



May 13, 2005

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 22 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, the current competitive bidding rules. These comments are in addition to the initial comments filed by PacifiCorp on May 16, 2003 in this docket.

In these comments, PacifiCorp will offer its view of the general principles that should be incorporated into any modification of Chapter 480-107 WAC. Thereafter, PacifiCorp will offer comments on specific proposed rules in this Chapter.

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.
- 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. As discussed in PacifiCorp's comments submitted in Docket No. UE-030311 with respect to the integrated resource planning rule, PacifiCorp proposes that the Commission consider a subsequent process whereby a utility could obtain regulatory approval before committing significant expenditures to developing or acquiring new resources. Such a process would *not* be a part of the RFP process, but would be identified in advance as a procedure that could be followed when acquiring resources. This resource review process, which is currently in place in another jurisdiction in which PacifiCorp operates,¹ could be an optional procedure in Washington that would be available to utilities seeking greater certainty of cost recovery of acquired resources. Such a resource review process would also provide an opportunity for stakeholders to submit their views at a timely stage in the course of activities associated with acquiring new resources, rather than after the resource is acquired and rate recovery is being sought.
- 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.

Comments on Specific Rules in Chapter 480-107 WAC

Purpose and Scope (480-107-001(1)). PacifiCorp proposes that the language be revised as follows:

(1) The rules in this chapter establish the process for require-utilities seeking to conduct competitive bidding solicitations as a means of acquiring new resources to solicit bids, rank project proposals, and identify any bidders that meet the minimum selection criteria. The rules in this chapter do not establish the sole procedures electric utilities must use to acquire new resources. Electric utilities may construct electric resources, operate conservation programs, purchase power through negotiated contracts, or take other action to satisfy their public service obligations.

¹ Utah Senate Bill (S.B.) 26, codified at Utah Code Chapter 54-17, "Energy Resource Procurement Act."

A utility should not be *required* to issue a Commission-approved RFP as a means of filling its resource needs. Use of a Commission-approved RFP should be only one means of acquiring resources, but not the sole means of doing so. A utility should have a choice in resource acquisitions: (1) it can proceed with an RFP approved by the Commission pursuant to Chapter 480-107 WAC, 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 this chapter. 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. Alternatively, the utility may acquire resources *without* proceeding under the competitive bidding rules, subject to the admonition in proposed subsection 480-107-001(2) that the prudence of any such acquisitions may be judged by reference to “information about the price and availability of electric power obtained through the bidding procedures described in these rules, in conjunction with other evidence, in general rate proceedings.” This flexibility should be retained under any revised rules flowing from this rulemaking. At the same time, as discussed above, 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 in the form of an optional resource review process that would follow the identification in the RFP of the proposed resource to be acquired.

Definition of Avoided Costs (480-107-007(2)). PacifiCorp proposes that the language be revised as follows:

(2) “Avoided costs” means the incremental costs to an electric utility of electric energy, electric capacity, or both, that the utility would generate itself or purchase from another source, but for purchases to be made under these rules. ~~Avoided cost is identified as the minimum bid that meets the criteria specified in the Request for Proposal, or is estimated from data in the utility’s most recent Integrated Resource Plan.~~

Only the first sentence of the definition—which is consistent with FERC’s definition of avoided costs—is necessary. The manner in which avoided costs is determined is specified in a later rule, and need not be repeated in the definition.

Timing of the Solicitation Process (480-107-015(2)(a)). PacifiCorp proposes that the language be revised as follows:

(2) Timing of the solicitation process.
(a) An electric utility proposing to issue an RFP in accordance with these rules must submit to the commission a proposed request for proposals and accompanying documentation no later than ninety days after the utility’s integrated resource plan has been accepted by ~~is due to be filed with~~ the commission. Interested persons will have

sixty days from the RFP's filing date with the commission to submit written comments to the commission on the RFP. The commission will approve or suspend the RFP within thirty days after the close of the comment period.

As discussed above with respect to proposed WAC 480-107-001(1), a utility should not be *required* to submit an RFP under these rules. If a utility does propose to issue an RFP in accordance with these rules, the deadline should be defined according to the date on which the Commission *accepts* the utility's integrated resource plan (IRP), not the date on which the IRP is *filed* with the Commission. The draft RFP should be informed by the IRP process, including comments received by the Commission as part of that process and any guidance the Commission may provide in its letter accepting the IRP. Requiring the draft RFP to be submitted ninety days after *filing* the IRP—as the draft rule proposes—will likely not permit the RFP to be informed by the IRP review process.

Contents of the Solicitation Process (480-107-025(2)). PacifiCorp proposes that the language be revised as follows:

(2) The RFP must identify a resource block consisting of the overall amount and duration of power the electric utility is soliciting through the bidding process. The RFP must document that the size of the resource block is consistent with the range of estimated new resource needs identified in the utility's integrated resource plan. ~~The RFP may specify a zero megawatt resource block only if the integrated resource plan demonstrates that the utility does not need additional capacity within three years.~~

There is no need to address the possibility of a “zero megawatt resource block” unless the rule *requires* RFPs to be issued. As discussed above with respect to proposed WAC 480-107-001(1), a utility should not be *required* to submit an RFP under these rules. This sentence should therefore be unnecessary.

Filing of Avoided Cost Schedules (480-107-055). PacifiCorp proposes that the language be revised as follows:

(1) No less often than every two years~~On an annual basis~~, an electric utility must file its schedule of estimated avoided costs~~schedule for the energy and capacity associated with the resource block the electric utility solicited in its most recent RFP filed pursuant to WAC 480-07-025, Contents of the solicitation.~~ Such estimated avoided cost schedule shall reflect:

(a) the prices, terms and conditions for purchases of electric energy, electric capacity, or both under the most recent final contract executed by the utility under the competitive bidding process set forth in these rules;

(b) the prices, terms and conditions for purchases of electric energy, electric capacity, or both under the most recent final contract executed by the utility under any other competitive bidding process conducted by such utility; and

(c) any other data that it is indicative of the current incremental costs that would likely be incurred by the utility for electric energy or electric capacity, including but not limited to information from the utility's most recent integrated resource plan.

The electric utility must include in its filing documentation supporting its estimated avoided cost schedule.

~~(2) Avoided cost schedules filed within 12 months after an RFP will be based directly on the bids received pursuant to that RFP. (3) Avoided cost schedules filed more than 12 months after an RFP will be based on estimates included in the utility's current integrated resource plan filed pursuant to WAC 480-100-238 and the results of the most recent bidding process. The electric utility must file documentation supporting its estimated avoided cost schedule.~~

(24) Electric utilities may revise an estimated avoided cost schedule at any time. Such revisions must be filed with the commission and are subject to commission approval.

(35) The estimated avoided cost schedule provides only general information to potential bidders about the costs of new power supplies. It does not provide a guaranteed contract price for electricity.

(46) For projects rated at one megawatt capacity or less, the most recently approved schedule of estimated long-term avoided costs will be the basis for prices offered.

~~(7) For projects in excess of one megawatt, the avoided cost will be the lowest bid among the project proposals with an acceptable evaluation.~~

The proposed requirement under the draft rules to file avoided costs annually is without foundation. As the Commission is aware, 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 revisions proposed above ensure that this requirement is fulfilled. It is unnecessary to resort to the burdensome process contemplated by the proposed rules. The issuance of a Commission-approved RFP should be an option for the utility to determine its avoided costs. A utility

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choosing not to exercise that particular option would nonetheless have the obligation to file the required avoided cost information every two years, in order to achieve compliance with PURPA requirements. The information supporting the calculation of avoided cost estimates can be gleaned from a variety of sources, including the outcomes of other competitive bidding solicitations conducted by the utility and the analysis of resource costs from the utility's IRP. The utility has an incentive to ensure that its avoided cost schedule on file with the Commission is current, inasmuch as this schedule will form the basis for pricing of any purchases from small projects (*i.e.*, projects of one MW or less).

Conclusion

PacifiCorp appreciates the opportunity to provide written comments and looks forward to participating in the workshop on June 9. Please direct any questions regarding these comments to either the undersigned at (503) 813-6092 or Stacey Kusters at (503) 813-5351.

Very truly yours,

PacifiCorp

By 
Christy Omohundro
Managing Director, Regulation