

ITEM NO. 1

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: November 2, 2007**

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

**DATE:** October 25, 2007

**TO:** Public Utility Commission

**FROM:** Lisa Schwartz

**THROUGH:** Lee Sparling and Ed Busch

**SUBJECT:** PACIFIC POWER & LIGHT: (Docket No. UM 1208) Update on 2012 Request for Proposals for Base Load Resources. Informational only.

**STAFF RECOMMENDATION:**

Staff does not have a recommendation but seeks to inform the Commissioners about concerns it has with PacifiCorp's proposed changes to its Request for Proposals (RFP) for base load resources.

**DISCUSSION:**

PacifiCorp<sup>1</sup> issued its final RFP on April 5, 2007, for up to 1,700 megawatts (MW) of base load resources, following approval by the Public Service Commission of Utah (Utah Commission). The Public Utility Commission of Oregon (Commission) rejected an earlier version of the RFP. The Commission found the RFP was not aligned with PacifiCorp's acknowledged 2004 Integrated Resource Plan (IRP), and the company had failed to justify the need for 1,109 MW of base load resources. See Order No. 07-018.

On October 1, 2007, PacifiCorp filed a motion with the Utah Commission to amend its RFP, requesting expedited treatment. See Utah Docket 05-035-47.<sup>2</sup> The purpose of the Commission's special public meeting is to provide an opportunity for PacifiCorp to explain to the Commission the proposed RFP changes and rationale, and for the Commission to receive comments from the Oregon Independent Evaluators, staff, parties and the public on the proposed changes.

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<sup>1</sup> Dba Pacific Power & Light in Oregon and Rocky Mountain Power in Utah.

<sup>2</sup> See <http://www.psc.utah.gov/elec/Indexes/0503547indx.htm>.

Following is a summary of the requested changes to the RFP:

- Add two benchmark resources<sup>3</sup> with a 2012 in-service date — natural gas-fired resources at Carrant Creek and Lake Side, existing company generation sites in Utah (The company is *not* eliminating its current 2012 Benchmark Resource, a 340 MW share of a planned supercritical pulverized coal facility in Utah, Intermountain Power Project 3 – IPP 3.)
- Allow new bidders to submit proposals and allow existing bidders to refresh bids and submit new proposals
- Change the request for qualifications process to eliminate the upfront credit requirement. Commitment letters or letters of credit would be due within 10 business days of notification that the bid has been selected for the initial short-list<sup>4,5</sup>
- Change the response due date from June 19, 2007, to January 18, 2008
- Change the date that bids must remain effective<sup>6</sup> from June 15, 2008, to January 9, 2009
- Make a similar date change to Officer Certification Forms

The Oregon Independent Evaluators are providing a separate report to the Commission that provides more detail on PacifiCorp's proposed amendments.

On September 28, 2007, PacifiCorp filed a motion with the Utah Commission requesting additional protective measures prior to filing further justification for the proposed RFP changes. The company states that "...disclosing any of the information surrounding the bid evaluation process and the status of the bids could prove detrimental to the integrity of the RFP process and jeopardize the bidders and the Company's competitive positions." See Rocky Mountain Power's Motion for Additional Protective Measures and Request for Expedited Treatment at 2.

The motion sought to bar parties other than Utah Commission staff and the Utah Independent Evaluator<sup>7</sup> from receiving "...certain information that is non-public information and commercially sensitive to the request for proposals process...." *Id.*, Proposed Order at 1. Two non-bidding intervenors filed objections. On October 12, 2007, the Utah Commission issued an order incorporating a stipulated agreement

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<sup>3</sup> Utility self-build options.

<sup>4</sup> Existing bidders will need to update qualification information only if it has changed since submittal.

<sup>5</sup> PacifiCorp previously issued an RFP amendment extending until May 25, 2007, the date by which bidders must meet the Request for Qualifications (RFQ) requirements. The amendment also allowed new bidders to reply to the RFQ and extended the RFP submission date to June 29, 2007.

<sup>6</sup> Unless released by the company if the proposal does not make the short list.

<sup>7</sup> Merrimack Energy Group.

between the company and these parties, providing them access to the confidential information.<sup>8</sup>

### *Procedural History in Oregon*

PacifiCorp originally filed an application in Docket UM 1208 on June 28, 2005, seeking approval of an RFP for an east-side resource to be in-service in summer 2009. The company subsequently asked the Commission to defer consideration. On October 27, 2005, the company filed a motion to suspend the docket, stating that its updated analysis had eliminated the resource need previously forecasted for 2009. Shortly thereafter, PacifiCorp filed an update to its 2004 IRP (Docket LC 39) stating that a base load plant would be needed in 2012.

On July 11, 2006, PacifiCorp filed a draft RFP to acquire base load resources with in-service dates from 2012 to 2014 to meet east-side loads.

On August 10, 2006, the Commission issued new competitive bidding guidelines that would “apply to all pending and future RFP proceedings.” See Order No. 06-446 at 15. On August 30, 2006, PacifiCorp filed a revised draft RFP to address the updated guidelines. The company filed two additional revisions of the draft RFP, on October 4 and November 1, 2006, in response to comments made by parties in Oregon and Utah.

On September 19, 2006, the Commission approved staff’s proposals for a conditional RFP approval process and a selection process for an Oregon Independent Evaluator. The conditional approval process was designed to avoid delay in issuing the RFP due to hiring an Oregon Independent Evaluator. Further, the process provided that the Commission could reconsider any initial approval of the RFP following the Independent Evaluator’s assessment. See Order No. 06-550.

At the public meeting on November 7, 2006, the Commission approved the selection of Accion Group and Boston Pacific Company to jointly serve as Oregon’s Independent Evaluators.

On December 20, 2006, the Commission ruled on PacifiCorp’s motion requesting clarification on the role of the Independent Evaluators in the event the RFP was not conditionally or finally approved. The Commission determined that the company should retain the Oregon Independent Evaluators to review its bidding process even if the RFP is not conditionally or finally approved. The Commission recognized that even in the absence of an approved RFP, a utility might be able to obtain acknowledgment of its RFP final short-list if it can demonstrate the final choice of resources is aligned with its

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<sup>8</sup> The Utah Commission issued an errata order on October 15, 2007.

acknowledged IRP. The Commission also recognized that a utility may seek cost recovery of resources acquired through an RFP the Commission did not approve. The Commission found that the Oregon Independent Evaluators would continue to play an important role by helping inform any decision on short-list acknowledgment or the prudence of acquired resources. See Order No. 06-676.

On January 16, 2007, the Commission denied the company's request for RFP approval. See Order No. 07-018.

### *Staff Concerns*

Staff has two primary concerns related to PacifiCorp's proposed RFP amendments, addressing two of the Commission's competitive bidding goals:<sup>9</sup>

- Goal 1: Provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints
- Goal 5: Be understandable and fair

PacifiCorp is proposing to add two self-build options six months after issuing its RFP, and several months after bids were due, because of problems with its 2012 benchmark resource, the IPP 3 coal plant. According to the company, public statements and actions by the Intermountain Power Agency and Los Angeles Department of Water and Power "...indicated that they would no longer support the development of IPP 3, which puts at risk the timeliness and viability of the construction of this 2012 benchmark." See Rocky Mountain Power's Motion to Amend Its 2012 Request for Proposals and Request for Expedited Treatment at 8. The company further states:

The existing company Benchmark for 2012 ... may be delayed or ultimately determined to not be viable for circumstances outside of the company's control. The company is required to have a viable company Benchmark to ensure the integrity of the competitive process, to discipline the market to provide cost effective resources and ensure the company can deliver safe and reliability [sic] electricity to retail customers starting in June 2012. The Company has amended Attachment 1 to include additional Company Benchmarks for 2012 at the Currant Creek and Lake Side site[s]. This amendment will not impact a Bidder's ability to submit a proposal on the Company sites as further described in the Base Load Request for Proposal[s]. *Id.*, Exhibit B at 7-8.

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<sup>9</sup> See Order No. 06-446 at 2.

Staff's first concern is that PacifiCorp cannot maintain a fair process when, mid-way through it, the company changes the rules to its apparent benefit. Bidders are not similarly afforded such an option. If the facility a bidder originally proposed is no longer a viable option, the bidder is simply out of luck unless PacifiCorp unilaterally decides to reopen its solicitation.

Further, the RFP allows bidders to propose facilities at PacifiCorp sites where the company is now proposing additional benchmark resources — Currant Creek and Lake Side.<sup>10</sup> To the extent a bidder already has proposed a facility at one of those sites, staff's concerns about fairness are further heightened. During the company's 2003-A RFP process, design changes to its self-build option (Currant Creek) after the bids were received helped spur a Utah law designed to prevent such perceived self-dealing.<sup>11</sup>

Staff's second concern is for the bidders who already have spent considerable time and money to participate in the RFP. The company is now making it harder to win by increasing competition two ways — by adding two benchmark resources for 2012 and allowing new bidders to participate. Staff is concerned not only with how this will affect the current RFP results, but participation in future solicitations, as well. Ultimately, consumers will be harmed if independent power producers do not find it worthwhile to bid here because the process is either not fair or perceived to be unfair. Fewer bids mean fewer chances to acquire the best resources for Oregon customers.

A third concern relates to the change in the bid effectiveness date from June 15, 2008, to January 9, 2009. Bidders that submitted proposals timely would have to hold their bids for roughly seven more months. That ties up the bidder's proposed facilities, as well as its financial resources, and existing bidders with viable projects may pull out of the process as a result.

Staff has reviewed the Oregon Independent Evaluators' memorandum to the Commissioners and the confidential attachments. Staff supports their comments and recommendations regarding the RFP process.

#### **PROPOSED COMMISSION MOTION:**

N/A

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<sup>10</sup> A bidder may propose an Asset Purchase and Sale Agreement at either site and/or an Engineering, Procurement and Construction contract for the Currant Creek site.

<sup>11</sup> Utah Code § 54-17-101, *et seq.*