

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of PacifiCorp for Approval of a 2009 Request for Proposals for Flexible Resource)))))	<u>DOCKET NO. 05-035-47</u>
In the Matter of the Application of Rocky Mountain Power for Approval of Significant Energy Resource Decision Resulting from 2012 Request for Proposals)))))	<u>DOCKET NO. 08-035-95</u> <u>ORDER</u>

ISSUED: May 7, 2009

By the Commission:

This matter comes before us in response to the requests on February 19, 2009, and February 25, 2009, by Rocky Mountain Power, a division of PacifiCorp (“Company”), that the Public Service Commission of Utah (“Commission”) close Docket No. 08-035-95 and Docket No. 05-035-47 and terminate the Company’s 2012 Request for Proposals for Base Load Resources (“2012 RFP”).

PROCEDURAL HISTORY OF DOCKET NO. 05-035-47

On June 27, 2005, pursuant to Utah Code Annotated (“UCA”) §§54-17-101, et. seq., Energy Resource Procurement Act (“Act”) and in accordance with UCA §54-17-201(2)(b), PacifiCorp filed an application with the Commission for approval of its 2009 Request for Proposals (“RFP”) for a Flexible Resource in Docket No. 05-035-47. Subsequently, the Company changed its request in this docket from a flexible resource needed in 2009 to a base

load resource needed in 2012. On April 4, 2007, the Commission approved the Company's 2012 RFP filed March 26, 2007, subject to certain editing changes ("April Order"). The procedural history of Docket No. 05-035-47 up to the April Order is included in that order and shall not be recounted here.

Subsequent to the April Order, the Company filed a letter with the Commission on May 21, 2007, to confirm certain conversations and to clarify issues raised pertaining to the 2012 RFP. Specifically, the Company noted potential bidders' responses to its request for qualifications ("RFQ") were highly deficient. Thus the RFQ may not have been sufficiently clear and therefore the Company agreed it would reopen the RFQ process, extend the RFQ deadline, and clarify credit requirements, eligible resource alternatives and the communications protocol for jointly developed project bids. On August 16, 2007, the Commission issued a notice of technical conference to be held August 27, 2007. On August 22, 2007, the Commission issued a notice canceling this technical conference.

On September 28, 2007, the Company filed a motion for additional protective measures for information to be provided in the proceeding and a request for expedited treatment. On October 2, 2007, the Company filed a motion to amend its 2012 RFP and a request for expedited treatment ("Motion to Amend"). Responses to the Company's motion for additional protective measures and request for expedited treatment were filed by the Utah Division of Public Utilities ("Division") and Western Resource Advocates ("WRA") on October 4, 2007, and by the Utah Association of Energy Users ("UAE") on October 5, 2007. On October 10, 2007, the Company filed a request for approval of a stipulation between the Company, UAE and

WRA regarding the Company's motion for additional protective measures. On October 12, 2007, and October 15, 2007, the Commission issued a revised protective order and erratum revised protective order respectively, incorporating the provisions of the October 10, 2007, stipulation ("October Protective Orders").

On October 16, 2007, the Company filed, under seal pursuant to the October Protective Orders, its supporting memorandum to accompany its Motion to Amend. On October 26, 2007, the Commission issued a notice of a November 2, 2007, filing deadline for responses to the Company's Motion to Amend and a notice of a hearing date set for November 7, 2007. On October 26, 2007, the Company filed a redacted version of its October 16, 2007, supporting memorandum. On October 30, 2007, the Commission issued an amended notice of hearing moving the hearing date in this matter to November 20, 2007. On November 1, 2007, LS Power Associates, L.P. ("LS Power") filed a motion requesting an extension of time in which to respond to the Company's Motion to Amend and UAE filed its response to the Company's Motion to Amend. On November 2, 2007, the Commission issued a notice extending the filing deadline for responses to the Company's Motion to Amend to November 9, 2007. On November 8, 2007, the Division filed redacted and proprietary comments on the Company's Motion to Amend and filed the unedited proprietary comments of Merrimack Energy Group, Inc., the Commission's independent evaluator ("Merrimack," or "IE"), on behalf of Merrimack. On November 9, 2007, responses to the Company's Motion to Amend were filed by the Utah Committee of Consumer Services ("Committee"), and LS Power. Also, a third party filed proprietary comments and UAE filed its supplemental response.

On November 14, 2007, the Commission issued its second amended notice of hearing changing the hearing date to November 29, 2007. On November 14, 2007, the Committee filed a motion requesting a pre-hearing order from the Commission pursuant to Utah Administrative Code (“UAC”) R746-100-9. On November 16, 2007, the Company filed an objection and response to the Committee’s motion. On November 19, 2007, the Committee filed a motion for the release of highly sensitive, non-public information pertaining to the August 27, 2007, IE status report to the Commission. On November 20, 2007, the Commission issued a procedural order for the hearing. On November 21, 2007, the Commission issued a protective order for the IE’s August 27, 2007, status report. On November 28, 2007, the Company filed a notice of withdrawal of its Motion to Amend and the Commission issued a notice canceling the hearing on the Motion to Amend.

On December 12, 2007, the Company filed a letter with the Commission to memorialize its meeting with the Division, the IE, and certain bidders who had submitted bids in the Company’s 2012 RFP, wherein the Company updated the bidders on its Motion to Amend and its plan for the 2012 RFP moving forward.

On January 23, 2008, the Division, on behalf of the IE, filed the IE’s proprietary status report on the Company’s discussions with short-listed bidders. On January 30, 2008, the Company requested a hearing before the Commission regarding the Company’s 2012 RFP. On February 4, 2008, the Commission issued a notice of hearing to be held on February 14, 2008. On February 13, 2008, the IE filed proprietary status reports with the Commission on the

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Company's receipt of final offers from bidders and on follow-up discussions with bidders. On February 14, 2008, a hearing was held, a portion of which was closed to the public.

On April 18, 2008, and May 13, 2008, the Division filed status reports on four PacifiCorp resource acquisition dockets, including the Company's 2012 RFP. On October 16, 2008, and December 16, 2008, on behalf of the IE, the Division filed, respectively, the proprietary and public versions of the IE's report on the evaluation and selection of the draft final conditional short list for the Company's 2012 RFP. On December 4, 2008, the Company filed a confidential notification of its selection of a significant energy resource in the 2012 RFP.

On February 25, 2009, the Company filed a request for the Commission to close Docket No. 05-035-47 and terminate the 2012 RFP. On March 9, 2009, the Committee filed its response to the Company's request. On March 19, 2009, the Company filed its reply to the Committee's response.

PROCEDURAL HISTORY OF DOCKET NO. 08-035-95

Pursuant to UCA §54-17-302 and UAC R746-430-2, the Company filed a verified application with supporting confidential testimony on December 3, 2008, requesting approval, in Docket No. 08-035-95, of its significant energy resource decision to construct Lake Side 2, a combined cycle combustion turbine generating plant, to be developed by Summit Vineyard, LLC ("Summit"), with CH2M Hill E&C, Inc. ("CH2M Hill"), as engineering, procurement, and construction contractor. In addition, pursuant to UCA §54-4-25, the Company requested the Commission issue a certificate of public convenience and necessity ("CPCN") for the Lake Side

2 generating plant. Essentially, the Company also requested the application be considered on an expedited basis.

On December 4, 2008, the Division requested the Commission order a scheduling conference, the Company filed its confidential Phase II report, and the Commission issued a protective order for this docket. On December 10, 2008, the Commission issued a notice setting a scheduling conference for December 17, 2008. On December 24, 2008, the Commission issued a scheduling order. UAE, WRA and Questar Gas Company requested, and were granted, permission to intervene in this docket.

On January 12, 2009, pursuant to the Commission's scheduling order, the IE filed public and confidential versions of its final report on the Company's 2012 RFP. On January 13, 2009, the Division filed a memo with the Commission. On January 5, 2009, a technical conference was held pursuant to the Commission's scheduling order. On January 20, 2009, the Company filed follow-up information requested in the January 5, 2009, technical conference. On January 28, 2009, the IE filed information regarding a conversation between the IE and a Committee consultant.

On February 5, 2009, the Division, IE, Committee, and UAE filed confidential and/or public versions of direct testimony, comments or position statements. On February 12, 2009, the Company filed confidential rebuttal comments and testimony and notice of its termination of the Master Development, Engineering, Procurement and Construction Agreement ("Agreement") with Summit and CH2M Hill regarding the Lake Side 2 generating plant, to be effective February 18, 2009. Also on February 12, the Committee filed confidential and public

versions of its reply comments. On February 19, 2009, a hearing was held and the Company filed a notice of withdrawal of its application for approval of its significant energy resource decision to construct and operate the Lake Side 2 generating plant and its request for issuance of a CPCN for the plant and requested that the Commission close Docket No. 08-035-95.

On February 26, 2009, and March 9, 2009, the Division and Committee, respectively, filed comments on the Company's withdrawal of the application in this proceeding and its request to close the docket. On March 19, 2009, the Company filed its reply to the Committee's March 9, 2009, comments.

PARTIES' POSITIONS

In support of its notice to withdraw its application requesting approval of its significant energy resource decision to construct and operate the Lake Side 2 generating plant, the Company affirms it terminated the Agreement underlying construction of the resource and provides supporting reasons for the termination. The Company states it has determined it will further explore resource alternatives because the dramatic global economic downturn in late 2008 has resulted in reduced customer loads, reduced commodity prices, potentially reduced future construction costs and other changes in economic and market conditions. The Company also maintains it is committed to securing viable, cost-effective resources to meet its forecasted needs for summer 2012. In hearing, the Company testifies to using the following additional factors in its decision-making process: 1) the high cost of the Lake Side 2 resource; 2) a change in its load forecast; 3) changes to the Company's transmission capability; and 4) intervening parties' comments. The Company communicates its appreciation for the efforts of the

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Commission and parties in considering its application on an expedited basis, withdraws the application from further consideration and requests the Commission close the docket.

In support of its request that the Commission terminate the 2012 RFP and close Docket No, 05-035-47, the Company refers to its notice to withdraw its application in Docket No. 08-035-95, and to the lack of any other resource in the 2012 final shortlist. In making its request, the Company notes it does not intend to foreclose the provision of any report from the IE the Commission deems necessary and therefore suggests the Commission close the docket after the IE has filed any final report deemed necessary, which should be within 30 days.

The Division submits it is premature to close Docket No. 08-035-95 and requests the Commission deny the Company's request. The Division notes certain issues were raised and questions asked of the Company witness at the hearing that could not be answered at that time. Thus, the Division argues it did not have a meaningful opportunity to explore, at the hearing, the reasons for termination and the Company's process for evaluating the Agreement and the other bids in this docket and that the sudden termination of the Agreement left questions unanswered. Essentially, the Division argues the information provided by the Company is inadequate. The Division states it is awaiting responses to data requests to the Company that are integral to an examination of the whole RFP process and are not focused merely on a single agreement to build a specific resource. The Division is interested in the process involved in selecting, executing, then terminating the Agreement as well as the process used to obtain, examine and evaluate other bids. The Division did not file comments on the Company's request to close Docket No. 05-035-47.

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The Committee recommends the Commission formally adjudicate the Company's requests to close Docket Nos. 05-035-47 and 08-035-95. The Committee states the Company's announcement that it had terminated the contract to acquire Lake Side 2 contained no empirical or numerical support. The Committee requests the Commission allow the Division, Committee and interested parties the time necessary to investigate, make recommendations, and hold hearings, if necessary, upon the following issues: 1) whether the IE's role in the 2012 RFP and participation in the Lake Side 2 contract negotiations were consistent with the Act and administrative rules; 2) whether the Commission was provided with sufficient notice of the progress, major issues and disputes, and was involved in developing proposed resolutions, to allow it to properly oversee the RFP; 3) whether the structure and timing of the Lake Side 2 project agreement pertaining to liability milestones, penalty and price adjustments, and permitting, were consistent with the Act; 4) whether these dockets are appropriate for considering rate recovery for internal or external costs incurred by the Company in connection with the terminated Lake Side 2 Project, including permitting, site preparation and construction, or payments to Summit, CHM2 Hill, or any affiliated entity.

In its response to the Committee's comments, the Company argues it has not requested agency action by the Commission. Because it filed a notice of termination and notice of withdrawal in Docket No. 08-035-95 and because no energy resource decision resulted from the 2012 RFP in Docket No. 05-035-47, there is nothing pending in either docket to adjudicate. As nothing is pending in either docket, the Company argues it is unnecessary to keep them open. Further, the Company argues there is no need to keep Docket Nos. 08-035-95 and 05-035-47

open for more than 30 days because it has agreed to provide information pertaining to its decision to cancel Lake Side 2 through data responses and the IE can provide any additions to its final report within that time frame. Finally, the Company opposes addressing the issues on the 2012 RFP process raised by the Committee arguing such issues are improper and unnecessary under the Act. With respect to the Committee's request for investigation of cost recovery, the Company argues there is no reason to embark on an investigation and hearings on issues that have not yet been raised.

DISCUSSION, FINDINGS AND CONCLUSIONS

While we do not anticipate further adjudication in Docket Nos. 05-035-47 or 08-035-95, we decline to close the dockets. It is not our general practice to "close" dockets, and we see no compelling reason to start such a practice in this case.

We concur with the Division and Committee that empirical support for the Company's decision to terminate the Agreement has yet to be provided in Docket No. 08-035-95. We conclude the public interest would be served if the record provided detailed information regarding the information the Company relied upon to make its decision regarding the Lake Side 2 Agreement. Therefore, in the interest of ensuring that a complete record in this case is available for future reference, we direct the Company to file empirical support for the factors it described in hearing and in writing as having contributed to its decision to terminate the Lake Side 2 Agreement and all data, information, analyses and supporting documentation used in its decision.

In hearing, the Company described several factors that changed since it initially analyzed its need for power in 2012, leading it to the conclusion a better alternative is available than executing the Agreement. While some of these factors are qualitative in nature and may be difficult to support empirically, other factors can be readily quantified and provided in the record. Indeed, from the Company's representations, such information has already been quantified and used by the Company to reach its decision to terminate the Agreement. For example, although the expectation that construction costs will be lower in the future cannot be demonstrated at this point with unquestionable empirical support, changed circumstances or information regarding projected load and resource balance in 2012, changed circumstances or information regarding transmission capabilities, and reduction in commodity prices can and should be demonstrated to identify the information the Company knew or relied upon at the time it made its decision to terminate the Agreement. We direct the Company to file all supporting documentation used in reaching its decision and all documents created and used in its decision-making process to terminate the Agreement. These documents are to be filed in Docket No. 08-035-95 within 30 days from the date of this order. We do not anticipate this is burdensome to the Company. Such data, information, analyses and documents already exist and were used by the Company to decide to terminate the Agreement.

With respect to the 2012 RFP process issues, it is our conclusion the IE's work in Docket Nos. 05-035-47 and 08-035-95 is complete and this information is contained in the reports and testimony the IE has filed in these dockets. This information is now filed with the Commission and interested parties may use it to suggest improvements to the RFP processes

going forward and to evaluate Company decisions regarding resource acquisitions in appropriate proceedings. Nonetheless, we also acknowledge parties were not given an opportunity to examine the IE in hearing due to the truncated hearing process. The IE was scheduled to testify in the hearing on the Company's significant energy resource decision and to be available to answer any questions but that hearing did not proceed as expected. In order to ensure parties have ample opportunity to fully understand the IE's work and recommendations with respect to the 2012 RFP, we authorize a discovery period of 30 days for parties to issue data requests to the IE regarding the work products prepared and filed in Docket Nos. 05-035-47 and 08-035-95. The information gathered by parties through this process may be used in an appropriate future solicitation or rate proceeding.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Company shall file, within 30 days from the date of this order, all data, information, analyses and all supporting documentation used in its decision to terminate the Agreement in Docket No. 08-035-95, as discussed herein.

2. Parties may serve data requests to the IE regarding the 2012 RFP process within 30 days from the date of this order. The IE shall respond to the data requests in a timely manner.

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DATED at Salt Lake City, Utah, this 7th day of May, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#61873 Docket No. 05-035-47
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