

Agenda Date: December 10, 2003  
Item Number: A4

**Docket:** UE- 031311  
Company Name: PacifiCorp, d/b/a Pacific Power and Light Company

Staff: Yohannes Mariam, Regulatory Analyst  
Hank McIntosh, Regulatory Consultant

**Recommendation:**

Suspend the Request for Proposal (RFP) filed by PacifiCorp, d/b/a Pacific Power and Light Company, (PacifiCorp or Company) because it doesn't comply with WAC 480-107 and the Public Utility Regulatory Policies Act (PURPA). Alternatively, the Company could resubmit the request eliminating the statement described in the body of memo and the order within five business days following the Commission's order.

**Discussion:**

Chapter 480-107 WAC establishes the rules that govern the purchases of electricity through a bidding process, and administers implementation of PURPA. The competitive bidding provisions of the rule require that regulated utilities issue a Commission approved Request for Proposal (RFP) approximately every two years, corresponding with the biennial filing of least cost plans (LCP). This provision applies whether or not the LCP shows any need for additional resources.

WAC 480-107-060 (1) states that:

*These rules are consistent with the provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292. Purchase of electric power under these rules shall satisfy an electric utility's obligation to purchase power from qualifying facilities under section 210 of PURPA.*

Furthermore, WAC 480-107-001 (2) clearly states:

*(2) The provisions of this chapter shall apply to any electric utility which has submitted to the commission a least-cost plan as provided in WAC 480-100-251.*

### **Importance of the Solicitation Process and Enforcement of Chapter 480-107 WAC**

The Commission has elected to administer PURPA through a bidding process, which is generally thought to result in a lower competitively determined avoided cost than other methods, such as an administratively determined avoided cost. Because the bidding process sets avoided cost for purchases of electricity from QFs, regulated electric utilities have to issue an RFP whether or not the LCP shows a need for additional capacity and energy resources. Bids submitted by potential developers are used for determining avoided cost under PURPA. That is, the bidding process can elicit prices less than, equal to, or greater than the avoided costs from the LCP. Further, these solicitations provide useful price discovery mechanisms to the utility as it determines spot market purchase requirements and develops its next LCP. In other words, competitors or bidders incorporate more recent cost and market information as they seek to maximize their profit in the presence of competition.

PacifiCorp filed its Least Cost Plan (LCP) on January 24, 2003. Pursuant to WAC 480-107-060(2)(a), the Company should have filed a draft RFP on April 23, 2003. Instead, following months of discussions with Staff on the need to file and contents of an RFP, the Company submitted a petition (including an administratively determined avoided cost) on August 14, 2003. This filing included what appears to be a request for exception of the draft RFP filing requirement, and/or the RFP solicitation process. PacifiCorp filed a subsequent draft RFP on September 25, 2003.

### **Minimum RFP Filing Requirements**

The Company requests the Commission to consider the filing of August 14, 2003, to satisfy the draft RFP requirements despite the fact that it included only avoided costs and supporting data. Thus, the filing lacks other elements of an RFP as required in Chapter 480-107 WAC.

Staff disagrees with the filing because it does not meet the requirements of Commission's bidding rules.<sup>1</sup>

Because the Commission has an obligation to administer PURPA, a periodic adjustment of the market-based avoided costs is required. This is why electric utilities regulated by the Commission must meet the spirit of the Rule whether or not the LCP shows any need for additional resources. After all, the bidding process could result in acquiring resources that could displace spot market purchases.

PacifiCorp filed amendments to Docket UE-031311 on September 25, 2003. The major component of the amendment was the issuance of an RFP. The RFP included guidelines for submitting proposals, type of resources, size of resource block, avoided cost schedule, evaluation

---

<sup>1</sup> Chapter 480-107-060 (2)(c) and (2)(d) states that:

2) Requirements for issuing a request for proposals:

(c) The RFP shall specify the resource block and the long-term avoided cost schedule as calculated in WAC [480-107-040](#) and [480-107-050](#).

(d) The RFP shall explain the evaluation and ranking procedure to be used by the utility. The RFP must also specify any minimum criteria that bidders must satisfy to be eligible for consideration in the ranking procedure.

and ranking procedure, and prototype contracts. The inclusion of these components in the amended filing satisfies the requirements of PURPA and WAC 480-107. However, the filing is flawed because it contains a sentence that nullifies the intent or objective of WAC 480-107. PacifiCorp's RFP filing includes the following sentence on the first page:

"Although PacifiCorp is currently seeking to acquire resources through specifically-tailored solicitation, it doesn't propose to issue a Commission-approved RFP in Washington as a means of securing additional resources" (emphasis added)

Company representatives and Staff discussed ways of changing the above sentence. Staff sees the issue as an important procedure required to make sound economic decisions and a requirement of the rule. However, the Company believes that the sentence is merely stylistic and not of substantive importance.

Specifically, Staff identified three issues that result from the inclusion of the above sentence in the RFP. These are discussed below.

First, the inclusion of the above sentence in its RFP implies that the Company might not consider bids from Washington, thus leading potential developers not to file a bid. It also implies that the Company might intend to discriminate against offers from Washington despite the fact its ratepayers pay for a share of system-wide resource costs. State and federal rules do not specify exclusions of offers from any potential developers. Instead, a utility is expected to consider all offers or bids consistent with its requirements, in order to estimate a lowest price. Consequently, this RFP filing explicitly fails to adequately provide provision for price discovery. Thus, the final avoided cost PacifiCorp will use will not be based on complete market information that could only be obtained by considering all bids or offers which the market might produce.

Second, the Company's LCP acknowledged that transfer of power from east to west is constrained by transmission. However, the transmission constraints are less binding for power transmitted from west to east. It well may be that it is less costly to acquire power in the west to serve the loads in the east. Thus, acquiring resources from the east without any consideration of power from the west may not represent the lowest system cost.

Third, PacifiCorp prefers to allocate cost of its resources to each state according to a scheme that is not approved by this Commission. Limiting the geographic region from which resources may be acquired could inflict harm to Washington ratepayers because there may be locally available cost-effective resources (e.g., DSM programs). Further, the exclusion of potential developers from Washington may affect the market and price efficiency because it truncates the population of bidders.

After careful consideration of the relevant rules and regulations in light of the filing contained in Docket UE-031311, Staff concludes that the Company's RFP filing doesn't fully meet the requirements of Chapter 480-107 WAC. That is, Staff believes that the filing is materially flawed in its content because it contains a sentence that nullifies the elements of an RFP that satisfy the requirements of the rule.

**Recommendations:**

Staff has reviewed the RFP filing and petition in Docket UE-031311. Staff believes that the Company's RFP filing doesn't comply with Chapter 480-107 WAC and the Public Utility Regulatory Policy Act (PURPA). The Company should remove the "nullifying sentence" (identified above) included in the filing, and resubmit the RFP within five business days of following the Commission's action. The Company should also post the final RFP to its website and provide a link (URL) for posting at the Commission's order.