

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
PacifiCorp, by and through its Rocky) DOCKET NO. 07-035-94
Mountain Power Division, for Approval of a)
Solicitation Process for a Flexible Resource) ORDER APPROVING
for the 2012-2017 Time Period, and for) SUSPENSION OF REQUEST FOR
Approval of a Significant Energy Resource) PROPOSALS
Decision)

ISSUED: April 6, 2009

SHORT TITLE

PacifiCorp All Source RFP Suspension

SYNOPSIS

The Commission approves, with conditions, PacifiCorp's request to suspend its All Source Request for Proposals for Resources in the 2012 to 2016 time period.

By the Commission:

PROCEDURAL HISTORY

On February 15, 2008, PacifiCorp, by and through its Rocky Mountain Power division ("PacifiCorp" or "Company"), and pursuant to Utah Code § 54-17-201 et seq. and Utah Administrative Code ("UAC") R746-420-1 et seq., filed an application with the Public Service Commission of Utah ("Commission") for approval of the solicitation and solicitation process contained in the Company's 2008 All Source Request for Proposals ("All Source RFP") to meet

up to 2,000 megawatts of the Company's capacity and energy resource needs for calendar years 2012 to 2016. On September 25, 2008, the Commission approved the revised All Source RFP filed August 5, 2008, subject to editing changes.

On February 26, 2009, pursuant to UAC R746-100-3.A.1.a and R746-420-1(4)(c), the Company filed a motion requesting the Commission approve suspension of the All Source RFP on an expedited basis. Responses to the motion were filed on March 5, 2009, by the Utah Division of Public Utilities ("Division"), on March 9, 2009, by the Utah Committee of Consumer Services ("Committee"), and on March 10, 2009, by LS Power Associates, L.P ("LS Power"). On March 12, 2009, the Company filed reply comments.

PARTIES' POSITIONS

The Company argues it is not in the best interests of its customers to proceed with the All Source RFP at this time. Due to the dramatic global economic downturn in late 2008 and the resulting reduction of customer loads, reduction in price of commodities, potential reduction of future construction costs and other changes in economic and market conditions, the Company believes there is a reasonable possibility more favorable bids may be received in the future as economic and market conditions continue to change.

Specifically, the Company requests Commission approval to provide a notice of suspension to bidders. The form and substance of the suspension notice is contained in a letter the Company intends to send to bidders attached to its motion as Appendix A. Appendix A communicates that bidders may either withdraw their bids or leave their bids pending as the Company continues to assess the market over the next six to eight months. Based on its market assessment, the Company anticipates it will request bidders that have not withdrawn their bids to

refresh them. Further, the Company may also request new bids and intends to refresh its benchmark resource proposals at that time.

The Division responds that it is reviewing the reasons for the Company's request. It observes that any delay in the All Source RFP at this point will make it unlikely the Company can have any new resources on line for the summer of 2013. The reasonableness of any delay will depend on the Company's projected load and resource balance which the Division has yet to see. The Division recommends any order suspending the All Source RFP clearly state that it does not address the reasonableness of the Company's decision to suspend the All Source RFP. Such review should occur in an appropriate future docket.

Given its uncertainty regarding the reasons for the Company's decision to suspend the All Source RFP, the Division recommends: 1) any suspension be for a time certain such as four to six months; 2) at the end of the suspension period, the Company should refine its All Source RFP to reflect the most current information, including refreshing the Company's benchmarks, and inform bidders of any changes; 3) bidders that do not initially withdraw would be able to refresh their bids or submit new bids for consideration; 4) following review of the new or refreshed bids, the Company would seek Commission approval, with new information, to further suspend or cancel the All Source RFP; and 5) if the Company cancels the RFP after considering the new or refreshed bids, the Company should refund all bidders fees. With these issues addressed, the Division does not object to an order suspending the All Source RFP.

In its response to the Company's motion, the Committee recommends the Commission authorize the Company to provide notification to bidders as the Company proposes, with one modification, and recommends the Commission formally adjudicate the suspension of,

and modifications to, the All Source RFP. The Committee argues the need for an independent and thorough prudence review of the Company's decision to suspend the All Source RFP, and the timing, terms and conditions for resuming the All Source RFP, is critical to compliance with the Energy Resource Procurement Act and to the public interest.

The Committee agrees the Company has discretion to suspend the All Source RFP. However, the Committee argues the Company must comply with the rules governing the solicitation process that require it "[b]e commenced sufficiently in advance of the time of the projected resource need to permit and facilitate compliance with the Act and the Commission rules and a reasonable evaluation of resource options that can be available to fill the projected need and that will satisfy the criteria contained with Section 54-17-302(3)(c)." R746-420-3(1)(b)(v).

Essentially, the Committee argues the Company has, to date, provided insufficient information detailing changed conditions and customer loads to support its decision to suspend the All Source RFP. Therefore, the Committee is concerned lax oversight will result in inadequate vetting of the next resource decision by the Company. To avoid this result, the Committee recommends the Commission require the Company to file regularly scheduled reports with the Commission, Division and Committee on the status of its market assessments, its customer load forecasts, forecasts or information pertaining to construction costs, the response of bidders to the suspension notice, the development of new or refreshed benchmark resource proposals, and other reports as the Commission may deem necessary to monitor the All Source RFP while it is suspended. Further, the Committee requests the Commission allow discovery upon these reports or other matters deemed appropriate.

The Committee also requests striking the fourth paragraph to the Company's proposed notice to bidders. The Committee believes that through this paragraph, the Company intends the independent evaluator to participate in updating and modifying the All Source RFP, inappropriately presupposing the Commission's approval of the utility's actions during the suspension period. This, the Committee argues, can only come after the Commission's consideration of the Company's request to resume the RFP.

LS Power believes the Company's proposal is sufficiently unclear that to allow suspension without certain conditions may be unfair and may result in a reduced pool of bidders. Specifically, LS Power argues the Company's proposal is unclear regarding whether: 1) A bidder would be allowed back in the process if it withdraws and the Company later resumes the process; 2) the resumed All Source RFP will be closed except to those who leave in their bids during the suspension period; 3) the Company will refund the bid fees of bidders electing to remain in the All Source RFP if it is not resumed, or if it is resumed but is ultimately terminated without selecting a resource; 4) there is a time limit to the suspension; and 5) an existing bidder was on the All Source RFP "short list."

To address the foregoing concerns, LS Power recommends the Commission require the Company to: 1) Return bid fees during the period of suspension and allow bidders to re-submit the fee in the same amount when they refresh their bids upon resumption of the All Source RFP; 2) clarify whether new bidders would be allowed to enter the All Source RFP upon resumption; 3) resume or cancel the All Source RFP within six months; 4) propose a procedure by which the Utah independent evaluator and the Commission can be assured that the Company will not obtain an undue advantage over other bidders by continuing to develop its benchmark

resource during the period of suspension; 5) inform bidders whether they were on the shortlist that was developed before suspension occurred; and 6) refrain from acquiring any resource during the period of this RFP and for a reasonable time thereafter.

In its reply comments, the Company agrees with the Division's recommendations with the following modifications: 1) The time certain be not more than six months from the date the Commission issues its order approving suspension; 2) if the Company decides to proceed with the All Source RFP prior to six months, it should be allowed to do so; 3) no later than six months from the date of the Commission's order approving the suspension, the Company shall notify the Commission that it will proceed, request further suspension, or request cancellation of the All Source RFP. If the Company decides to proceed with the RFP, it will provide notice to bidders of any refinements to the All Source RFP based on then-current information and should refresh its benchmarks based on that information. The Company also agrees the notice should indicate whether new bids will be considered. If the Company further suspends or cancels the All Source RFP, either before or after reviewing refreshed or new bids, the Company should refund bid fees to bidders withdrawing at that time if the RFP is further suspended, or to all remaining bidders if the RFP is cancelled. The Company proposes refunding the bid fee paid by a bidder less a pro rata share of fees incurred by the Company for the independent evaluator during the process.

In reply to the Committee, the Company agrees to obtain Commission approval of any material modification to the All Source RFP that may be proposed in the future, prior to providing notice to bidders. The Company objects to the Committee's recommendation regarding regular reports on market assessments, load forecasts, response of bidders,

development of new or refreshed benchmarks and other matters during the suspension as onerous, burdensome, and unnecessary. Further, it opposes the Committee's recommendation to strike the fourth paragraph of the notice of suspension to bidders. The Company argues this paragraph is consistent with UAC R746-420-6(3)(a) prohibiting the Company from having any communications with potential or actual bidders outside of the presence of the independent evaluator.

In reply to LS Power, the Company clarifies that in its notice to bidders it will allow new bids from potential bidders if the All Source RFP resumes. Further, the Company will host a teleconference to discuss the process going forward and respond to any questions from bidders. The date of the teleconference will be provided in the notice to bidders and bidders will not be required to decide whether to withdraw their bids prior to this opportunity to ask questions and receive answers. The Company clarifies that it did not compile the short list before its decision to suspend the All Source RFP and agrees to resume or cancel the All Source RFP (but may also request a further suspension).

The Company disagrees with LS Power's recommendations that it should: Refund all bid fees and allow bidders to refresh their bids to re-submit fees when and if the All Source RFP resumes; propose a procedure to assure that the Company's benchmark proposals will not be unfairly advantaged by continuing to develop the benchmark during the suspension; refrain from acquiring any resource during the period of the 2008 RFP and for a reasonable time afterward.

In response to the comments filed by the Division, Committee and LS Power, the Company provides a revised notice of suspension to bidders as Appendix 2 of its reply comments.

DISCUSSION, FINDINGS AND CONCLUSIONS

Given the comments of the parties, we approve the Company's motion to suspend the All Source RFP with conditions. The following conditions shall apply to the Company's request as modified in its reply comments: 1) The suspension is granted for a period up to six months beginning with the effective date of this order; 2) prior to providing notice to bidders that it will resume, request approval to further suspend, or request approval to cancel the All Source RFP, the Company shall notify and file the appropriate requests for approval with the Commission; 3) if the Company notifies the Commission of its intention to resume the All Source RFP, it shall include in its notification to the Commission, a request for approval of the new schedule for the All Source RFP and include a request for approval of any material changes to the All Source RFP; 4) the Company shall refund the bid fee to bidders withdrawing from the All Source RFP at this time; 5) if the All Source RFP is cancelled or further suspended prior to full evaluation of bids, the Company shall refund bid fees to all bidders or to bidders then withdrawing from the All Source RFP respectively; and 6) the Company's notice to bidders of the suspension, attached as Appendix 2 to its reply comments, is approved with the modification that it remove the phrase, "less a pro rata share of independent evaluator fees," from the notice.

We conclude these modifications strike a reasonable balance among the parties' concerns to ensure fairness to bidders, and promote both the integrity of the process and the interests of customers in obtaining adequate service at reasonable cost. This order does not address the reasonableness of the Company's decision to suspend the All Source RFP. Any

review of the reasonableness of the Company's decision will take place in an appropriate proceeding.

ORDER

Wherefore, pursuant to our discussion, findings and conclusions made herein, we order:

1. The Company's motion to suspend its All Source RFP is granted subject to the conditions ordered immediately above.

DATED at Salt Lake City, Utah, this 6th day of April, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#61505