proposed selection process for an Independent Evaluator (IE) for Oregon for PacifiCorp's 2012 Request for Proposals for Base Load Resources. Staff also recommends the Commission approve staff's proposed conditional RFP approval process.

**DISCUSSION:**

PacifiCorp filed its draft 2012 Request for Proposals (RFP) for Base Load Resources on July 11, 2006. The RFP seeks up to four base load resources during the period 2012-2014, totaling 1,775 megawatts (MW). The company's Benchmark Resources<sup>1</sup> consist of the following:

- A 600 MW supercritical (pulverized) coal plant at the Hunter site in Utah in 2012
- A 340 MW share in a supercritical coal plant in Utah known as the Intermountain Power Project (IPP) Unit 3 in 2012
- A 750 MW supercritical coal plant at Jim Bridger Unit 5 in Wyoming in 2013<sup>2</sup>

<sup>1</sup> The Commission defines a Benchmark Resource as a "site-specific, self-build option." See Order No. 06-446 at 5.

<sup>2</sup> If PacifiCorp acquires resources in an amount equal to both the Hunter and IPP plants in 2012, it projects resource needs in 2013 would be 335 MW. If instead the company acquires resources in 2012 in an amount equal only to the IPP project, the 2013 requirement would be 935 MW. See Draft 2012 RFP at 2.

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- A 250 MW to 600 MW Integrated Gasification Combined Cycle (IGCC) coal plant in 2014, location to be determined before the Utah IE locks down the 2014 Benchmark Resource

The 2012 RFP replaces the 2009 RFP the company originally filed in this docket for a 550 MW "flexible" resource, using a natural gas-fired plant as the Benchmark Resource.

In its initial filing of the 2012 RFP, PacifiCorp requested a Commission decision on RFP approval by October 9, 2006. However, Judge Grant adopted parties' agreed-upon schedule, with slight modification, which targets a Commission decision at a special meeting on October 26, 2006. See UM 1208 Ruling and Prehearing Conference Memorandum, August 18, 2006.

#### Guidelines for RFP Approval

The Commission issued its revised competitive bidding guidelines on August 10, 2006. See Order No. 06-446. Guideline No. 7 lays out three criteria for RFP approval, consideration of multi-state regulation, and timeline:

...Public comment and Commission review should focus on: (1) the alignment of the utility's RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process. After reviewing the RFP and the public comments, the Commission may approve the RFP with any conditions and modifications deemed necessary. The Commission may consider the impact of multi-state regulation, including requirements imposed by other states for the RFP process. The Commission will target a decision within 60 days after the filing of the final draft RFP, unless the utility requests a longer review period when it submits the final draft RFP for approval. *Id* at 9.

#### IE-Related Guidelines

Guideline 5 addresses the IE selection and contracting process:

...Commission Staff, with input from the utility and interested, non-bidding parties, will recommend an IE to the Commission, which will then select or approve an IE for the RFP. The IE must be independent of the utility and likely, potential bidders, and also be experienced and competent to perform all IE functions identified in these Guidelines. The IE will contract

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with and be paid by the utility. The IE should confer with Commission staff as needed, on the IE's duties under these Guidelines. The utility may request recovery of its payments to the IE in customer rates. *Id* at 6.

In its discussion of the guideline, the Commission stated: "We believe the utility and non-bidders should participate in the process and provide input to Staff. Staff, however, should make a final recommendation to the Commission for approval, which could be accomplished at a public meeting. In approving a final selection, we will give due consideration to an IE already selected for the RFP by another state commission." *Id* at 7.

Guideline 6 states, "The utility will consult with the IE in preparing the RFPs, and the IE will submit its assessment of the final draft RFP to the Commission when the utility files for RFP approval." *Id* at 7.

Guideline 10 addresses the role of the IE in the competitive bidding process, including when the RFP includes utility ownership options:

- b. The IE will oversee the RFP process to ensure that it is conducted fairly and properly....
- d. If the RFP allows affiliate bidding or includes ownership options, the IE will independently score the utility's Benchmark Resource (if any) and all or a sample of the bids to determine whether the selections for the initial and final short-lists are reasonable. In addition, the IE will evaluate the unique risks and advantages associated with the Benchmark Resource (if used), including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.
- e. Once the competing bids and Benchmark Resource (if used) have been scored and evaluated by the utility and the IE, the two should compare results. The utility and IE should attempt to reconcile and resolve any scoring differences. If the two are unable to agree, the IE should explain the differences in its Closing Report.

*Id* at 12-13.

Under Guideline 11, the IE prepares a Closing Report for the Commission after the utility has selected its final short-list of bids, for use in any final short-list acknowledgment process. The IE's detailed bid scoring and evaluation results also are

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provided to the utility, Commission staff and non-bidding parties in the RFP docket, subject to terms of the protective order.

Finally, under Guideline 13, the IE participates in the final short-list acknowledgment process.

#### IE Hired by the Utah Commission

Utah State Law 54-17-101 requires PacifiCorp to use a solicitation process to construct or acquire significant energy resources, and the participation of an IE hired by the Public Service Commission of Utah (Utah Commission) to actively monitor the process for fairness and compliance with state law. The Utah Commission originally hired Merrimack Energy Group, Inc. in 2005 for PacifiCorp's 2009 RFP for flexible resources, then modified the contract in 2006 to accommodate the replacement 2012 RFP for base load resources.

Oregon staff discussed with Utah staff its solicitation process and acquired related documents, including the solicitation itself, key portions of Merrimack's bid, and the scope of work for the amended contract. Staff provided these materials to parties in this proceeding. Staff also submitted data requests to PacifiCorp related to Merrimack's independence, contact between both companies to date, how Merrimack's scope of work in Utah compares with Oregon's new bidding guidelines, and IE access to PacifiCorp's evaluation models. Finally, staff reviewed comments from Utah parties and materials Merrimack has produced for Utah's proceeding, including an August 30, 2006, report to the Utah Commission on the draft 2012 RFP.

#### Parties' Positions

Staff has held two workshops to date in this proceeding. IE selection for Oregon was a topic at both workshops. A Merrimack representative participated by phone at the first workshop. As requested, staff received written comments from parties on an IE for Oregon on September 5, 2006. Parties discussed these comments at a workshop the following day. At staff's invitation, PacifiCorp submitted response comments on September 11, 2006. Following is a summary of these comments:

##### *Northwest Independent Power Producers Coalition (NIPPC)*

NIPPC recommends the Commission select an IE other than Merrimack. First, NIPPC was an active participant in Docket LC 33, Portland General Electric's (PGE's) 2002 Integrated Resource Plan (IRP), which incorporated an RFP process resulting in part in the company's Port Westward plant. NIPPC states in its comments to staff, "NIPPC's experience in that RFP did not leave independent power producers with the impression

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that Merrimack was able to keep the bidding process fair.... Merrimack did not take exception to many issues NIPPC's consultants identified in their research of the same information, which left NIPPC wondering why issues that bidders believed to be important and worthy of correction were not addressed."

NIPPC provides several examples of issues it raised during Docket LC 33, including discounting of the price factor compared to non-price factors, comparative O&M costs for Port Westward vs. power purchase agreements, and discounting of PGE's credit risk considering what NIPPC views as the company's uncertain financial future at the time, as well as counter-party risk associated with the myriad of companies PGE would use to build the plant.

NIPPC notes that Merrimack may be able to perform better under the Commission's new bidding guidelines, and it is not recommending the Commission never again consider Merrimack. Nevertheless, NIPPC states that Oregon should want a different IE from Utah, particularly because of the size and importance of this RFP.

NIPPC notes that Utah regulators selected Merrimack to evaluate PacifiCorp's RFP from Utah's standpoint, and Oregon's energy policies are not the same. In particular, PacifiCorp seeks to acquire substantial base load generating resources and emphasizes coal as its preferred resource. NIPPC notes the Oregon Commission declined to acknowledge the action item in PacifiCorp's 2004 IRP for a base load plant to deliver energy to Utah in 2011, modeled as a pulverized coal plant. By contrast, NIPPC notes the Utah Commission's concern regarding acquisition of additional natural gas resources.

NIPPC sees the potential for serious conflicts between Oregon and Utah regarding the proper direction of PacifiCorp's resource acquisition. NIPPC asks, for example, whether Utah's IE can provide a "contra-indicated" report on the RFP process in Oregon, compared to its report in Utah, if the states' respective policies and rules lead to that result. NIPPC also asks how Oregon staff and parties will be able to ensure Oregon's preferences are accounted for in the IE's analysis, and whether the Merrimack analysis in Utah will be used in any state allocation proceeding if Utah supports acquisition of coal resources but Oregon does not.

NIPPC lays out its recommended process for carrying out the Commission's interest in having an evaluator who is "truly independent." It begins with the utility notifying Commission staff when the utility anticipates a need for a bidding process. NIPPC recommends that multi-jurisdictional utilities facilitate a process among the states to select a single IE, if the utility prefers (and, presumably, the states agree). NIPPC states that without the Oregon Commission's up-front involvement, the state effectively cedes

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IE selection to Utah. If Oregon hires its own IE, NIPPC recommends that staff issue a Request for Qualifications and Proposals for IE services. Staff would convene a single meeting seeking help in evaluating proposals from the utility and interested parties, including NIPPC.<sup>3</sup> Staff would make its recommendation to the Commission with input from the group. The Commission would then select an IE and issue an order directing the utility to contract with that IE and authorizing the utility to defer IE expenses.

However, due to the timing of PacifiCorp's 2012 RFP and the Commission's order on competitive bidding, NIPPC recommends an abbreviated process for IE selection and consideration of the IE's findings on RFP design:

- Staff adapts the solicitation document used by the Utah Commission to hire its IE, incorporating Oregon's bidding guidelines and reflecting an Oregon schedule. By September 22, staff sends its modified RFP document — along with Order Nos. 93-1383 (environmental cost guidelines), 06-446 (bidding guidelines) and 06-029 (PacifiCorp's 2004 IRP), as well as the 2004 IRP itself — to selected firms (Accion Group, Boston Pacific, and Gestalt Consulting).
- By October 13, bidders' responses are due.
- By October 19, staff recommends in its report to the Commission either a single entity or ranks the entities, based on the firms' responses to Oregon's RFP. Staff decides whether to convene a single meeting with one representative from each non-bidding party in Docket UM 1208 to take input on the responses.
- At its public meeting on October 26, the Commission issues an order selecting the IE and directing PacifiCorp to contract with that firm as soon as reasonably possible.
- Six weeks from the date its contract is executed with PacifiCorp, the IE submits to the Commission its assessment of the final draft RFP, addressing the three review criteria established in the new competitive bidding guidelines.

Presumably, parties would comment on the IE's assessment, and staff would follow up with its recommendation to the Commission on RFP approval at a public meeting.

Even assuming NIPPC's four-week IE selection process,<sup>4</sup> NIPPC's proposed process would delay consideration of PacifiCorp's 2012 RFP at least 11 to 13 weeks by staff's account — a week for PacifiCorp to contract with the Commission-approved IE; six

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<sup>3</sup> NIPPC notes that the organization itself is not a bidder.

<sup>4</sup> Staff shows below that the IE selection process will take longer than the four weeks NIPPC assumes in its timeline.



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weeks for the IE to produce its assessment of the draft RFP; and four to six weeks for parties to review the assessment and submit comments, for staff to prepare its public meeting memo, and for the Commission to consider the matter at a public meeting. NIPPC finds the delay inconsequential given the magnitude of the resources PacifiCorp intends to acquire through the RFP.

*Citizens' Utility Board (CUB)*

CUB generally agrees with the issues raised by NIPPC in its comments to staff and supports NIPPC's arguments and proposals. In particular, CUB agrees on the importance of a careful and reasoned procedure in selecting an IE. CUB cannot vouch for the firms NIPPC proposes and presumes that staff and other parties would add to the list as appropriate.

CUB states in its comments to staff that the RFP process that led to PGE's construction of Port Westward "did not strike us as sufficiently robust in its objectivity, and we were left with the impression that Merrimack did not aggressively challenge the measures and criteria that were used." CUB further notes that Merrimack's selection by the Utah Commission is problematic because "Oregon has different interests, goals, and processes than Utah, and it is not unreasonable for the Oregon Commission to select an independent evaluator whose sole mission is to see that Oregon's policy concerns are advanced."

Finally, CUB notes that the 2012 RFP "represents potentially billions of dollars of investment on behalf of customers, and, under no circumstance, should the Commission allow itself to be rushed to accommodate another party's schedule."

*Industrial Customers of Northwest Utilities (ICNU)*

ICNU notes in its comments to staff that IE selection "is a critically important first step in the difficult task of assuring that the RFP process is fair and unbiased, and will lead to the participation of independent power producers." ICNU has concerns about whether any IE can be truly independent if the utility hires and contracts with the IE, or if the utility is involved in the process of selecting the IE.

ICNU opposes the use of Merrimack as Oregon's IE. First, ICNU states that Utah and Oregon do not have the same energy needs or policy goals, pointing toward "divergent load growth, the different treatment provided to PacifiCorp's integrated resource plan, and the contrasting regulatory environments (i.e., Utah has a resource pre-approval process while Oregon does not)." ICNU states that it may not be opposed to using the same IE as Utah for small resource acquisitions. ICNU notes, however, that PacifiCorp is planning to build or acquire 1,775 MW of resources through the 2012 RFP. Therefore,

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ICNU argues that an Oregon IE must be independent of both PacifiCorp and the Utah Commission.

ICNU also is concerned about Merrimack's ability to identify problems with PacifiCorp's RFP or to raise concerns and flaws to Oregon staff, the parties and the Commission. ICNU states that Merrimack's involvement in past RFPs issued by PacifiCorp<sup>5</sup> and PGE "do not provide ICNU with confidence that Merrimack will be able to rigorously review, evaluate, and critique PacifiCorp's current RFP."<sup>6</sup>

Considering that the Oregon IE would be selected late in the current RFP process, ICNU recommends that Oregon staff conduct an expedited review of alternative candidates. ICNU specifically recommends the use of the Boston Pacific Company as Oregon's IE in this case, noting that a more formal process may be appropriate for future IE selections.<sup>7</sup> Further, ICNU recommends staff conduct an internal review of the potential candidates and accept comments from the UM 1208 parties before recommending an IE to the Commission. If staff's recommended IE is contested or controversial, ICNU recommends the Commission hear comments from the parties.

Finally, ICNU notes that PacifiCorp's 2012 RFP is the first competitive bidding process conducted under the Commission's new guidelines. ICNU believes that Oregon's IE must be "truly independent" and have the experience and objectivity to evaluate the entire bidding process, including RFP design.

#### *PacifiCorp's Initial Comments*

In its initial comments to staff, the company supported approval of Merrimack to serve Oregon's needs for an IE. In PacifiCorp's view, Merrimack has the independence, experience and competence to perform all the IE functions identified in Oregon's competitive bidding guidelines. For those functions required by the Oregon guidelines that are not covered in Merrimack's contract with the Utah Commission, PacifiCorp believes arrangements can be made with Merrimack to amend the Utah agreement to provide for the incremental services, or a new contract could be executed to cover such services.

Further, PacifiCorp expressed concern about practical issues associated with hiring a second IE at this stage of the RFP process. The company filed its RFP before the

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<sup>5</sup> Merrimack served as a consultant to the Utah Division of Public Utilities during PacifiCorp's application for a Certificate of Convenience and Necessity Authorizing Construction of the Lake Side Power Project in 2004.

<sup>6</sup> ICNU notes that it would have similar concerns about the use of Navigant as Oregon's IE. Navigant served as PacifiCorp's independent monitor for its RFP resulting in the company's Currant Creek plant.

<sup>7</sup> However, ICNU recommends that staff should at least provide notice to the public.

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Oregon Commission issued its new guidelines. PacifiCorp made a compliance filing on August 30, 2006, to largely conform the draft RFP to the order. However, in its amended filing the company requested the Commission not apply the following provision from Guideline 6: "The utility will consult with the IE in preparing the RFPs, and the IE will submit its assessment of the final draft RFP to the Commission when the utility files for RFP approval."

The company stated in its amended filing that because it filed the draft RFP prior to the Commission's issuance of the order, "it is not possible to fully comply with this requirement . . . ." In support of its position, the company states that the Utah IE submitted comments on September 16, 2005, to the Utah Commission on the draft 2009 RFP (with a natural gas-fired plant as the company's Benchmark Resource), and PacifiCorp took these comments into account when preparing the current RFP, for base load resources beginning in 2012 (with coal-fired plants as the company's Benchmark Resources).

PacifiCorp stated that rejection of Merrimack as the IE could substantially delay issuance of the 2012 RFP. In turn, PacifiCorp stated the company's ability to meet its resource needs in a manner that minimizes costs and risks would be negatively affected.

PacifiCorp also pointed toward cost savings if Oregon uses the same IE as Utah, and minimization of duplication of efforts. Finally, the company noted that having two IEs charged with the same tasks at the same time could create "administrative complexities" that would be exacerbated if the IEs have different opinions and approaches. The company presumes that recognition of such issues caused the Oregon Commission to state in its order that it would give due consideration to an IE selected by another state Commission.

#### *Commission Staff's Conditional Approval Concept*

At the September 6, 2006, UM 1208 workshop, staff raised the concept of *conditional* RFP approval that would allow the Commission to *reconsider* any initial approval of the 2012 RFP following an assessment by an IE (other than Merrimack) selected by the Oregon Commission. The Commission would consider conditional approval of the 2012 RFP at the UM 1208 public meeting on October 26, 2006.

If the draft RFP were approved conditionally<sup>8</sup> on that date, the Oregon IE would have a certain number of weeks from the date of contract execution with PacifiCorp to report to the Commission its findings regarding RFP design, considering the Commission's three criteria for RFP approval (described above). If the IE finds no significant flaw in RFP

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<sup>8</sup> In whole or in part, with or without additional conditions or modifications.

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design related to these criteria within this time period, any approval contingent on the IE's assessment would become final. If, however, the IE finds significant flaws related to RFP design, or the IE's findings cause staff or parties to identify significant flaws, the Commission would consider such findings at a public meeting and could modify its original order. PacifiCorp could then amend its RFP to address such concerns. The company has previously issued an amendment after RFP issuance. For example, the company recently amended its RFP for renewable resources.<sup>9</sup>

*PacifiCorp's Reply Comments*

On September 11, 2006, PacifiCorp provided additional comments to staff in response to parties' comments. The company continues to recommend Merrimack as Oregon's IE, stating that the Commission can ensure Merrimack performs the IE role contemplated by the Oregon guidelines by directing PacifiCorp to execute a contract with Merrimack covering these functions.<sup>10</sup> PacifiCorp also contests parties' comments regarding the role of the IE related to carrying out the state's energy policies, noting that the IE's role under guideline 10(b) is to "oversee the RFP process to ensure that is conducted fairly and properly."

However, PacifiCorp recognizes that NIPPC, ICNU and CUB advocate strongly for a different IE for Oregon than the IE hired by the Utah Commission. If the Commission favors this position, PacifiCorp asks that the Commission select a new Oregon IE in a manner that minimizes disruption of the current schedule for the 2012 RFP, in order to minimize risk to customers. Specifically, PacifiCorp recommends the Commission direct the IE to perform all tasks set forth in the bidding guidelines on a going-forward basis, i.e., oversee the ongoing RFP process from the time of hiring, but not review the design of the RFP.

The current schedule contemplates PacifiCorp's final resource selection in September 2007, with a Utah-mandated 180-day pre-approval process that would not result in a Utah decision until March 2008. The company notes that this timeframe would provide a 51-month schedule to meet a June 2012 start date, and most Engineering and Procurement Contractors are indicating a need for a minimum lead time of 54 months.

PacifiCorp states that it is important to maintain the current RFP schedule without any further delay<sup>11</sup> because the base load resources it seeks have a construction lead time

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<sup>9</sup> Filed March 21, 2006 (Docket UM 1118).

<sup>10</sup> PacifiCorp states that such a contract would be subject to Oregon Commission review and approval. While staff finds no such requirement in the competitive bidding guidelines, staff review of the scope of work and budget, prior to contract execution, is appropriate.

<sup>11</sup> PacifiCorp notes that in its initial filing, it requested a 90-day review period, rather than the targeted 60-day period contemplated by Guideline 7. In agreeing to the current schedule in the case, the company agreed to extend the review period by another two weeks.

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“between 4-5 years at best.” The company goes on to state that short delays in the RFP schedule could reduce or eliminate resource options to meet 2012, and even 2013, resource needs. The company notes that a reduction of options may increase the cost/risk profile of the resources procured through the RFP.

Alternatively, if the Commission concludes the Oregon IE must assess whether the design of the RFP will lead to a fair process, PacifiCorp recommends the Commission adopt an expedited schedule for acquiring an Oregon IE, with a new IE in place by October 26, 2006. The company recommends the IE be selected through an RFP process to ensure independence and competency. PacifiCorp believes that process could be conducted by staff or by the company, under staff’s direction.

Under this alternative, PacifiCorp states that the Commission could approve the 2012 RFP at the October 26, 2006, meeting, “conditioned upon execution of the Oregon IE’s contract and the Oregon IE’s review of the RFP for any material design issues that call into question the fairness of the RFP.” PacifiCorp suggests the Commission require these tasks be accomplished within six weeks, or by December 7, 2006. If no material design flaws are found, any approval conditioned upon the IE’s assessment would become final. If the Oregon IE uncovers any significant design issues, PacifiCorp would be required to amend the RFP to address the issues to satisfy the approval condition.

PacifiCorp states that under such a process, the 2012 RFP could move forward on its present schedule even with an Oregon IE reviewing the design of the RFP.

#### Options for the Commission’s Consideration

Following are options for the Commission’s consideration related to selecting an Oregon IE, determining the IE’s duties and considering approval of PacifiCorp’s 2012 RFP:

##### *Option 1: Select Merrimack Energy Group, Inc.*

The Commission would require PacifiCorp to contract for services to accommodate Oregon’s guidelines and Oregon’s schedule. There are two alternatives under this option:

##### *Option 1a: Select Merrimack and waive the requirement for review of RFP design.*

This is PacifiCorp’s preferred option. The Commission would simply consider Merrimack’s August 30, 2006, RFP assessment prepared for the Utah Commission. The assessment does not consider alignment with Oregon’s acknowledgment order for PacifiCorp’s 2004 IRP, or address thoroughly all of the issues of interest to Oregon staff or parties.

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*Option 1b: Select Merrimack and require the company to review RFP design based on Oregon's guidelines.*

Because Merrimack is already engaged in the RFP process, the company may be able to provide prior to the October 26 UM 1208 meeting an assessment tailored to Oregon's needs.

PacifiCorp argues in favor of using Merrimack as Oregon's IE for the 2012 RFP, primarily for practical reasons – to minimize or prevent delay in the RFP approval schedule and to avoid administrative complexities in working with two IEs. PacifiCorp also finds that Merrimack meets the Commission's interests in terms of independence and competence.

Comments from NIPPC, ICNU and CUB, summarized above, argue against using Merrimack. The parties do not have faith that Merrimack will aggressively identify flaws in RFP design or the ongoing RFP process, or pursue issues identified by staff and parties. They also argue against using the same IE for Oregon as in Utah, considering the size and type of resources PacifiCorp is seeking to acquire through the 2012 RFP.

*Option 2: Select a different IE for Oregon, but waive the requirement that Oregon's IE review RFP design prior to Commission consideration of RFP approval.*

This option addresses parties' interests in having a different IE for Oregon, but fails to address a key IE role – to provide the Commission with an assessment of RFP design based on Oregon's competitive bidding guidelines. RFP design is the starting point for a fair process, and the IE's assessment is an important consideration in RFP approval. However, this option would grant PacifiCorp's request that the Commission waive the requirement for the IE's assessment of RFP design, keeping the RFP approval process on schedule without the need for a conditional approval process as described below.

*Option 3: Select a different IE for Oregon, require IE review of RFP design, and consider conditional approval of the draft RFP.*

PacifiCorp accepts Option 3 as an alternative to its preferred options – in order of preference, Option 1 (particularly 1a) or Option 2. Option 3 would satisfy other parties' interests in having a different IE for Oregon and Oregon's IE reviewing RFP design. However, other parties do not support even conditional approval of the RFP prior to the Oregon's IE assessment.

Option 3 would avoid delay in issuing the RFP due to hiring an IE to serve Oregon's needs, if PacifiCorp chooses to proceed with approval conditioned on review of RFP design by Oregon's IE. The company has indicated that it would do so. However, conditional approval could be problematic if significant flaws are found in RFP design

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based on the IE's assessment. Commission reconsideration of the RFP could inconvenience PacifiCorp, as well as bidders that already completed, or substantially completed, work on their proposals, including any markups they made to the pro forma contracts.<sup>12</sup> Further, it is possible that potential bidders would not take the RFP as seriously if it were approved in Oregon on the condition that Oregon's IE found no significant flaws in RFP design. This concern could be mitigated by Utah Commission approval of the RFP, which would be granted without such a condition.

*Option 4: Delay consideration of RFP approval until an Oregon IE reviews RFP design.* NIPPC, ICNU and CUB favor this option, stating that the Commission should not be rushed into a decision on RFP approval especially considering the magnitude of the investments that will be made as a result of the process. Further, they believe that without an assessment of RFP design by Oregon's IE, the Commission would not have a sufficient basis on which to consider the RFP even for conditional approval.

PacifiCorp opposes this option because it would delay issuance of the RFP. The company argues that customers could be harmed by reduced resource options considering the on-line dates the company projects would be required to meet load. Delaying consideration of RFP approval, however, would avoid the problems described under Option 3, above.

#### Staff's Recommendation

Staff agrees with NIPPC, CUB and ICNU that it is reasonable that Oregon have its own IE to serve its needs for PacifiCorp's 2012 RFP, given the magnitude of the investment that will be undertaken through this process, issues related to multi-state allocation of resources, and differential treatment of the company's 2004 IRP by the Oregon and Utah Commissions. On this last point, staff notes that alignment of the utility's RFP with its *acknowledged* IRP is one of the three review criteria for RFP approval in Oregon.

NIPPC, CUB and ICNU strongly favor that Commission staff, and not PacifiCorp, conduct the IE solicitation and selection process. Staff proposes to accommodate this request and notes that the company does not oppose it. At the same time, non-utility parties are opposed to even *conditional* approval of the 2012 RFP until an Oregon IE provides to the Commission its assessment of RFP design.

Considering that PacifiCorp finds value in conditional approval of the 2012 RFP, staff's recommendation blends this concept with NIPPC's proposed process for selecting an Oregon IE for the 2012 RFP. In doing so, however, staff takes into account what we

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<sup>12</sup> PacifiCorp's draft RFP states that bids are due 75 days from RFP issuance. The company may be able to modify this timeline.

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believe is a realistic timeline both for IE selection/contracting and consideration of the IE's findings on RFP design. The following timeline is approximate:<sup>13</sup>

- By October 4, staff adapts the solicitation document used by the Utah Commission to hire its IE, incorporating Oregon's bidding guidelines and reflecting an Oregon schedule. The modified solicitation, along with related orders and PacifiCorp's 2004 IRP, are posted on the state's on-line solicitation notification system and sent directly to qualified firms identified by parties.
- By October 18, bidders' responses are due.
- At the October 26 UM 1208 public meeting, the Commission considers conditional approval of PacifiCorp's 2012 RFP<sup>14</sup> contingent on the Oregon IE's assessment of RFP design, considering the three criteria for RFP approval. PacifiCorp issues its 2012 RFP, if conditionally approved, on or after October 27.<sup>15</sup>
- By November 2, staff recommends in its report to the Commission an IE for Oregon, based on the firms' responses to Oregon's RFP and input from non-bidding parties.
- At its public meeting on November 7, the Commission issues an order selecting the IE and directing PacifiCorp to contract with that firm as soon as reasonably possible.<sup>16</sup>
- Six weeks from the date of contract execution with PacifiCorp, approximately December 19, the IE submits to the Commission its assessment of the final issued RFP, addressing the three review criteria established in the competitive bidding guidelines.
- Parties comment on the IE's assessment by January 9, and staff reports to the Commission shortly thereafter. If the IE finds no significant flaws in RFP design, or its findings do not cause staff or parties to identify additional flaws in RFP design, staff's report would recommend that the Commission deem the condition related to IE review to be satisfied. If, however, the IE's assessment raises concerns about

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<sup>13</sup> Staff's estimated timeline assumes that because the utility will be contracting with the IE, and not the Commission, certain state purchasing requirements will not be required. Staff is working with the Commission's Administrative Services Division and the Department of Justice (DOJ) to determine whether requirements such as DOJ review of the draft solicitation and a one-week bidders' protest period will be required.

<sup>14</sup> In whole or in part, with or without additional conditions or modifications.

<sup>15</sup> In its comments to staff on September 11, 2006, PacifiCorp states that it plans to issue the RFP in "November 2006." No date is specified.

<sup>16</sup> Staff assumes the contract can be executed within one week.



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RFP design, the Commission would consider the matter at a public meeting as soon as reasonably possible.<sup>17</sup>

**PROPOSED COMMISSION MOTION:**

Staff's proposed selection process for an Independent Evaluator for Oregon for PacifiCorp's 2012 Request for Proposals for Base Load Resources, and staff's proposed conditional RFP approval process, be approved.

UM 1208 - Independent Evaluator.doc

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<sup>17</sup> The Commission's public meeting schedule for 2007 is not yet available. The Commission also could consider the matter at a special public meeting.