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January 14, 2004

**VIA OVERNIGHT MAIL**

Ms. Carole J. Washburn, Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504-7250

**Re: PacifiCorp's Application for Mitigation of Penalty UE-031942**

Dear Ms. Washburn:

Enclosed for filing please find an original and 12 copies of the following:

1. Motion of PacifiCorp for Leave to File A Reply; and
2. [proposed] PacifiCorp's Reply In Support of Petition to Mitigate Penalty.

Electronic copies are being sent to the Commission's records center. Please feel free to contact me if you have any questions regarding this filing.

Very truly yours,

  
Justin Boose

JRB:swk  
Enclosures  
cc (w/encls.): PacifiCorp  
Jamie M. Van Nostrand

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

PACIFICORP dba PACIFIC POWER &  
LIGHT COMPANY

Docket No. UE-031942

MOTION OF PACIFICORP FOR LEAVE  
TO FILE A REPLY

PacifiCorp doing business as Pacific Power & Light Company (“PacifiCorp”) respectfully moves for leave to file a reply. The basis for this motion is described below. In the event the motion is granted, a proposed form of reply is attached hereto.

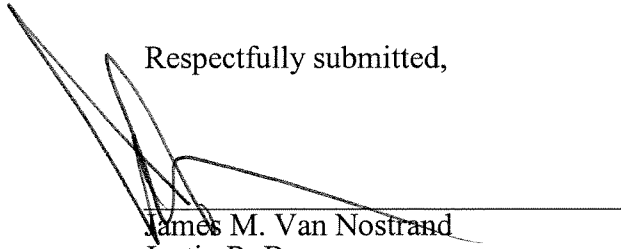
PacifiCorp moves pursuant to WAC 480-07-370(d)(ii) to file a reply. A reply is necessary and appropriate to allow PacifiCorp to respond to certain disputed statements in Staff’s comments, including (1) that a clear violation of the Commission’s rules occurred, (2) that developers were harmed by PacifiCorp’s decision not to file a draft RFP and (3) that a penalty is appropriate under the circumstances. These issues are addressed in greater detail in PacifiCorp’s proposed form of reply attached hereto.

**CONCLUSION**

For the reasons set forth above, PacifiCorp respectfully requests that the Commission grant PacifiCorp’s motion to file a reply.

DATED this 14th day of January, 2004.

Respectfully submitted,



James M. Van Nostrand  
Justin R. Boose  
Stoel Rives LLP

Attorneys for PacifiCorp

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

PACIFICORP dba PACIFIC POWER &  
LIGHT COMPANY

Docket No. UE-031942

PACIFICORP'S REPLY IN SUPPORT OF  
PETITION TO MITIGATE PENALTY

Pursuant to WAC 480-07-370(d)(ii), PacifiCorp doing business as Pacific Power & Light Company ("PacifiCorp") respectfully submits this reply in support of its petition to mitigate the penalty imposed in this docket.

**A. There is a Substantial Question As to Whether PacifiCorp Violated Commission Rules by not Filing A Draft RFP**

PacifiCorp disagrees with Staff's characterization that "there is no dispute" as to whether PacifiCorp violated the Commission's rules by not filing a draft RFP within 90 days of its LCP filing. As explained in PacifiCorp's petition for mitigation, WAC 480-107-001(1) allows utilities to acquire resources other than through the Commission-approved RFP process. PacifiCorp has long interpreted this provision, when read in conjunction with WAC 480-107-060(2)(a), to make the Commission-approved RFP process elective, not mandatory. Because utilities are not required to acquire resources through the RFP process, it makes little sense that they nonetheless be required in all instances to go through the RFP process.

Rigidly construing the RFP filing requirement to apply in all cases, as Staff does, leads to one of two undesirable outcomes: (1) either utilities must actually acquire resources via the RFP process, in which case they lose the flexibility contained in WAC 480-107-001(1) to acquire resources via other means; or (2) utilities do not actually have to acquire resources through the RFP process, in which case the filing requirement may (as here) prove an empty form-over-substance requirement. Given these alternatives,

PacifiCorp's interpretation of the draft RFP filing requirement as elective is, if not the only possible interpretation, at least a reasonable one.

**B. Even Assuming a Violation Occurred, Mitigation is Appropriate in View of the Circumstances**

Assuming the Commission disagrees with PacifiCorp's interpretation that the draft RFP filing requirement is elective, it does not necessarily follow, as argued by Staff, that a penalty is appropriate. Instead, the Commission should take into account PacifiCorp's reasonable reliance on its interpretation of the rules, particularly in view of:

- the historic lack of rigid enforcement of the draft RFP filing requirement;
- the ongoing rulemaking process to revise the RFP and LCP rules; and
- PacifiCorp's substantial compliance with the requirements of PURPA and Chapter 480-107 WAC.

Each of these bases for mitigation is addressed below.

**1. Mitigation is Appropriate Given the Historic Lack of Enforcement of the Draft RFP Requirement**

As explained in PacifiCorp's petition for mitigation, since Chapter 480-107 WAC was adopted in 1989, it has not been the regular practice of Washington utilities to file draft RFPs or formal requests for exemption within the 90-day time period specified in WAC 480-107-060(2)(a). PacifiCorp is not aware of prior instances in which utilities were penalized for failing to timely file a draft RFP or request for exemption, and Staff cites none in its Comments. While this lack of rigid enforcement of the draft RFP requirement does not deprive the Commission of authority to issue a penalty, it is a factor that should be considered in determining whether a penalty is appropriate here.

2. **Mitigation is Appropriate Given the Ongoing Rulemaking Proceeding to Revise the RFP Rules**

Relatedly, the Commission should take into account the fact that a rulemaking proceeding is underway to revise the RFP and LCP rules. Staff argues that “the rulemaking proceeding is not a justification for lack of compliance with the existing rules under review.” (Staff Comments PP 14.) This argument misses the point. The rulemaking proceeding is evidence that the existing rules require revision to conform to current practices and changes in market conditions, a factor that is relevant to whether PacifiCorp should be penalized for acting in reliance on its reasonable interpretation of the rules.

3. **Mitigation is Appropriate Because PacifiCorp Substantially Complied with PURPA and Chapter 480-107 WAC**

Finally, mitigation is appropriate in view of the fact that PacifiCorp complied with the essential elements of PURPA and Chapter 480-107 WAC so as not to disadvantage QFs or other potential developers. Consistent with its LCP, PacifiCorp filed its administratively-determined avoided costs to serve as a benchmark for QFs and other developers. At the same time, PacifiCorp has been actively pursuing specifically tailored resource acquisitions through its company-initiated RFPs. These RFPs are well designed, widely publicized, available on PacifiCorp’s web site, and open to all capable bidders. These RFPs provide meaningful opportunities for QFs and other developers to offer resources to PacifiCorp and are intended to generate bids that, among other things, will be useful for price discovery purposes.

Staff’s assertion that PacifiCorp stifled meaningful development opportunities by not filing a draft RFP in April 2003 is not supported by the facts. Consistent with its

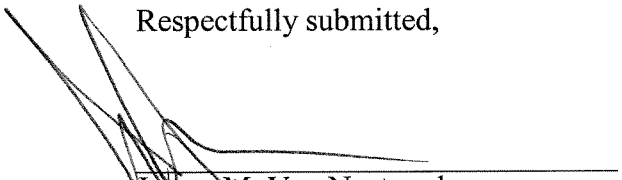
resource-acquisition strategy, any filing that PacifiCorp would have made in April 2003 would have been for a supply block of zero, as the company ultimately filed in September 2003. Such a filing would not have provided any meaningful opportunity for resource development or price discovery.

### CONCLUSION

For the reasons set forth above, PacifiCorp respectfully requests that the Commission exercise its discretion to mitigate or waive the penalty assessed in the November 26 order in this proceeding.

DATED this 14th day of January, 2004

Respectfully submitted,



James M. Van Nostrand  
Justin R. Boose  
Stoel Rives LLP


Attorneys for PacifiCorp

## CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing documents upon the following person by first-class mail to the address shown below:

Robert Cedarbaum  
Asst. Attorney General  
1400 S. Evergreen Park Drive SW  
PO Box 40128  
Olympia, WA 98504-0128

DATED: January 14, 2004.



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Justin R. Boose  
Of Attorneys for PacifiCorp