

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In re Penalty Assessment No.)	DOCKET NO. UE-031942
UE-031942)	
)	ORDER NO. 02
PACIFICORP, d/b/a PACIFIC)	
POWER AND LIGHT COMPANY,)	ORDER MITIGATING PENALTY,
.....)	IN PART, TO \$5,000
)	

1 **Synopsis:** *The Commission grants, in part, a plea for mitigation of a penalty imposed under RCW 80.04.405. The Commission mitigates a penalty of \$11,300 to \$5,000.*

2 On November 26, 2003, the Commission assessed penalties in the amount of \$11,300 against PacifiCorp (Pacific or PP&L) based on Pacific’s alleged failure to file a timely Request for Proposals (RFP) within 90 days after filing its Least Cost Plan (LCP) for 2003, as required in WAC 480-107-060(2)(a).

3 Pacific submitted a plea for mitigation of the penalty on December 11, 2003; Commission Staff responded to the petition on January 9, 2004. Pacific filed a motion for leave to reply to the response on January 15, along with a form of reply that it asked be considered if the motion were granted.¹ The matter is ready for Commission decision.

I. BACKGROUND

4 Pacific filed its least cost plan for 2003 with the Commission on January 24, 2003. RCW 80.04.405 and WAC 480-107-060(2)(a) require the company to file a Request for Proposals within 90 days, or on April 23, 2003. Proposals submitted pursuant to an RFP can provide the company with valuable information about its

¹ The Commission grants the motion for leave to reply and will consider Pacific’s reply to Commission Staff’s answer to the plea for mitigation.

prospective costs of capacity to serve its customers and its avoided costs when it reduces demand or reduces growth in demand.

5 On August 14, 2003, the Company submitted a petition that included what appears to be a “request for exception” from the draft RFP filing requirements and/or a draft RFP. PacifiCorp filed a request for exemption from the rule on August 14, 2003, and a subsequent draft RFP on September 25, 2003. The Order Assessing Penalties alleged that the Company is in violation of WAC 480-107-060(2)(a) for 113 days, from April 23, 2003 to August 14, 2003, and that it consequently is responsible for penalties in the amount of \$11,300.

II. ARGUMENTS

Pacific’s plea for mitigation:

6 Pacific made three principal arguments in support of mitigating the penalty. It argued that it would be unfair to impose a penalty because the Commission has not assessed penalties for other violations; that the RFP would be totally without value because, as Pacific needs no resources it would not award a contract for resources; and that compliance with the existing rule should be excused because the rule is the subject of a proceeding to amend the rule. Pacific also asserted that the rules are ambiguous and that it is in compliance with other provisions of law.

Commission Staff response:

7 The Commission Staff responds that the rule is clear and not ambiguous; that compliance with other provisions of law does not excuse failure to comply with this provision; that Pacific violated the rule and is thus subject to penalties for doing so; and that the RFP could be valuable as a tool to secure cost information.

III. DISCUSSION

- 8 It is clear to the Commission that Pacific, in failing to file its RFP or to obtain exemption from the requirement to file a draft RFP within the prescribed time, has violated the rule. We find no ambiguity in the rule itself, and agree with Commission Staff's observation that a different rule allowing companies to acquire resources outside the RFP process does not repeal the rule—it instead merely allows companies some flexibility. We find no ambiguity in the rule.
- 9 Compliance with one provision of law does not excuse failure to comply with another. Nor is compliance with the rule a mere technicality or useless exercise. Moreover, Pacific is well able to raise its substantial compliance and futility arguments in seeking an exemption from the rules under WAC 480-107-170(3).
- 10 Finally, entering into a rulemaking does not repeal or excuse performance required by the rule that is subject to change. Repeal is accomplished only by completing the rulemaking process and filing an order with the Code Reviser repealing the rule. *Chapter 34.05 RCW, Part III.*
- 11 We find none of Pacific's arguments persuasive that the penalty should be mitigated to zero. At the same time, we are concerned that the penalty be in rough proportion to the seriousness of the offense and the Company's demonstrated willingness to comply. Here the Company did comply, albeit in an untimely manner, and it should understand now the need to comply with rules or to seek a waiver. For these reasons, the Commission mitigates the penalty to \$5000, recognizing the existence of the violation for 50 days.

Conclusion

- 12 The Commission grants Pacific's petition, in part, to mitigate the penalty to \$5,000 from the original \$11,300.

DATED at Olympia, Washington, and effective this 12th day of February, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.