

September 6, 2011

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, WA 98504-7250

ATTN: David W. Danner  
Executive Director and Secretary

**RE: PacifiCorp's Amended Petition for Waiver of Certain Requirements Related to  
Requests for Proposals Contained in WAC 480-107 – Docket UE-111418**

Dear Mr. Danner:

PacifiCorp d.b.a. Pacific Power & Light Company (PacifiCorp or Company) hereby submits an original and two (2) copies of PacifiCorp's Amended Petition for Waiver of Certain Requirements Related to Requests for Proposals Contained in WAC 480-107. An electronic copy of the filing will also be sent to the Commission's record center.

Communications regarding this petition should be addressed to:

Washington Dockets  
PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
[washingtondockets@pacificorp.com](mailto:washingtondockets@pacificorp.com)

Mary Wiencke, Legal Counsel  
PacifiCorp  
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In addition, PacifiCorp requests that all formal correspondence, Staff requests and data requests regarding this petition be addressed to:

By E-mail (preferred): [datarequest@PacifiCorp.com](mailto:datarequest@PacifiCorp.com)

By Regular Mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232

Washington Utilities and Transportation Commission

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Informal inquiries may be directed to me, at (503) 813-6043.

Sincerely,

Handwritten signature of Andrea Kelly in cursive, with the initials "EWR" written in a smaller font at the end of the signature.

Andrea Kelly  
Vice President, Regulation

Enclosures

cc: David Nightingale, WUTC  
Deborah Reynolds, WUTC  
Vanda Novak, WUTC  
Steve Johnson, WUTC

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

In the Matter of the Petition of  
  
PACIFICORP, d.b.a. Pacific Power &  
Light Company,  
  
Petitioner

DOCKET UE-111418  
PacifiCorp's Amended Petition for Waiver  
of Certain Requirements Related to  
Requests for Proposals Contained in WAC  
480-107

1. Pursuant to WAC 480-107-002(3) and WAC 480-07-370(b), PacifiCorp, d.b.a. Pacific Power & Light Company (Company) petitions (Petition) the Washington Utilities and Transportation Commission (Commission) for a waiver of certain requirements related to requests for proposals (RFP) contained in WAC Chapter 480-107. Pursuant to WAC 480-07-395(5), the Company requests that this Petition amend the petition filed August 3, 2011, in the above-referenced docket.
2. The Company is an electric company and public service company in the State of Washington within the meaning of RCW 80.04.010, and is subject to the Commission's jurisdiction with respect to its prices and terms of electric service to retail customers in Washington. The Company provides electric service to approximately 126,665 retail customers in the State of Washington and approximately 1.7 million total retail customers in Washington, California, Idaho, Oregon, Utah and Wyoming.
3. PacifiCorp's name and address:

Washington Dockets  
PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
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## **Procedural Issues**

4. On August 3, 2011, the Company filed its original petition for waiver of certain requirements related to RFPs contained in WAC 480-107. On August 11, 2011, the Company presented its original petition for waiver at the Commission's open meeting. At the open meeting, the Commission requested additional information with respect to the basis for the Company's request. Further, the Commission requested greater specificity with regard to which rules the Company is requesting waiver. The Company agreed to provide such additional information and specificity in an amended petition; which constitutes the instant filing. Pursuant to WAC 480-07-395(5), the Commission may allow amendments to pleadings on such terms as promote fair and just results. This amendment meets this requirement as it provides additional detail and context to aid the Commission in reaching a fair and just result.

## **Introduction and Background**

5. On May 31, 2011, in Docket UE-100514, the Company filed its 2011 integrated resource plan (2011 IRP) pursuant to WAC 480-100-238. The 2011 IRP preferred portfolio identifies resources needed to serve the west balancing authority area (BAA) over the next three years. Table 8.16 of the 2011 IRP, included here as Attachment 1, provides detail on the preferred portfolio resources by east and west region, resource type, and the year the resource is required. This consists of a mix of resources which includes front office transactions (FOT) at liquid hubs from existing or new generation sources, demand-side management (DSM), thermal plant turbine upgrades, combined heat and power (CHP), and renewable resources. For each identified resource the Company has procurement processes in place that are tailored to efficiently and effectively acquire each

resource identified in the west region from 2011 to 2013. For reasons explained below, these processes are the most efficient mechanism, from the perspective of the Company and bidders, to procure the type of resource needed. However, in each instance, the process identified as the most efficient deviates from the RFP process as explicitly contemplated by the Commission's rules. In each case, the Company seeks waiver of the relevant rules in order to effectively procure each resource in the most efficient and cost-effective manner. This waiver request is in the public interest because it allows the Company to utilize procurement processes that are specifically designed, by type of resource, to achieve the maximum benefit for PacifiCorp's customers. Depending on the resource, the Company seeks either a waiver of the entire WAC Chapter 480-107 or a limited waiver of certain sections of WAC Chapter 480-107. Discussed below are a description of each resource, the procurement process for acquiring each resource, how and whether each procurement process complies with the requirements of WAC 480-107, and an explanation of why a waiver of certain requirements of WAC 480-107 is in the public interest.

### **Front Office Transactions**

#### *Overview*

6. FOTs are proxy market purchases, assumed to be firm, that represent procurement activity made on a forward basis to help the Company cover short energy or capacity positions. As proxy resources, firm FOTs represent a range of purchase transaction types. They are usually standard products, such as heavy load hour (HLH), light load hour (LLH), and/or daily HLH call options (the right to buy or call energy at a strike price) and typically rely on standard enabling agreements as a contracting vehicle. Firm FOT prices

are determined by comparing the pricing provided by bidders to the then-current forward market price for power. An optimal mix of these purchases would include a range in terms for these transactions. Solicitations for firm FOTs can be made years, quarters or months in advance. Annual firm FOT transactions can be available up to three or more years in advance depending on the liquidity and market depth of the product being provided. Seasonal firm FOT transactions are typically delivered during quarters and can be available from one to three years or more in advance. The terms, points of delivery, and products all vary by individual market point.

7. Two FOT products were included in the 2011 IRP portfolio analysis: an annual firm FOT flat product and a third-quarter firm FOT HLH product. An annual firm FOT flat product reflects energy provided to PacifiCorp at a constant delivery rate over all the hours of a year. Third-quarter HLH firm FOT transactions represent purchases received 16 hours per day, six days per week from July through September.
8. The 2011 IRP preferred portfolio includes firm FOTs to address the majority of the west side BAA need within the next three years, from the following market hubs:
  - California Oregon Border (COB), Flat firm Annual and 3<sup>rd</sup> Quarter Heavy Load Hour – 400 MW of installed capacity;
  - Mid-Columbia, Flat firm Annual and 3<sup>rd</sup> Quarter Heavy Load Hour – 400 MW + 375 MW of installed capacity with 10% price premium; and
  - Southern Oregon / Northern California, 3<sup>rd</sup> firm Quarter Heavy Load Hour – 50 MW of installed capacity.

To arrive at these maximum quantities, the Company considered the following: 1) historical operational data and institutional experience with transactions at the market

hubs; 2) the Company's forward market view, including an assessment of expected physical delivery constraints and market liquidity and depth; and 3) financial and risk management consequences associated with acquiring purchases at higher levels, such as additional credit and liquidity costs. Prices for firm FOT purchases are associated with specific market hubs and are set to the relevant forward market prices, time period, and location, plus appropriate wheeling charges.

9. Firm FOT purchases allow the Company to procure short-term firm energy products from existing generating resources or new firm resources, if provided. The resource need requirements may vary from year-to-year due to the fluctuation in load and generation or due to planned and forced maintenance assumptions on existing resources. In utilizing firm FOTs on a short-term basis, the Company retains the flexibility to meet shorter-term resource deficits without the need to commit to a long-term built resource, which could take 18 to 24 months to solicit and an additional 36 to 42 months to construct. In this way, the Company can tailor the firm energy/capacity FOT products it procures on a quarterly basis to meet its peak needs as well as account for load forecast deviations without over committing and effectively managing costs to customers. Firm FOTs allow the Company to determine its resource requirements on a year-by-year and/or quarterly basis instead of committing to new long-term resources.
10. Although from a planning perspective the IRP uses specific types of resources as proxy resource(s) in the base case and in the preferred portfolio, this should not be considered to be the only resource type or technology that PacifiCorp is willing to consider to meet its resource needs. For example, to the extent a firm physical or financial toll or a qualifying facility is proposed that provides either an annual or third quarter product the company

would compare the costs of all the proposals to each of the proposals received to evaluate the economics of each of the resources. Furthermore, the Company may opt to contract for more or less power, depending on such items as the quality of bids received, updates to the company's forecasts, regional transmission availability and timing, and changes in the wholesale energy market conditions.

*FOT Procurement Process (Market RFP)*

11. The Company procures firm FOTs through the use of a Market Request For Proposals (Market RFP or Mini-RFP) that solicits bids for firm energy products for specified time periods and points of delivery. The Market RFP is specifically designed to procure the type of firm FOTs needed consistent with the 2011 IRP. The solicitation reflects the then-current forward market price for firm energy to meet the peak requirements at liquid trading hubs in the west. Market RFPs are issued frequently and in response to fluctuating market conditions (e.g. regional and or non-regional economic or political conditions, weather, transmission conditions, load demand conditions, resource performance conditions) and are less complex than an RFP used to procure new or existing generating facilities and/or long-term stand-alone power purchase agreements as the firm FOT typically involve transactions that are contracted under standard terms and conditions under an umbrella agreements (Edison Electric Institute (EEI), Western Systems Power Pool (WSPP), International Swaps and Derivatives Association (ISDA)). When considering timing of issuance, the Company considers current, expected market and fundamental factors. In order to effectively respond to changing conditions, and optimize the benefits of the market, the Company typically issues a Market RFP within a short period of time following the identification of the need to do so. In addition, bidders



will typically only keep pricing open to the Company for up to 2 hours so execution of a transaction must be completed within a very short timeframe. In this way, the Company is able to use Market RFPs in order to retain timing and flexibility to transact while leveraging, the market depth of the delivery point, the transparency and the liquidity that exist in the west side BAA.

12. The Market RFP is issued to all WSPP members via an email, sent as blind carbon copy to all WECC market participants. The Company maintains and updates a record of market participant contact information, including contact information for utilities, power marketers and developers. When issuing Market RFPs, and prior to the due date, the Company describes the desired enabling agreement and/or confirmation that will be used to document any consummated transactions. Historically, the enabling agreements used have been the WSPP agreement, ISDA agreement or EEI agreement which set forth the standard non-price terms and conditions governing the transactions. Bidders providing responses to the Market RFP are requested to have at least one of these agreements already in place for the Company prior to accepting a firm bid, however, this is not a mandatory requirement.

*Overview of WAC Chapter 480-107*

13. The rules established under WAC 480-107 require utilities to solicit bids, rank project proposals, and identify any bidders that meet minimum selection criteria.<sup>1</sup> These rules do not establish the sole procedures utilities must use to acquire resources. Utilities may also construct electric resources, operate conservation programs, purchase power through negotiated contracts, or take other action to satisfy their public obligations.<sup>2</sup> A utility

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<sup>1</sup> WAC 480-107-001(1).

<sup>2</sup> *Id.*

must submit to the Commission a proposed RFP and accompanying documentation no later than one hundred thirty-five days after the utility's integrated resource plan is due to be filed with the Commission.<sup>3</sup>

14. The Company sets forth below the requirements of WAC 480-107 and explains how the Market RFP complies with the rules set forth in that chapter, and why a waiver of certain requirements of WAC 480-107 is in the public interest. The discussion below excludes certain administrative rules of WAC 480-107; the Company is not seeking waiver of any of these rules.<sup>4</sup>

*WAC 480-107-015 – The Solicitation Process*

15. WAC 480-107-015(1)-(2). This rule states that:

Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate in the RFP process. Bidders may propose a variety of energy resources including: Electrical savings associated with conservation; electricity from qualifying facilities; electricity from independent power producers; and, at the utility's election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property. Qualifying facility producers with a generation capacity of one megawatt or less may choose to participate in the utilities' standard tariffs without filing a bid.

Consistent with the first requirement of this section, the Company would receive and consider proposals from a variety of energy resources, as long as they met the solicitation product requirements identified in the Market RFP. The Company does not need to limit its consideration of bids to market purchases and therefore is able to comply with this

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<sup>3</sup> PacifiCorp filed its petition for waiver on August 3, 2011, within the 135-day window. WAC 480-107-015(3)(b).

<sup>4</sup> The following sections are not discussed in detail herein because they are discussed elsewhere in the Petition or are administrative in nature: 480-107-001 (Purpose and Scope); 480-107-002 (Application of Rules); 480-107-004 (Additional Requirements); 480-107-006 (Severability); 480-107-145 (Filings – Investigations); 480-107-999 (Adoption by Reference); 480-107-007 (Definitions).

requirement. Similarly, the Company will comply with WAC 480-107-015(2), which requires that RFP include a declaration of utility or affiliate participation in the bidding process, because the Market RFP will contain information about whether a utility or its affiliate/subsidiaries may participate.<sup>5</sup>

16. WAC 480-107-015(3). This rule states that:

(3) Timing of the solicitation process.

(a) The rules in this section do not apply when a utility's integrated resource plan, prepared pursuant to WAC 480-100-238, demonstrates that the utility does not need additional capacity within three years.

(b) A utility must submit to the commission a proposed request for proposals and accompanying documentation no later than one hundred thirty-five days after the utility's integrated resource plan is due to be filed with the commission. Interested persons will have sixty days from the RFP's filing date with the commission to submit written comments to the commission on the RFP. The commission will approve or suspend the RFP within thirty days after the close of the comment period.

(c) A utility must solicit bids for electric power and electrical savings within thirty days of a commission order approving the RFP.

(d) All bids will remain sealed until expiration of the solicitation period specified in the RFP.

Upon approval of the waiver request contained herein, the Company will submit for approval its Market RFP, consistent with WAC 480-107-015(3)(b). The Company will solicit bids within thirty days of a Commission order approving the RFP in accordance with WAC 480-107-015(c). The Company will then work with the Commission and other interested persons to ensure that adequate time is given for review of the Company's proposed RFP. However, because the bids are faxed and/or emailed to the Company and are reviewed and evaluated within a two-hour timeframe, the bids are not sealed. The Company therefore requests waiver of WAC 480-107-015(d) in order to not require

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<sup>5</sup> The company does not plan to allow utility, affiliate or subsidiary participation in the Market RFP.

sealed bids. This waiver is consistent with the public interest because it allows the Company to leverage current market conditions to benefit its customers by attempting to capture attractive market pricing and opportunities.

17. WAC 480-107-015(4)-(5). The Company will comply with WAC 480-107-015(4), as it allows utilities, at their discretion, to issue an RFP that limits project proposals to resources with specific characteristics as well as to issue RFPs more frequently than required by this rule. WAC 480-107-015(5) does not apply to the Company in that it provides a mechanism for interested persons to receive notice from the Commission of a utility's RFP filings.

*480-107-025 – Contents of the Solicitation*

18. WAC 480-107-025(1). This rule states that

The RFP must identify the resource block, consisting of the overall amount and duration of power the utility is soliciting, the initial estimate of avoided cost schedule as calculated in WAC 480-107-055 Avoided cost schedule, and any additional information necessary for potential bidders to make a complete bid.

The Company's proposed Market RFP is provided as Attachment 2. The Market RFP identifies each of these items: 1) the minimum bid of 25 MW in 25 MW increments for Standard On-Peak (6x16) products that will allow acquisition of the overall amount solicited over the duration the utility is soliciting; and 2) reference to market forward price curve (e.g., the Mid-Columbia or California Oregon Border market hubs) as the initial estimate of avoided cost for which bids will be evaluated against. In addition, the Market RFP also includes any specified resource terms, including but not limited to, firmness of energy, capacity amount, delivery requirements, eligible points of delivery, and scheduling requirements.

19. WAC 480-107-025(2)-(5). The Market RFP contains all of the content required by these rules. It documents that the size of the resource block is consistent with the range of estimated new resource needs identified in the utility's integrated resource plan in accordance with WAC 480-107-025(2). It explains the general evaluation and ranking procedures the utility will use in accordance with WAC 480-107-035 project ranking procedure, and includes additional minimum eligibility criteria, in accordance with WAC 480-107-025(3). The additional minimum eligibility requirements include the Company's credit requirements as the selection of bids are contingent on Company credit approval which is dependent on the bidder's credit rating, notional dollar amount of specified transaction, and the term of specified transaction. The Market RFP also includes the due date and time of bid response and due date and time of completed evaluation in accordance with WAC 480-107-025(4). Further, the Market RFP contains all of the security requirements and rationale for them, as required by WAC 480-107-025(5).
20. WAC 480-107-025(6). This rule encourages utilities to consult with Commission staff during the development of the RFP. The Company has done this, and will continue to do so.

*WAC 480-107-035 – Ranking Procedures*

21. WAC 480-107-035(1). This rule states that the procedures and criteria the utility will use in its RFP to evaluate and rank project proposals are subject to Commission approval. The Company acknowledges this and will submit its ranking procedures for Commission review with its submittal of the Market RFP.
22. WAC 480-107-035(2). This rule states:

At a minimum, the ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties,

resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference adopted by Washington state or the federal government and environmental effects including those associated with resources that emit carbon dioxide. The ranking criteria must recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, and contract provisions. The ranking process must complement power acquisition goals identified in the utility's integrated resource plan.

The Company evaluates the results of the Market RFP based on price in comparison to the Company's current market position, which is based on its forward market curve. The forward market curve reflects the then-current, competitive forward market price for energy/capacity and considers an assessment of physical delivery constraints and market liquidity and depth. Also, the forward price curve considers the range, or price spread, between the average buyers' price and the average sellers' price in the market. This ensures that the Company procures the optimal amount of energy/capacity at the lowest reasonable cost, adjusted for risk. To the extent bidders provide resource options other than energy and capacity resources from the market then the Company will evaluate those proposals using a ranking criteria which will include any benefits, costs or risks associated with the resource as it pertains to the Company's dispatch rights of the resource, land ownership, development risk if any and other risks that may be imposed on customers which may include the impact, if any, of carbon dioxide.

23. WAC 480-107-035(3)-(5). The Company will retain each proposal, a summary of the proposal pricing, and the final ranking of all proposed projects available for public inspection in accordance with WAC 480-107-035(3). Further, the Company acknowledges that it may reject bids on the grounds set forth in WAC 480-107-035(4)-(5).

24. WAC 480-107-035(6). This rule allows competing bidders to request an independent evaluation of the bid if the utility, or the utility's affiliate or subsidiary submits a bid in response to an RFP. This rule will not apply to the proposed Market RFP because the Company does not plan to allow its subsidiaries or affiliates to bid in the Market RFP.

*WAC 480-107-045 – Pricing and Contracting Procedures*

25. WAC 480-107-045(1). This rule states that:

Once project proposals have been ranked in accordance with WAC 480-107-035 Project ranking procedure, the utility must identify the bidders that best meet the selection criteria and that are expected to produce the energy, capacity, and electrical savings as defined by that portion of the resource block to which the project proposal is directed.

Typically bidders' proposals are due within 7 days of when the Market RFP is issued. If a bid is found to best meet the selection criteria, that bid is selected for transacting on the Market RFP due date. The Company confirms the transaction terms on the same day via a recorded phone line within approximately 2 hours and the transaction is executed. This verbal execution is then followed up with a written confirmation which documents the agreed-upon price terms and conditions. An example of a written confirmation is provided as Attachment 3.

26. WAC 480-107-045(2). This rule states that the project proposal's price, pricing structure, and terms are subject to negotiation. The Company acknowledges that these items are negotiable.

*WAC 480-107-055 – Schedules of Estimated Cost*

27. WAC 480-107-055(1). This rule states that a utility must file annually a schedule of estimated avoided cost for the energy and capacity associated with the resource block the

utility solicited in its most recent RFP filed pursuant to WAC 480-107-025. The Company intends to file this schedule in the fourth quarter of 2011.

28. WAC 480-107-055(2). This rule states that:

Schedules of estimated avoided cost are to be based upon:

- (a) The most recent project proposals received pursuant to an RFP issued under these rules;
- (b) Estimates included in the utility's current integrated resource plan filed pursuant to WAC 480-100-238;
- (c) The results of the utility's most recent bidding process; and
- (d) Current projected market prices for power. The utility must file documentation supporting its schedule of estimated avoided cost.

The Company estimates its avoided costs consistent with this rule. The Company's avoided cost is calculated based on its Schedule 37 (for Qualified Facilities (QF) 2 megawatts or less) or market price (for QFs larger than 2 megawatts). Schedule 37 avoided cost prices are prepared using GRID runs to determine the value of the avoided energy during the sufficiency period and the all-in cost of a combined cycle combustion turbine for the deficiency period where the sufficiency and deficiency period is determined based on the load and resource plan for the western BAA. Schedule 37 avoided cost prices are updated and filed every year in the fourth quarter covering a five-year period. For QFs greater than 2 megawatts, the Company offers projected market prices for power at its avoided cost consistent with the definition of avoided costs contained in WAC 480-107-007.<sup>6</sup> The Company addresses these large QFs on an

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<sup>6</sup> "Avoided costs" means the incremental costs to a utility of electric energy, electric capacity, or both, that the utility would generate itself or purchase from another source, but for purchases to be made under these rules. A utility's avoided costs are the prices, terms and conditions, including the period of time and the power supply attributes, of the least cost final contract entered into as a result of the competitive bidding process described in these rules. If no final contract is entered into in response to a request for proposal (RFP) issued by a utility under these rules, the utility's avoided costs are the lesser of:

(1) The price, terms and conditions set forth in the least cost project proposal that meets the criteria specified in the RFP; or



individual basis and provides avoided cost market prices specific to the timing and characteristics of the proposed resource.

29. WAC 480-107-055(3)-(4). To the extent that the Company revises its estimated avoided cost schedule, it will file such revisions with the Commission along with documentation supporting the revision as required by WAC 480-107-055(3). The Company also acknowledges that the schedule of estimated avoided cost provides only general information to potential bidders about the costs of new power supplies; it does not provide a guaranteed contract price for electricity, in accordance with 480-107-055(4).

*WAC 480-107-065 – Eligibility for Long-Run Conservation Purchase Rates*

30. WAC 480-107-065(1)-(2). These rules solely apply to conservation suppliers. Because conservation bids are required by WAC 480-107-065(2)(a) to be over a time period greater than five years, the Company does not expect to receive any eligible conservation bids in response to its Market RFP. Therefore, the Company does not expect that the requirements of these rules will apply with respect to the Market RFP issued to procure FOTs as identified in the 2011 IRP.

*WAC 480-107-075 – Contract Finalization*

31. WAC 480-107-075(1)-(5). The rules of this section govern the potential development of a final contract with any bidder. WAC 480-107-075(1) grants a utility discretion to decide whether to enter into a final contract. As mentioned above, the Company confirms transaction terms on the same day via a recorded phone line within approximately 2 hours and then documents the terms of the agreed-upon transaction with a written confirmation which includes the price terms and conditions. However, in the event the Company

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(2) Current projected market prices for power with comparable terms and conditions.

receives proposals for resources other than energy or capacity resources that meet the criteria set forth in the RFP, the Company would consider whether or not to enter into a final contract. In the event the Company and the bidder opt to enter into a final contract, the Company will follow the requirements set forth in WAC 480-107-075(2)-(5).

*WAC 480-107-085 – Obligations of Generating Facilities to the Utility*

32. WAC 480-107-085(1)-(3). The rules of this section set forth the obligations of the utility and an owner or operator of a generating facility purchasing or selling electricity under this chapter. Given the short-term nature of the resources solicited in the Market RFP, the Company does not expect to receive proposals for new generating assets, which may take 36 to 42 months to engineer, procure and construct. Therefore, the Company does not expect that the requirements of these rules will apply with respect to the Market RFP issued to procure FOTs as identified in the 2011 IRP. In the event the Company receives a proposal for a new generating asset from an eligible bidder that meet the requirements of the solicitation, the Company will follow the requirements set forth in 480-107-085(1)-(3).

*WAC 480-107-095 – Obligations of the Utility to Qualifying Facilities and WAC 480-107-105 – Rates for Sales to Qualifying Facilities*

33. These sections govern certain aspects, including rates and services provided, of the Company's relationship with qualifying facilities. The Company currently follows these rules with respect to its relationship with existing qualifying facilities. To the extent a qualifying facility is a winning bidder resulting from the issuance of the Market RFP, the Company will continue to comply with these rules with respect to those qualifying facilities.

*WAC 480-107-115 – System Emergencies and WAC 480-107-125 – Interconnection Costs*

34. These sections address requirements for generating facilities. The Company currently follows these rules with respect to existing generating facilities. Given the short-term nature of the resources solicited in the Market RFP, the Company does not expect to receive proposals for new generating assets, which may take 36 to 42 months to engineer, procure and construct. Therefore, the Company does not expect that these requirements will apply with respect to the Market RFP issued to procure FOTs as identified in the 2011 IRP. In the event the Company receives a proposal for a new generating asset from an eligible bidder that meet the requirements of the solicitation, the Company will follow the requirements set forth in these sections.

*WAC 480-107-135 – Conditions of Purchase of Electrical Power or Savings from a Utility, a Utility’s Subsidiary or Affiliate*

35. This section sets forth the requirements for a utility, its subsidiary or affiliate participation in the utility’s bidding process. This requirement will not apply to the Company because the Market RFP will not allow the utility, subsidiaries or affiliates to bid.

**Other West BAA Resources**

*Overview*

36. In addition to FOTs, Table 8.16 of the 2011 IRP identifies demand-side management (DSM), thermal plant turbine upgrades, combine heat and power (CHP) and renewable resources as needed resources in the west BAA in the next three years. For each of these resources the Company has established procurement processes in place to effectively

acquire each resource. These are described below. In addition, the Company provides an explanation of why each requested waiver is in the public interest.

*Jim Bridger Turbine Upgrades, CHP Biomass, and DSM Class 2*

37. The preferred portfolio supports efficiency improvements to existing resources, when economically justified. Turbine upgrades identified in the preferred portfolio are to Jim Bridger Unit 2 and are part of ongoing planned capital investments and ongoing maintenance and management of the Company's thermal fleet. The procurement of goods and services to accomplish the upgrades utilize an engineer, procure and construct (EPC) RFP, specifically targeted to the upgrade project. The EPC RFP associated with the Jim Bridger Turbine Upgrades was already conducted and design and fabrication of the upgrades are currently underway.
38. The preferred portfolio also includes distributed generation biomass-based Combined Heat and Power (CHP) resources which are acquired through qualified facilities (QF) contracts, utilizing the terms and conditions of avoided cost purchases. These resources are secured utilizing tariff Schedule 37 (Washington) if their nameplate capacity is 2 megawatts or below or at market prices pursuant to WAC 480-107 if the QF resource is greater than 2 megawatts. The Company's standard tariff can be found here:

<http://www.pacificpower.net/about/rr/wri.html>

39. The preferred portfolio also identifies Class 2 DSM programs, which are energy efficiency programs, such as refrigerator recycling, energy education in schools, residential dwelling energy efficiency improvements, and commercial/industrial equipment efficiencies. These programs are secured utilizing Washington tariff Schedules 107, 113, 114, 115, 118, and 125, in accordance with Washington's I-937 conservation

requirements, and as informed by the Washington DSM Advisory Group. The existing tariffs can be found here:

<http://www.pacificpower.net/about/rr/wri.html>

40. The Company seeks waiver of WAC 480-107-015(3)(b), which, as discussed above, requires a utility to submit a proposed RFP to the Commission for approval no later than one hundred and third-five days after the utility's integrated resource plan is due to be filed with the Commission for the Jim Bridger Turbine Upgrades, CHP Biomass, and Class 2 DSM resources described above. In the case of the Jim Bridger Turbine Upgrades, the work has already been procured over the course of normal operations and maintenance cycles. With respect to CHP Biomass and Class 2 DSM, the Company will effectively procure these resources using existing Commission-approved tariffs. Therefore, issuing an RFP for these resources is simply not necessary nor is it in the public interest. With respect to the Jim Bridger Turbine Upgrades, the issuance of an RFP for upgrades that are already in the design and fabrication stage would not be cost-effective or feasible. Requiring the issuance of an RFP at this time would result in significantly increased costs, adding an unnecessary burden to the Company's customers. With respect to CHP Biomass and Class 2 DSM, the Company has Commission-approved tariffs in place to procure these resources. Conducting an RFP process for these resources would therefore unnecessarily create additional administrative burden and potential confusion to entities wishing to provide these resources.

*DSM Class 1*

41. All DSM programs are assigned to the state where the program operates, utilizing the terms and conditions of that state's demand-side management or system benefits tariffs.

For Washington, customer rates only reflect costs associated with programs operated in Washington. Class 1 DSM programs are commercial curtailment programs. The preferred portfolio identifies a Washington irrigation program of approximately 2 MW of installed capacity in 2013, which will be secured through Requests for Information (RFI) and an RFP that specifically target irrigation curtailment products. Analysis to determine the viability of irrigation products in the west BAA is ongoing. The Company anticipates issuing RFIs and an RFP once all analysis has been completed, and if a Washington irrigation program is determined to be viable.

42. The Company seeks waiver of WAC 480-107-015(3)(b) for Class 1 DSM. As described above, the Company will effectively procure this resource through an RFI and a targeted RFP. As part of this competitive solicitation, the Company will allow all types of bidder proposals (by individual customer or aggregator). However, the Company agrees to provide a draft of the RFI and, as applicable, the RFP for Commission staff to review at least thirty days prior to the issuance of an RFI or RFP. Issuing an RFP for Class 1 DSM at this time would be premature and not in the public interest. As the viability analysis has not yet been completed, the Company does not yet have necessary information to issue an RFP. Issuing an RFP prematurely is unnecessary, would create an undue administrative burden, and could cause confusion among potential bidders.

*Solar*

43. The preferred portfolio also identifies solar resources as needed in the west BAA within the next three years. The Solar Capacity Standard and Solar Incentive Program Pilot are Oregon solar initiative programs created by the Oregon legislature in 2009 (House Bill 3039, modified in 2010 House Bill 3690). The costs of state specific solar initiatives,

such as these Oregon programs, are assigned to the state where the programs operate. As a result, costs of the Oregon programs would not be included in Washington rates. For more information on Oregon's solar programs, please refer to:

<http://www.pacificpower.net/env/nmcg/osip.html>

<http://www.puc.state.or.us/PUC/solar/index.shtml>

44. With respect to the Solar Capacity Standard and Solar Incentive Program Pilot, the Company seeks waiver of entire chapter WAC 480-107. As described above, the cost of this resource will be fully allocated to Oregon and should therefore not be subject to Washington's competitive bidding requirements.

#### *Hot Water Solar Heating*

45. The preferred portfolio also includes solar hot water heating of less than 2 MW of installed capacity for the west BAA. At present, additional research and analysis is necessary on the market potential and viability of a solar hot water heating program. It is yet to be determined whether a solar hot water heating program would be considered a DSM or net metering program. It is also yet to be determined whether existing tariffs could be utilized, or new tariffs required. However, in the event a solar hot water heating program is instituted, PacifiCorp could effectively offer the program to customers through tariffs. These tariffs would be reviewed and approved by the Commission.
46. The Company seeks waiver of WAC 480-107-015(3)(b) for Hot Water Solar Heating. As described above, the Company will effectively procure this resource through a tariff. In the event a program is instituted, the Company will file a request for a new tariff (if required) or use an existing tariff. Issuing an RFP for these resources is simply not necessary nor is it in the public interest. Conducting an RFP process for these resources

would therefore unnecessarily create additional administrative burden and potential confusion to entities wishing to provide this resource.

### **Request for Waiver**

47. WAC 480-107-002(3) allows the Commission to grant waivers of the requirements of WAC Chapter 480, Section 107 “if consistent with the public interest, the purposes underlying regulation, and applicable statutes.”
48. The Company’s request is in the public interest. The procurement processes described above are structured to effectively and efficiently acquire each particular resource on a lowest reasonable cost, adjusted for risk. The content, timing, or administration of these processes is not fully compatible with all of the requirements of a RFP process as contemplated by the Commission’s rules. As such, the identified processes are in the public interest because they are specifically tailored to each resource and to minimize procurement risks to the Company and its customers, while still maintaining Commission oversight through existing tariffs and the submittal of the Market RFP for Commission review.
49. The Company’s request is also consistent with the purposes underlying the regulation and applicable statutes. The purpose and scope section of WAC Chapter 480-107 states that the “rules in this chapter do not establish the sole procedures utilities must use to acquire new resources.”<sup>7</sup> This language acknowledges that a full bid solicitation process may not always be the preferable mechanism for utilities to procure resources and satisfy their public service obligations. Furthermore, with only one exception, the Company is seeking only a limited waiver of the Commission’s rules. Where a waiver is sought, the Company has explained and demonstrated how such waiver allows the Company to efficiently and

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<sup>7</sup> WAC 480-107-001(1).



effectively procure the identified resources in accordance with the rules that remain applicable.

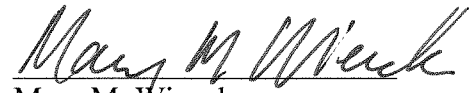
50. The Company's request is also consistent with other applicable statutes, including the Public Utility Regulatory Policies Act (PURPA). As fully explained above, the Company does and will continue to purchase energy and capacity from qualifying facilities in accordance with PURPA. Further, the Company does and will continue to estimate and calculate avoided costs and rates for qualifying facilities in accordance with the rules set forth in WAC Chapter 480-107.

### **Conclusion**

51. Due to the foregoing, the Commission should grant the Company's petition for waiver for each of the 2011 IRP preferred portfolio resources listed below, specifically:
- Waiver of WAC 480-107-015(3)(d) with respect to Front Office Transactions;
  - Waiver of WAC 480-107-015(3)(b) with respect to Jim Bridger Turbine Upgrades;
  - Waiver of WAC 480-107-015(3)(b) with respect to CHP Biomass;
  - Waiver of WAC 480-107-015(3)(b) with respect to DSM Class 2;
  - Waiver of WAC 480-107-015(3)(b) with respect to DSM Class 1;
  - Waiver of WAC 480-107-015(3)(b) with respect to Hot Water Solar Heating;
  - and
  - Waiver of entire WAC Chapter 480-107 with respect to Solar.
52. Upon approval of this Petition, the Company will submit a Market RFP to the Commission for its review and approval, consistent with WAC 480-107-015(3)(b).

DATED: this 6th day of September 2011.

Respectfully submitted,



Mary M. Wiencke  
Legal Counsel, Pacific Power

Counsel for PacifiCorp

**ATTACHMENT 1**

**Table 8.16 – Preferred Portfolio, Detail Level  
(2011 IRP, Volume 1, Chapter 8 – Modeling Results, page 230)**

Table 8.16 – Preferred Portfolio, Detail Level

Resource	Capacity (MW)											Resource Totals /											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	10-year	20-year	
CCGT F 2d1 (Utah North, Utah South)	-	-	-	-	625	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,222	1,222
CCGT H (Utah South)	-	-	-	-	-	-	-	-	475	-	-	-	-	-	-	-	-	-	-	-	-	475	475
Coal Plant Turbine Upgrades	121	18.9	1.8	-	-	18.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	51	53
Wind, Wyoming, 15% Capacity Factor	-	-	-	-	-	-	300	300	300	200	200	200	200	200	100	100	100	100	100	100	-	800	2,100
CHP - Biomass	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	10	20	
DSM, Class 1, Utah Coal-Keeper	5.5	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11	11
DSM, Class 1, Idaho D/C-Irrigation	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	20	22
DSM, Class 1, Utah, Curtailment	-	43	-	-	-	79	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	71	71
DSM, Class 1, Utah, D/C-Residential	-	22	-	-	-	62	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	85	85
DSM, Class 1, Utah, D/C-Irrigation	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8
DSM, Class 1 Total	6	70	-	-	20	91	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	187	191
DSM, Class 2, Idaho	1	2	2	3	3	4	4	4	4	5	5	5	6	6	6	6	6	6	6	6	6	33	33
DSM, Class 2, Utah	42	47	39	40	41	44	45	46	48	50	48	55	57	52	55	54	56	54	56	56	442	976	
DSM, Class 2, Wyoming	3	4	5	5	5	6	7	8	8	8	10	10	12	15	16	20	24	28	35	37	60	267	
DSM, Class 2 Total	47	53	46	48	48	51	54	56	58	60	63	70	69	74	75	84	82	89	95	99	536	1,334	
Micro Solar - Water Heating	-	2.64	2.64	2.64	2.64	2.64	2.64	2.64	-	-	-	-	-	-	-	-	-	-	-	-	-	18	18
POT Mead Q3 HLH	-	168	264	264	264	99	25	-	-	-	-	-	-	-	-	-	-	-	-	-	-	82	41
POT Mone Q3 HLH	200	200	204	26	250	-	72	217	-	245	-	-	-	-	-	-	-	-	-	-	-	141	71
POT Utah Q3 HLH	-	-	-	150	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	225	263	
Growth Resource, Gwshen ID	-	-	-	-	-	-	-	-	-	-	-	-	-	-	149	293	108	215	232	3	-	100	100
Growth Resource, Utah North	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	24	201	211	303	261	-	N/A	100
Growth Resource, Wyoming	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	206	55	346	392	-	-	N/A	100
Coal Plant Turbine Upgrades	-	3.7	-	-	-	-	-	8.3	-	-	-	-	-	-	-	-	-	-	-	-	-	12	12
CHP - Biomass	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	42	84
DSM, Class 1, California, D/C-Irrigation	-	-	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	5
DSM, Class 1, Oregon, D/C-Irrigation	-	-	13	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	36	36
DSM, Class 1, Oregon, Curtailment	-	-	36	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9	9
DSM, Class 1, Washington, D/C-Irrigation	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	63	63
DSM, Class 1 Total 2/	-	-	57	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	79	170
DSM, Class 2, Washington	7	8	8	8	8	8	8	8	8	8	9	10	10	10	10	10	8	8	8	8	9	9	9
DSM, Class 2, California	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2
DSM, Class 2, Oregon	53	53	56	61	62	61	60	52	52	52	52	52	52	52	52	52	44	36	36	36	562	1,028	
DSM, Class 2 Total	61	61	65	70	71	70	70	62	62	63	63	64	65	65	65	63	54	46	46	46	653	1,228	
OR Solar Capacity Standard	-	2	2	2	2	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9	9
OR Solar Incentive Program Flat	4	2	2	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	10
Micro Solar - Water Heating	1.81	1.81	1.81	1.81	1.81	1.81	0.97	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12	12
POT COB Q3 HLH	150	150	150	150	150	50	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	65	32
POT Mad-Columbia Q3 HLH	-	400	400	400	400	400	395	400	400	400	400	400	400	400	400	400	400	400	400	400	400	560	380
POT Mad-Columbia Q3 HLH, 10% price premium	-	271	211	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	48	24
POT Oregon Q3 HLH	-	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	40	40	
Growth Resource, Walla Walla WA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	N/A	100
Growth Resource, Oregon	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	N/A	100
Growth Resource, Yakima WA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	N/A	107
Annual Addressed, Long Term Resources	134	217	187	776	232	417	902	832	832	330	332	339	338	344	244	252	241	245	246	246	151	151	151
Annual Addressed, Short Term Resources	350	1,240	1,429	1,190	1,149	775	822	967	695	995	711	845	951	1,000	1,296	1,467	1,613	1,725	1,900	2,015	2,015	2,015	2,015
Total/Annual Addressed	484	1,457	1,616	1,966	1,381	1,524	958	1,404	1,397	1,325	1,043	1,184	1,289	1,344	1,542	1,719	1,855	1,970	2,146	2,165	2,165	2,165	2,165

1/ Front office transaction and growth resource amounts reflect one-year transaction periods, and are not additive. Front office transactions are reported as a 20-year annual average. Growth resources are reported as a 10-year average.  
 2/ PacificCorp excluded from the portfolio new programs under a five-megawatt implementation feasibility threshold. The programs excluded consist of direct load control programs for Washington, Oregon, and California.

**ATTACHMENT 2**

**Sample Market RFP**

***Example Market RFP***

[Insert date]

Consistent with the PacifiCorp 2011 Integrated Resource Plan (2011 IRP) and as a result of PacifiCorp's continued evaluation of its needs, PacifiCorp is interested in receiving proposals for the products shown in this Request for Proposal (RFP).

PacifiCorp's Preferred Portfolio, found on page 230 of the 2011 IRP (link below), contains the FOT requirements on the west side to meet PacifiCorp's resource need in 2011 through 2013. The west side front office purchases can come from existing or new resources for two products 1) 3<sup>rd</sup> quarter heavy load products and 2) an annual calendar product. The Preferred Portfolio can be accessed from the following link:

[http://www.pacificorp.com/content/dam/pacificorp/doc/Energy\\_Sources/Integrated\\_Resource\\_Plan/2011IRP/2011IRP-MainDocFinal\\_Vol1-FINAL.pdf](http://www.pacificorp.com/content/dam/pacificorp/doc/Energy_Sources/Integrated_Resource_Plan/2011IRP/2011IRP-MainDocFinal_Vol1-FINAL.pdf)

**Seller should provide PacifiCorp the following information on the attached matrix on the RFP due date of [Day], [Insert Date] at [Insert Time] Pacific Prevailing Time (PPT) by e-mail and or fax copy to:**

Contact Name  
Contact Name @pacificorp.com  
Fax:  
Phone:  
Cell:

**Contract pricing submitted by Seller shall be valid until 11:00 a.m. PPT [Insert Date]. PacifiCorp will contact Bidders at [date] and [time] if the Bidder is successful in the Market RFP**

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**Request for Proposals:**

**Seller:** Counterparty  
**Buyer:** PacifiCorp  
**Term:** 2011, 2012 and/or 2013  
**Quantity:** Minimum bid of 25 MW in 25 MW increments  
**Delivery Term:** Product One: July – September (all months inclusive, Q3) or  
Product Two: January – December all months during Calendar  
2012 and 2013  
**Point of Delivery:** Mid-Columbia or California Oregon Border (N-S)  
**Products** Product One: Q3 Standard On-Peak (6x16); Monday through  
Saturday HE 0700 – HE 2200 PPT, excluding NERC holidays for  
Q3 and  
Product Two: Flat Calendar product. All hours HE 0100 – HE  
2400 PPT, including NERC holidays for 2012 and 2013.  
**Energy Price:** Please specify energy price (\$/MWh) for all Delivery Months in  
each year in the Term.  
**Quality of Product:** WSPP Schedule C.  
**Pre-scheduling:** Pre-scheduling will be pursuant to the WECC ISAS daily pre-  
scheduling calendar and the WECC Business Practices.  
**Evaluation:** All proposals will be evaluated using a two step process.  
Step One: All proposals will be evaluated against the respective  
forward price curve at the time of execution for either Mid-  
Columbia and or the California Oregon Border consistent with the  
Point of Delivery that is submitted in the Market RFP.  
  
Step Two: Ranking of the proposals will be completed to assess  
the risks associated with each of the Proposals. This will be  
dependent on the types of proposals received by the Bidders and if  
there are any risks associated with the Bidders' proposals such as  
development risk, permitting and land risk, and or environmental  
risks. All risks within each proposal will be identified and ranked  
with a score of 1 through 5 (1 being no risk and 5 being a large risk  
to customers and the company).  
**Credit Requirements:** Credit requirements will be evaluated based on the Bidders' credit  
rating and the Product, Quantity, Delivery Term and the Price of  
the Bidders' proposals.

Counterparty Name (Seller): \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone number: \_\_\_\_\_

<b>Delivery Point</b>	<b>Delivery Months</b>	<b>Year(s)</b>	<b>Delivery Schedule</b>	<b>Quantity (MW)</b>	<b>Energy Price (\$/MWh)</b>

Contingencies – These Proposed Terms/Conditions are for discussion purposes only, and not an offer or commitment of PacifiCorp or any of its affiliates to enter into any transaction. Except as set forth above, the prices and terms are subject to change and further review and approval, until execution of a definitive agreement containing all appropriate provisions, including those related to dispute resolution, credit, and governing law. Neither party is obligated to enter into a transaction or definitive agreement with the other and each party may cease discussions for any reason at any time. Counterparty shall not disclose the provisions of this document to any third party.



**ATTACHMENT 3**

**Sample Confirmation**

**Example WSPP Confirmation for Market RFP Purchase  
 FORWARD CONFIRMATION AGREEMENT**

 Counter party name: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Counterparty fax and or email address: \_\_\_\_\_

The undersigned Parties agree to sell and purchase electric energy pursuant to the WSPP agreement.

Trade Date:	Date of transaction	
Seller:	Counter party name	Seller Trader: Contact name
Purchaser:	PacifiCorp	Purchaser Trader: PacifiCorp employee name
Schedule:	Standard On-Peak (6x16)	
Type of Service:	WSPP Service Schedule C	Term: July 1, 2012 to September 30, 2012
Delivery Point:	California Oregon Border (N-S)	
Contract Price:	US Dollars \$ _____ per MWh	
Delivery Rate:	25 MW per hour	
Contract Quantity:	30,400 MWh	

CONTACTS	Phone	Facsimile
Preschedule:	503-813-6972	503-813-6265
Real Time:	503-813-5389/5374	503-813-5512
Contracts/Confirms:	503-813-5924	866-861-6371

**Scheduling:** Both parties shall notify each other of pre-schedules on the business day preceding the scheduled delivery, or as mutually agreed by the parties, in accordance with WECC guidelines.

**Contingency Reserves:** Unless otherwise explicitly agreed to by both parties, responsibility for Contingency Reserves shall be according to the terms of PacifiCorp Merchant's letter to counterparties dated November 28, 2007, summarized as follows: firm capacity is deemed a capacity sale from the Seller's resources and backed by the Seller's contingency reserves; the Purchaser of non-firm capacity shall be responsible for maintaining operating reserve requirements as back-up for Economy Energy Service purchased and the Seller shall not be required to maintain such operating reserve.

**Liquidated Damages:** Per Section 21.3 of the WSPP Agreement.

**Waiver of Challenges:** Absent the agreement of all parties to the proposed change, the standard of review for changes to this contract proposed by a party, a non-party or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine). The Parties hereby agree and acknowledge that the prices and terms of this Agreement are just and reasonable, and waive any and all claims and rights to assert, in any and all courts of competent jurisdiction, in arbitration or otherwise, that the prices and terms of this Agreement are not just and reasonable and should be modified.

Please indicate your acceptance of the terms stated herein by returning an executed copy of this Confirmation Agreement by facsimile within 5 business days.

Counter party name  
 Authorized Signature

PacifiCorp  
 Authorized Signature

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_