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Washington Utilities and Transportation Commission
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COMMISSION

RE: Docket UE-190837—Rulemaking to consider changes to WAC 480-107, Purchase of Electricity in light of RCW 19.405, other legislative changes since 2006 and changes in the electric industry.

The Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to Submit Written Comments on its draft rules to consider changes to WAC 480-107, Purchase of Electricity in light of RCW 19.405, other legislative changes since 2006 and changes in the electric industry on November 3, 2020, requesting general comment on its final draft rules before the rule adoption hearing on December 14, 2020. PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp) appreciates the opportunity to provide written comments on the proposed rules and reiterates its serious concerns about the practical viability and potential negative customer impact of these rules.

INTRODUCTION

These rules – like all of the Clean Energy Transformation Act (CETA) rulemakings – are the product of over a year of work by all parties. PacifiCorp acknowledges the challenge of implementing CETA and commends the Commission and Commission Staff (Staff) for conducting a robust stakeholder process. Beyond the challenge of interpreting CETA and resolving differences in interpretation among stakeholders, the Commission, Staff, and stakeholders were challenged by a global pandemic that required all parties to adapt to new methods of engagement. Notwithstanding PacifiCorp’s considerable appreciation for the work that went into these rules, PacifiCorp continues to advocate for further clarification or modification of these rules to ensure fair and efficient acquisition processes in the future.

These draft rules create burdensome and complicated acquisition processes likely to result in unnecessary work and regulatory fatigue for utilities, the Commission, Staff, and all stakeholders. The request for proposals (RFP) requirements are unlikely to result in acquisitions that are quickly and efficiently run, complementing the need for rapid action that is inherent in the law. Rather, they may burden PacifiCorp’s and Washington’s transformation to a clean energy future with inefficiencies, unnecessary administrative burden, and resulting cost increases for customers to comply with these prescriptive and burdensome requirements. Ultimately, this approach will do more harm than good in terms of meeting CETA’s ambitious goals.

PacifiCorp supports simple, straightforward rules to implement CETA. In four sets of written comments and a number of informal comments provided through rulemaking workshops over the past 11 months, PacifiCorp and other parties have proposed numerous revisions intended to simplify and clarify the rules consistent with the plain language of CETA. In many cases, these comments have been ignored.

PacifiCorp recognizes CETA's statutory deadline for rulemaking, coupled with the Washington Administrative Procedures Act's notice and comment requirements, make changes at this point difficult – but they are not impossible. PacifiCorp's suggestions in these comments are limited to areas where customers and stakeholders could see considerable value to changes, even at this late stage. Accordingly, PacifiCorp's comments should be read as suggestions for this rulemaking, or alternately as proposals for future modifications to these rules, including examples of areas in which PacifiCorp is likely to seek exemptions. PacifiCorp has proposed redline examples of these proposals in prior rounds of comments.

REQUESTS FOR FURTHER CLARIFICATION OR MODIFICATION

PacifiCorp is pleased to see that there are several sections that have been improved from previous drafts, and the Company appreciates Staff's efforts to streamline and simplify these areas. PacifiCorp offers additional comments and requests for clarification in the draft rules as discussed below.

The requirement to file an RFP 120 days after an IRP is filed – rather than acknowledged – is burdensome and may be infeasible

PacifiCorp appreciates Staff's concern that an RFP should be issued as soon as possible to ensure that all analyses are current, but requiring an RFP to be filed potentially before Commission review of an IRP is complete creates increased likelihood for re-work and/or re-issuance. As stated in PacifiCorp's September 14, 2020 comments, an ideal modification would be to require an RFP to be filed 120 days after the IRP is *acknowledged*. PacifiCorp routinely conducts RFPs on that timeline in other states and has never found the IRP's analysis to be stale or out of date.

Absent the change in timeline, this section of rule is likely to necessitate waiver requests.

Qualifying facilities under contract should not be able to bid into an RFP

PacifiCorp restates its request that the Commission revise these rules to prohibit QFs with an existing contract with the utility from bidding into the utility's RFP. In its summary of comments, Staff states that it is "unclear to staff that QFs can 'cancel' their contracts. It is unclear to staff why a utility needs regulatory protection from contract terms that it chooses to enter." PacifiCorp is glad to have this opportunity to clarify its position, and to explain why customers face risks if existing QFs can bid into a utility RFP.

A utility does not "need regulatory protection from contract terms that it chooses to enter," in the context of PURPA, because for QFs, a utility does not "choose to enter" the contract, nor does it necessarily choose the "contract terms." For example, in Washington, PacifiCorp's Schedule QF provides Commission-approved terms that PacifiCorp must use for QF contracting. In Oregon,

PacifiCorp has several form contracts that have been approved by the Public Utility Commission of Oregon. While those contracts typically provide for damages for breach, they are generally insufficient to hold the utility and its customers harmless if the breach causes the utility to need to procure replacement power at a higher cost. For example, PacifiCorp's Oregon standard QF contract limits both the potential dollar value of replacement power, and requires the QF to pay for that replacement power for no more than one year.¹ This could mean, for example, that a QF with a PPA set at the current avoided cost prices contained in Washington Schedule QF could bid the same facility into an RFP at a higher cost, and then breach its QF contract only if it wins the RFP. This would give the QF a risk-free shot at a higher payment, but customers see no potential benefit whatsoever. While this scenario may be unlikely given current avoided cost pricing are consistently higher than market prices, the Commission should adopt rules that make sense and provide customer benefit in all cases, without making assumptions about future events.

Further, an IRP model includes all QFs in the utility's resource mix through the end of their contracts² – a reasonable assumption, given that they have contracted to sell their power to the utility – so an existing QF that bids into an RFP actually provides no additional energy or capacity, meaning that the utility will remain short even if it “fills” its resource need with such a purchase.

The Commission should not require utilities to issue an RFP for purchases with terms of five years or less

In its summary of comments, Staff rejected PacifiCorp's request to exempt purchases with terms of five years or less from the RFP rules. PacifiCorp's position was, and is, that such purchases are usually made through at auctions with timelines that do not align with utility RFPs, and from sellers that do not participate in RFPs in any case.³ In many cases, those sales would be from existing hydro facilities (commonly referred to as hydro “slices”), but PacifiCorp's proposal was, and is, not resource specific.⁴

A five-year purchase is fundamentally different from a procurement of a resource with an expected life of twenty or twenty-five years. It is common industry practice that contracts for acquisitions shorter than five years are handled by utility front offices, whereas longer term acquisitions are handled by long-term resource acquisition (generally known in the utility industry as “Origination” or “Resource Acquisition”) groups who implement the procurement of generating resources through a RFP process or bilateral negotiation. This five-year threshold distinction is common in the other states where PacifiCorp conducts business.⁵ To the best of

¹ See, e.g. section 11. 4.1 of Oregon form PPA for new, firm QFs, available at https://www.pacificpower.net/content/dam/pcorp/documents/en/pacificpower/rates-regulation/oregon/tariffs/purpa/Power_Purchase_Agreement_for_New_Firm_QF_Not_An_Intermittent_Resource.pdf.

² See Draft WAC 480-100-620(14)(b) (docket UE-191023).

³ See PacifiCorp's September 14, 2020 comments at page 4.

⁴ Staff declined, in its summary, to adopt an exemption specific to hydro slices, on the grounds that such an exemption would “further complicate the rule.” PacifiCorp agrees that an exemption focused solely on hydro slices would “complicate the rule,” but clarifies that its request was for a blanket exemption in the rule for resources with terms of five years or less, regardless of the resource type.

⁵ Oregon Administrative Rule 860-089, Utah Rule R746-420.

PacifiCorp's knowledge, no party to this rulemaking has opposed a five-year threshold for requiring an RFP.

Most importantly, the draft rules could make compliance with CETA on a least-cost, least-risk basis more challenging. As noted in PacifiCorp's September 14 comments, several Washington public utility districts, on a regular basis, sell five-year hydro slices, but on their timeline and not aligned the proposed RFP process. The Bonneville Power Administration has also sold five-year capacity contracts to northwest utilities, but again, not through existing RFP processes.⁶ Staff's present proposal would prevent utilities from easily contracting for these carbon-free, low-cost resources, just as CETA increases pressure on utilities to acquire precisely this kind of resource. PacifiCorp anticipates that it will continue to participate in auctions for these resources, and will need to request waivers from the Commission if these rules are not changed. Depending on the timing of the waiver requirement, the Company's competitive position could be materially affected to the detriment of its customers, as those waiver requests could put other potential bidders on notice of its participation.⁷ The Commission should consider incorporating such an exemption for five-year purchases in its adopted rules to allow utilities easy access to this sort of valuable resource.

In the matrix of previous comments provided with Staff's November 3, 2020 notice, Staff noted that some hedging activities have a three-year duration and therefore could be considered for exemption from an RFP. However, this considered exemption is not reflected in the rules as written. The company appreciates Staff's recognition that flexibility may be needed as part of the exemption process, or as a modification to the rules as proposed.

The Commission should consider adopting a threshold for when an RFP is required

A prior draft of these rules required utilities to issue RFPs for resource needs identified in IRP updates only if the resource need exceeded 80 megawatts. While these rules wisely apply the same standards to all required RFPs (regardless of whether the resource need is identified in an IRP or an IRP update), PacifiCorp suggests that all procurements stemming from an IRP be subject to the 80 MW threshold. In other words, if a utility has a modest resource need, it is likely not an efficient use of utility, Commission, or stakeholder resources to conduct a full-fledged IRP with the attendant regulatory requirements contained in these rules. PacifiCorp requests that the Commission consider incorporating an 80 MW threshold for requiring RFPs following identification of a resource need in an IRP, as proposed in prior PacifiCorp comments.⁸

Utilities should not be required to accept identical bids in parallel RFPs

PacifiCorp has repeatedly objected to Staff's proposal to require an "all source" RFP following each IRP, on the grounds that the utility is best-suited to determine what kinds of resources could realistically meet its resource need. Staff's proposal to allow a "targeted" RFP for specific types

⁶ <https://www.portlandgeneral.com/our-company/news-room/news-releases/2018/03-07-2018-new-agreements-will-deliver-clean-bpa-power>, <https://www.pse.com/press-release/details/new-agreements-will-deliver-clean-bpa-power-to-pse-customers>.

⁷ Slice auctions are typically blind, meaning bidders are not notified of the identifies of other bidders at any point.

⁸ See PacifiCorp's September 14, 2020 comments at pages 3-5.

of resources to run in parallel with the “all source” RFP mitigates these concerns somewhat, as it would allow the utility to develop RFPs that will be reviewed by appropriate groups within the Company, and with reasonable requirements for bidders. However, the draft rules are not clear on whether a utility must accept *identical* bids in the “all source” and “targeted” parallel RFPs. If so, the efficiency gained through running parallel and complementary RFPs would be lost. PacifiCorp would appreciate clarification from the Commission that a utility is not required to accept identical bids in parallel RFPs, when the final analysis of bids will be aligned internally.

CONCLUSION

PacifiCorp appreciates the opportunity to provide comments in response to the Commission’s Notice. Please contact Ariel Son at (503) 813-5410 if you have any questions regarding these comments.

Sincerely,

/s/

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