

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

In the Matter of)	
)	DOCKET NO. UE-031311
PACIFICORP, d/b/a PACIFIC POWER)	
AND LIGHT COMPANY)	ORDER NO. 02
)	
)	ORDER APPROVING AND
)	ADOPTING SETTLEMENT
)	STIPULATON; APPROVING
)	SEPTEMBER 25, 2003, RFP
)	FILING
.....)	

1 **Synopsis.** *The Commission approves and adopts the Settlement Stipulation as a reasonable resolution of the issues in dispute between PacifiCorp and Commission Staff in this proceeding, and finds the Settlement Stipulation consistent with the law and the public interest. The Commission also approves PacifiCorp’s September 25, 2003, Supplemental Filing in Compliance with Chapter 480-107 WAC.*

I. INTRODUCTION

2 **Proceeding:** This proceeding involves a draft Request for Proposals (RFP) filed by PacifiCorp, d/b/a Pacific Power and Light Company (PacifiCorp or the Company) to comply with Chapter 480-107 WAC, and PacifiCorp’s request for a waiver of the RFP filing requirement.

3 **Procedural History:** PacifiCorp filed its Least Cost Plan with the Commission on January 24, 2003, in Docket No. UE-030709. The Company did not file a draft RFP with the Commission by April 23, 2003, as anticipated under WAC 480-107-060(2)(a). Following months of discussion with Commission Staff, on August 14, 2003, the Company filed avoided cost data with the Commission in Docket No. UE-031311, together with a statement that the Company did not intend to issue a

Commission-approved RFP in Washington. On September 25, 2003, the Company filed with the Commission a Supplemental Filing in Compliance with Chapter 107-WAC. In that supplemental filing, the Company submitted a draft RFP, which included the following language:

Consistent with PacifiCorp's January 2003 Integrated Resource Plan, PacifiCorp has identified a resource block of zero megawatts for this Request for Proposals ("RFP). 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.

- 4 On October 6, 2003, the Commission issued a notice to all interested persons of the opportunity to submit written comments concerning PacifiCorp's filing no later than November 24, 2003.
- 5 Commission Staff and PacifiCorp disagreed whether the Company's September 25, 2003, RFP filing fully satisfied the requirements of Chapter 480-107 WAC and the Public Utility Regulatory Policies Act of 1978 (PURPA).¹ Based on that dispute, the Commission suspended the draft RFP at its regularly scheduled open meeting of December 10, 2003, and entered Order No. 01, Order Suspending Draft Request for Proposal Filing.
- 6 On January 2, 2004, PacifiCorp filed a Request for Waiver of RFP Filing Requirement, stating that a waiver is consistent with PURPA in light of the Company's ongoing efforts to acquire specifically-tailored resources through its Company-initiated RFPs.

¹ Codified in 16 U.S.C. § 2601 *et seq.*

7 On February 27, 2004, the Commission issued a Notice of Prehearing Conference, scheduling a prehearing conference in the proceeding for April 2, 2004. On March 16, 2004, the Commission rescheduled the prehearing conference to April 20, 2004.

8 On April 15, 2004, the parties filed with the Commission a Settlement Stipulation (Settlement), which the parties intend to resolve all issues in this docket. The Settlement is attached as Appendix A to this Order.

9 The Commission convened a prehearing conference in this docket at Olympia, Washington on April 20, 2004, before Administrative Law Judge Ann E. Rendahl. During that conference, the parties made formal appearances and counsel provided statements supporting the Settlement. Based on the information provided during the conference, the Commission determined pursuant to WAC 480-07-740(1)(d) that a settlement hearing would not assist it in determining whether to adopt the proposed settlement.

10 **Appearances.** James Van Nostrand, Stoel Rives LLP, Seattle, Washington, and Justin R. Boose, Stoel Rives LLP, Portland, Oregon, represent PacifiCorp. Donald T. Trotter, Assistant Attorney General, Olympia, Washington, represents Commission Staff.

II. MEMORANDUM

11 **PURPA and Commission Rules.** One of the requirements for electric utilities under PURPA is that of offering to purchase the output of a qualifying facility at the utility's then-current estimate of avoided costs. The Federal Energy Regulatory Commission (FERC) has issued regulations implementing PURPA in Title 18 of the Code of Federal Regulations, Part 292. FERC requires electric utilities to periodically file their avoided cost information with state commissions, and allows state commissions to require that electric utilities

provide different data to the state commission in order to derive avoided cost information. *See 18 C.F.R. § 292.302.*

- 12 The Commission has elected to administer PURPA through a bidding process, which, as Staff describes in its December 10, 2003, memorandum, “is generally thought to result in a lower competitively determined avoided cost than other methods, such as an administratively determined avoided cost.” Chapter 480-107 WAC implements the Commission’s obligations under PURPA and FERC regulations, and establishes rules governing the purchases of electricity through a bidding process.
- 13 WAC 480-107-001(2) specifically provides that “The provisions of this chapter shall apply to any electric utility which has submitted to the commission a least cost plan as provided in WAC 480-100-251.” WAC 480-107-060(2)(b) requires electric utilizes to “submit a proposed RFP and accompanying documentation to the commission at least ninety days before its proposed issuance date.” The issue in this proceeding concerns whether PacifiCorp’s September 25, 2003, draft RFP filing complies with the requirements of Chapter 480-107 WAC.
- 14 **The Dispute Over PacifiCorp’s Filing.** Commission Staff objected to PacifiCorp’s August 14, 2003, filing asserting that the filing did not meet the requirements of the Commission’s bidding rules under WAC 480-107-060(2)(c) and (d) which require, among other things, that an RFP specify a resource block and explain the evaluation and ranking procedure used by the utility.
- 15 Commission Staff also objected to PacifiCorp’s amended filing of September 25, 2003, asserting that the following sentence on the first page of the draft RFP nullifies the intent or objective of Chapter 480-107 WAC: “Although PacifiCorp is currently seeking to acquire resources through specifically-tailored solicitation, it does not propose to issue a Commission-approved RFP in Washington as a means of securing additional resources.”

- 16 While the Company asserted that the sentence was merely stylistic and not of substantive importance, the sentence raised a number of concerns for Staff. Specifically, Staff asserted in its December 10, 2003, memorandum that the draft RFP might discourage potential developers from filing bids, failed to adequately provide for price discovery, failed to consider acquisition of power from the west, and excludes potential developers of power in Washington, which may affect the market and price efficiency of power.
- 17 **The Settlement.** The Settlement filed on April 15, 2004, is intended to resolve all issues pending in the docket. The Settlement contains three terms addressing the issues in dispute.
- 18 First, Item 1 of the Settlement provides that PacifiCorp will revise the first paragraph of the September 25, 2003, draft RFP to read as follows:

PacifiCorp has identified a resource block of zero megawatts for this Request for Proposals (“RFP”). The express goal of this RFP is to meet PacifiCorp’s obligations under Chapter 480-107 WAC. This process is intended to support the Commission’s ongoing assessment of the cost and availability of resources to PacifiCorp. PacifiCorp will evaluate all resources offered under this bidding rule.

Item 1 of the Settlement provides that the time periods for reviewing the proposed RFP are considered satisfied based upon Staff’s review of the September 25, 2003, filing. Item 1 further provides that by accepting the Settlement, the Commission approves the draft RFP for purposes of WAC 480-107-060(2)(b). PacifiCorp will issue the RFP and begin the solicitation process on or before 30 days after the Commission enters an Order approving and adopting the Settlement.

- 19 Second, Item 2 of the Settlement indicates Staff agreement that the revisions to paragraph 1 of the September 25, 2003, draft RFP satisfy the concerns raised in Staff's December 10, 2003, open meeting memorandum in this docket.
- 20 Third, Item 3 of the Settlement provides, for RFPs issued after January 24, 2003, that PacifiCorp will file with the Commission a copy of each RFP issued by the Company, or provide Staff with a link to a website where the materials would be located. Item 3 provides that after each RFP is complete, PacifiCorp will file with Commission Staff a public document summarizing the process and results of the RFP. Item 3 further provides that PacifiCorp will provide additional information to the Commission, upon request, and that PacifiCorp will retain information regarding the RFPs for a period of five years.
- 21 During the April 20, 2004, conference, counsel for PacifiCorp and Staff agreed that the effect of the Settlement is to resolve all issues in dispute, including PacifiCorp's waiver request. *Tr. at 5-6.* The parties agreed that the effect of language in paragraph 1 of the Settlement is the withdrawal of PacifiCorp's waiver request. *Tr. at 6-7.*
- 22 During the conference, counsel asserted that the general intent of PURPA is to encourage development of cogeneration and small power production. *Tr. at 7.* Counsel for PacifiCorp stated that the Commission's RFP requirements "provide a forum for interested parties to bid their resources on a competitive basis to purchasing utilities" and "provide price signals to utilities, the parties and the Commission for purposes of refining the utilities' avoided cost and also for judging the prudence of utility purchases and resource acquisitions generally." *Tr. at 8.*
- 23 The Company's counsel further asserted that the Settlement is consistent with PURPA, Chapter 480-107 WAC, and the public interest, as it provides an RFP consistent with the Commission's rules, and provides a process for the

Commission to gain access to information concerning all resource proposals submitted to the Company. *Tr. at 9.* Counsel for Commission Staff concurred with these assertions, adding that PURPA also requires states to participate in establishing the avoided cost of a utility through an administratively determined cost or through competitive bidding. *Tr. at 10.* Counsel for the Company asserted that the language in Item 1 of the Settlement balances the requirements of Chapter 480-107 WAC and the Company's position concerning acquiring resources under a Commission-approved RFP. *Tr. at 15.* Counsel for Staff further noted that the language in Item 1 of the Settlement is the nearly the same as that approved by the Commission in the Avista Corporation RFP in Docket No. UE-031247.

24 Counsel for Staff noted that Chapter 480-107 WAC does contemplate companies issuing RFPs outside of the process set forth in the chapter, but that issuance of such RFPs does not supplant the requirement to file an RFP with the Commission. *Tr. at 11.*

25 **Discussion and Decision.** The ultimate determination to be made by the Commission in this proceeding is whether approving the Settlement is "lawful, the settlement terms are supported by an appropriate record, and [whether] the result is consistent with the public interest in light of all the information available to the commission." *WAC 480-07-750(1).*

26 Based on a review of the requirements under PURPA, FERC regulations, and the Commission's rules in Chapter 480-107 WAC, as well as consideration of the parties' statements on the record, the Settlement is consistent with these requirements. The Settlement resolves the dispute over language in the proposed RFP filed on September 25, 2003, by appropriately balancing PacifiCorp's interests and regulatory requirements. The language is also consistent with an Avista Corporation RFP approved by the Commission in Docket No. UE-031247.

27 The record in this proceeding, albeit minimal, supports the agreements reached in the Settlement as well as the Commission's approval of the Settlement. The parties expressed the basis for the Settlement in the Settlement itself and in the April 20, 2004, prehearing conference.

28 Based on the record developed in this proceeding, we find the issues pending in this proceeding are adequately addressed and resolved by the terms of the Settlement. Under these circumstances, we are satisfied that the Settlement is lawful, appropriate, and consistent with the public interest. The Settlement should be approved and adopted as a full and final resolution of all issues pending in Docket No. UE-031311, and the draft RFP filed on September 25, 2003, should be approved, as modified by the Settlement.

III. FINDINGS OF FACT

29 Having discussed in detail both the oral and documentary evidence concerning all material matters inquired into, and having previously stated findings and conclusions based thereon, the following summary of the facts is now made. The portions of the proceeding detailing findings and discussion pertaining to the ultimate facts are incorporated by this reference.

30 (1) The Washington Utilities and Transportation Commission (Commission) is an agency of the State of Washington vested by statute with the authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.

31 (2) PacifiCorp, d/b/a Pacific Power and Light is an electric company operating in Washington State pursuant to Chapter 80.28 RCW.

- 32 (3) PacifiCorp filed a draft Request for Proposals with the Commission on
September 25, 2003, to comply with WAC 480-107-060(2)(b).
- 33 (4) The Commission suspended PacifiCorp's September 25, 2003, draft
Request for Proposals due to a dispute between Staff and the Company as
to whether the draft Request for Proposals complied with Chapter 480-107
WAC.
- 34 (5) On April 15, 2004, PacifiCorp and Commission Staff filed a Settlement
Stipulation with the Commission in order to resolve all issues in dispute
in this docket.

IV. CONCLUSIONS OF LAW

35 Having discussed above in detail all matters material to this decision, and having
stated general findings and conclusions, the following provides summary
conclusions of law. Those portions of the preceding detailed discussion that
state conclusions pertaining to the ultimate decisions of the Order are
incorporated by this reference.

- 36 (1) The Washington Utilities and Transportation Commission has jurisdiction
over the subject matter of and the parties to, this proceeding. *RCW*
80.01.040, Chapter 80.04 RCW, Chapter 80.28 RCW.
- 37 (2) The Settlement Stipulation (Appendix A to this Order) fully and fairly
resolves the issues pending in this proceeding, is consistent with PURPA
and Chapter 480-107 WAC, and the public interest, and should be
approved. *RCW 80.01.040, WAC 480-07-750.*

V. ORDER

THE COMMISSION ORDERS That:

- 38 (1) The Washington Utilities and Transportation Commission has jurisdiction
over the subject matter of and the parties to this proceeding.
- 39 (2) The Settlement Stipulation (Appendix A to this Order) is approved,
adopted, and made part of this Order.
- 40 (3) The draft Request For Proposals that PacifiCorp, d/b/a Pacific Power and
Light filed with the Commission on September 25, 2003, as modified by
Item 1 of the Settlement Stipulation, is approved.

Dated at Olympia, Washington and effective this ___ day of May, 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.

[Service Date May 3, 2004]

APPENDIX A