

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PACIFICORP dba PACIFIC POWER &
LIGHT COMPANY

Docket No. UE-031311

REQUEST FOR WAIVER OF RFP
FILING REQUIREMENT

Pursuant to WAC 480-107-170(3), PacifiCorp doing business as Pacific Power & Light Company (“PacifiCorp”) respectfully requests a waiver of the request for proposals (“RFP”) filing requirements contained in Chapter 480-107 WAC in connection with its 2003 least-cost plan (“LCP”) filed in Docket No. UE-030709. The Company in August 2003 submitted an RFP with a supply block of zero to comply with the technical requirements of Chapter 480-107 WAC. This filing, which was assigned Docket No. UE-031311, was suspended at the Commission’s December 10, 2003 open meeting. Rather than proceeding with that filing, the Company by this request seeks a waiver of the RFP filing requirement.

A waiver is consistent with the purposes underlying Chapter 480-107 WAC and the Public Utility Regulatory Policies Act of 1978 (“PURPA”) in light of PacifiCorp’s ongoing efforts to acquire specifically-tailored resources through its Company-initiated RFPs. PacifiCorp’s RFPs are designed to ensure sufficient flexibility to PacifiCorp (particularly in the area of credit assurances) while at the same time providing a fair and robust process to all interested bidders. Under these circumstances a waiver is appropriate because:

- The essential attributes of PURPA are satisfied because PacifiCorp’s company-initiated RFPs provide a full and fair opportunities for developers to submit proposals;

- PacifiCorp's company-initiated RFPs allow better flexibility to acquire resources specifically-tailored to meet the resource needs identified in its RFP; and
- PacifiCorp's company-initiated RFPs will permit adequate price discovery for regulatory purposes.

BACKGROUND

A. Contact Information

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B. Factual Background

1. PacifiCorp's LCP and RFP Filings

On January 24, 2003, PacifiCorp filed its LCP with the Commission pursuant to WAC 480-100-238. (Docket No. UE-030709.) At the time the LCP was filed, it was not PacifiCorp's intention to acquire new resources via a Commission-approved RFP. In response to inquiries from Staff, PacifiCorp explained its understanding that the RFP process was elective and that it was not looking to acquire new resources via a Commission-approved RFP.

On August 14, 2003, PacifiCorp filed its biennial avoided cost rates in accordance with Chapter 480-107 WAC.¹ PacifiCorp's avoided cost calculations indicated a period of system-wide energy sufficiency for the period between 2003 and 2006. In its avoided cost filing, PacifiCorp reaffirmed its intention not to seek new resources through a Commission-approved RFP process. The letter accompanying PacifiCorp's avoided cost filing stated:

“Although PacifiCorp is currently seeking to acquire certain types of resources through specifically-tailored solicitations, it does not propose to issue a Commission-approved RFP in Washington as a means of securing additional resources. Accordingly, this filing can be considered to be an RFP with a resource block of zero. WAC 480-017-040.” (Aug. 14, 2003 Letter from Christy Omohundro to Carole Washburn at 2.)

Based on discussions with Staff subsequent to the August 14 filing, PacifiCorp filed a formal RFP for a supply block of zero on September 25, 2003. Consistent with PacifiCorp's intention not to acquire resources through the Commission-approved RFP process, the RFP provided that:

“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)

On October 3, 2002, the Commission issued a letter which formally accepted PacifiCorp's LCP.

¹ Following the January 2003 LCP filing and prior to the August 14, 2003 filing of avoided costs, Company representatives had a number of conversations with Staff members regarding the nature and content of a filing necessary to comply with Chapter 480-107 WAC, and whether or not a waiver of those requirements would be appropriate in light of the Company's circumstances. Based on these discussions, a waiver did not appear to be available, and the Company proceeded with its August 14 filing of avoided costs.

Subsequently, Staff objected to the italicized-portion of the language in PacifiCorp's RFP quoted above. Staff's position is that the proposed language violates PURPA and Chapter 480-107 WAC by discouraging Washington bidders, failing to allow adequate price discovery, and failing to facilitate appropriate system-wide resource allocation.

At the Commission's December 10, 2003 open meeting, Staff presented a memorandum and proposed order recommending that PacifiCorp's RFP be suspended and that PacifiCorp be required to resubmit the RFP without the language at issue. The Commission ordered that the RFP be suspended but declined to enter Staff's proposed order. The Commission indicated it would consider a request for waiver of the RFP requirements if PacifiCorp demonstrates that its resource acquisition efforts, including other Company-initiated RFPs, comply with the essential attributes of PURPA and Chapter 480-107 WAC.

2. PacifiCorp's Company-Initiated RFP Filings

As part of its LCP filing, PacifiCorp identified four categories of future resource needs which are summarized in Table 1² below:

² The table is excerpted from PacifiCorp RFP 2003-A at 2. PacifiCorp's resource needs are identified in greater detail in its 2003 Integrated Resource Plan at 154-57. Both documents, as well as PacifiCorp's other current RFPs, are available electronically at <http://www.pacificorp.com>

Table 1: IRP Supply-Side Action Items

Solicitation	Resource	IRP Action Item
RFP 2003-A	East Super-peak 2004/05/06/07	21
	East 200 MW “peakers”	15
	East 570 MW base load	2
RFP 2003-B	100 MW West wind/renewable	18, 20
	200 MW East wind/renewable	19, 20
	200 MW West wind/renewable	18, 20
	200 MW East wind/renewable	19, 20
	200 MW West wind/renewable	18, 20
RFP 2003-C	West Off-peak	21
	West 230 MW “peakers”	15
	West 500 MW base load	1
RFP 2004-A	East 500 MW base load	4

Consistent with its LCP, PacifiCorp is currently undertaking a four-part RFP process that corresponds with the four categories of resource needs identified in its LCP.

The first RFP (RFP 2003-A) was issued on June 6, 2003 and sought bids for east-side supply resources. PacifiCorp hired a consultant to handle administration of the RFP to assure fair and impartial consideration of bids on a “blinded” basis. The existence of the RFP was widely publicized to ensure that all potential bidders were aware of the opportunity to submit bids. No potential class of bidders was excluded from the opportunity to participate, except affiliates of PacifiCorp.

The second RFP (2003 RFP-B), seeking bids for system-wide renewable resources, is expected to be issued in early 2004. An advance copy of the RFP available on PacifiCorp's website indicates that the same procedures are being followed to ensure full and fair participation by all interested participants. PacifiCorp intends to follow the same format with respect to any additional RFPs issued as part of its LCP process.

ARGUMENT

WAC 480-107-170(3) provides that the Commission may grant exceptions to the RFP rules as may be appropriate in individual cases. No standards for granting waivers are specified. However, the waiver provisions under Chapter 480-100 WAC, as set forth in WAC 480-100-108(1), are helpful by analogy in determining the appropriate standard for waiver of the RFP requirements. WAC 480-100-108(1) states that the Commission may grant waivers of regulatory requirements "if consistent with the public interest, the purpose underlying regulation and applicable statutes."

The RFP process in Chapter 480-107 WAC is part of the Commission's implementation of PURPA in Washington. The RFP process serves three important purposes:

1. It provides a means of allowing owners of Qualifying Facilities ("QFs") and other developers to offer resources to a utility at a competitively determined avoided cost;
2. It provides a means for a utility to solicit and acquire resources that are tailored to the needs identified in its LCP; and
3. It provide price discovery concerning available resources to assist in the refinement of avoided costs calculations and in prudence determinations by the Commission for ratemaking purposes.

As discussed below, a waiver is appropriate here, because each of these objectives are met.

A. A Waiver is Consistent With PURPA Implementation Because PacifiCorp's Company-Initiated RFPs Allow a Full and Fair Opportunity For Interested Bidders.

As the Commission is aware, Chapter 480-107 WAC represents the Commission's implementation of the PURPA in Washington. Among other things, PURPA generally requires a utility to offer to purchase the output of QFs at the utility's then-current estimate of avoided costs. The regulations promulgated by the Federal Energy Regulatory Commission to implement PURPA, set forth at 18 C.F.R. Part 292, require, among other things, that electric utilities periodically file their avoided cost information with state commissions. *See* 18 C.F.R. § 292.302(b).

In Washington, this periodic filing requirement with respect to avoided costs is satisfied by requiring utilities to calculate their avoided costs in a manner "consistent with the utility's least-cost plan" (WAC 480-017-050), which is required every two years under WAC 480-100-238. PacifiCorp's August 14 filing makes clear that its calculation of avoided costs was consistent with its LCP, as submitted to the Commission on January 24, 2003 and accepted by the Commission on October 3, 2003. As stated in Attachment B (Description of Calculation of Avoided Costs) to the August 14 filing:

"The starting point for the avoided cost calculation is the loads and resource balance developed in conjunction with the Company's Integrated Resource Plan (IRP) filed in Washington in January 2003."

Moreover, as noted above, PacifiCorp frequently issues RFPs throughout its system to provide a full and fair opportunity for QF developers and others to submit

project proposals for PacifiCorp's consideration. PacifiCorp is currently in the process of initiating four RFPs that comport to the resource needs identified in its 2003 LCP which was approved by the Commission.

There is no appreciable difference between bidders submitting proposals into a Commission-approved RFP versus into a Company-initiated RFP. There is certainly no disadvantage to developers of Washington-based resources – contrary to Staff's suggestion in its memorandum to the Commission – by not proceeding with a Commission-approved RFP. PacifiCorp's RFPs are well published, open to all categories of potential bidders and contain elaborate blinding mechanisms to ensure that bids are evaluated on an impartial basis. As with a Commission-approved RFP, the decision process will focus on compatibility of bids with PacifiCorp's specific resource needs as identified in its LCP. In sum, PacifiCorp's company-initiated RFPs offer an equal, and arguably superior, means of complying with PURPA.

B. A Waiver Is Consistent With Timely and Prudent Resource Acquisitions by PacifiCorp.

Contrary to Staff's contention that PacifiCorp is trying to exclude bidders or improperly acquire or allocate system resources, PacifiCorp's request for waiver is part of its efforts to achieve the most efficient resource mix that meet its specific resource needs. As summarized in comments by PacifiCorp and others in the rulemaking process to revisit Chapter 480-107 WAC, the current RFP rules are perceived as inflexible and unworkable in their current form.

One significant limitation of the current rules is the lack of adequate credit assurances available. WAC 480-107-090 states that bidders are not required to provide

security except to the extent payments would exceed those required under PacifiCorp's filed avoided cost rates. However, as recent events in the industry have made clear, far more comprehensive security and credit provisions are required to protect utilities and ratepayers from the risks associated with default or insolvency by counterparties. It simply would not be prudent of PacifiCorp to enter into purchases and transactions without the ability to require adequate credit assurances. Accordingly, PacifiCorp's Company-initiated RFPs offer advantages to Commission-approved RFPs in terms of the flexibility of the process, particularly the ability to require adequate credit assurances from bidders.

C. A Waiver will Not Impair Price Discovery for Regulatory Purposes.

Bids in response to utility RFPs under Chapter 480-107 WAC may provide useful information on the pricing and availability of market resources, for such purposes as refining avoided costs or determining the prudence of utility acquisitions. Under WAC 480-107-070 the Commission is entitled to review information submitted by bidders.

The same price discovery may be served by bids submitted in response to company-initiated RFPs. Indeed, because PacifiCorp's company-initiated RFPs are tied to the resource needs identified in its LCP, the bid information received will be the most relevant information available to judge the adequacy of PacifiCorp's resource decisions. Assuming the Commission grants the requested waiver, PacifiCorp is willing to make bid information available to the Commission for price discovery purposes subject to the

imposition of a protective order or other device to protect confidential information submitted by bidders.³

Relatedly, as in all resource acquisitions, the Commission has the right to evaluate the prudence of PacifiCorp's resource acquisitions in connection with ratemaking proceedings. Thus the risk of imprudence lies at all times with PacifiCorp's shareholders and not with ratepayers. The Commission's ability to determine prudence ensures that no additional risk or potential harm to ratepayers arises from a decision to grant the requested waiver. In sum, the requested waiver will not impair price discovery or the ability of the Commission to determine the prudence of resource acquisitions.

CONCLUSION

For the reasons set forth above, PacifiCorp respectfully requests that the Commission exercise its discretion to waive the RFP filing requirements in Chapter 480-107 WAC with respect to PacifiCorp's 2003 LCP. A waiver is consistent with PURPA implementation, efficient resource acquisition by PacifiCorp and adequate price discovery for regulatory purposes.

DATED this 31st day of December, 2003.

Respectfully submitted,

/s/ James M. Van Nostrand

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³ PacifiCorp's RFPs generally provide that it will endeavor to keep bid information confidential except to the extent provided to regulatory authorities pursuant to a protective order or required by law. (*See, e.g.*, 2003 RFP-A at 5.)