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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of )  
4 PACIFICORP d/b/a PACIFIC ) DOCKET NO. UE-031311  
5 POWER AND LIGHT COMPANY. ) Volume I  
6 ) Pages 1 - 19  
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13 A prehearing conference in the above matter  
14 was held on April 20, 2004, at 10:00 a.m., at 1300  
15 South Evergreen Park Drive Southwest, Olympia,  
16 Washington, before Administrative Law Judge ANN  
17 RENDAHL.  
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23 The parties were present as follows:  
24  
25 WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION, by DONALD T. TROTTER, Assistant Attorney  
General, 1400 South Evergreen Park Drive Southwest,  
Post Office Box 40128, Olympia, Washington 98504-0128;  
telephone, (360) 664-1189.

PACIFICORP, by JUSTIN R. BOOSE (via bridge),  
Attorney at Law, Stoel Rives, 900 Southwest Fifth  
Avenue, Suite 2600, Portland, Oregon 97204; telephone,  
(503) 294-9637.

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Kathryn T. Wilson, CCR  
Court Reporter

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1 P R O C E E D I N G S

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3 JUDGE RENDAHL: Let's be on the record. Good  
4 morning, everyone. I'm Ann Rendahl, the administrative  
5 law judge presiding over this proceeding. We are here  
6 before the Washington Utilities and Transportation  
7 Commission this morning, Tuesday, April the 20th, 2004,  
8 for a prehearing conference in Docket No. UE-031311  
9 captioned, In the Matter of PacifiCorp doing business  
10 as Pacific Power and Light Company.

11 The parties were provided notice of an April  
12 2nd prehearing conference in a notice served on all  
13 parties on the 27th of February. On March 16th, the  
14 Commission notified all parties that the prehearing  
15 conference was rescheduled to today, April the 20th.  
16 This prehearing was scheduled originally to take  
17 interventions and establish a procedural schedule, but  
18 on Thursday April 15th, the parties filed a settlement  
19 in this matter.

20 So before we address the status of the case  
21 and discuss the settlement, let's take the appearances  
22 of the parties, and we will begin with Mr. Boose. This  
23 is the first formal appearance that's been taken in the  
24 case, so if you could please state your full name, the  
25 party you represent, your full address, telephone

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1 number, fax number, and e-mail, that would be  
2 appreciated.

3 MR. BOOSE: My name is Justin Boose,  
4 B-o-o-s-e. I'm with the Stoel Rives Law Firm in  
5 Portland, Oregon, on behalf of PacifiCorp. My address  
6 is 900 Southwest Fifth Avenue, Suite 2600, Portland,  
7 Oregon, 97204. My telephone number is area code (503)  
8 294-9637. My fax number is area code (503) 220-2480,  
9 and my e-mail address is jrboose@stoel.com.

10 JUDGE RENDAHL: Thank you. Mr. Trotter?

11 MR. TROTTER: Your Honor, I'm appearing for  
12 the Commission. My name is Donald T. Trotter,  
13 assistant attorney general. My address is 1400 South  
14 Evergreen Park Drive Southwest, PO Box 40128, Olympia,  
15 Washington, 98504-0128. My phone is (360) 664-1189.  
16 Fax is (360) 586-5522, and e-mail is  
17 dtrotter@wutc.wa.gov.

18 JUDGE RENDAHL: Thank you. Public counsel is  
19 not here this morning, but we also have Hank McIntosh  
20 and Yohannes Mariam of the Commission staff here in the  
21 room, and Nick Garcia, who is with the Commission's  
22 policy staff, is also here in the room. I thought I  
23 would let you know that, Mr. Boose, so you know who  
24 else is present.

25 MR. BOOSE: Thank you.

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1                   JUDGE RENDAHL: Mr. Boose or Mr. Trotter, now  
2 that the Staff and the Company have reached a  
3 settlement in this matter, I advised you prior to the  
4 prehearing before going on the record that it does not  
5 look like the commissioners see a need to schedule a  
6 settlement hearing in this proceeding if we can clarify  
7 some of the details on the record this morning. How  
8 would you like to proceed?

9                   MR. TROTTER: However you would like to  
10 proceed, Your Honor.

11                   JUDGE RENDAHL: Is there a date on which the  
12 parties need to have this matter resolved? When does  
13 an order need to be drafted to accommodate the parties'  
14 needs?

15                   MR. BOOSE: I think it's fairly open. There  
16 is not a statutory time line that I'm aware of that  
17 applies, and the filing is currently under suspension,  
18 but it's in the parties' interest to have the matter  
19 resolved as soon as possible.

20                   MR. TROTTER: Your Honor, Donald Trotter for  
21 the Commission staff. The original time line in the  
22 rule was for an RFP to be issued around April 23rd of  
23 2003, and that has been a matter of contention since  
24 then and the subject of another docket, which we can  
25 get into, if necessary. So we believe there is a time

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1 period involved, but it's sort of by the boards now,  
2 but we would agree with PacifiCorp that as soon as  
3 possible would be appreciated, but I would not consider  
4 this to be an emergency-type situation.

5 JUDGE RENDAHL: So if possible, by the end of  
6 the month and maybe the first week in May. Would that  
7 work for the parties?

8 MR. TROTTER: It would for Commission staff,  
9 Your Honor.

10 MR. BOOSE: And for PacifiCorp, Your Honor.

11 JUDGE RENDAHL: We'll work towards that goal.  
12 Again, depending on what we discuss this morning, if  
13 the commissioners want to have a hearing, then we may  
14 need to schedule one.

15 Mr. Boose, I noticed in the settlement  
16 agreement that there is no discussion of the request  
17 for a waiver of the RFP filing requirement and whether  
18 PacifiCorp intends to withdraw that request. Was that  
19 intended to be a part of the settlement?

20 MR. BOOSE: Your Honor, Mr. Trotter and I had  
21 some discussions about that and believe that it is  
22 covered by the settlement. I'm looking for it now, but  
23 I think there is language in it that has otherwise  
24 resolved the issues in the docket, which we both  
25 interpreted to be a request for a waiver. Long way of

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1 saying yes, it is PacifiCorp's understanding that that  
2 would effectively take care of that or nullify or  
3 withdraw that request.

4 MR. TROTTER: The language I believe he's  
5 referring to is in Paragraph 1, the second sentence,  
6 where it says, The parties agree that the settlement  
7 stipulation resolves all issues necessary to resolve in  
8 the docket. So if it's necessary to resolve the  
9 petition for waiver, then it is resolved, and, I  
10 believe, negatively. Meaning it would be effectively  
11 denied, but I don't think there is a reason necessarily  
12 to contain that in the order, but I think PacifiCorp  
13 and I are in agreement that that's the effect of it.

14 JUDGE RENDAHL: Mr. Boose, are you in  
15 agreement that the effective Paragraph 1 is that the  
16 request is effectively denied or that PacifiCorp  
17 withdraws the request?

18 MR. BOOSE: I'm not certain there is a  
19 difference. I guess probably the preference would be  
20 to have it withdrawn to avoid any possibility of any  
21 precedent.

22 MR. TROTTER: I have no objection to that. I  
23 don't see a real difference between the two outcomes.

24 JUDGE RENDAHL: Thank you. In terms of  
25 meeting the requirements for acting on a settlement --

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1 I'll start with Mr. Boose -- can you state on the  
2 record why you believe the proposed settlement is  
3 consistent with the law, in particular with PURPA, how  
4 it complies with PURPA and the Commission statutes and  
5 rules, and why it's in the public interest and  
6 appropriate for the Commission to adopt the settlement.

7 MR. BOOSE: Certainly, Your Honor. I would  
8 like one last point on the withdrawal of our  
9 application for waiver. I would like to note that my  
10 position is that that continue -- towards the end of  
11 this agreement, there is some language to the effect  
12 that it's all sort of contingent on the Commission  
13 adopting it in this form, so I would like to have the  
14 waiver included in that on the very unlikely chance  
15 that the Commission didn't adopt the settlement that I  
16 hadn't prejudice our rights on the waiver. So I think  
17 it's a very unlikely issue to arise, but I would like  
18 to make the point nonetheless.

19 With that, I'll address your other question.  
20 I do believe the settlement is consistent both with  
21 PURPA and to Commission regulation. The general intent  
22 of PURPA, sort of consistent with ratepayer neutrality,  
23 is to encourage the development of cogeneration and  
24 small power production, and the Commission has seen in  
25 its regulation that to utilize an RFP process to do

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1 that, I think the twin aims of the process being both  
2 to provide a forum for interested parties to bid their  
3 resources on a competitive basis to the purchasing  
4 utilities, and I think a secondary aim, although not  
5 necessarily explicit, is to provide price signals to  
6 utilities, the parties, and the Commission for purposes  
7 of further refining the utilities' avoided cost and  
8 also for judging the prudence of utility purchases and  
9 resource acquisitions generally. So I think that's  
10 what we are trying to do with the process under the  
11 Commission's rules and PURPA, and I think the  
12 settlement agreement effectuates those aims for several  
13 reasons.

14 One, the settlement agreement provides -- I  
15 guess by way of background, PacifiCorp has undergone  
16 and is in the process of undergoing a number of, we'll  
17 call them company-sponsored RFP's to distinguish them  
18 from an RFP under the regulation, and these RFP's are  
19 all sort of carefully tailored to fit with the specific  
20 resource needs of PacifiCorp as highlighted in its  
21 integrated resource plan, and part of this settlement  
22 provides that PacifiCorp will make information  
23 concerning bids and bid analysis from those RFP's  
24 available, and it is the Company's position and has  
25 been the Company's position throughout this docket and



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1 the related dockets that that bid information and the  
2 process is a bid evaluation process for those RFP's,  
3 provide the best current and appropriately tailored  
4 price information to the Commission, Commission staff  
5 and the parties concerning resources out there in the  
6 market generally, and it's been PacifiCorp's intention  
7 to use those RFP's as, if you will, a substitute  
8 provided in the rules, and that's not really out of any  
9 intention to circumvent the rules. Simply out of an  
10 understanding that there is a little more flexibility  
11 in terms of tailoring the proposal to its resource  
12 needs as provided by the rule.

13 But I think in that light, this settlement  
14 agreement is consistent with the public interest, the  
15 Commission's regulation, and PURPA because it  
16 facilitates a way for information regarding all  
17 proposals submitted to the Company to be brought to the  
18 Commission's attention, and it also satisfies the  
19 mechanics of the rules in terms of actually providing  
20 for an RFP consistent with the Commission's rules. So  
21 I think in general, that sums up my thoughts on those  
22 matters.

23 JUDGE RENDAHL: Thank you, Mr. Boose.  
24 Mr. Trotter?

25 MR. TROTTER: Well, in large part, I don't

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1 disagree with what he said, but there are some areas I  
2 would like to perhaps refine or clarify. First of all,  
3 this docket has a history. As I mentioned at the  
4 beginning, it was the Commission staff's belief that  
5 the rules required a filing of an RFP April 23rd of  
6 last year, which was 90 days from the filing of  
7 PacifiCorp's least-cost plan, which was filed on  
8 January 24th of last year. The Company did not share  
9 that view but ultimately filed the application that  
10 started this docket on August 15th of last year. The  
11 Company was trying to comply with the Commission's  
12 rule, which specifically was WAC 480-107-0602(a).  
13 There was dispute about whether that application  
14 applied and supplemental filings, and ultimately, the  
15 Commission suspended that filing, so that RFP was not  
16 issued. The Company on the last day of 2003 requested  
17 a waiver of the RFP filing requirement, and then we  
18 were able to reach the settlement which is before you.

19           The purposes of PURPA are essentially as  
20 Mr. Boose articulated, but they are also congress's  
21 requirement that the states participate in establishing  
22 the avoided cost for a utility, and that can be done a  
23 couple of ways. It can be administratively determined,  
24 or it can be done as a result of a competitive bidding  
25 process. The Commission here has chosen the later, and

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1 that is now codified in the rule, WAC 480-107. That  
2 rule does contemplate companies issuing RFP's outside  
3 the process enumerated in the rule, but it does not  
4 supplant the requirement for the filing of an RFP, or  
5 at least the filing of a waiver of such a requirement.

6           So we believe that in context, now we are a  
7 year out when the Staff believed it ought to have been  
8 filed, a new least-cost plan cycle is under way, so  
9 with the advent of these other RFP's that have been  
10 issued, the bid date under this settlement stipulation,  
11 plus issuing this RFP under the rule will satisfy  
12 PURPA.

13           I will note, there was another docket related  
14 to this docket, UE-031942, and that was a penalty  
15 docket in which the Commission did find that the  
16 Company should have filed an RFP on or around April  
17 23rd of 2003, and the Company sought mitigation, got  
18 some mitigation. They did pay the penalty and the case  
19 closed, so we think going forward, we think the Company  
20 understands the requirements and will be complying with  
21 the rule, which includes seeking a waiver, in the  
22 future.

23           So we believe the past problems have been  
24 resolved and it's in the public interest to approve the  
25 settlement for that reason, and we believe that it

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1 complies with PURPA for the reasons Mr. Boose and I  
2 have articulated.

3 JUDGE RENDAHL: Okay. So in terms of what  
4 you last said, I have a question about that. Does this  
5 settlement then in a sense close the book on the  
6 problem of the filing an RFP following the most recent  
7 least-cost plan?

8 MR. TROTTER: Yes.

9 JUDGE RENDAHL: But in terms of what might  
10 happen in the future for the next least-cost plan, what  
11 I heard you say is it's possible with the next  
12 least-cost plan, which is due to be filed next year --

13 MR. TROTTER: I believe that's true.

14 JUDGE RENDAHL: -- that the Company may seek  
15 a waiver of the RFP filing requirement instead of  
16 filing an RFP.

17 MR. TROTTER: That is contemplated by the  
18 rule itself. The rule itself has a provision that  
19 permits companies to seek waivers, and I think that  
20 obviously, the Company is well aware of that because  
21 they filed one in this case.

22 I think the other docket I referred to,  
23 031942, resolved the issue as to what the rule means  
24 and what the Company needs to comply. It's my  
25 understanding the Company is very well aware of that.

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1 So I think going forward, we won't have the same  
2 interpretive issue we had in the past.

3 JUDGE RENDAHL: Mr. Boose?

4 MR. BOOSE: I agree in substance with  
5 everything Mr. Trotter just said. The Company believes  
6 in its request for waiver all the reasons that were  
7 articulated there, but given that was set for hearing,  
8 the reason for that, this settlement was sort of a  
9 reasonable way of wrapping all this up both as to the  
10 past filing and the mechanics thereof and as to the  
11 requirements going forward, so I think for those  
12 reasons, it's a good settlement.

13 JUDGE RENDAHL: The reason I'm asking this is  
14 are we going to be back here in another year and a half  
15 dealing with the same issue?

16 MR. TROTTER: If you mean by "same issue"  
17 whether there is a waiver, we might be. I don't know  
18 if the Company will file for a waiver or not, but what  
19 will be different next time is that action will be more  
20 timely, so the Company, I think, is clear now that they  
21 need to file an RFP within 90 days of their least-cost  
22 plan or seek a waiver of that requirement, so we won't  
23 be a year out next time.

24 MR. BOOSE: I agree, Your Honor. You will  
25 see within 90 days of the next least-cost plan either a

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1 draft RFP as contemplated by the Rule or a timely  
2 waiver, so it is possible that the issue of the  
3 propriety of a waiver will come before the Commission  
4 in connection with the next cycle, but it wouldn't  
5 really have any direct relation to -- I don't think  
6 there is anything in this docket that's precedential in  
7 terms of a waiver. There is certainly instructive  
8 language in the settlement and in the Commission's  
9 order in the other docket that Mr. Trotter has referred  
10 to, making clear the nature of the obligation, and the  
11 Company understands that. Hopefully, that answers the  
12 question.

13 JUDGE RENDAHL: Let me think here for a  
14 minute if there is any other questions I have for you  
15 both.

16 MR. TROTTER: I just have one thing, Your  
17 Honor. The settlement document I filed does contain an  
18 accurate copy of the Company's signature page, but I do  
19 have the original, if that's necessary, to be filed. I  
20 received that yesterday. If that's necessary, I can  
21 give it to you. I'm satisfied with what's in the file.

22 JUDGE RENDAHL: Maybe if you file that with  
23 the Commission and then we will go forward with that  
24 corrected version.

25 In terms of the language of the first

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1 paragraph RFP, the change that's proposed in  
2 Paragraph 3 of the stipulation, the last sentence where  
3 it says, "PacifiCorp will evaluate all resources  
4 offered under this bidding rule," does that encompass  
5 both any bids that might come in under this RFP as well  
6 as any bids that might come in under the Company's own  
7 RFP process?

8 MR. BOOSE: I don't believe that it's the  
9 intention that this paragraph speak to anything with  
10 respect to the company's RFP's. The language in this  
11 paragraph is sort of specifically what is in contention  
12 in this docket. Absent the settlement and setting  
13 aside the issue of the waiver, there has been some  
14 general disagreement between Staff and the Company as  
15 to the prior language submitted by PacifiCorp, which  
16 kind of came out, and in effect said we are issuing  
17 this RFP but we don't intend to acquire any resources  
18 hereunder, and Staff raised some concerns that they  
19 felt that that was potentially discouraging to bidders,  
20 so part of this settlement process was the Company and  
21 Staff agreeing on language that those parties, I think,  
22 felt adequately represented the regulatory requirement  
23 on the one hand be filed and the Company's position  
24 with respect to acquiring resources under it.

25 It's not clear in my mind whether an RFP,

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1 which is a dual-resource block, is going to attract  
2 bids or not, but it is clear that if it does, the  
3 Company has the responsibility to evaluate them, and it  
4 intends to do so, and that's what the paragraph  
5 reflects. All of the other RFP's that we discussed,  
6 the Company-sponsored RFP's, are really being done  
7 outside the auspices of the rule, so while it's  
8 certainly the case that the Company will evaluate bids  
9 thereunder, and obviously, if they select one in any  
10 given RFP, we'll need to make the requisite showing as  
11 to its calculations and why it felt that that would be  
12 that proposal, but I don't think that that evaluation  
13 process is really directly governed by the rule, the  
14 Washington WAC 480-107 rule.

15 JUDGE RENDAHL: Mr. Trotter?

16 MR. TROTTER: Three points. No. 1, any bids  
17 under this RFP will be evaluated, but bids submitted  
18 under, or other RFP's issued by PacifiCorp outside of  
19 this one would not be evaluated under this one, so this  
20 is a unique RFP.

21 No. 2, the language that's quoted there that  
22 you are focusing on is essentially the same as that  
23 included in the Avista Corp RFP that was approved by  
24 the Commission, and third, while the RFP does quote a  
25 zero-resource block for additional resources, that



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1 would not prevent a bidder from bidding a resource to  
2 PacifiCorp that would displace one of its existing  
3 resources.

4           So for example, if PacifiCorp is operating a  
5 relatively high-cost resource, say, as a peaking  
6 facility, someone could bid a peaking facility that  
7 would undercut that price or that cost, and we would  
8 expect PacifiCorp to evaluate that, and if it was truly  
9 a more economical way to operate, then it would  
10 purchase that displaced resource, but that would not be  
11 an incremental resource.

12           JUDGE RENDAHL: Thank you. One last  
13 question, which really goes to the PURPA and  
14 avoided-cost requirement. How does this language help  
15 the Commission to meet its obligation under PURPA to  
16 establish an avoided cost for the Company?

17           MR. TROTTER: Your Honor, I don't think PURPA  
18 requires the Commission to determine avoided cost.  
19 FERC has stated that a competitive bidding process will  
20 suffice. This RFP is a furtherance of that process,  
21 and I believe that complies with PURPA as interpreted  
22 by the FERC.

23           MR. BOOSE: I would agree, Your Honor. The  
24 combination of this RFP and the Company's other RFP's  
25 is probably the widest possible net that could be cast

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1 to attract resource proposals, and again, the  
2 Commission's rules provide that the evaluation of any  
3 resources that are submitted under the RFP pursuant to  
4 the rules will be made available to the Commission and  
5 will inform the avoided-cost process, and the  
6 settlement agreement further provides that bids and bid  
7 evaluations from the other RFP's will be made available  
8 to the Commission as well. So if you take all that  
9 information together, that's about as good as it gets  
10 in terms of evaluating what other resources are out  
11 there for purposes of looking at the Company's avoided  
12 costs.

13 MR. TROTTER: Also, Your Honor, PURPA  
14 requires utilities under certain circumstances to  
15 purchase energy from what are called "qualifying  
16 facilities," and this RFP, at least, will be a vehicle  
17 for a qualifying facility to approach the Company, and  
18 if they are dissatisfied with the way their resource is  
19 evaluated or treated, this will be a vehicle for them  
20 to come to the Commission and seek recourse if any is  
21 available.

22 JUDGE RENDAHL: I do appreciate your  
23 responses. I know that it may be a little more  
24 in-depth than maybe you thought we might get into this  
25 morning, but I do appreciate it. Are there any further

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1 comments that any of the parties would wish to make?

2 MR. TROTTER: I have none, Your Honor.

3 MR. BOOSE: I have none either, Your Honor.

4 JUDGE RENDAHL: This is what I will do. I  
5 plan to communicate with the commissioners what  
6 transpired this morning, the comments you all have  
7 made, and if the commissioners are satisfied that any  
8 of their remaining questions are answered, then we will  
9 just go forward with an order from the Commission and  
10 try to accomplish that by the end of April or the first  
11 week in May. Are there any questions?

12 MR. TROTTER: None. Thank you, Your Honor.

13 MR. BOOSE: No questions, Your Honor. Thank  
14 you.

15 JUDGE RENDAHL: Then this prehearing is  
16 adjourned. Thank you all for attending this morning.  
17 We will be off the record.

18 (Prehearing concluded at 10:30 a.m.)

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