

Rocky Mountain Power  
Exhibit RMP\_\_\_\_(RTL-10SS)  
Docket No. 17-035-40  
Witness: Rick T. Link

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

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Exhibit Accompanying Second Supplemental Direct Testimony of Rick T. Link

2017R RFP Main Document

February 2018



## **Renewable Request for Proposals**

**(2017R RFP)**

**ISSUED: Wednesday, September 27, 2017**

**DUE DATE: WYOMING WIND  
Tuesday, October 17, 2017 5:00 PM PPT**

**NON-WYOMING WIND  
Tuesday, October 24, 2017 5:00 PM PPT**

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### **2017 RFP Responses:**

**PacifiCorp  
RFP 2017R  
Resource & Commercial Strategy  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232**

**[rfp\\_2017R@pacificorp.com](mailto:rfp_2017R@pacificorp.com)**

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## SECTION 1. INTRODUCTION

This 2017R Request for Proposals for renewable resources (2017R RFP) is seeking cost-competitive bids for up to 1,270 MW of wind energy interconnecting with or delivering to PacifiCorp's Wyoming system and any additional wind energy located outside of Wyoming that will reduce system costs and provide net benefits for customers. Bidders should assume that Wyoming projects can interconnect to, or deliver via third-party transmission to, the proposed 500-kV Energy Gateway Segment D2 Aeolus-to-Bridger/Anticline substation and transmission system.<sup>1,2</sup> As assessed in its 2017 Integrated Resource Plan (IRP), Federal tax extender legislation passed in late 2015 provides an opportunity for qualifying renewable energy projects to receive the full value of the federal PTC available under Section 45 of the Internal Revenue Code up to December 31, 2020.<sup>3</sup>

PacifiCorp (sometimes also referred to herein as the "Company") is seeking proposals for competitively-priced new or repowered existing wind projects to deliver to PacifiCorp's transmission system in its west and east balancing area (PACW and PACE, respectively). Proposals for wind resources claiming PTC eligibility must demonstrate as interpreted by applicable guidance of the Internal Revenue Service (IRS), to PacifiCorp's satisfaction, that projects will qualify for the federal PTC, if applicable. Proposals must further demonstrate to PacifiCorp's satisfaction, and as determined in its sole discretion, that the proposed project can achieve commercial operation prior to December 31, 2020. PacifiCorp is not bound to accept any bids, and may cancel this solicitation at any time and at its own discretion.

Projects must be a discrete generating asset that is not located behind any load served by a utility or net-metered<sup>4</sup> and can be individually metered and remotely monitored. The minimum project size is 10.0 MW<sup>5</sup>. PacifiCorp is not setting a maximum size limit for projects submitted in this RFP, but PacifiCorp will only consider projects that demonstrate

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<sup>1</sup> See **Appendix O** for description of proposed Energy Gateway Segment D2 or go to the interactive Gateway project map at <http://www.gatewaywestmaps.com/>.

<sup>2</sup> Bidders submitting bids interconnecting to or delivering to Wyoming should review their technical specifications with PacifiCorp Transmission. Based on technical information received by PacifiCorp Transmission, concerns have been raised with the capability of integrating some types of wind turbine generators in the Aeolus / Freezeout / Shirley Basin / Standpipe area of the Rocky Mountain Power 230 kV Wyoming transmission system. These concerns include wind turbine will be normally operating on a weak transmission system with a steady state short-circuit ratio that is less than 2.0 in the 2020 timeframe and beyond, and with the eventual completion of the Gateway West and Gateway South Transmission Projects, the wind turbine generators will be operating on a series-compensated transmission system. Further questions should be directed to PacifiCorp Transmission.

<sup>3</sup> As recently extended by Congress, the federal PTC currently provides a \$24 tax credit for each MWh of production from a qualifying renewable energy facility that begins construction (as interpreted by applicable guidance of the Internal Revenue Service) before January 1, 2017. The value of the PTC is reduced by 20% for projects beginning construction each year thereafter until it expires completely beginning on January 1, 2020.

<sup>4</sup> Generation cannot offset retail load first and sell excess to PacifiCorp. See Pacific Power's Oregon Schedule 135, *Net Metering Service Optional for Qualifying Customers*, for additional detail on net metering.

<sup>5</sup> Qualifying Facilities (QF) greater than 10.0 MW will be allowed to participate in accordance with Oregon UM 1182, Order 14-149, Competitive Bidding Guideline #6.

a unique value opportunity for its customers and achieve commercial operation by December 31, 2020, without compromising system reliability.

PacifiCorp will accept proposals for new or repowered existing wind resources capable of directly interconnecting and delivering energy to PacifiCorp's network transmission system in PACW and PACE or capable of delivering energy to PacifiCorp's transmission system in PACW and PACE with the use of third-party firm transmission service.

Bids submitted with repowered wind resources will only be allowed for an existing wind resource that currently:

- does not have a power purchase agreement with PacifiCorp for the offtake of the energy, or
- has an active power purchase agreement with PacifiCorp that naturally expires before December 31, 2020.

PacifiCorp will consider proposals for the two following transaction structures:

1. "Build-Transfer" transaction whereby the bidder develops the project, assumes responsibility for construction and ultimately transfers the operating asset to PacifiCorp upon or prior to December 31, 2020, all pursuant to the terms of a build-transfer agreement (BTA). The asset must be designed, constructed, and operating in compliance with PacifiCorp's specifications. Bidder is responsible for all development, design, wind turbine supply, balance of plant (BOP) equipment, construction, commissioning, and performance testing.
2. Power purchase agreement (PPA) for up to a thirty (30) year term with exclusive ownership by PacifiCorp of any and all environmental attributes associated with all energy generated<sup>6</sup>. At the bidder's option, the PPA bid submittal can include two distinct alternatives:
  - a. a proposed contract term ranging between twenty (20) and thirty (30) years, with or without the right for PacifiCorp to purchase the project assets during or at the end of the proposed contract term at fair market value (FMV) to retain the value of the site for customers, or;
  - b. a twenty (20) year PPA term with an option for PacifiCorp to extend the PPA term at a proposed fixed price (\$/MWh) for up to ten (10) years.

For longer-term contract offers (i.e., PPA terms of 25 to 30 years without PPA extensions, or PPA terms that, after consideration of extension options, would result in a PPA term of 25 to 30 years), bidders should carefully consider the potential book and tax lease accounting treatment or Variable Interest Entity (VIE) treatment implications. For these PPA offers of 25 years or greater (Long Term), bidders that are selected to the initial shortlist will required to supply projected cash flows through the life of the underlying asset so that PacifiCorp can assess potential accounting implications. Potential accounting treatment impacts will be incorporated into the bid evaluation and selection process. For instance, if

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<sup>6</sup> As the term, Environmental Attributes, is defined in the pro-forma transaction documents for this RFP.

PacifiCorp determines that a Long Term PPA offering would be treated as a capital lease for tax purposes, PacifiCorp would be treated as the tax owner for the proposed facility. Please also refer to Section 5.F of this RFP.

To the extent bidders propose variations of a BTA or a PPA, such proposals will be considered (or not considered) at PacifiCorp's sole discretion and PacifiCorp reserves the right to reject non-compliant bids.

PacifiCorp will submit four (4) self-build ownership proposals (benchmark resources) which are further described in **Appendix L**. PacifiCorp benchmark resource bids will be received by the independent evaluator (IE) no later than seven (7) days prior to the receipt of market bids. The market bids will not be opened until such time as PacifiCorp benchmark resource bids have been reviewed, evaluated, and validated by the IE and PacifiCorp's evaluation team.

In order to provide for a transparent and fair process, the RFP will be conducted under the oversight of two IEs. An IE has been retained by PacifiCorp on behalf of the Public Utility Commission of Oregon (Oregon Commission) as required in Order 06-046<sup>7</sup>. The Utah Public Service Commission (Utah Commission) has also retained their own IE consistent with Utah guidelines in Utah Admin. Code R746-420. Both IEs will be involved in development of the RFP and ensuring the RFP process is conducted in a fair and reasonable manner.<sup>8</sup> Potential bidders are invited and encouraged to contact the Oregon or the Utah IE with questions or concerns. More information concerning the role of the IE is provided in **Appendix M** for both Oregon and Utah.

Contact information for the IEs is as follows:

<b>Independent Evaluators:</b>	
Oregon - Bates White	Frank Mossburg (202) 652-2194 <a href="mailto:frank.mossburg@bateswhite.com">frank.mossburg@bateswhite.com</a>
Utah – Merrimack Energy	Wayne Oliver (781) 856-0007 <a href="mailto:waynejoliver@aol.com">waynejoliver@aol.com</a>

PacifiCorp has the option of seeking regulatory acknowledgement of the final shortlist consistent with Oregon Order No. 06-446. PacifiCorp will seek rate recovery consistent with standard rate making practices in its six state jurisdictions.

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<sup>7</sup> Public Utility Commission of Oregon Docket UM 1182, In the Matter of an Investigation Regarding Competitive Bidding, Order 06-046.

<sup>8</sup> A bidder may request the appointment of an independent third-party to assist the Washington Utilities & Transportation staff with review of any utility bids at the expense of the bidder requesting the appointment.

## SECTION 2. PROCEDURAL ITEMS

PacifiCorp will evaluate proposals based on the following:

- Customer cost,
- Deliverability, including demonstration that the project's commercial operation date will be achieved by December 31, 2020,
- Transmission access and interconnection status in conformance with the 2017R RFP requirements,
- Compliance with and verification of major equipment availability defined in **Appendix A - Technical Specification**, and as outlined in **Appendices A-1 through A-10**.
- Ability to provide acceptable credit security for the bidder's proposed obligation and conformance to the *pro forma* agreements attached as **Appendices E-2 and F-2** to this RFP.

Each proposal will be prepared at the sole cost and expense of the bidder and with the express understanding that there will be no claims whatsoever for reimbursement from PacifiCorp. PacifiCorp is not liable for any costs incurred by bidders in responding to this RFP, or for any damages arising out of or relating to PacifiCorp's rejection of any proposal, or bidder's reliance upon any communication received from PacifiCorp, for any reason. bidder shall bear all costs, expenses, and bidder fees of any response to PacifiCorp in connection with its proposal for the 2017R RFP, including providing additional information, the bidder fee and the success fee, if project is selected to the final shortlist, and bidder's own expenses in negotiating and reviewing any documentation.

**Appendix E-1 - PPA Instructions to bidder** and **Appendix F-1 - BTA Instructions to bidder** provide additional detail on preparation of bid document deliverables.

All proposals belong to PacifiCorp and will not be returned. Confidentiality agreements (CA) and mutual nondisclosure agreements (NDAs) will be executed with projects as part of this RFP. PacifiCorp will use reasonable efforts to protect information clearly and prominently marked as proprietary and confidential on the page it appears, but PacifiCorp reserves the right to release such information to agents or contractors to help evaluate the proposal, as well as to its regulators and non-bidding parties to regulatory proceedings subject to standard protective orders or confidentiality arrangements. PacifiCorp shall not be liable for any damages resulting from any disclosure of such information, howsoever occurring.

PacifiCorp is interested in creative proposal options that add value to customers. As a result, PacifiCorp will accept offers that include several different alternatives under the same proposal. For each bid proposal, bidders must submit a bid fee of \$10,000 which allows a bidder to submit a base proposal and two (2) alternatives for the same \$10,000 bid fee. Bidders will also be allowed to offer up to three (3) additional alternatives to the base proposal at a fee of \$3,000 per alternative.



## SECTION 3. LOGISTICS

### A. SCHEDULE

Milestone	Date	Day of Week
RFP Issued to Market	09/27/2017	Wednesday
1st Bidder's Conference	10/02/2017	Monday
Notice of Intent to Bid Due	10/09/2017	Monday
Last Day for RFP Questions to IEs for Q&A	10/10/2017	Tuesday
Benchmark Bids Due	10/10/2017	Tuesday
RFP Bids Due - WYOMING WIND ONLY	10/17/2017	Tuesday
RFP Bids Due - NON-WYOMING WIND ONLY	10/24/2017	Tuesday
Bid Eligibility Screening Completed	10/30/2017	Monday
Initial Shortlist (ISL) Evaluation/Scoring Completed	11/12/2017	Sunday
Capacity Factor Evaluation on ISL started	11/12/2017	Sunday
IEs' Review of ISL Completed	11/17/2017	Friday
ISL Price Update	11/22/2017	Wednesday
Capacity Factor Evaluation on ISL Completed	11/27/2017	Monday
Final Shortlist (FSL) Evaluation Completed	01/08/2018	Monday
IEs' Review of FSL Completed	01/15/2018	Monday
Execute Agreements	04/16/2018	Monday

The indicative schedule above is subject to change. Actual dates may vary from the indicative schedule for reasons that include, but are not limited to, negotiation time, availability of key personnel, due diligence, the evaluation or negotiation of any issues unique to any bid, bidder, or project, bidder's willingness to agree to forms of agreements desired by PacifiCorp, PacifiCorp's evaluation of bidder's creditworthiness, and actions required by any third parties. PacifiCorp accepts no liability to the extent the actual schedule varies from the indicative schedule. PacifiCorp is not obligated to develop a shortlist of bidders, to make a final selection, or to initiate or complete negotiations on any transaction.

**Bidders should note the condensed schedule and be available for calls and meetings with PacifiCorp and the IE regarding bid submittals and responsive to questions in a timely manner. PacifiCorp and the IEs will attempt to complete its bid review and screening as efficiently as possible but may require very short turnaround times on bid clarifications in order to meet its RFP milestones and schedule.**

### B. INTENT TO BID FORMS

Bidders who intend to be considered as part of this RFP process must return both the "Intent to Bid Form" (**Appendices B**) and the "Bidder's Credit Information" (**Appendix D**) as set forth below.

Bidders shall submit an electronic copy of Appendix B and Appendix D to the following

PacifiCorp and IE's email addresses, no later than **5:00 p.m. Pacific Prevailing Time on Monday, October 9, 2017.**

Email: [rfp\\_2017R@pacificorp.com](mailto:rfp_2017R@pacificorp.com)  
[frank.mossburg@bateswhite.com](mailto:frank.mossburg@bateswhite.com)  
[waynejoliver@aol.com](mailto:waynejoliver@aol.com)

#### **C. 20017R RFP BIDDER CONFERENCE**

A bidder conference will be held on **Monday, October 2, 2017** in both Utah and Oregon locations. The bidder conference will cover the 2017R RFP structure, deliverables and schedule as well as allocating specific time to cover interconnection and transmission service requirements. The bidder conference is scheduled for three (3) hours at the locations and start times below and will also be set up as a webinar for remote attendance. Additional details on the bidder conference will be posted to the PacifiCorp website.

	<b>Oregon</b>	<b>Utah</b>
Day	Monday	Monday
Date:	October 2, 2017	October 2, 2017
Time:	1:00 pm Pacific	2:00 pm Mountain
Location:	PacifiCorp Learning Center at east end of Lloyd Center Mall	Rocky Mountain Power North Temple Office
Room	Willamette Room	130k

#### **D. SUBMISSION OF QUESTIONS**

Interested parties and bidders may submit questions related to this solicitation, and PacifiCorp will respond in a timely fashion. All information, including pre-bid materials, questions, and PacifiCorp's response to questions, will be posted on the PacifiCorp website at [www.pacificorp.com/sup/rfps/2017-rfp.html](http://www.pacificorp.com/sup/rfps/2017-rfp.html) as well as the IE website described below.

IE Website – Merrimack Energy, the Utah IE, will host a website dedicated to information exchange and archiving information, questions and answers between the bidder, IE, and PacifiCorp. The IE site, separate from PacifiCorp's RFP website, will be used for bidder's specific questions related to their bid or the RFP. Any question submitted through the IE form will be blinded and provided to PacifiCorp for a response. The website link is shown below and will also be accessible as a link on PacifiCorp's RFP website.

<https://www.merrimackenergy.com/>

Email - Communications with the Oregon and Utah IE or PacifiCorp can also be emailed directly at the following email addresses:

Oregon IE: Bates White / Frank Mossburg – [frank.mossburg@bateswhite.com](mailto:frank.mossburg@bateswhite.com)

Utah IE: Merrimack Energy / Wayne Oliver - [waynejoliver@aol.com](mailto:waynejoliver@aol.com)

PacifiCorp: [rfp\\_2017R@pacificorp.com](mailto:rfp_2017R@pacificorp.com)

## E. RFP ROLES AND TEAMS

The RFP teams will be established by PacifiCorp prior to the final approval of the RFP. The RFP teams shall consist of an evaluation team, intent to bid team, benchmark team, and IRP team. The composition of the teams and their primary roles and responsibilities are shown in the following table and further described in **Appendix N**.

Team	PacifiCorp Department	Roles
IE		The IE will ensure a fair and reasonable process is used in the RFP and will validate that PacifiCorp is following the bidder pre-approval process and monitor and document all material aspects of the solicitation, evaluation and negotiation processes. See <b>Appendix M</b> for the roles of the IE.
Evaluation Team:	Origination, resource development, energy supply management, and/or third-party consultants as required	Overall coordinator of the process. Bid process management for all proposals and coordination with the IE and all of the work groups. Evaluation of the non-price components of the analysis. Specifying, evaluating and confirming conformity with design specifications; conducting, as needed, technological and operational due diligence, environmental due diligence on all resources.
	Structuring and pricing, accounting, tax, and/or third-party consultants as required	Economic analysis and modeling including validation of the inputs to the production cost modeling and risk assessment of the market bids and the benchmark bids. Evaluation of the price components of the analysis. Evaluation of accounting treatment impacts of bids.

Team	PacifiCorp Department	Roles
	Environmental and wind operations	If applicable, review of local, state, and federal permits, permit applications, and supporting documentation, including: wildlife baseline study (including wildlife habitat mapping, special status species survey, and raptor nest survey); avian and bat use data analysis (including four-season study); avian and bat impact assessments; rare plant habitat assessments; wetlands survey; historic, cultural, and archaeological resources survey; Phase One environmental site assessment; and project mitigation and monitoring plan (including any proposed conservation easements).
	Credit	Evaluate credit requirements for final shortlist bidders
	Legal	Legal will confirm compliance of bids to requirements of RFP and its forms, attachments and appendices; conduct of legal process; conducting due diligence inquiries; supervising any documentation entered into as part of the RFP process.
Intent to Bid Team	Origination, legal and credit	Origination, legal and credit will work with the Oregon and Utah IEs to ensure that <b>Appendices B and Appendix D</b> are complete.
Benchmark Team	Resource development, wind operations, financial analysis, legal	The benchmark team prepares and submits PacifiCorp's benchmark bids.
IRP Team	IRP workgroup	The IRP team will be treated as a shared resource to perform work for the evaluation team and the benchmark team in running SO and PaR models. Consistent with PacifiCorp's identification of shared employees under FERC's Standards of Conduct, <sup>9</sup> the IRP team will not share any information it obtains from either team with the other team and the IRP team will not share any non-public transmission system information with either team at any point in the process.

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<sup>9</sup> See Appendix I

## F. SUBMISSION OF BIDS

All submitted bids must be transmitted by express, certified or registered mail, or hand delivery to the following address:

**PacifiCorp 2017R RFP**  
Attention: Resource & Commercial Strategy  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232

A signed original hard copy of the bid shall be submitted prepared on standard 8 1/2 inch by 11 inch recycled paper, duplex printed (2 sided). THE BID MUST BE ORGANIZED IN THE SAME ORDER AS THE INFORMATION IS REQUESTED IN THIS RFP. The hard copy bid should also include four (4) copies of the full proposal on individual USB flash drives or disks. PacifiCorp may reject any bid that fails to follow these instructions.

In addition, bidders must submit one (1) electronic copy to PacifiCorp at: [rfp\\_2017R@pacificorp.com](mailto:rfp_2017R@pacificorp.com).

PacifiCorp will respond with a receipt email.

Bids will be accepted until **5:00 p.m. Pacific Prevailing Time** as follows:

<b>BENCHMARK BIDS:</b>	<b>Tuesday October 10, 2017</b>
<b>WYOMING MARKET ONLY:</b>	<b>Tuesday, October 17, 2017</b>
<b>NON-WYOMING MARKET BIDS:</b>	<b>Tuesday, October 24, 2017</b>

**All bid proposals shall have a bid validity date through 5:00 pm PPT, Monday, April 16, 2018.** Bids selected to the initial shortlist will be asked to update their bid prices as part of the negotiation process.

Bidders must submit complete proposals that include the following items:

1. One (1) signed original hard copy of each bid and any required forms including all exhibit sheets required in **Appendix A**, and **Appendices E-1** and **E-2 (PPA)** and **Appendices F-1** and **F-2 (BTA)**.
2. One (1) electronic copy of the bid and any required forms in PDF format and Microsoft Excel format, as required, including all exhibit sheets required in **Appendix A**.
3. One (1) electronic copy of the **Appendix C – Bid Summary and Pricing Input Sheet** in original Microsoft Excel format, and a hard copy. The bidder must provide one (1) electronic and hard copy of an independent third-party wind assessment analysis/report supported by a minimum of (a) two years of wind data for BTA proposals from the proposed site or (b) one year of wind data for PPA proposals from the proposed site and one (1) electronic copy of the wind data that support the capacity factor. Wind proposals must supply a representative p-50 annual hourly (8760 hours) energy profile reflecting expected unit availability in Microsoft Excel

format.

In the event the bidder chooses to use different performance modeling software than specified, the bidder must provide sufficient data and inputs for PacifiCorp to validate the expected performance of the proposed resource.

**PacifiCorp will not accept any late proposals. Any bids received after this time will be returned to the bidder unopened.**

#### **G. BID EVALUATION FEES**

Benchmark and market bidders shall pay a fee (Bid Fee) of \$10,000 for each base proposal and two (2) alternatives submitted. Bidders will also be allowed to offer up to three (3) additional alternatives to the base proposal at a fee of \$3,000 per alternative. Alternatives will be limited to different bid sizes, contract terms, in service dates, and/or pricing structures. A bidder may submit more than one proposal. If a bidder submits the same proposal but with three different bid sizes, the proposal will be considered one proposal with two alternatives and the bidder will pay one bid fee. PacifiCorp's objective in offering bidders the opportunity to propose multiple alternatives is to allow PacifiCorp to optimize the benefits from the solicitation by combining proposals of different sizes, terms and in-service dates. Proposals must be submitted in the legal name of the respondent who would be bound by any agreement with PacifiCorp.

A success fee will be charged to successful winning bid(s) to cover any incremental costs of the Oregon and Utah IEs as well as serve as a bid assurance fee. The success fee applies to both benchmark and market bids. The success fee will be assessed for the purpose of ensuring that the winning bid(s) price does not change after being awarded the winning bid, provided that in no event shall the success fee exceed \$300,000 dollars per successful bid. Documentation of the calculation of the success fee will be computed in cooperation with the IEs and provided to the bidder at the time the bid is selected to final shortlist.

Payment of Bid Fees. Bid fees shall be paid by wire transfer to PacifiCorp. PacifiCorp will email wire transfer instructions to bidders who have submitted a notice of intent to bid, five (5) business days prior to October 17, 2017 for Wyoming-only bids and October 24, 2017 for non-Wyoming bids. No cashier's checks will be accepted. If a proposal is deemed "Not Complete" and the bidder elects not to cure any identified deficiencies in the allowed period of time, the bid and all bid fees will be returned to the bidder and PacifiCorp will no longer consider that bid(s). Once the bid is deemed "Complete", PacifiCorp will not refund any bid fees associated with any bid, regardless of the success or failure of that bid.

#### **H. MINIMUM ELIGIBILITY REQUIREMENTS FOR BIDDERS**

Bidders may be disqualified for failure to comply with the RFP if any of the requirements outlined in this RFP are not met to the satisfaction of PacifiCorp, as determined in its sole discretion. If proposals do not comply with these requirements, PacifiCorp has the option to deem the proposal ineligible and eliminate it from further evaluation. Reasons for rejection of a bidder or its proposal include, but are not limited to:

1. Receipt of any proposal after the response deadline.

2. Failure to meet the requirements described in this RFP and provide all information requested in **Appendix C - Bid Summary and Pricing Input Sheet** of this RFP.
3. Failure to demonstrate a commercial operation date prior to December 31, 2020.
4. Failure to permit disclosure of information contained in the proposal to PacifiCorp's agents, contractors, regulators, or non-bidding parties to regulatory proceedings under appropriate confidentiality agreements.
5. Any attempt to influence PacifiCorp in the evaluation of the proposals, outside the solicitation process.
6. Failure to provide a firm offer through the bid validity date outlined in Section 3.F. of this RFP.
7. Failure to disclose the real parties of interest in the submitted proposal.
8. Bidder is in current material litigation or has threatened material litigation against PacifiCorp. For the purpose of this provision, material litigation shall mean a dispute in excess of five (5) million dollars in which bidder has issued a demand letter to PacifiCorp, the bidder and PacifiCorp are currently in dispute resolution, the bidder and PacifiCorp have an unresolved dispute pending or bidder has noticed a pending legal action against PacifiCorp. Material litigation excludes bidder complaints before a state regulatory utility commission. PacifiCorp will consult with the IE to determine if the bidder should be excluded if the bidder is threatening litigation against or in active litigation with the company.
9. Failure to clearly specify all pricing terms for each alternative(s).
10. Failure to offer unit contingent (as generated) or system firm capacity and energy, directly interconnected with Company's network transmission system in PACW and PACE balancing areas or capable of delivering energy to PacifiCorp's transmission system with the use of third-party firm transmission service (including appropriate contract term lengths and commercial operation dates).
11. Failure to provide evidence that the proposed project has either: (1) requested a direct interconnection with PacifiCorp's system and executed an interconnection feasibility study agreement with PacifiCorp's transmission function; or (2) requested interconnection with a third party's system, executed an interconnection feasibility study agreement with the third party transmission provider, and requested long-term, firm third-party transmission service from the resource's point of interconnection with the third party's system to the proposed point of delivery on PacifiCorp's system.
12. Failure to provide interconnection costs and transmission service costs, if applicable, in bid proposal. Costs estimates shall be performed by the project if a transmission provider study has not been completed or is not available at the time of submittal.
13. Proposal presents unacceptable level of development or technology risk.
14. Failure to materially comply with technical specification requirements in **Appendix A** for proposals involving potential PacifiCorp ownership or operational control.
15. Failure to demonstrate a process to adequately acquire or purchase major equipment (i.e., wind turbines, generator step-up transformers) and other critical long lead time equipment.
16. Failure to demonstrate, to PacifiCorp's satisfaction, that it can meet the credit security requirements for the renewable resource proposed.
17. Failure to submit information required by PacifiCorp to evaluate the price and non-price factors described herein.

18. Failure to or unable to abide by the applicable safety standards.
19. Bidder submits an unacceptable contract structure.
20. Collusive bidding or any other anticompetitive behavior or conduct exists.
21. Bidder or proposed project being bid is involved in bankruptcy proceedings.
22. Failure of the bidder's authorized officer to sign the proposal.
23. Misrepresentation or failure to abide by Federal Trade Commission Green guidelines.
24. Any change in regulations or regulatory requirements that make the bidder's proposal non-conforming.
25. Any matter impairing the bidder, the specified resource or the generation of power or environmental attributes of the renewable resource.
26. Failure to provide two (2) years of wind resource data for a proposed wind project submitted as a BTA or one (1) year of wind resource data if wind project is submitted as a PPA, as validated by a third party engineering firm, as applicable.
27. Failure to provide a performance model output including hourly output values as identified in **Appendix A**.
28. Failure to provide **Exhibit D - Bidder's Credit Information**, and **Appendix H - Form 1 - Pricing Input Sheet**.
29. Failure to submit an operations and maintenance agreement materially compliant with **Appendix K** for proposals involving PacifiCorp ownership or operational control upon the commercial operation or substantial completion date.
30. Any matter impairing bidder, specified resources or the generation of power or non-power attributes therefrom.

## **I. COMPANY RESERVATION OF RIGHTS AND DISCLAIMERS**

PacifiCorp reserves the right, without limitation or qualification and in its sole discretion, to reject any or all bids, and to terminate or suspend this RFP in whole or in part at any time. Without limiting the foregoing, PacifiCorp reserves the right to reject as non-responsive any or all bid proposals received for failure to meet any requirement of this RFP outlined herein. PacifiCorp further reserves the right without qualification and in its sole discretion to decline to enter into any agreement with any bidder for any reason, including, but not limited to, change in regulations or regulatory requirements that impact PacifiCorp, and/or any collusive bidding or other anticompetitive behavior or conduct of bidders.

Bidders who submit bid proposals do so without recourse against PacifiCorp, its parent company, its affiliates and its subsidiaries, or against any director, officer, employee, agent or representative of any of them, for any modification or withdrawal of this RFP, rejection of any bid proposal, failure to enter into an agreement, or for any other reason relating to or arising out of this RFP. Bidders will be required to execute **Appendix G - Confidentiality Agreement** after the initial shortlist is identified and **Appendix G - Non-Reliance Letter** after being selected to the final shortlist, prior to entering into final negotiations.

## **J. ACCOUNTING**

All proposals will be assessed by PacifiCorp for appropriate accounting and tax treatment. Bidders must supply all information PacifiCorp reasonably requires in order to make these assessments if project is selected to the initial shortlist.



## **K. CONFIDENTIALITY**

PacifiCorp will attempt to maintain the confidentiality of all bids submitted, to the extent consistent with law or regulatory order, as long as such confidentiality does not adversely impact a regulatory proceeding. It is the bidder's responsibility to clearly indicate in its proposal what information it deems to be confidential. Bidders may not mark an entire proposal as confidential, but must mark specific information on individual pages to be confidential in order to receive confidential treatment for that information.

All information supplied to PacifiCorp or generated internally by PacifiCorp is and shall remain the property of PacifiCorp. The bidder expressly acknowledges that PacifiCorp may retain information submitted by the bidder in connection with this RFP. To the extent bidder receives information from PacifiCorp, Bidder shall maintain the confidentiality of such information and such information shall not be available to any entity before, during or after this RFP process unless required by law or regulatory order.

Only those Company employees who are directly involved in the RFP process or with the need to know for business reasons will be afforded the opportunity to view submitted bids or bidder information.

Bidders should be aware that information supplied by bidders may be requested and supplied during regulatory proceedings, subject to appropriate confidentiality provisions applicable to that particular proceeding. This means that parties to regulatory proceedings may request and view confidential information. If such a request occurs, PacifiCorp will attempt to prevent such confidential bidder information from being supplied to intervening parties who are also bidders, or who may be providing services to a bidder, but PacifiCorp cannot promise success in that endeavor and accordingly cannot be held liable for any information that it is ordered to be released or that is inadvertently released.

Lastly, PacifiCorp intends to utilize its internal, proprietary models in its evaluation process. These models, the assumptions used in these models, and the bid evaluation results will not be shared with entities external to PacifiCorp or its consultants, including bidders, unless required to support regulatory proceedings, required by law, or required by regulatory order.

## **SECTION 4. RFP CONTENT**

### **A. ALL PROPOSALS**

This section outlines the content and format requirements for all proposal structures and alternative proposal structures. Proposals that do not include the information requested and in a form described in this section may be deemed ineligible for further evaluation unless the information is not relevant as determined by PacifiCorp in its sole discretion. All sections must be complete and in compliance with the RFP in order for the bid to be accepted. In addition to the requirements listed here, bidders must meet the requirements of **Appendix B - Information Required in Bid Proposals**.

While bidders may submit alternative ownership proposals, such alternative ownership proposals will be considered by PacifiCorp in its sole discretion to determine whether these alternatives provide an attractive benefit for customers. Each bidder must provide complete information as requested in all appendices, forms and attachments outlined in the table below that is relevant to its proposal and for any alternative, as applicable.

	<b>2016R RFP Bid Applicability</b>	<b>PPA</b>	<b>BTA</b>
Appendix A	Renewable Resource Technical Specification		
<i>Appendix A-1</i>	<i>Overview of Appendices</i>	--	--
<i>Appendix A-2</i>	<i>Interconnection Agreement</i>	X	X
<i>Appendix A-3</i>	<i>Permit-Matrix</i>	X	X
<i>Appendix A-4</i>	<i>Not used</i>		
<i>Appendix A-5</i>	<i>Project One-line Drawing and Layout</i>	X	X
<i>Appendix A-6</i>	<i>Division of Responsibility</i>		X
<i>Appendix A-7</i>	<i>Owner Standards and Specification</i>		X
<i>Appendix A-8</i>	<i>Performance Summary Report</i>	X	X
<i>Appendix A-9</i>	<i>Product Data- Equipment Supply Matrix</i>	X	X
<i>Appendix A-10</i>	<i>Plant Performance Guarantee</i>		X
Appendix B	Intent to Bid and Information Required in Bid Proposal	X	X
Appendix C	Bid Summary and Pricing Input Sheet for PPA and BTA Bids (including term sheets)	X	X
Appendix D	Bidder's Credit Information	X	X
Appendix E-1	PPA Instructions to Bidders	X	
Appendix E-2	PPA and Exhibits	X	
Appendix F-1	BTA Instructions to Bidders		X
Appendix F-2	BTA and Appendices (A-Q)		X
Appendix G	Confidentiality Agreement and Non-Reliance Letter	X	X
Appendix H	Reserved – Intentionally Left Blank - see Appendix C for Pricing Input Sheet		
Appendix I	FERC's Standards of Conduct		
Appendix J	QRE Agreement	X	
Appendix K	General Services Contract-Operations & Maintenance Services or other resource type		X
Appendix L	PacifiCorp's Company Alternative (Benchmark Resource)		
Appendix M	Role of Independent Evaluator	X	X
Appendix N	Code of Conduct Governing PacifiCorp's Intra-Company Relationships with RFP Process	X	X
Appendix O	Description of Gateway Segment D2		

## B. BUILD-TRANSFER AGREEMENT

**Appendix C - Bid Summary and Pricing Input Sheet** shows the form of project information required if a bidder proposes a "Build-Transfer" transaction whereby the bidder develops the resource, assumes responsibility for construction and then ultimately transfers the project to PacifiCorp upon or prior to the operation date, all pursuant to the terms of a build transfer agreement. This is an Excel-based worksheet that covers bid summary information, energy production profile, and pricing for the BTA. The bidder's proposal must contain the information requested in **Appendix F-1 - BTA Instructions to bidders**. The bidder must provide information, representations, and warranties sufficient to assure PacifiCorp that any proposed project will successfully complete construction and

achieve full commercial operation by December 31, 2020, and that any new wind or repowered resource will be eligible to claim, as applicable, the full or partial federal PTC as interpreted by applicable guidelines and rules of the Internal Revenue Service.

**The BTA *pro forma* documents are attached as Appendix F-2 - Build Transfer Agreement (BTA).** Bidders should include a redlined or marked up version of **Appendix F-2 Build Transfer Agreement** showing exceptions to the terms of the pro forma BTA document. Bidders objecting to terms should provide alternate language and context to the objections for PacifiCorp to evaluate the alternate language.

The BTA is structured such that PacifiCorp makes progress payments on an agreed-upon schedule in exchange for the developer meeting certain milestones and deliverables. However, PacifiCorp is also receptive to a single lump sum payment due at a defined substantial completion date. All bidders in this category must complete the information requested in **Appendix C - Bid Summary and Pricing Input Sheet** (BTA tab). PacifiCorp will only accept BTA proposals in which the final outcome is a purchase by PacifiCorp of a fully completed project at the “substantial completion date” or “commercial operation date.”

The bidder will be responsible for all aspects of the development and construction of the facility, including, but not limited to, permitting, engineering, procurement, construction, interconnection and all related costs up to achieving commercial operation. Without limiting the foregoing, the bidder will be responsible for obtaining all permits, rights and resources required to construct and provide an operational generation resource consistent with the bidder’s proposal.

Bidders will be responsible for submitting an operation and maintenance (O&M) service proposal as part of the overall BTA bid submittal consistent with **Appendix K, General Services Contract for Operation and Maintenance Services**. **Any proposal that does not include an O&M proposal that provides pricing, scope and other key terms will be rejected as a nonconforming proposal.**

Bidders should note that any proposal submitted in this category that proposes new construction of a wind resource or a repowered wind resource must comply with the applicable technical and construction specifications contained in **Appendix A** and must utilize the services of a single primary contractor.

To the extent the bidder uses a contractor or a separate legal entity other than the bidder itself, this entity must be experienced with the type of facility being proposed and meet credit criteria, all as deemed acceptable to PacifiCorp in its sole discretion.

## **C. POWER PURCHASE AGREEMENT**

**Appendix C Bid Summary and Pricing Input Sheet** (PPA tab) shows the form of project information required for a bidder offering a PPA option. This is an Excel-based worksheet that covers bid summary information, energy production profile, and pricing for the PPA. Bidder’s proposal must contain the information requested in **Appendix E-1 - PPA Instructions to bidders**. The term of the PPA shall; (i) range between twenty (20) and thirty (30) years, with or without the right for PacifiCorp to purchase the project assets

during or at the end of the proposed contract term at fair market value (FMV) to retain the value of the site for customers or, (ii) a twenty (20) year PPA term with an option for PacifiCorp to extend the PPA term at a proposed fixed price (\$/MWh) for up to ten (10) years. The bidder must agree to meet its contractual obligations within the PPA during the term of the PPA.

For longer-term contract offers (i.e., PPA terms of 25 to 30 years without PPA extensions, or PPA terms that, after consideration of extension options, would result in a PPA term of 25 to 30 years), bidders should carefully consider the potential book and tax lease accounting treatment or Variable Interest Entity (VIE) treatment implications. Bidders that make the initial shortlist and have PPA offers of 25 years or greater (Long Term), will need to supply projected cash flows through the life of the underlying asset so that PacifiCorp can assess potential accounting implications. Potential accounting treatment impacts will be incorporated into the bid evaluation and selection process. For instance, if PacifiCorp determines that a Long Term PPA offering would be treated as a capital lease for tax purposes, PacifiCorp would be treated as the tax owner for the proposed facility. Please also refer to Section 5.F of this RFP.

The bidder's proposal must contain the information requested in **Appendix E-1 PPA Instructions to bidders**. The bidder must provide documentation and information, representations, and warranties sufficient to assure PacifiCorp that any proposed project will successfully complete construction and achieve full operation by December 31, 2020, and that any new or repowered existing resource will be eligible to claim, as applicable, the full or partial federal PTC as interpreted by applicable guidelines and rules of the Internal Revenue Service. PacifiCorp reserves the right to request bid cashflow information in order to complete its evaluation for capital lease accounting for tax purposes on Long Term PPAs if necessary.

Bidders should include a redlined or marked up version of **Appendix E-2 Power Purchase Agreement** showing exceptions to the terms of the pro forma PPA document. Bidders objecting to terms should provide alternate language and context to the objections for PacifiCorp to evaluate the alternate language. Bidders should also submit comments to the pro forma agreement on issues that they have concerns with and identify alternatives to address the issues.

The bidder will be required to complete **Appendix J - Qualifying Reporting Entity (QRE) Services Agreement** as part of the PPA which establishes WREGIS registration and reporting obligations for both parties.

#### **D. ALTERNATIVE BID PROPOSALS**

As noted in Section 1, bidders may propose variations of a BTA or a PPA, such proposals will be considered (or not considered) at PacifiCorp's sole discretion and PacifiCorp reserves the right to reject non-compliant bids. Bidders must submit the appendices that are relevant to the bidder's alternative bid proposal, which will typically correspond to the requirements for a build-transfer proposal as noted herein. Such proposals must include full documentation on the proposed financing structure and the pricing associated with PacifiCorp's contemplated ownership.

## SECTION 5. RESOURCE INFORMATION

### A. PRICE INFORMATION

Bidders must supply **Appendix C – Bid Summary and Pricing Input Sheet** in its original Microsoft Excel format with all submitted proposals. Price information that must be supplied by the bidder includes:

Information Requested	PPA	PPA with Purchase Option	BTA
Term: start and end date of base PPA and PPA extension, if applicable	X	X	
Transmission cost assumptions	X	X	X
Point of delivery (POD) and Point of receipt (POR)	X	X	X
Expected annual dispatch pattern, or generation profile, that reflects availability <sup>10</sup>	X	X	X
Availability rate assumed in annual dispatch or generation profile data	X	X	X
Designation of firm or unit contingent energy deliveries	X	X	
Energy price (\$/MWh) including fixed price for the term or 1 <sup>st</sup> year price with escalation for the base PPA and PPA extension, if applicable	X	X	
Price and milestone payment schedule (\$ and dates, as applicable)		X	X
Variable O&M cost (\$/MWh, as applicable) <sup>11</sup>		X	X
Fixed O&M cost (\$/Year, as applicable) <sup>12</sup>		X	X
Ongoing capital (\$/Year, as applicable)		X	X
Other variable costs, <i>i.e.</i> , royalties (% of energy revenue, or \$/MWh, as applicable)		X	X
Variable energy payment, with escalation (\$/MWh escalating at X%/year, as applicable)		X	X
Fixed capacity payment, with escalation (\$/Month growing at X%/year, as applicable)		X	X
Other fixed charges, <i>i.e.</i> land leases, with escalation (\$/MWh, \$/MW or \$/Year growing at X%/year, as applicable)		X	
Buyout dates and prices (\$ or “fair market value,” as applicable)		X	
Qualifying costs and term for any incentives that reduce delivered costs, such as federal, state or local incentives including among others; federal PTC, bonus depreciation, property tax exemptions, or local economic incentives	X	X	X

<sup>10</sup> Section 3.F.3 of the 2017R RFP describes the type of generation profiles required.

<sup>11</sup> PacifiCorp may supply certain operational and maintenance costs for consistency across similar bids.

<sup>12</sup> PacifiCorp may supply certain operational and maintenance costs for consistency across similar bids.

**B. DIRECT INTERCONNECTION OR THIRD-PARTY  
INTERCONNECTION AND TRANSMISSION SERVICE**

PacifiCorp is seeking resources capable of: (1) directly interconnecting with PacifiCorp's system in its PACW and PACE balancing areas or (2) interconnecting with a third-party system and using third-party firm transmission service to deliver to PacifiCorp's transmission system. With either method, PacifiCorp prefers bids that will not face significant transmission costs or constraints between: (1) the resource's point of interconnection or the resource's delivery point on PacifiCorp's transmission system; and (2) PacifiCorp network load. While PacifiCorp provides these general guidelines, the available transfer capability from the project or project delivery point to PacifiCorp's network load cannot be known or estimated until the bidder identifies its proposed point of interconnection/point of delivery. Bidders are thus required to provide as much granularity and documentation as possible regarding their proposed point of interconnection/point of delivery.

As noted above, the minimum eligibility requirements for bidders include the provision of evidence that the proposed project has either: (1) requested a direct interconnection with PacifiCorp's transmission system and executed an interconnection feasibility study agreement with PacifiCorp's transmission function; or (2) requested interconnection with a third party's system, executed an interconnection feasibility study agreement with the third party transmission provider, and requested long-term, firm third-party transmission service from the resource's point of interconnection with the third party's system to the proposed point of delivery on PacifiCorp's system.

PacifiCorp requests that bidders interconnecting to or delivering to Wyoming should review their technical specifications with PacifiCorp Transmission. Based on technical information received by PacifiCorp Transmission, concerns have been raised with the capability of integrating some types of wind turbine generators in the Aeolus / Freezeout / Shirley Basin / Standpipe area of the Rocky Mountain Power 230 kV Wyoming transmission system. These concerns include wind turbines will be normally operating on a weak transmission system with a steady state short-circuit ratio that is less than 2.0 in the 2020 timeframe and beyond, and with the eventual completion of the Gateway West and Gateway South Transmission Projects, the wind turbine will be operating on a series-compensated transmission system. Further questions should be directed to PacifiCorp Transmission..

All BTA proposals that will require a new electrical interconnection or an upgrade to an existing electrical interconnection, regardless of the project's interconnection to either PacifiCorp's system or to another utility's system, must include a firm statement of the cost of interconnection (broken out between network upgrade costs and facility specific or direct assigned interconnection costs), together with a diagram of the interconnection facilities. The interconnection costs included in the bids from all bidders will be considered as firm costs and included in the bid evaluation. Interconnection costs should be clearly identified in the resource cost proposal and differentiate the portion of costs associated with network upgrades and that portion that are facility-specific.

Although not required for initial bidding eligibility, PacifiCorp will ultimately require a completed interconnection system impact study (for directly interconnected projects) or a

completed third-party interconnection system impact study and a completed third-party transmission service study (for projects using third-party transmission) to determine the actual direct assigned cost for the interconnection or transmission services. Bids will be evaluated based on the direct assigned interconnection costs submitted in the bids and considered firm costs for the initial shortlist evaluation. Bids that are selected to the initial shortlist will be held to their best and final pricing for final shortlist evaluation. If selected to the final shortlist, bidder's agreement with PacifiCorp, whether PPA or BTA, will include a condition precedent that states PacifiCorp will compare the actual direct assigned interconnection cost from the completed SIS with the bidder's firm estimate provided in their best and final price. In the event the actual SIS cost exceeds the bidder's firm interconnection cost in best and final pricing, bidder will be responsible for the cost above their best and final firm price. In the event the actual SIS cost is less than the bidder's firm interconnection cost estimate, PacifiCorp will require an adjustment of the final PPA or BTA price to reflect the reduction in interconnection costs. The Company will also compare the commercial operation date in the SIS with the commercial operation date in the agreement to confirm operation by December 31, 2020. PacifiCorp will examine critical study information such as: (1) whether the studies support a December 31, 2020 commercial operation date; (2) interconnection and/or transmission costs; and (3) whether any third-party transmission arrangements will be available to the bidder during the full term of the offer(s) proposed or include contractual roll-over options if available to the bidder.

Bidders choosing the third-party interconnection and third-party transmission option are responsible for any current or future third-party tariff requirements or tariff changes including, but not limited to, interconnection, variable energy resource, electric losses, reserves, transmission, integration, imbalance, scheduling, and ancillary service arrangements required to deliver to the point of delivery on PacifiCorp's system in its Wyoming service territory. These costs will not be included in the evaluation of PPA proposals as they are assumed to be the responsibility of the bidder.

Bidders that propose bids relying on third-party transmission should also be aware that the use of transmission that is interruptible within the hour in any segment of the schedule or tagged from the source to the point(s) of delivery will require PacifiCorp to evaluate the cost and need to carry reserves against the schedule, which can be up to 100% in the case of electricity moved from a third party control area to PacifiCorp's network transmission system.

All proposals will require firm transmission to PacifiCorp's network transmission system and proposed resources must be able to be designated by PacifiCorp's Energy Supply Management (ESM) function as a Network Resource under the network service contract between PacifiCorp Transmission ([www.oasis.pacificorp.com](http://www.oasis.pacificorp.com)) and PacifiCorp ESM.

### **C. FERC'S STANDARDS OF CONDUCT**

Each bidder responding to this RFP must conduct its communications, implementation and operations in compliance with FERC's Standards of Conduct for Transmission Providers (see **Appendix I**), requiring the separation of its transmission and merchant functions. Any interconnection or transmission service is NOT a transmission service agreement with PacifiCorp's ESM merchant function; rather, it is with PacifiCorp's transmission function

or other third-party transmission provider. As such, the bidder must follow the transmission provider's OASIS process. If requested, bidders shall execute a customer consent form consistent with FERC requirements that enables PacifiCorp's ESM merchant function to discuss the bidder's interconnection and/or transmission service application(s) with the transmission interconnection or transmission service provider.

#### **D. RESOURCE TYPES ELIGIBLE TO BID**

PacifiCorp is seeking new wind energy resources or repowered existing wind resources capable of directly interconnecting and/or delivering energy to PacifiCorp's PACE and PACW network transmission system by December 31, 2020. These resources must be capable of being interconnected with PacifiCorp's transmission system, or capable of delivering energy to PacifiCorp's transmission system with the use of third-party firm transmission service. Repowered existing wind resources that currently have a PPA with PacifiCorp for the offtake of the energy will be accepted provided the existing PPA expires before December 31, 2020.

#### **E. TAX CREDITS AND/OR PROJECT INCENTIVES**

Bidders must bear all risks, financial and otherwise, associated with bidder's or the facility's eligibility to receive any state or federal energy tax credits, sales tax waivers or exemptions or any other identified tax credit or incentive, or qualify for accelerated depreciation for bidder's accounting, reporting or tax purposes, as applicable. The obligations of the bidder to perform under any executed agreement as a result of this solicitation shall be effective and binding regardless of whether the sale of or output from the bidder's facility under such agreement is eligible for, or receives production or investment tax credits, or other identified tax credits/incentives.

PacifiCorp will require written documentation of the amount, timing and control of any and all available tax credits/incentives that the bidder's facility is eligible for, applied for, and/or received. Such documentation shall include but not be limited to ownership rights to the credit, grant or incentive, timing including expiration dates and milestones to achieve the credit, grant, or incentive.

#### **F. ACCOUNTING**

All contracts proposed to be entered into as a result of this RFP will be assessed by PacifiCorp for appropriate accounting and tax treatment. Bidders shall be required to supply PacifiCorp with any and all information that PacifiCorp reasonably requires in order to make these assessments if the bid is selected to the initial shortlist. Specifically, given the term length of the PPA, or the useful life of the asset to be acquired under an asset acquisition or alternative ownership proposal, accounting and tax rules may require either: (i) a contract be accounted for by PacifiCorp as a capital lease or operating lease<sup>13</sup> for book purposes pursuant to ASC 840, (ii) a contract be accounted for by PacifiCorp as a capital

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<sup>13</sup> "Capital Lease" and "Operating Lease" - shall have the meaning as set forth in the Accounting Standards Codification (ASC) 840 as issued and amended from time to time by the Financial Accounting Standards Board.



lease for tax purposes<sup>14</sup>, or (iii) the seller or assets owned by the seller, as a result of an applicable contract, be consolidated as a variable interest entity (VIE) onto PacifiCorp's balance sheet.<sup>15</sup>

As a result, bidders may be required by PacifiCorp to certify, with supporting information sufficient to enable PacifiCorp to independently verify such certification, that their proposals will not be subject to VIE treatment. Bidders should carefully consider the potential book and tax lease accounting treatment or VIE treatment implications associated with a Long Term PPA offers (i.e., PPA terms of 25 to 30 years without PPA extensions, or PPA terms that, after consideration of extension options, would result in a PPA term of 25 to 30 years). For these Long Term PPA offers, bidders will need to supply, with their bid, projected cash flows through the life of the underlying asset so that PacifiCorp can assess potential accounting implications. Potential accounting treatment impacts will be incorporated into the bid evaluation and selection process. For instance, if PacifiCorp determines that a Long Term PPA offering would be treated as a capital lease for tax purposes, PacifiCorp would be treated as the tax owner for the proposed facility.

Each bidder must also agree to make available in the bid evaluation process any and all financial data associated with the bidder PPA or BTA that PacifiCorp requires to determine potential accounting impacts. Such information may include, but is not limited to, data supporting the economic life (both initial and remaining), the fair market value, executory costs, nonexecutory costs, and investment tax credits or other costs (including debt specific to the asset being proposed) associated with the bidder's proposal. Financial data contained in the bidder's financial statements (e.g., income statements, balance sheets, etc.) may also be required to be supplemented.

#### **G. COST ASSOCIATED WITH DIRECT OR INFERRED DEBT**

PacifiCorp will not take into account potential costs to PacifiCorp associated with direct or inferred debt (described below) as part of its economic analysis in the shortlist evaluation. However, after completing the shortlist and before the final resource selections are made, PacifiCorp may take direct or inferred debt into consideration. In so doing, PacifiCorp may obtain a written advisory opinion from a rating agency to substantiate PacifiCorp's analysis and final decision regarding direct or inferred debt.

Direct debt results when a contract is deemed to be a capital lease pursuant to ASC 840 and the lower of the present value of the nonexecutory minimum lease payments or 100% of the fair market value of the asset must be added to PacifiCorp's balance sheet.

Inferred debt results when credit rating agencies infer an amount of debt associated with a power supply contract and, as a result, take the added debt into account when reviewing PacifiCorp's credit standing.

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<sup>14</sup> See IRS Code Section 7701(e) describing the test for capital lease for tax purposes.

<sup>15</sup> "Variable Interest Entity" or "VIE" - shall have the meaning as set forth in ASC 810 as issued and amended from time to time by the FASB.

## SECTION 6. BID EVALUATION AND SELECTION

### A. OVERVIEW OF THE EVALUATION PROCESS

PacifiCorp's bid evaluation and selection process is designed to identify the combination and amount of new or repowered wind projects bid into the 2017R RFP that will maximize customer benefits. The method used to evaluate and select bids is consistent with the methods that were used to evaluate new or repowered wind resources and transmission infrastructure in PacifiCorp's 2017 IRP. The same method will be used to evaluate benchmark resources and market bids. PacifiCorp will not make any of the evaluation models available to bidders. The IEs will have full access to the inputs in all models used during the evaluation process.

The bid evaluation process will occur in two phases. In the first phase, PacifiCorp will establish an initial shortlist based on both price and non-price factors. During this phase of the bid evaluation process, PacifiCorp will not ask for, or accept, updated pricing. PacifiCorp will rely on the pricing and transaction structure as submitted into the 2017R RFP for each benchmark resource and market bid. However, PacifiCorp will contact bidders to confirm and clarify information presented in each proposal. Bids selected to the initial shortlist will be given an opportunity to provide best and final pricing, subject to certain limits as described later in this section.

In the second phase, initial shortlist bids, with updated pricing, will be analyzed with the same production cost models that were used to develop PacifiCorp's 2017 IRP preferred portfolio. These production cost models will be used to perform a net customer benefit analysis by simulating PacifiCorp's system costs with and without initial shortlist bids. PacifiCorp's production cost modeling will be used to calculate the expected net present value revenue requirement impacts, accounting for risk. The customer cost and risk analysis, along with any other factors not expressly included in the formal evaluation process, but required by applicable law or commission order, will be used by PacifiCorp, in consultation with the IEs, to establish the final shortlist.

After the final shortlist is established and acknowledged, PacifiCorp will initiate negotiations with bidders that submitted proposals for projects selected to the final shortlist. Selection of a bid to the final shortlist does not constitute a winning bid. Only execution of a definitive agreement between PacifiCorp and the bidder, on terms acceptable to PacifiCorp, in its sole and absolute discretion, will constitute a winning bid proposal. Any definitive PPA or BTA will be in the form of the PPA or BTA contracts provided in **Appendices E-2** and **F-2**, respectively. If the bidder alters the PPA or BTA, or does not use it as the underlying agreement, bid evaluation and selection can be affected. PacifiCorp welcomes bidders, at their own discretion, to provide written comments on the PPA or BTA contracts provided in **Appendices E-2** and **F-2** as part of their bid. PacifiCorp has no legal obligation to enter into any agreement of any kind with any bidder.

## **B. PHASE 1 – INITIAL SHORTLIST**

### **1. Price Evaluation (up to 80%)**

PacifiCorp will use proprietary models to perform financial analysis and rank benchmark resources and market bids. PacifiCorp will use a proprietary spreadsheet model to calculate the delivered revenue requirement cost of each benchmark resource and market bid, inclusive of any applicable carrying cost and net of production tax credit benefits, as applicable. The delivered revenue requirement cost will be netted against energy, capacity, and terminal value benefits, as applicable, to calculate the net cost of each benchmark resource and market bid.

In developing revenue requirement costs, PacifiCorp will use cost data for each benchmark resource and market bid. Any internal assumptions for key financial inputs (i.e., inflation, discount rates, marginal tax rates, asset lives, AFUDC rates, etc.) and PacifiCorp carrying costs (i.e., integration costs, owner's costs, etc.) will be applied consistently to benchmark resources and market bids, as applicable. The cost of the Aeolus-to-Bridger/Anticline transmission project will not be directly assigned to specific benchmark resources or market bids during the initial-shortlist price evaluation. These costs will be considered as system costs during the financial evaluation performed to establish the final shortlist, as described later in this section. However, the cost for any transmission network upgrades or required to connect to the Aeolus-to-Bridger/Anticline transmission line or other areas of PacifiCorp's transmission system will be included in the initial shortlist price evaluation. The cost for any third-party wheeling expenses required to deliver output to PacifiCorp's system will be the responsibility of the bidder and should be included in the cost proposal. All internal assumptions needed to calculate revenue requirement costs will be provided to the IEs and locked down before benchmark resource bids and market bids are received and opened.

PacifiCorp will also apply consistent assumptions associated with bid benefits (i.e., energy, capacity, terminal value, etc.), as applicable. Energy and capacity value will be based on two production cost model runs for prospective bids delivering output to varying locations on PacifiCorp's system. For each location (Wyoming, Utah, Idaho, and Washington/Oregon), one simulation will include proxy wind resources and new transmission, as applicable, at a zero cost and one simulation will exclude proxy wind resources and new transmission, as applicable. The differential in system fixed and variable costs between the two production cost model simulations will serve as the basis for expected energy and capacity benefits associated with new or repowered wind facilities at varying locations. All energy, capacity, and terminal value assumptions will be provided to the IEs and locked down before benchmark resource bids and market bids are opened.

The net cost calculation will be used to assign a price score to each benchmark resource and each market bid. This will be achieved by calculating the nominal levelized (discounted) revenue requirement cost and the nominal levelized (discounted) benefit for each benchmark resource and market bid, where revenue requirement costs are reported as a negative value and customer benefits are reported as a positive value.

## 2. Non-Price Evaluation (Up To 20%)

The non-price analysis will gauge the relative development, construction and operational characteristics and associated risks of each benchmark resource and market bid. A matrix will be used for each non-price factor. For each non-price factor, proposals will be assigned one of three discrete scores: (1) 100% of the percentage weight; (2) 50% of the percentage weight; or (3) 0% of the percentage weight. Benchmark and market bids will be evaluated based on their ability to demonstrate the proposal is thorough, comprehensive and provides limited risk to the buyer prior to PacifiCorp performing due diligence on any given bid. Bidders that have a demonstrated track record and bids for mature proposals will receive higher scores. The following table summarizes the basis for weighting each non-price factor.

### NON-PRICE FACTOR WEIGHTING

Non-Price Factor	Non-Price Factor Weighting
1. Conformity to RFP Requirements: <ul style="list-style-type: none"> <li>Bids provided all required RFP information pursuant to RFP instructions and schedule, including the accuracy of such information.</li> <li>Bids provided complete and accurate required RFP information of but not limited to documentation of site control and permitting process, environmental compliance plan, and interconnection or transmission arrangements.</li> <li>Bids in compliance with technical specifications as outlined in <b>Appendix A</b> (applicable primarily to BTA bids or PPA bids with a purchase option)</li> <li>Bidder's development and construction experience related to large scale wind projects.</li> </ul>	4%
2. Project Deliverability: <ul style="list-style-type: none"> <li>Bids demonstrated the commercial operation date would be achieved by December 31, 2020.</li> <li>Bids provided sufficient detail, including schedule(s) and documentation, to demonstrate the ability of meeting all of the project's environmental compliance, permits, and equipment procurement.</li> <li>Bids demonstrate and provide sufficient detail regarding access to generation equipment and well defined O&amp;M plan and financing plan.</li> <li>Bids included documentation that projects qualify for and would receive the full or partial value of the federal PTC as interpreted by applicable guidelines and rules of the Internal Revenue Service at commercial operation.</li> </ul>	8%
3. Transmission Progression: <ul style="list-style-type: none"> <li>Bids provided sufficient detail, including schedule(s) and documentation for completing project interconnection and securing any required third party transmission service to support December 31, 2020 commercial operation date.</li> </ul>	8%

### 3. Initial Shortlist Selection

PacifiCorp will seek to establish an initial shortlist that includes up to approximately 2,000 MW of aggregate wind capacity for Wyoming wind projects that are reliant on the Aeolus-to-Bridger/Anticline transmission project. PacifiCorp will also seek to establish an initial shortlist that includes up to 2,000 MW of aggregate wind capacity for wind projects that are not reliant on the Aeolus-to-Bridger/Anticline transmission project. However, PacifiCorp, in consultation with the IEs, may establish an initial shortlist containing less or more aggregate capacity depending upon the relative total bid score among benchmark resources and market bids. PacifiCorp, in consultation with the IEs, may select the base proposal and one or more bid alternatives proposed with any benchmark resource or market bid, as applicable, to the initial shortlist.

PacifiCorp will use the combined price and non-price results to rank benchmark resources and market bids. Based on these rankings, PacifiCorp will select an initial shortlist based on total bid score (maximum at 100%, with a maximum of 80% for price and a maximum of 20% for non-price factors).

The calculated nominal levelized \$/MWh net benefit for each benchmark resource and market bid will be force ranked, with a maximum of 80 points to the evaluated bid with the highest calculated net benefit, a minimum of zero (0) points to the evaluated bid with the lowest calculated net benefit; and the remaining bids scored on the 0 to 80 point scale according to the relationship of their respective calculated net benefits to those of the highest and lowest bids. PacifiCorp will also rank the bids per the IE-recommended ranking methodology used in PacifiCorp's previous RFPs<sup>16</sup> for purposes of comparison as part of the initial shortlist evaluation. If the two methodologies result in different initial shortlists, PacifiCorp will include in its initial shortlist all bids supported by both methodologies.

The non-price score will not be force ranked. Each bid will have its forced rank price score added to the non-price score. The bidders with the highest total score (price and non-price), and representing up to approximately 2,000 MW of aggregate capacity at any given location, will be considered for the initial shortlist.

PacifiCorp will engage an independent third-party expert to evaluate proposed wind generation data for each benchmark resource and market bid selected to the initial shortlist in compliance with Guideline 10(f) in Oregon Order 14-149<sup>17</sup>. In consultation with the IEs, PacifiCorp may use information provided by the independent third-party expert to adjust proposed wind generation data and projected capacity factors during the final shortlist selection process.

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<sup>16</sup> PacifiCorp has historically used a ranking methodology based on the ratio of bid benefits to costs with established bookends for the ratios. For example, PacifiCorp used a lower bookend of 60 percent and an upper bookend of 140 percent in its 2012 All-Source RFP. The bookends can be adjusted to balance between price and non-price scores.

<sup>17</sup> Public Utility Commission of Oregon Docket UM 1182, In the Matter of an Investigation Regarding Competitive Bidding, Order 14-149.

PacifiCorp will assess initial short listed PPA bids for the appropriate accounting and tax treatment. PPA bids will be evaluated for: (i) whether a contract must be accounted for by PacifiCorp as a capital lease or operating lease pursuant to ASC 840 for book purposes, (ii) whether a contract must be accounted for by PacifiCorp as a capital lease for tax purposes, or (ii) whether the seller or assets owned by the seller, as a result of an applicable contract, be consolidated as a variable interest entity (VIE) onto PacifiCorp's balance sheet. For Long Term PPA offers (i.e., PPA terms of 25 to 30 years without PPA extensions, or PPA terms that, after consideration of extension options, would result in a PPA term of 25 to 30 years), bidders should carefully consider the potential book and tax lease accounting treatment or (VIE) treatment implications. For these Long Term PPA offers that are selected to the initial shortlist, bidders will be required to supply, with their bid, projected cash flows through the life of the underlying asset so that PacifiCorp can assess potential accounting implications. Potential accounting treatment impacts will be incorporated into the bid evaluation and selection process. For instance, if PacifiCorp determines that a Long Term PPA offering would be treated as a capital lease for tax purposes, PacifiCorp would be treated as the tax owner for the proposed facility. Please also refer to Section 5.F of this RFP.

#### **4. Best and Final Pricing**

Benchmark and market bids notified of their selection to the initial shortlist will be given an opportunity to provide best and final pricing. Best and final pricing must be provided for the same site using the same or similar technologies as original proposed. Best and final pricing, shall not exceed 10% of the original total bid cost, which PacifiCorp will assess on a present value revenue requirement basis. In the event that best and final pricing increases the total benchmark resource or market bid cost by more than 10%, PacifiCorp reserves the right to either (a) reject the best and final proposal or, (b) replace the short-listed bid or bid alternative with a final proposal solicited from another bid not originally selected to the initial shortlist. Accordingly, PacifiCorp may request that certain indicative bids, not initially selected to the initial shortlist, remain open after the initial shortlist is established and that those bidders be prepared to provide best and final pricing on an expedited basis.

### **C. PHASE 2 – FINAL SHORTLIST**

#### **1. Processing of Best and Final Bids**

After confirming that best and final pricing meets the requirements of the 2017R RFP, as outlined above, PacifiCorp will use the same proprietary models used for the initial shortlist price evaluation, with bids updated for best and final pricing and projected performance, to process bid costs for input into IRP production cost models. In processing benchmark resource and market bid costs, PacifiCorp will convert the calculated revenue requirement associated with capital costs (i.e., return on investment, return of investment, and taxes, net of PTCs, as applicable) to first-year-real-levelized costs, consistent with the treatment of capital revenue requirement in PacifiCorp's IRP modeling. All other benchmark resource and market bid costs will be summarized in nominal dollars and formatted for input into the IRP models, consistent with the treatment of non-capital revenue requirement in PacifiCorp's IRP modeling. Projected wind resource performance data (expected hourly capacity factor information) will also be processed for input into the IRP models.

## **2. Bid Resource Portfolio Development**

PacifiCorp will use the System Optimizer (SO) model—the same model used by PacifiCorp to develop resource portfolios in the 2017 IRP—to develop a resource portfolio containing 2017R RFP bids with the Aeolus-to-Bridger/Anticline transmission project. For purposes of the 2017R RFP, the SO model will be used to select the combination of wind projects from the initial shortlist. For Wyoming wind that requires construction of the Aeolus-to-Bridger/Anticline transmission project for interconnection, the model will be able to select up to approximately 1,270 MW of new or repowered wind capacity. For bids that are not dependent upon the Aeolus-to-Bridger/Anticline transmission project for interconnection, the model will be able to select new or repowered wind capacity at any level that reduces system costs, thereby demonstrating net benefits for customers. Bids will be available for selection to the resource portfolio for a range of different environmental policy and market price scenarios (policy-price scenarios).<sup>18</sup> For each of these portfolios, the SO model will be configured to include the cost and incremental transfer capability associated with the Aeolus-to-Bridger/Anticline transmission project. The SO model will also be used to establish least cost resource portfolios for each policy-price scenario without any new wind and without the Aeolus-to-Bridger/Anticline transmission project.

For each policy-price scenario, PacifiCorp will calculate the present value revenue requirement differential (PVRR(d)) between the portfolio containing 2017R RFP wind resources with the Aeolus-to-Bridger/Anticline project, including the all transmission costs, and the portfolio without 2017R RFP wind resources and without incremental transmission costs.

## **3. Stochastic Risk Analysis**

PacifiCorp will also evaluate each of the resource portfolios developed with the SO model using Planning and Risk (PaR)—the same model used in PacifiCorp's 2017 IRP to analyze stochastic resource portfolio risk. PaR captures stochastic risk in its production cost estimates, without altering the resource portfolio, by using Monte Carlo sampling of stochastic variables, which include: load, wholesale electricity and natural gas prices, hydro generation, and thermal unit outages. For purposes of the 2017R RFP, PaR will be used to calculate the stochastic mean PVRR(d) and the risk-adjusted PVRR(d) for each policy-price scenario.<sup>19</sup>

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<sup>18</sup> Policy-price scenarios will be conceptually consistent with those used in the 2017 IRP (i.e., alternative environmental policy assumptions among low, medium, and high price scenarios), but updated to reflect PacifiCorp's assessment of the most current information. Policy-price scenario assumptions will be established and reviewed with the IEs before updated bids with best and final pricing are received and opened.

<sup>19</sup> The stochastic mean metric is the average of system net variable operating costs among 50 iterations, combined with the real-levelized capital costs and fixed costs taken from the SO model. The risk-adjusted metric adds 5% of system variable costs from the 95<sup>th</sup> percentile to the stochastic mean. The risk-adjusted metric incorporates the expected value of low-probability, high-cost outcomes.

#### **4. Identifying Top-Performing 2017R RFP Wind Resource Portfolios**

PacifiCorp will summarize and evaluate the 2017R RFP wind resource portfolios to identify the specific benchmark resources and market bid resources that are most consistently selected among the policy-price scenarios and that deliver economic benefits for customers. Based on these data, and in consultation with the IEs, PacifiCorp will select one or more 2017R RFP wind resource portfolios for further scenario risk analysis.

#### **5. Scenario Risk Analysis**

This step of the evaluation process will help identify whether top-performing portfolios exhibit especially poor performance under a range of future policy-price scenarios. PacifiCorp will develop new system resource portfolios around the top-performing 2017R RFP resource portfolios and calculate a system PVRR(d) for each policy-price scenario. Similarly, the portfolios developed in the SO model will be evaluated in PaR, and PacifiCorp will calculate a stochastic mean PVRR(d) and a risk-adjusted PVRR(d) for each policy price-scenario.

#### **6. Other Factors**

Before establishing a final shortlist, PacifiCorp may take into consideration, in consultation with the IEs, other factors that are not expressly or adequately factored into the evaluation process outlined above, particularly any factor required by applicable law or Commission order to be considered.

The Utah Energy Resource Procurement Act requires consideration of at least the following factors in determining whether a resource selected by PacifiCorp should be approved as in the public interest:

- Whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;
- Long-term and short-term impacts;
- Risk;
- Reliability;
- Financial impacts on the affected electrical utility; and
- Other factors determined by the Commission to be relevant.

Oregon Order No. 06-446, Guideline 10(d) as modified by Order 14-149, requires, among other things, that the Oregon IE evaluate the unique risks and advantages associated with the benchmark resource, including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP. The IE may apply those same risks and advantages in review of the market bids.

#### **7. Final Shortlist Selection**

PacifiCorp will summarize and evaluate the results of its scenario risk analysis, considering PVRR(d) results and annual customer impacts, to identify the specific benchmark



resources and market bid resources that maximize customer benefits. Based on these data and certain other factors as described above, and in consultation with the IEs, PacifiCorp will establish a final shortlist. This final shortlist will be submitted to the Public Utility Commission of Oregon for acknowledgement. PacifiCorp will seek acknowledgment of the 2017R RFP final shortlist after acknowledgement of the 2017 IRP. Development of the resources identified in the 2017R RFP is not contingent on acknowledgement of the 2017 IRP, however, and the Company reserves the right to modify or cancel the 2017R RFP pending resolution of the 2017 IRP proceedings. PacifiCorp will also seek approval of the the final shortlist with the Utah Public Service Commission, the Wyoming Public Service Commission, and the Idaho Public Utilities Commission. Once the final shortlist is established and bidders notified, PacifiCorp will initiate negotiations with final-shortlist bidders.

## **SECTION 7. AWARDING OF CONTRACTS**

### **A. INVITATION**

This RFP contains only an invitation to make proposals to PacifiCorp. No proposal is itself a binding contract unless the parties execute definitive and complete documentation providing otherwise.

PacifiCorp may in its sole discretion do any one or more of the following:

1. Determine which proposals are eligible for consideration in response to this RFP.
2. Issue additional subsequent solicitations for information, and conduct investigations with respect to the qualifications of each bidder.
3. Supplement, amend, or otherwise modify this RFP, or cancel this RFP with or without the substitution of another RFP.
4. Negotiate with bidders to amend any proposal.
5. Select and enter into agreements with the bidders who, in PacifiCorp's sole judgment, are most responsive to the RFP and whose proposals best satisfy the interests of PacifiCorp and its customers, and not necessarily on the basis of price alone or any other single factor.
6. Issue additional subsequent solicitations for proposals.
7. Waive any irregularity or informality on any proposal to the extent not prohibited by law.
8. Reject any or all proposals in whole or in part.
9. Vary any timetable.
10. Conduct any briefing session or further RFP process on any terms and conditions.
11. Withdraw any invitation to submit a response.

### **Basis for Rejection**

Proposals may be rejected for any reason including but not limited to not meeting the minimum eligibility requirements identified in Section 3.H of this RFP.

## **B. CONFIDENTIALITY AGREEMENT**

In addition to the confidentiality provisions set forth herein, bidders should note that all parties will be required to sign **Appendix G - Confidentiality Agreement** with PacifiCorp if they qualify for the initial shortlist.

## **C. NON-RELIANCE LETTER**

All parties will be required to sign **Appendix G - Non-Reliance Letter** if they qualify for the final shortlist prior to entering into negotiations with PacifiCorp.

## **D. POST-BID NEGOTIATION**

PacifiCorp will further negotiate both price and non-price factors during post-bid negotiations. PacifiCorp will also include in its evaluation any factor that may impact the total cost of a resource, including but not limited to all of the factors used in the final shortlist cost analysis plus consideration of accounting treatment and potential effects due to rating agency treatment, if applicable. Post-bid negotiation will be based on PacifiCorp's cost assessment. PacifiCorp will continually update its economic and risk evaluations until both parties execute a definitive agreement acceptable to PacifiCorp in its sole and absolute discretion.

PacifiCorp shall have no obligation to enter into any agreement with any bidder to this RFP and PacifiCorp may terminate or modify this RFP at any time without liability or obligation to any bidder. In addition, this RFP shall not be construed as preventing PacifiCorp from entering into any agreement that PacifiCorp deems prudent, in PacifiCorp's sole discretion, at any time before, during, or after this RFP process is complete. Finally, PacifiCorp reserves the right to negotiate only with those entities who propose transactions that PacifiCorp believes in its sole discretion to have a reasonable likelihood of being executed.

## **E. SUBSEQUENT REGULATORY ACTION**

Unless mutually agreed between the parties or unless required by actual (or proposed) law or regulatory order, at the time of contract execution, PacifiCorp does not intend to include a contractual clause whereby PacifiCorp is allowed to adjust contract prices in the event that an entity who has regulatory jurisdiction over PacifiCorp does not fully recognize the contract prices in determining PacifiCorp's revenue requirement. As of the issuance date for this solicitation, PacifiCorp is unaware of any such actual law or regulatory order.