



**VIA ELECTRONIC MAIL**

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May 16, 2003

Ms. Carole J. Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

**Re: Docket No. UE-030423  
Chapter 480-107 WAC Rulemaking**

Dear Ms. Washburn:

In response to the Commission's April 18 Notice of Opportunity to File Written Comments, PacifiCorp dba Pacific Power & Light Company ("PacifiCorp") hereby submits written comments on the Commission's proposed changes to Chapter 480-107 WAC.

According to the CR-101 Statement, the review in this proceeding "will examine whether the current rule provides the results that it was originally intended to achieve and whether the rule is consistent with laws, with appropriate and lawful policies, and with the advances in technology in the electric industry." The subjects included in this review may include the following:

- conditions that trigger a Request for Proposals (RFP) process, such as the filing of a least-cost plan (LCP) or a "need for power" event,
- conditions to waive an RFP process,
- schedule for an RFP process,
- staff role in an RFP process,
- the need to clarify the beneficiary of competitive markets under regulated monopolies, specifically for fairness for providers or reasonableness for consumers,

- the need to ensure that only non-interested parties are reviewers of the RFP and the bidding process,
- discussion of approval of acquisitions and projects prior to a general rate case,
- consistency with Chapter 480-146 WAC “Securities and Affiliated Interests,” and
- consistency with the Energy Policy Act (EPACT) and FERC Orders 888 and 889 for wheeling issues.

In these comments, PacifiCorp will offer its view of the general principles that should be incorporated into any modification of Chapter 480-107 WAC. These comments will touch upon many of the issues identified above.

### **General Principles**

- As a multi-state utility, a critical issue for PacifiCorp is preserving the ability to achieve compliance with various state requirements concerning the resource acquisition process. Any requirements imposed in this proceeding should provide sufficient flexibility to avoid conflict with requirements imposed by other jurisdictions. Moreover, any rules should include specific guidance for multi-state utilities in the event rules or guidelines in another state are contradictory.
- PacifiCorp interprets the Commission’s existing RFP process as being optional, and urges retention of this feature. As in the existing rule, following a Commission-approved RFP process should be *one*, but not the *exclusive*, means for a utility to acquire resources.
- If a utility chooses to follow the Commission-approved RFP process, there should be an identifiable benefit deriving from that strategy. In particular, acquisition of a resource through a Commission-approved RFP process should create a rebuttable presumption that such resource acquisition was prudent, so long as the utility demonstrates that its actions effecting the acquisition were reasonably executed.
- The RFP process should be sufficiently streamlined to enable the utility to act expeditiously to fulfill its load-serving obligation and to respond to constantly changing market circumstances. In addition, the RFP process should be sufficiently flexible to accommodate utility-specific policies such as the provision of adequate credit assurances or the customization of contractual terms and conditions for circumstances unique to the transaction and counterparties. A cumbersome, lengthy or inflexible RFP process could potentially deny utility customers the benefits that flow from competition among would-be suppliers, or introduce an unacceptable level of risk in the event a chosen supplier subsequently fails to fulfill its contractual commitments.

### **Background of the Commission's RFP Rules**

As the Commission is aware, Chapter 480-107 WAC represents the Commission's implementation of the Public Utility Regulatory Policies Act of 1978 ("PURPA") in Washington. Among other things, PURPA generally requires a utility to offer to purchase the output of Qualifying Facilities, or QFs, at the utility's then-current estimate of avoided costs. With the Commission's adoption of revisions to this chapter in 1989 to institute a competitive bidding process, utilities thereafter defined their avoided costs—and, in turn, their obligation to purchase the output from QFs—through competitive bidding, rather than relying on "administratively determined" avoided costs. In other words, avoided costs were defined by reference to the information gleaned from competitive bidding solicitations—i.e., the marketplace—rather than relying on the utility's own estimates of incremental generation costs or projected market prices.

Any proposed modification to the Commission's rules in this proceeding must take into account that this Chapter represents the means by which PURPA is implemented in Washington, and thus these rules must continue to satisfy the PURPA regulations promulgated by FERC, 18 C.F.R. Part 292 (at least so long as PURPA remains in effect). Under the existing rules, these requirements were found to be satisfied generally by (a) requiring the utility to offer to purchase pursuant to a short-run prototype contract at a price equivalent to one hundred percent of the avoided energy-only production costs (480-107-010(2)); (b) requiring the utility to offer to purchase the output of small QFs (one MW or less) under a standard contract at a price based on avoided energy and capacity costs (480-107-010(3)(b); 480-107-020(1)); and (c) requiring proposals for a large projects under a long-term contract to be subjected to a competitive bidding process (480-107-010(3)(a)). Thus, the current rules provide considerable flexibility in implementing PURPA in Washington. This flexibility should be retained under any revised rules, subject to the minimal requirements necessary to achieve compliance with PURPA.

### **PacifiCorp's Use of Competitive Bidding**

PacifiCorp has conducted a number of competitive bidding solicitations. In 1991-92, PacifiCorp issued a Commission-approved RFP in which it reviewed and considered approximately twenty resources acquisition opportunities in 1992 and 1993.<sup>1</sup> Since that time, PacifiCorp has conducted a number of solicitations on its own, without proceeding under the Commission's rule. Generally, PacifiCorp relies on an RFP process when it is reasonably expected that such a process will result in an outcome that has a better cost/risk balance for the Company's resource

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<sup>1</sup> See Section 3.5.2, Joint Report, PacifiCorp Prudence Review of Generating Resources Acquired Since 1986, Docket No. UE-991832, December 7, 2001.

portfolio. Whether a formal or informal RFP process is followed depends on the circumstances. PacifiCorp has found that a formal RFP is heavily process driven, typically involves a long cycle time, and is more expensive and labor-intensive. An informal RFP process, on the other hand, permits a shorter cycle time. Informal RFPs have typically included the identification of potential counter-parties thought to be capable of providing the requested product (particularly in the case of a unique power product), the solicitation of offers, evaluation, and negotiation of a final form of deal.

PacifiCorp's objectives in its resource procurement process are to:

- Administer a solicitation process that is understandable, objective and unbiased,
- Solicit a wide number of responses,
- Ensure prudent credit assurances,
- Maintain confidentiality as appropriate,
- Develop a flexible process that helps obtain the best cost/risk balance for new resources,
- Minimize solicitation cycle time, and
- Prudently manage portfolio price and physical delivery risk.

PacifiCorp relies upon market-based information for making its electric resource decisions. This market information is derived through a number of sources, including direct offers, brokered offers, bi-lateral negotiations, or, when appropriate, comparison against a forward price curve that is generated from a combination of market-based quotes and fundamental information that is market-based.

### **Specific Issues in this Rulemaking**

#### **Conditions Triggering an RFP Filing**

The Commission's Notice includes as an issue to be considered in this proceeding the "conditions that trigger" the RFP process. The current rule suggests that an RFP solicitation is required every two years, at the same interval as the development of an integrated resource plan, or IRP. This two-year requirement is probably too frequent. Rather, the triggering event should be (a) a utility's recognized need to acquire a long-term (i.e., greater than 15 years) resource, or (b) at the specific direction of the Commission, such as in response to changes in the industry.

A likely explanation for the requirement to issue an RFP every two years is the relationship between the information required to be included in the RFP and the utility's obligation to file

avoided costs from time to time. As described above, Chapter 480-107 WAC represents the Commission's implementation of PURPA in Washington. Among other things, the FERC regulations implementing PURPA generally require the utility to "not less often than every two years" file certain data regarding its estimated avoided costs. *See* 18 C.F.R. § 292.302(b). The existing WAC 480-107-050, in turn, requires the utility to determine its avoided costs and file an avoided cost schedule and supporting documentation with its proposed RFP. There is no need to link an obligation imposed on the utility to file an avoided cost estimate every two years—which is a requirement based on the FERC rule—with a requirement to issue an RFP at the same interval (every two years). The Commission should consider revising the rule in this proceeding to separate these requirements, and to retain the two-year interval only with respect to the filing of avoided cost information. The issuance of a Commission-approved RFP would be an option for the utility, as discussed in the next section. But a utility choosing not to issue a Commission-approved RFP would nonetheless have the obligation to file the required avoided cost information every two years.

#### **Retention of the RFP Process as an "Option"**

According to existing WAC 480-107-001(1), a utility is not *required* to fulfill all its resource acquisition needs through a Commission-approved RFP. Use of a Commission-approved RFP is one means of acquiring resources, but is not the sole means of doing so. WAC 480-107-001(1) provides:

These rules *do not preclude electric utilities from* constructing electric resources, operating conservation programs, purchasing power through negotiated purchase contracts, or otherwise taking action to satisfy their public service obligations. (emphasis added)

This language was added during the rulemaking process in 1989 to clarify that while utilities were *encouraged* to use Commission-approved RFPs as a means of acquiring resources, there was not a *requirement* that competitive bidding be the *exclusive* means of acquiring resources. The next sentence in the rule makes it clear that resources can be acquired other than through competitive bidding:

Information about the price and availability of electric power obtained through the bidding procedures described in these rules may be used, in conjunction with other evidence, in general rate cases and other cost recovery proceedings pertaining to *resources not acquired through these bidding procedures*. (emphasis added)

In other words, where a utility acquires resources by a means other than competitive bidding, the utility is put on notice that the prudence of such acquisitions will likely be judged by reference to the “[i]nformation about the price and availability of electric power obtained through” competitive bids.

Thus, under the existing rule, a utility has a choice in resource acquisitions: (1) it can proceed with an RFP approved by the Commission, or (2) it can acquire resources through any other means (including conducting its own competitive bidding procedure *without* proceeding under Chapter 480-107 WAC). A utility choosing the former path must comply with all the requirements of Chapter 480-107 WAC. This course of action presumably provides more certainty as to the rate recovery of resources acquired thereby, inasmuch as the acquisition would be pursuant to a “Commission-approved” RFP. At the same time, however, the utility may acquire resources *without* proceeding under the competitive bidding rules, subject to the admonition that the prudence of any such acquisitions may be judged by reference to information obtained through other competitive bids.

This flexibility should be retained under any revised rules flowing from this rulemaking. At the same time, as discussed below, in the event the utility chooses to take advantage of the Commission-approved RFP process, there should be an identifiable benefit deriving from that strategy.

#### **Schedule for RFP Process**

The Commission’s Notice includes as an issue to be considered in this proceeding the “schedule for an RFP process.” As discussed above, the RFP process should be sufficiently streamlined to enable the utility to act expeditiously in response to market circumstances. A cumbersome or lengthy RFP process could potentially deny utility customers the benefits that flow from competition among would-be suppliers, and may handicap the utility in meeting its resource needs. The existing rule’s requirements of a sixty-day comment period and a ninety-day review period are probably too lengthy to allow the desired responsiveness on the utility’s part. At the same time, the length of the process followed by the Commission should bear a relationship to the significance of the Commission’s actions in approving an RFP solicitation. If a resource acquired pursuant to a Commission-approved RFP is presumptively prudent, then it is reasonable to expect a more thorough process associated with approval of the RFP solicitation.

#### **Approval of Acquisitions and Projects Prior to a General Rate Case**

The Commission’s Notice includes as an issue to be considered in this proceeding a “discussion of approval of acquisitions and projects prior to a general rate case.” As discussed above, a

utility choosing to follow the Commission-approved RFP process should derive an identifiable benefit from following that strategy. In particular, acquisition of a resource through a Commission-approved RFP process should create a rebuttable presumption that such resource acquisition was prudent, so long as the utility demonstrates that its actions effecting the acquisition were reasonably executed.

### **Consistency with Chapter 480-146 WAC**

The Commission's Notice includes as an issue to be considered in this proceeding the "consistency with Chapter 480-146 WAC" relating to securities and affiliated interests. PacifiCorp is not opposed to the adoption of rules or guidelines with respect to participation by affiliates in RFPs. If the Commission decides that such rules or guidelines are necessary, PacifiCorp recommends that the Commission provide flexibility to accommodate responding to industry changes. Any rules or guidelines relating to affiliate participation should include the following elements:

- the rules or guidelines must be specific in their applications,
- the rules or guidelines should not result in a process that involves lengthy approval delays,
- the rules or guidelines should not duplicate or contradict Federal law, and
- the rules or guidelines should provide specific guidance for multi-state utilities in the event rules or guidelines in another state are contradictory.

Whether or not affiliates are allowed to bid into a given competitive solicitation should be determined on a case-by-case basis. If participation is allowed, PacifiCorp proposes that an independent third party be retained to either perform the bid evaluations or to validate that the evaluations were completed without discrimination.


### **Conclusion**

PacifiCorp appreciates the opportunity to provide written comments and looks forward to participating in the workshop on June 13. Please direct any questions regarding these comments to either the undersigned at (503) 813-6092 or Mark Tallman at (503) 813-5376.

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Very truly yours,

**PacifiCorp**

By   
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