

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1360

In the Matter of	)	
	)	
PACIFICORP, dba Pacific Power	)	ORDER
	)	
Request for Approval of Draft 2008 Request for Proposals.	)	

**DISPOSITION: APPLICATION APPROVED WITH CONDITIONS**

On December 24, 2007, PacifiCorp, dba Pacific Power (PacifiCorp or the Company) filed an application with the Public Utility Commission of Oregon (Commission) to open a docket to address a Request for Proposals (RFP) for energy resources that the Company planned to file. PacifiCorp also requested that the Commission select, on an expedited basis, an Oregon Independent Evaluator (IE) to review the 2008 RFP. Commission Staff (Staff) recommended that Accion Group and Boston Pacific Company, Inc. (Boston Pacific Company) jointly serve as the IE.<sup>1</sup> In Order No. 08-019, entered on January 16, 2008, the Commission opened Docket No. UM 1360 to address PacifiCorp's soon-to-be-filed 2008 RFP. The Commission also directed PacifiCorp to negotiate a contract with Boston Pacific Company, Inc. and Accion Group for IE services regarding the 2008 RFP.

On February 15, 2008, PacifiCorp filed, with the Commission, an initial Draft 2008 RFP to solicit up to 2,000 megawatts of unit contingent or firm resource capacity and associated energy for delivery to the east or west sides of PacifiCorp's system. Base load, intermediate load and summer peaking resources available for dispatch or scheduling by June 1 of 2012 to 2016 are eligible. Intermittent renewable resources<sup>2</sup> and unspecified purchases are not eligible. The RFP includes a description of the Company's proposed bidding process. Bidders can submit proposals for a variety of transactions. Market bids will compete against each other and against PacifiCorp's self-build options.

On March 5, 2008, a prehearing conference was held. At the time, the notice of intervention by the Citizens' Utility Board of Oregon (CUB) was recognized, and the petition to intervene of the Industrial Customers of Northwest Utilities (ICNU) was granted. Later, LS Power Associates, L.P. (LS Power) filed a petition to intervene that was granted on

<sup>1</sup> Accion Group and Boston Pacific Company, Inc. jointly served as the IE for PacifiCorp's 2012 RFP for base load resources in Docket UM 1208. Although the Commission declined to approve that RFP, in Order No. 07-018, the Commission did not alter advice, made in Order No. 06-676, that an Oregon IE be retained to review all RFPs, even those not approved by the Commission.

<sup>2</sup> The Company will accept bids for biomass and geothermal plants.

May 6, 2008. Constellation Energy Commodities Group, Inc. (Constellation) later filed a petition to intervene that was granted on May 15, 2008.

Pursuant to the procedural schedule adopted at the prehearing conference, on March 21, 2008, Staff and ICNU filed comments on the Draft 2008 RFP. On March 28, 2008, PacifiCorp filed the first version of the Final Draft 2008 RFP. On April 14, 2008, Staff filed the assessment reports of the Final Draft 2008 RFP by the Oregon IE. On April 25, 2008, Staff, ICNU and LS Power filed comments on the revised Draft 2008 RFP. PacifiCorp also filed comments, together with a revised Final Draft 2008 RFP. On May 7, 2008, Staff filed a supplemental assessment report of the Final Draft 2008 RFP by the Accion Group. On May 8, 2008, Staff filed a memorandum from the Boston Pacific Company regarding additional comments about the indexing of bids in the Final Draft 2008 RFP. On May 9, 2008, PacifiCorp filed supplemental comments, together with the last revised Final Draft 2008 RFP. On May 16, 2008, Constellation filed comments on the Final Draft 2008 RFP.

On May 20, 2008, the Commission considered the Final Draft 2008 RFP at a Public Meeting. At this Public Meeting, public comment was taken and Staff presented its final recommendations. A Staff Report, dated May 12, 2008, is attached as Appendix A, and incorporated by reference. The Staff Report contains a more detailed description of the Final Draft 2008 RFP. Base load, intermediate load and summer peaking resources available for dispatch or scheduling by June 1 of 2012 to 2016 are eligible. Intermittent renewable resources<sup>3</sup> and unspecified purchases are not eligible.

As the procedural history indicates, the Final Draft 2008 RFP was subject to significant discussion and evaluation, which influenced multiple revisions to the RFP, as well as the conditions to approval recommended by Staff. The Commission considers whether an RFP should be approved based on three criteria: 1) the alignment of the utility's RFP with its acknowledged Integrated Resource Plan (IRP)<sup>4</sup>; 2) whether the RFP satisfies the Commission's competitive bidding guidelines, as adopted in Order No. 06-446; and 3) the overall fairness of the utility's proposed bidding process.<sup>5</sup> Based on a review of the application, the Commission's records and public comment, the Commission finds that the RFP and bidding process satisfy these criteria. At its Public Meeting on May 20, 2008, the Commission adopted Staff's Recommendation and approved PacifiCorp's proposed RFP with the specified conditions.

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<sup>3</sup> The Company will accept bids for biomass and geothermal plants.

<sup>4</sup> The Commission entered Order No. 08-232 regarding PacifiCorp's 2007 Integrated Resource Plan (IRP) on April 24, 2008.

<sup>5</sup> See Guideline 7, Order No. 06-446 (at 9).

**ORDER**

IT IS ORDERED that the Final Draft 2008 Request for Proposals filed by PacifiCorp, dba Pacific Power, filed on April 25, 2008, is approved, with the conditions listed below:

1. PacifiCorp must include the following statement in the final RFP that the Company releases to the market:

In the event the Company receives necessary approvals from regulators and acquires the resource, the total resource need will be adjusted to account for the generating facility that is the subject of Oregon Docket UM 1374.”

Further, PacifiCorp must include in final short-list modeling the resources under consideration in Docket Nos. UM 1374 and UM 1208 unless the subject resources are no longer viable at that time. The Commission does not acknowledge a resource need through the 2008 RFP of 2,000 MW if PacifiCorp acquires the existing generating plant as planned or resources through the 2012 RFP.

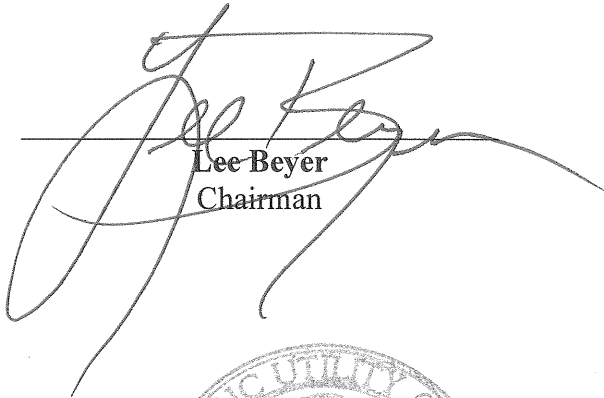
2. PacifiCorp must submit its detailed initial short-list scoring and weighting criteria with the Commission, for review by Staff and the Oregon IE, no later than one day before bidder responses are due. Specifically, the Company must provide the methodology for translating each bid’s initial price score – percent of forward price curve – into a score that can be blended with the non-price score. Further, the detailed scoring must show how the Company will award points for the non-price factors within each category.
3. Prior to the receipt of market bids, the Company must submit the detailed score for benchmark resources, with supporting cost information, pursuant to Guideline 8 of Order No. 06-446.
4. PacifiCorp must specify in the final RFP the maximum quantities of bids that will be included on the initial and final short-lists.
5. PacifiCorp must clarify in the final RFP what coal bids are acceptable and any requirements for indemnification related to the risk of greenhouse gas emissions and associated security.

6. PacifiCorp must adjust the submitted capital costs of benchmark resources for risk in the following manner:
  - a. Establish with the Oregon IE the indexes and percentage split between the indexes.
  - b. Add to the expected mean escalation of the indexes the 95<sup>th</sup> percentile escalation adjusted for the probability of its occurrence.
  - c. Include the risk adjustment for the benchmark resources in the final short-list evaluation, applying the agreed-upon escalator to 100 percent of the submitted capital costs.
7. PacifiCorp must address bid indexing in the following manner:
  - a. All reasonable indexes specified by the bidder will be considered. Indexes must be transparent, easy to forecast and independent.
  - b. Prior to the submission of bids, PacifiCorp must disclose to bidders which index forecasts it is using for evaluation, including the volatility forecasts for deriving the risk-adjusted value.
  - c. PacifiCorp must adjust the submitted capital costs of indexed bids for risk in the same manner specified in condition 6 for benchmark resources, but the adjustment will be applied only to the portion of capital costs that are indexed and to the reasonable indexes specified by the bidder.
  - d. The RFP must clarify that the bidder's costs above the specified indexing will not be reimbursed.
  - e. PacifiCorp must consider and include in the evaluation process any reasonable risk mitigation measures that a bidder may offer.
8. PacifiCorp must modify the RFP to clarify that eligible renewable resource bids with heat rates less than 6,900 MMBtu will be accepted, classified and evaluated based on the resource's unique operating characteristics.
9. Regarding credit requirements, PacifiCorp must:
  - a. Include a table in the RFP with heat rates and capacity factors for intermediate and summer peaking resources.
  - b. Use the capacity factors in this table for calculating the required security for intermediate and summer peaking resources and include an

- example of how the security amount for these resources will be determined.
- c. Specify in the RFP how credit requirements may be adjusted for non-asset backed bids less than five years as well as other bids with a term less than 10 years.
  - d. Provide items (a) through (c) above for IE and stakeholder review prior to issuing the RFP.
10. PacifiCorp must state in the RFP whether it will accept any change of law risk and, if so, specify that provision in the power purchase agreement template or state whether there will be an opportunity to negotiate allocation of that risk after identification of the final short-list.
  11. PacifiCorp must explore with Staff and the Oregon IE use of a capped success fee that assists in the recovery of IE costs. PacifiCorp must determine whether such an approach is allowed under competitive solicitation requirements in other states. If allowed, the Company must develop a success fee approach with the IE and solicit feedback on the approach from potential bidders prior to implementation.
  12. The Company's planning margin analysis must be conducted in a manner consistent with Guideline 11 in Order No. 07-002.
  13. PacifiCorp must replace a portion of the planned wind resources that are inputs to the RFP Capacity Expansion Model with geothermal, hydro and biomass if the Company receives such bids in its renewable resource RFPs in time to do so and the bids score well in the initial evaluation for those RFPs.
  14. The Commission does not acknowledge reductions from the Company's 2007 Integrated Resource Plan preferred portfolio related to the specified levels of combined heat and power resources. PacifiCorp's resource need for this RFP is reduced by the amount of these resources in its acknowledged 2007 IRP.
  15. RFP approval does not imply endorsement of any of the Company's benchmark resources.
  16. The Commission is neither approving the pro forma agreements included in the Final Draft 2008 RFP in their entirety, nor endorsing any specific term therein.

- 17. The Commission does not acknowledge reductions from the Company's 2007 IRP preferred portfolio related to the specified levels of Front Office Transactions.
- 18. PacifiCorp must report to the Commission within 30 days of the due date for bids on the Company's efforts to promote the final RFP and reasons market participants cited for not participating.
- 19. PacifiCorp must revise the final RFP to reference the correct tables that will be used to determine Design Plant Life.
- 20. PacifiCorp must work with the IE, Staff and the Parties to modify the bid evaluation process to allow adjustments to the Design Plant Life based on existing or planned plant improvements.

Made, entered, and effective JUN 05 2008.

  
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**Lee Beyer**  
Chairman

  
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**John Savage**  
Commissioner

  
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**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. 5

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: May 20, 2008

REGULAR   X   CONSENT        EFFECTIVE DATE        N/A       

DATE: May 12, 2008

TO: Public Utility Commission

FROM: Lisa Schwartz *LS*  
*lin* *EB*

THROUGH: Lee Sparling and Ed Busch

SUBJECT: PACIFIC POWER & LIGHT: (Docket No. UM 1360) Request for approval of Draft 2008 Request for Proposals.

**STAFF RECOMMENDATION:**

I recommend the Commission approve PacifiCorp's Draft 2008 Request for Proposals, as filed on April 25, 2008, with conditions.

**DISCUSSION:**

PacifiCorp filed its initial draft RFP on February 15, 2008. The company filed revisions on March 28 and April 25, 2008. The RFP will solicit up to 2,000 megawatts (MW) of unit contingent or firm resource capacity and associated energy for delivery to the east or west sides of PacifiCorp's system. Base load, intermediate load and summer peaking resources available for dispatch or scheduling by June 1<sup>st</sup> of 2012 to 2016 are eligible. Intermittent renewable resources<sup>1</sup> and unspecified purchases are not eligible.

Bidders can submit proposals for a variety of transaction types. For power purchase agreements (PPAs) and tolling agreements not backed by assets, the eligible term is up to five years. For all other transactions, the minimum term is five years. Except for load curtailment and Qualifying Facilities, the minimum bid size is 100 MW.<sup>2</sup> Market bids will compete against each other, as well as PacifiCorp's self-build options.

The Commission focuses its consideration of RFP approval on three criteria:

- The alignment of the utility's RFP with its acknowledged IRP

<sup>1</sup> The company will accept bids for biomass and geothermal plants.

<sup>2</sup> Minimum size for load curtailment is 3 MW; minimum size for Qualifying Facilities is 10 MW.

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- Whether the RFP satisfies the Commission's competitive bidding guidelines
- The overall fairness of the utility's proposed bidding process<sup>3</sup>

Staff provided its assessment of each of these items in comments filed March 21 and April 25, 2008. Staff filed the assessment of draft RFP design by the Oregon Independent Evaluators (IEs), Boston Pacific Company and Accion Group, on April 14, 2008. In order to inform parties' opening comments, the IEs provided initial comments on draft RFP design at a bidders/stakeholders workshop held March 13, 2008. The Commission issued its order on PacifiCorp's 2007 Integrated Resource Plan (IRP) on April 24, 2008.<sup>4</sup>

### **Staff's Response to Reply Comments**

In addition to staff, Industrial Customers of Northwest Utilities (ICNU), LS Power Associates and PacifiCorp filed reply comments. PacifiCorp's reply comments were accompanied by a revised draft RFP that responded to some of the conditions staff recommended in opening comments. To assist the Commission in understanding the remaining issues, staff asked PacifiCorp to advise whether the recommended conditions in staff's reply comments are acceptable. Staff also asked intervenors to advise whether the proposed conditions address their concerns.

PacifiCorp filed supplemental comments on May 7, 2008. PacifiCorp states that it agrees with staff conditions 1, 2, 3, 4, 8, 12, 13, 14, 15, 16, 17 and 18. After further clarifications, the company advises that staff condition 10 also is acceptable. As staff discusses below, the company does not propose to fully comply with proposed condition 1. However, staff believes its clarifications should address PacifiCorp's concerns. Staff also believes condition 9 as restated should be acceptable to the company. After conferring with the IE, staff agrees that condition 7, proposed in staff's reply comments, is not necessary. Therefore, staff believes the remaining disputes with PacifiCorp relate to conditions 5, 6 and 11. In addition, PacifiCorp has not yet reviewed condition 7 as it appears in this staff report. Issues remain with ICNU and LS Power.

### *Proposed Conditions in Staff's Reply Comments*

Following is a summary of parties' responses and staff's reply, by condition:<sup>5</sup>

- *Condition 1, accounting for the planned purchase of an existing generating facility* – Staff recommends the following condition: PacifiCorp must include the following

<sup>3</sup> See Guideline 7, Order No. 06-446 (at 9).

<sup>4</sup> Order No. 08-232 in Docket LC 42.

<sup>5</sup> Numbers correspond to staff's reply comments, April 25, 2008.



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statement in the final RFP the company issues to the market: "In the event the Company receives necessary approvals from regulators, the total resource need will be adjusted to account for the generating facility that is the subject of Oregon Docket UM 1374." Further, the company must include this resource in its modeling for the final short-list evaluation, if it intends to proceed with the acquisition.

In its April 25, 2008, filing, PacifiCorp responded by simply adding the word "purchases" among the items that may cause the company to acquire more or less power than specified in the draft RFP. In supplemental reply comments, however, PacifiCorp stated that it will include staff's proposed language "to the extent a project is approved."<sup>6</sup> The company also said it "may also include the resource in its modeling for the final short-list evaluation if it proceeds with the acquisition." (Emphasis added.)

PacifiCorp has clarified with staff that the company plans to adjust the resource need for the RFP only in the event that all resource approvals are received prior to the selection of the final short-list.<sup>7</sup> The company explains that it does not know if its planned purchase of an existing generating facility will go forward until all approvals are granted, including approval from the Federal Energy Regulatory Commission. If approvals are not granted, PacifiCorp believes that including the resource in modeling for the final short-list may preclude a potential resource that would otherwise have made the list.

Staff conferred with the Oregon IE on this matter. Staff and the IE recommend that PacifiCorp be required to include for final short-list modeling all resources under consideration in both the 2012 RFP and Docket UM 1374 processes, unless each conditional transaction is no longer viable at that time. These resources are far along the acquisition curve.

It is important to note that this modeling can be accomplished without sacrificing alternative resources proceeding to the final short-list. The company would simply perform the modeling assuming the resources under consideration in the 2012 RFP and Docket UM 1374 processes are successful, then remove these conditional transactions and see which other resources take their place. This would provide for a second tier of bids the company could proceed with if any of the transactions falls through. PacifiCorp can adjust its proposed maximum size for the final short-list — beyond what it specified in supplemental reply comments — to ensure alternative

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<sup>6</sup> PacifiCorp's supplemental reply comments at 2.

<sup>7</sup> On April 30, 2008, the Utah Public Service Commission approved the company's requested waiver of solicitation requirements in that state. See <http://www.psc.utah.gov/utilities/electric/elecindx/documents/0803535ogrffwos.pdf>.

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projects would not be precluded from the final short-list.

In addition, the Commission should state it does not acknowledge the resource need for the 2008 RFP is 2,000 MW if PacifiCorp acquires resources through the 2012 RFP or acquires the existing generating plant.

- *Condition 2, detailed initial short-list scoring and weighting criteria* – PacifiCorp states that it will comply with this condition.<sup>8</sup>
- *Condition 3, detailed score for benchmark resources submitted before receipt of market bids* – PacifiCorp clarifies that it will submit detailed scores required by Guideline 8 and agrees to comply with this condition.<sup>9</sup>
- *Condition 4, specify maximum bid quantities on the initial and final short-lists* – PacifiCorp fully addresses staff's recommendation on page 48 of the revised draft RFP.
- *Condition 5, clarification of acceptable coal bids and indemnification/security requirements for greenhouse gas emissions risk* – PacifiCorp believes the RFP provides sufficient definition of acceptable coal bids. Further, the company will review indemnification and securitization for emissions risk in Step 4 of the evaluation process.<sup>10</sup> Staff continues to recommend that the RFP provide clarity to avoid bidder confusion and maintain the integrity of the bidding process. Staff explained its interpretation of coal bids that would be compliant with the RFP, but PacifiCorp has not verified that staff is correct.

It is staff's understanding that Washington and California emissions performance standards do not allow PacifiCorp an opportunity in those states to recover costs associated with long-term coal resources, regardless of whether the bidder takes the CO<sub>2</sub> cost risk. Therefore, as a practical matter, it appears that PacifiCorp will only accept coal bids for a term of under five years — even if it were possible for a bidder to provide a flawless indemnification agreement with appropriate security.

If this is accurate, PacifiCorp should so state in the RFP. Six months after submitting proposals for the 2012 base load RFP, bidders of coal resources on the conditional final short-list were told they would have to provide indemnification as described above in order to remain viable bids.

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<sup>8</sup> PacifiCorp's supplemental reply comments at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4-5.

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Staff recommends that the current RFP provide additional clarity up-front on what coal bids are acceptable. Any compliant coal bids will be analyzed at various potential CO<sub>2</sub> costs to evaluate the risk.<sup>11</sup>

- *Condition 6, risk-adjusting capital costs of benchmark resources* - Order No. 06-446 (Guideline 10d) requires the IE to evaluate the unique risks and advantages associated with benchmark resources, including the regulatory treatment of costs or benefits related to actual costs of construction and plant operation differing from projections for the RFP.

The IE recommends the issue be addressed up-front by risk-adjusting 100 percent of the estimated capital costs of benchmark resources for evaluation purposes. Staff explained the approach in reply comments (at 3-4):

Evaluators would start with PacifiCorp's costs as submitted. Evaluators would then create a "risk adjusted" value by assuming that 100 percent of PacifiCorp's costs are implicitly tied to a 50/50 split of the indexes the company allows bidders to use — the CPI and PPI-Metals. Based on the current position and past volatility of the indexes, evaluators would develop a 95th percentile value for those indexes. This 95<sup>th</sup> percentile escalation would be adjusted for the probability of its occurrence (5 percent) and added to the expected mean escalation of the index.

For example, if the CPI and PPI are expected on average to rise by 5 percent during the escalation period and the 95<sup>th</sup> percentile values of the CPI and PPI are 10 percent, the total escalation factor applied to the entirety of the company's capital costs would be 5.5 percent ( $0.05 + (0.10 * 0.05)$ ). This approach is similar to PacifiCorp's calculation of the primary risk metric for the RFP, "Risk-Adjusted PVRR." The benchmark resources would be evaluated in both the initial and final short-list evaluations with this escalation factor included.

The IE states that the indexes and splits are open for discussion, but any suggested indexes and splits should be substantiated with data.

LS Power states that such an approach would improve comparability of bids and benchmark resources.

The IE recommends that all of the estimated capital costs for the benchmark resources be indexed for evaluation purposes because those estimates are not fixed

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<sup>11</sup> Staff's reply comments at 8.

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in any way.<sup>12</sup> The proposed risk adjustment is consistent with the primary risk metric PacifiCorp used in its Planning and Risk modeling for its 2007 IRP and the 2012 RFP, and that the company plans to use in the 2008 RFP. The IE recommends the same risk adjustment for the portion of capital costs that bidders may index (up to 40 percent).<sup>13</sup>

- *Condition 7, evaluation of risks related to transmission costs, capital costs and selling power off-system* – The IE recommended scenario analysis to test whether capital costs higher than expected under indexed bids, and higher than expected transmission costs, affect bid selection. The IE also recommended scenario analysis to test whether assumptions regarding off-system sales affect bid selection.

PacifiCorp objects to performing these additional analyses. The company states that the IE has not indicated how the additional analysis would be used in the decision process and what benefit it would provide. Further, the company is concerned that the recommendation could significantly increase modeling time. PacifiCorp maintains that allowing bidders to index a portion of capital costs addresses the issue of capital cost increases. PacifiCorp states that estimated transmission costs for this RFP will be based on more timely information than the 2012 RFP.<sup>14</sup> The company also plans to hold a transmission workshop prior to bid submittal to give bidders a better understanding of transmission costs and their impact on bid evaluation. PacifiCorp notes that off-system sales are included in its modeling.

Staff agrees with PacifiCorp that condition 7 in staff's reply comments is not needed.<sup>15</sup> Regarding capital costs, however, staff's rationale is different than PacifiCorp's. The Oregon IE's recommendation to adjust capital costs of benchmark resources and indexed bids for risk addresses this issue for staff. Regarding off-system sales, staff will rely on the Oregon IE to monitor how the company addresses this issue in modeling.

- *Condition 8, clarification of heat rates* – PacifiCorp has fully addressed the IE's recommendation on pages 7 and 10 of the revised RFP. The company plans to further modify the bid categories to eliminate the use of heat rates and use only

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<sup>12</sup> Boston Pacific Company's additional comments on indexing at 5.

<sup>13</sup> See "Indexing of Bids" below.

<sup>14</sup> Docket UM 1208 was originally established with an application for approval of a draft RFP for a flexible resource with a 2009 on-line date. The proceeding ultimately addressed an RFP for base load resources with on-line dates from 2012 to 2014. Because of the delay in establishing the final short-list for the RFP, transmission cost estimates updated at that time were substantially higher than originally estimated.

<sup>15</sup> Condition 7 proposed in this staff report addresses a different subject (bid indexing).

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capacity factors to define the categories.

- *Condition 9, clarification of credit requirements* – On May 7, 2008, staff filed Accion Group's report supplementing its initial assessment of RFP design. The supplemental report states that the revised RFP fully addresses the IE's credit-related recommendations with the exception described further below.

In lieu of credit matrixes, the revised RFP provides a formula that PacifiCorp will use to compute credit requirements for intermediate and peaking resources. However, bidders would still be unable to determine their credit requirement prior to bid submittal. To do that, the bidder would need the capacity factor of its unit on the PacifiCorp system as dispatched in the company's model. In its supplemental reply comments, PacifiCorp agrees to tie its formula to a heat rate and capacity factor table to be included in the final RFP. PacifiCorp also agrees to include an example of how the security amount will be determined.

The RFP states that the company will consider reducing security requirements for bids with a term less than 10 years. In its supplemental reply comments, PacifiCorp agrees to disclose in the RFP how it will adjust security amounts for non-asset backed bids with a term less than five years. However, the company has not addressed how it will calculate a potential reduction in credit requirements for other types of bids less than 10 years. Staff recommends the Commission adopt the IE's recommendation to do so.

Staff revised its proposed credit condition to reflect these changes.

- *Condition 10, change of law risk* – In its supplemental report, the Oregon IE continues to recommend that PacifiCorp state in the RFP whether it would accept any change of law risk or negotiate allocation of that risk after identification of the final short-list. The IE notes that change of law provisions are not universally included in PPAs and tolling agreements, but they are not uncommon in today's uncertain regulatory climate. PacifiCorp has advised staff that it will make the recommended clarification in the RFP. The company intends to negotiate with counterparties depending on the circumstances presented.
- *Condition 11, success fee* – ICNU has indicated to staff that a success fee could at least mitigate ICNU's concerns regarding fairness under PacifiCorp's proposed fee approach — bidders' fees pay only for the cost of the Utah IE and Oregon ratepayers pay for the cost of the Oregon IE.<sup>16</sup> Both staff and ICNU are interested in

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<sup>16</sup> PacifiCorp's approach attempts to comply both with bidding requirements in Utah and bidding guidelines in Oregon.

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reducing ratepayer costs, but do not want to discourage bidder participation.

PacifiCorp is concerned that a success fee would be a barrier to bidder participation. However, PacifiCorp's reply comments do not correctly describe the IE's recommendation. The IE states that the "substantial" success fee would be "in addition to modest bid fees."<sup>17</sup> Therefore, the bidder's fee could be *reduced*, encouraging participation. The IE states that in its experience, bidders do not object to well-designed success fees. That includes disclosing in the RFP the maximum success fee.

In contrast to a higher *bidder's* fee to pay for the costs of both IEs, staff is not convinced that a *success* fee would be a barrier to participation. A success fee would pale in comparison to the contract amount awarded to a successful bidder.

PacifiCorp further commented to staff that the company has not researched the results of RFPs using a fee structure that combines bidder fees and success fees. The company recommends this be considered for future RFPs, including the recently filed renewable resources RFP.

Staff continues to recommend that PacifiCorp be required to modify the RFP to include a success fee that reduces IE costs to Oregon ratepayers and unsuccessful bidders unless potential bidders indicate it is problematic, PacifiCorp demonstrates that a success fee may otherwise harm the solicitation process, or PacifiCorp demonstrates that a success fee conflicts irreparably with another state's requirements.

Staff notes that if PacifiCorp selects one or more self-build options, and success fees are either not collected or do not total what they would otherwise, the company could request that the IEs' costs, less fees collected, be recovered through deferred accounting.

- *Condition 12, planning margin analysis* – PacifiCorp agrees to this condition.
- *Condition 13, renewable resource inputs into RFP Capacity Expansion Model* – PacifiCorp agrees to this condition.
- *Conditions 14 to 17* - PacifiCorp does not object to these Commission disclaimers. Regarding condition 14, the company has agreed to reduce the need for the 2008

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<sup>17</sup> See Accion Group's "Assessment of PacifiCorp's 2008 All Source RFP Design," April 11, 2008, at 19.

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RFP consistent with the amount of combined heat and power resources in its acknowledged 2007 IRP.

- *Condition 18, reporting on RFP promotion and bidder participation* – PacifiCorp agrees to this condition but notes that it will report on reasons market participants did not participate in the RFP to the extent the company receives such information.

### Security

Bidders must post security in accordance with amounts and timelines specified in the RFP. In its assessment of draft RFP design, the Oregon IE stated that it found the security requirements for bidders that are not creditworthy to be “reasonable and consistent with good industry practice.”<sup>18</sup>

LS Power submitted initial comments at the time set for reply. First, LS Power states that “... the amount of security required by PacifiCorp in the Final Draft RFP is unreasonably high and will limit bidder participation in the RFP. Additionally, the levels of security required could present a significant cost to bidders and a built-in bias towards self-build projects.”<sup>19</sup>

The Oregon IE’s supplemental report restates that it finds “...the balance between cost to bidders and the level of security provided to ratepayers and shareholders to be reasonable.”<sup>20</sup> The IE does not share LS Power’s concern that the credit terms create an unfair advantage for PacifiCorp’s self-build options, given that the utility is subject to regulatory review and cost disallowances and cannot include a risk premium reflecting those possible disallowances. Further, the IE does not want to increase risk to ratepayers by reducing bidder security requirements.

Instead, the IE recommends the Commission consider other approaches to equalizing the risk to ratepayers of a self-build proposal. The IE provides one example: If the utility selects its benchmark resource and there’s a delay in commercial operation or operational deficiency — of a type equivalent to an event that would trigger a draw on a bidder’s credit collateral — the utility would be subject to an automatic reduction in rates. The amount would be equal to what a bidder maintaining a credit score equal to PacifiCorp’s would have been required to post for a plant of similar size and operational characteristics. Staff conferred with the IE regarding whether a bidder with PacifiCorp’s credit rating would be required to post security. The IE stated that such a bidder would

<sup>18</sup> *Ibid* at 18.

<sup>19</sup> LS Power Associates’ comments, April 25, 2008, at 3.

<sup>20</sup> Accion Group, “Supplemental Assessment of PacifiCorp’s 2008 All Source RFP Design,” at 2.

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be required to post security for a sizable plant with an on-line date in the later years of the eligible range.

Staff believes this proposal comes too late in the process to be considered, given its lack of precedent in Oregon and likely elsewhere. Staff recommends this issue be further reviewed in subsequent RFPs and any future review of the Commission's competitive bidding guidelines.

Second, LS Power takes issue with when security must be posted. Specifically, LS Power objects to the requirement that 10 percent of the requirement be posted by the Effective Date for a 2012 resource and increase 10 percent every six months, with all of the security required 24 months after the Effective Date. Instead, LS Power recommends that bidders post 10 percent of the amount prior to financial closing and 90 percent when project financing is achieved. Further, LS Power recommends that security be filed prior to financial closing only in the event that a pre-determined milestone is not reached.

The Oregon IE does not find LS Power's position to be in ratepayers' interest. The IE states that PacifiCorp's requirement is consistent with other recent RFPs. The IE further states, "LS Power's approach would leave PacifiCorp and its customers exposed to significant risk of non-performance during a period when a non-investment grade counterparty is unfunded. In the event that a developer cannot secure project funding, a task solely in the control of the developer, the risk to the Company and its customers matures and its costs are realized. Accordingly, Accion believes that deferring the posting of credit support or collateral as proposed by LS Power to be inadvisable."<sup>21</sup>

Third, LS Power suggests that the RFP allow bidders to submit as many as three bid prices: 1) with the required level of security; 2) with no security; and 3) based on a security structure proposed by the bidder. According to LS Power, this approach would give the Commission and the IE a better understanding of the cost of credit requirements and allow bidders to optimize bids to what they view as acceptable security levels. Given the lack of interest on the part of the Oregon IE to reduce bidder security requirements, staff does not recommend the Commission require PacifiCorp to include this provision in the RFP.

#### Indexing of Bids

On May 8, 2008, staff filed Boston Pacific Company's additional comments on indexing of bids. The Oregon IE concludes that indexing of bids as proposed in the revised RFP is satisfactory as long as PacifiCorp considers creative proposals and the risks of

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<sup>21</sup> *Ibid* at 3.



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indexed bids (and benchmark resources) – and any risk mitigation measures proposed by bidders – are appropriately evaluated. Specifically, the IE recommends the following:

- The maximum amount of capital costs that bidders can index should remain at 40 percent, as in the 2012 RFP. The IE states that the 2012 RFP had adequate competition with this level of indexing, and the IE has not heard from any bidder that it would not bid into the 2008 RFP with indexing at this level. Requiring bidders to fix 60 percent of their capital costs may result in a higher risk premium embedded in bids. However, competition with other bids and benchmark resources serves as a check on excessive risk premiums. Further, the more fixed the bid price, the less risk to ratepayers.
- PacifiCorp's revised RFP indicates that bidders can propose an alternate index if it is transparent and easily measurable. The IE recommends that all indexes proposed by bidders should be considered and evaluated if they are transparent, easy to forecast and independent — i.e., the bidder has no control over the index. The IE states that the rising cost environment demands such creative solutions.
- Indexed bids should be adjusted in the evaluation process in the same manner recommended for benchmark resources (condition 6), but with the adjustment applied to the portion of capital costs indexed and using the reasonable indexes specified by the bidder. The IE makes this recommendation in order to recognize the risk inherent in an indexed bid and to give credit to fixed bid proposals. The IE also believes this could encourage bidders to offer lower-risk fixed bids.
- PacifiCorp should provide bidders the forecast it is using for the specified index and the assumed volatility for deriving the risk-adjusted value. Values for the CPI and PPI-metals indexes must be distributed to bidders prior to the submission of bids.
- The RFP should clarify that bidder's costs above the specified indexing will not be reimbursed.
- PacifiCorp should consider any risk mitigation measures that a bidder may offer and account for them in the evaluation process. For example, bidders could cap their capital costs — and any other costs. The IE wants to ensure that bidders are not discouraged from innovative risk management approaches.

*Effect of Other Acquisition Processes on Bidder Participation*

In reply comments, ICNU recommends PacifiCorp delay issuance of the RFP until it can accurately reflect the resources it intends to acquire through the solicitation. Specifically,

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ICNU states that the company should wait until the conclusion of its 2012 RFP (Docket UM 1208) and its requested waiver of the Commission's competitive bidding guidelines to procure an existing resource (Docket UM 1374). ICNU raises legitimate concerns about how the market may view the integrity of PacifiCorp's current and future RFP processes if the company solicits 2,000 MW of resources but acquires significantly less through the process.

Staff conferred with the Oregon IE about the potential dampening of bidder interest due to these ongoing processes. The IE recommends PacifiCorp address the issue by explaining to bidders – possibly in a cover letter – the extent to which potential acquisitions through other processes are a “done deal” and, in a manner protecting confidentiality, the remaining need for additional resources with on-line dates through 2016 even if the company acquires the other resources. Staff agrees and adds that the company may wish to explain the timeline for resolution of these processes.

Staff asked PacifiCorp to explain how the 2008 RFP provides bidders the necessary information to optimize the on-line date and resource size of their bids in order to align with PacifiCorp's remaining resource requirements after its other acquisition processes. PacifiCorp states that bidders can propose various in-service dates for the same project, including deferral or acceleration options. Thus, bidders can propose dates that may better align with the company's ultimate resource needs as they evolve over time.<sup>22</sup>

#### Changes to Comply with Utah Requirements and Recommendations

*Blinding* - PacifiCorp agrees with the IEs' recommendation not to blind bids because it is time-consuming and did not add value in the 2012 RFP process. However, the company advises that Utah law requires blinding of all bids and a waiver of the requirement is not possible at this time. PacifiCorp plans to revise the draft 2008 RFP to accommodate the blinding requirement. Staff does not object, but hopes the issue can be resolved in the future.

*Milestones* – PacifiCorp will modify Form 2 based on recommendations from the Utah IE and Division of Public Utilities to provide specific milestones for bidders for deferral, acceleration and buyout options. Staff does not object.

*Initial Short-List Evaluation* – The revised draft RFP specifies that bids less than or equal to 60 percent of adjusted forward price projections receive the maximum 70 percent score for price, and bids equal to or greater than 140 percent of the adjusted forward price projections receive a zero price score. Prices between the ranges will be linearly interpolated. To address the Utah IE's concern that the specified price ranges

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<sup>22</sup> See pages 23-24 of the revised draft RFP filed April 25, 2008.

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could lead to non-price weights having the primary impact on short-list selection, PacifiCorp will revise the ranges for the price scoring if needed based on the bid prices received and the forward price curve at the time of evaluation. Staff does not object, so long as PacifiCorp confers with the Oregon IE and staff on any revision to the ranges used in the price scoring.

**PROPOSED COMMISSION MOTION:**

PacifiCorp's Draft 2008 Request for Proposals, as filed on April 25, 2008, be approved with the following conditions:

1. PacifiCorp must include the following statement in the final RFP the company issues to the market: "In the event the company receives necessary approvals from regulators, the total resource need will be adjusted to account for the generating facility that is the subject of Oregon Docket UM 1374." Further, PacifiCorp must include in final short-list modeling the resources under consideration in Docket Nos. UM 1374 and UM 1208 unless the subject resources are no longer viable at that time. The Commission does not acknowledge a resource need through the 2008 RFP of 2,000 MW if PacifiCorp acquires the existing generating plant as planned or resources through the 2012 RFP.
2. PacifiCorp must submit its detailed initial short-list scoring and weighting criteria with the Commission, for review by staff and the Oregon IE, no later than one day before bidder responses are due. Specifically, the company must provide the methodology for translating each bid's initial price score – percent of forward price curve – into a score that can be blended with the non-price score. Further, the detailed scoring must show how the company will award points for the non-price factors within each category.
3. Prior to the receipt of market bids, the company must submit the detailed score for benchmark resources, with supporting cost information, pursuant to Guideline 8.
4. PacifiCorp must specify in the RFP the maximum quantities of bids that will be included on the initial and final short-lists.
5. PacifiCorp must clarify in the RFP what coal bids are acceptable and any requirements for indemnification related to the risk of greenhouse gas emissions and associated security.

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6. PacifiCorp must adjust the submitted capital costs of benchmark resources for risk in the following manner:
  - a. Establish with the Oregon IE the indexes and percentage split between the indexes.
  - b. Add to the expected mean escalation of the indexes the 95<sup>th</sup> percentile escalation adjusted for the probability of its occurrence.
  - c. Include the risk adjustment for the benchmark resources in the initial and final short-list evaluation, applying the agreed-upon escalator to 100 percent of the submitted capital costs.
  
7. PacifiCorp must address bid indexing in the following manner:
  - a. All reasonable indexes specified by the bidder will be considered. Indexes must be transparent, easy to forecast and independent.
  - b. PacifiCorp must provide to bidders the index forecast it is using and the volatility the company assumes to derive the risk-adjusted value. Values for the CPI and PPI-metals indexes must be distributed to bidders prior to the submission of bids.
  - c. PacifiCorp must adjust the submitted capital costs of indexed bids for risk in the same manner specified in condition 6 for benchmark resources, but the adjustment will be applied only to the portion of capital costs that are indexed and to the reasonable indexes specified by the bidder.
  - d. The RFP must clarify that the bidder's costs above the specified indexing will not be reimbursed.
  - e. PacifiCorp must consider and include in the evaluation process any reasonable risk mitigation measures that a bidder may offer.
  
8. PacifiCorp must modify the RFP to clarify that eligible renewable resource bids with heat rates less than 6,900 MMBtu will be accepted, classified and evaluated based on the resource's unique operating characteristics.
  
9. Regarding credit requirements, PacifiCorp must:
  - a. Include a table in the RFP with heat rates and capacity factors for intermediate and summer peaking resources.
  - b. Use the capacity factors in this table for calculating the required security for intermediate and summer peaking resources and include an example of how the security amount for these resources will be determined.
  - c. Specify in the RFP how credit requirements may be adjusted for non-asset backed bids less than five years as well as other bids with a term less than 10 years.
  - d. Provide items (a) through (c) above for IE and stakeholder review prior to issuing the RFP.

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10. PacifiCorp must state in the RFP whether it will accept any change of law risk and, if so, specify that provision in the power purchase agreement template or state whether there will be an opportunity to negotiate allocation of that risk after identification of the final short-list.
11. PacifiCorp must modify the RFP to include a success fee that reduces IE costs to Oregon ratepayers and unsuccessful bidders unless potential bidders indicate it is problematic, PacifiCorp demonstrates that a success fee may otherwise harm the solicitation process, or PacifiCorp demonstrates that a success fee conflicts irreparably with another state's requirements.
12. The company's planning margin analysis must be conducted in a manner consistent with Guideline 11 in Order No. 07-002.
13. PacifiCorp must replace a portion of the planned wind resources that are inputs to the RFP Capacity Expansion Model with geothermal, hydro and biomass if the company receives such bids in its renewable resource RFPs in time to do so and the bids score well in the initial evaluation for those RFPs.
14. The Commission does not acknowledge reductions from the company's 2007 Integrated Resource Plan preferred portfolio related to the specified levels of combined heat and power resources. PacifiCorp's resource need for this RFP is reduced by the amount of these resources in its acknowledged 2007 IRP.
15. RFP approval does not imply endorsement of any of the company's benchmark resources.
16. The Commission is neither approving the pro forma agreements included in the 2008 RFP in their entirety, nor endorsing any specific term therein.<sup>23</sup>
17. The Commission does not acknowledge reductions from the company's 2007 IRP preferred portfolio related to the specified levels of Front Office Transactions.
18. PacifiCorp must report to the Commission within 30 days of the due date for bids on the company's efforts to promote the RFP and reasons market participants cited for not participating.

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<sup>23</sup> This provision is similar to one adopted by the Commission in Order No. 04-091 (Docket No. UM 1118) for PacifiCorp's previous renewable resources RFP.