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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp, by and through its Rocky Mountain Power Division, for Approval of a Solicitation Process for a Flexible Resource for the 2012-2017 Time Period, and for Approval of a Significant Energy Resource Decision	))))))))	**REPLY COMMENTS OF LS POWER ASSOCIATES, L.P.** **Docket No. 07-035-94**

LS Power Associates, L.P., through its counsel, hereby submits the following Reply Comments on PacifiCorp's (the "Company") Final Draft Request for Proposals (RFP).

1. LS Power Associates, L.P. is an independent power producer that develops, owns, operates and manages large-scale power generation projects in the United States. As an active market participant interested in supplying Utah and PacifiCorp customers with low-cost generation, LS Power submitted initial comments in this docket. LS Power has now reviewed the final draft "All Source - Request for Proposals" (the "Final Draft RFP") and offers the following comments relating to two primary areas of the Final Draft RFP: Credit Requirements and Comparability.

Credit Requirements

2. LS Power's comments on the Draft RFP acknowledged that PacifiCorp has a need to protect itself against the credit of counterparties by requiring that non-investment grade bidders post certain levels of security. It was and still is LS Power's view, however, that the amount of security required by PacifiCorp is unreasonably high and will limit bidder participation in the RFP. Additionally, the levels of security required could present a significant cost to bidders and thereby creating a built-in bias towards self-build projects.

3. In the Report of the Utah Independent Evaluator Regarding PacifiCorp's All Source Request for Proposals, filed in this docket on April 11, 2008, ("Utah IE Report"), the Utah Independent Evaluator ("IE"), Merrimack Energy Group, Inc. ("Merrimack Energy" or "Merrimack"), commented on the credit requirements in the RFP. Merrimack Energy stated that "the credit requirements appear to be in the zone of reasonableness for investor owned utilities." Utah IE Report at 55. In support of that view, it offered a list of other RFPs in Appendix B of its comments that the IE found contained similar credit requirements. LS Power suggests that the Commission not only consider that those other RFPs required high levels of credit, but that it also consider the ultimate outcome of those RFPs. The table shown below describes the result of those RFPs. In almost every example given by Merrimack Energy, the result was that the utility either self-built generation or acquired existing generation. While itis unknown whether there were lower cost bids present in these RFPs, it is clear that none of the RFPs cited by Merrimack proved to be an example in which reasonable credit requirements provided a level playing field for power purchase alternatives. Most of the PPAs that were executed in these examples were

wind PPAs which are typically held to different credit standards, and in which there was no utility-build proposal.

Utility	RFP	Credit Requirement	Result
Southwestern Electric Power Company	December 2005 RFP for Baseload Capacity and Energy Resources	$0 for investment grade to $214.65/kW for CCC rating	Utility self-build the 600 MW Hempstead County coal plant
Progress Energy Florida	October 2003 RFP	Development security up to $50/kW, operational security up to $30/kW	Utility self-build the 580 MW Hines 4 unit
Georgia Power Company	2010 & 2011 (conducted together) RFP March 2006	Development security reaches $120/kW until commercial operations	Utility self-build 2,400 MW at McDonough, 292 MW Dahlberg PPA with utility affiliate, 561 MW Wansley PPA with utility affiliate, 992 MW Excelon PPA
Duke Power	March 2005 RFP	Not specified/to be negotiated	Purchase of existing 825 MW Rockingham combustion turbines
Public Service Company of Colorado	Xcel Energy 2005 All-Source RFP	$125/kW in model PPA of net capacity	Utility self-build the 750 MW Comanche 3 unit, 300 MW Cedar Creek Wind PPA, 200 MW Peetz Wind PPA, 200 MW Logan Wind PPA, 314 MW Spindle Hill PPA, 75 MW Twin Buttes Wind PPA, 116 MW Plains End II PPA
Idaho Power	June 2005 Peaking RFP	Not specified/to be negotiated	Utility self-build the 170 MW Evander Andrews peaker
Public Service of New Mexico	August 2004 Capacity Supply RFP	Not specified/to be negotiated	
Portland General Electric	June 2003 RFP	Not specified/to be negotiated	Utility self-build the 400 MW Port Westward unit
Cleco Power	2004 RFP for Capacity and Energy	Based on replacement power cost, no level specified/to be negotiated	Utility self-build the 660 MW Rodemacher 3 unit
Entergy	2006 RFP for long-term supply-side resources	$2 million at final selection, $100/kW for CC PPAs	Utility self-build 580 MW Little Gypsy unit
Puget Sound Energy	2006 RFP from all generation sources	Not specified/to be negotiated	Purchase the 277 MW Goldendale plant, 50 MW Klondike Wind PPA, 150 MW 4 year winter capacity PPA

Utility	RFP	Credit Requirement	Result
Pacific Gas and Electric	2004 long-term request for offers	$60/kW for first 5 years, formula based on market value beyond 5 years	Acquire 660 MW Colusa plant, 120 MW Firebaugh PPA, 600 MW Hayward PPA, 400 MW Firebaugh PPA
Delmarva Power & Light	November 2006 RFP	$50/kW at PPA execution, $100/kW upon regulatory approval, wind values 40% of normal security	Bluewater Wind PPA
N. Indiana Public Service Company	2006 all source RFP	Not specified/to be negotiated	No significant resource selected

Of the 14 RFPs listed above, only three yielded non-wind PPAs and, in every case, the utility also either acquired an already existing resource, or built its own resource. Further, because PPA terms are typically negotiated between parties, it is not clear whether the executed PPAs conformed to the RFP requirements. Clearly the examples offered by the Utah IE do not support a conclusion that the credit requirements are acceptable.

4. In addition to the amount of credit required, LS Power also finds the timing of the credit security very troublesome. PacifiCorp proposes that 10% of the requirement be posted on the Effective Date for a 2012 resource. The posted security would then increase by 10% every 6 months for the next 18 months, with 100% of the security required 24 months after the Effective Date. For a non-investment grade bidder proposing a 1,000 MW plant, $13.5 million would have to be posted every 6 months. For most independent power producers who take the project finance approach, the risk profile presented by these levels of security is not reasonable. The effect of this requirement is not only to increase every bidders' costs, but to eliminate altogether many competitive bidders.

5. LS Power believes that a more appropriate level of security would be a total of 10% prior to financial closing with the remaining 90% to be posted upon closing of project financing. Further, the requirement to post security prior to financial closing should be milestone-based so that security is only needed in the event a milestone is not reached by a certain pre-determined deadline. The milestone approach ensures that bidders have adequate incentive to achieve certain development steps, and that PacifiCorp and its customers have protection when it is needed most – in the event of a project experiencing delays. The time based approach proposed in the final RFP that requires credit regardless of performance does not provide the same incentive.

6. Merrimack Energy notes that the required security from bidders would act to shield ratepayers from events in which the bidder fails to meet the terms of the contract. In contrast, self-built resources place the risk of failure to meet estimated contract terms on ratepayers. As a solution, Merrimack Energy suggests that bidders submit bids with and without security requirements and that bids be evaluated without the cost of security. LS Power believes this would be an important step in ensuring that the credit requirements are not unreasonably high, and would not unduly advantage the benchmark resource.

7. Assuming the level of security can be reasonably addressed, the timing requirements for posted security are still problematic. LS Power suggests that the RFP allow bidders to submit as many as three bid prices relating to security: one with the required level of security; one with no security as suggested by the IE; and one based on a structure proposed by the bidder. This would allow the Commission and the IE to better understand the cost of the

credit requirements, and allow bidders to optimize their bids to what they see as acceptable security levels.

Comparability

8. LS Power provided initial comments on the Draft RFP about comparability between third party bids and PacifiCorp's self-build options. Those comparability issues have not been addressed in the Final Draft RFP. As a potential bidder, LS Power is troubled that PacifiCorp's benchmark resources might not be held to the same bidding standards as third-party bids. The perceived lack of a fair solicitation process could discourage bidders from participating. In fact, the Company's actions on the previous RFP may have already had a negative impact on the number of bids and bidders willing to participate. One of the Oregon IE's, Boston Pacific Company, Inc. ("Boston Pacific"), stated that "based on our observations, we fear that participation in PacifiCorp RFPs is declining, and could affect bid results." Oregon Independent Evaluator's Assessment of PacifiCorp's All Source RFP Design, at p. 28 (Oregon PUC Docket 1360) ("Oregon IE's Comments"). Boston Pacific noted the trend of declining bids, which it found "problematic," and observed that "if bidders don't show up to this RFP, then we will be in danger of not having a positive result." Id.

9. PacifiCorp stated in its Comments that the self-build option will not be subject to fixed pricing because cost-of-service regulations only allow for the recovery of actual costs in customers' rates. LS Power is concerned that cost-of-service regulation may become an excuse for treating third-party bids differently. While the regulations may prescribe certain cost recovery treatment, there is no reason that they should affect the evaluation process. Merrimack Energy acknowledged the importance of comparability, identifying it as "the most important and

most complex issue in the design of competitive bidding processes." Utah IE's Comments at 41. Boston Pacific also commented on comparability, stating that "the chief issue affecting the fairness and transparency of the process, and an issue that must also be addressed in the evaluation process, is the comparability of PacifiCorp's Benchmark bids to third-party bids." Oregon IE's Comments at 2. LS Power agrees with Merrimack Energy and Boston Pacific that comparability issues must be addressed in order to assure that ratepayers are getting the best deal.

10. Under the Final Draft RFP, bidders are required to provide a capacity price in which at least 60% is fixed and up to 40% is indexed at based on the CPI and the PPI. In a time where construction costs are highly uncertain and, in many instances, escalating at higher rates than market indices, bidders will have to account for that risk when developing their bids. In addition, bidders must consider the risk of changing financing costs in a volatile market, which further increases their bid prices. In addition to volatile construction and financing costs, bidders must fix or index other parameters such as efficiency, operating costs and availability, PacifiCorp's benchmark bids, on the other hand, are "cost plus" bids, meaning that they are only estimates, and that any risk of cost overruns are placed on ratepayers. The Company is therefore free to develop aggressive self-build benchmark bids, knowing that if actual costs exceed the bid price, the difference can more easily be recovered from captive ratepayers.

11. Merrimack Energy identified a few ways to get third-party bids on an equal footing with benchmark bids. The first is the "performance-based approach," in which PacifiCorp would be required to bid a contract subject to the same restrictions placed on third-party bidders. The second solution is the "cost-of-service based approach" in which bidders

would be allowed to submit cost estimates that are deemed to be acceptable, and then recover all prudent and necessary capital costs. LS Power agrees that these methods could help to ensure that the process is fair and equal to all parties. However, either of these methods may be complicated and, in light of the current regulatory framework, difficult to implement for the purpose of the present RFP. The third solution offered by Merrimack Energy is the "hybrid model" which has the following attributes:

- Bids are allowed to index the capacity price
- Environmental change in law costs are passed through for bidders
- The majority of security is not required until financial closing
- Benchmark resources must provide the same information as bidders
- The IE is to evaluate and audit the benchmark resources
- PacifiCorp is to conduct a capital cost and operating cost break-even analysis on its benchmark resources in the event that they are chosen as preferred resources
- All bids and benchmark resources are required to submit the same information
- The IE is to evaluate and audit the operating parameters of the benchmark resources
- Bids and benchmark resources can index their capital costs or capacity payments from 0 to 100% of their price. Bidders can request other indices than the CPI or the PPI
- Bids and benchmark resources can choose when indexed prices are locked-in
- Bids proposing indexing would be subject to risk assessment with bids offering more fixed costs as lower risk.
- The risk assessment would include fuel cost risk, CO_2 risk, capacity pricing risk, and development and operating risk for both the benchmark resource and third-party bids

- Bidders submit a bid price with and without the required security, the costs associated with security will not be included in bid evaluation, if a bidder is selected they will be required to post security and will be allowed to recover the security-adjusted bid price

LS Power believes that all of the suggestions by Merrimack Energy in the "hybrid model" are steps in the right direction. To date, PacifiCorp has been quick to identify and evaluate the risks that third party bids present, but has failed to consider the risk mitigation benefits that the bids offer. While the benchmark resources and third-party bids may not be held to precisely the same bidding standards, the benefits and detriments may be considered in the evaluation steps as long as the process acknowledges the different risk profiles of PacifiCorp's benchmark resources and third-party bids. If these factors are carefully and adequately considered, it would be a significant advancement toward leveling the playing field.

Conclusion

12. LS Power's initial comments on Draft RFP regarding the areas of credit and bid comparability have not been adequately addressed in the Final Draft RFP. The credit requirements for third party bids remain unreasonably high. In addition, the timing for posting the security requirements is very problematic and will be difficult for independent power producers to meet.

13. The Final Draft RFP does not allow for fair and reasonable consideration of third-party bids relative to PacifiCorp's self-build benchmark resources. Like Merrimack Energy, LS Power sees bid to benchmark comparability as a key issue in an effective solicitation process. LS Power believes that the best solicitation process should offer the maximum flexibility to

bidders, and supports Merrimack's suggestions on how to move in the direction of a level the playing field, fairly taking into consideration the differences of bids in evaluation stages.

14. LS Power also recommends that bidders should be allowed to be as flexible as possible in other items such as capacity price and operating costs. Prices should be allowed to be indexed from 0% to 100% and be based on a number of indices so that bidders can optimize their bids. The risks of changes to these indices should also be fairly analyzed in the evaluation process, and realistically compared to the risk in changes to the benchmark resources proposed by PacifiCorp including changes in capital costs, operating costs, maintenance costs, financing costs, and operating parameters.

15. LS Power understands the complexities of analyzing bids with different characteristics, but believes that it is necessary to ensure that ratepayers are getting the best resource. All of the suggestions from Merrimack Energy in the "hybrid model" would be steps in the right direction and LS Power believes that these should be implemented in this RFP. LS Power requests that the Commission consider these comments and take the necessary steps to ensure the best resources are chosen for Utah ratepayers.

Dated this 25th day of April, 2008.

/s/ William J. Evans

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2008, I caused to be e-mailed and/or mailed, first class, postage prepaid, a true and correct copy of the foregoing **REPLY COMMENTS OF LS POWER ASSOCIATES, L.P.**, to:

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