

**BEFORE THE UTAH PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
PACIFICORP FOR APPROVAL OF A 2009 REQUEST ) Docket No. 05-035-47  
FOR PROPOSALS FOR FLEXIBLE RESOURCE )

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**COMMENTS OF LS POWER ASSOCIATES, L.P.**

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Pursuant to the Utah Public Service Commission's ("Commission") September 26, 2006, Scheduling Order in the above-captioned docket, LS Power Associates, L.P. ("LS Power") submits the following comments on PacifiCorp's "Revised 2012 Request for Proposals Base Load Resources" which was filed by PacifiCorp<sup>1</sup> on October 4, 2006 ("Revised Draft RFP").

LS Power's Interest & Initial Comments

LS Power submitted comments on the prior version of the Draft RFP on August 16, 2006 ("Initial Comments"). Those comments included a description of LS Powers' interest in the RFP process, which will not be repeated here.

In general, LS Power's Initial Comments were based on a concern that the proposed economic evaluation of proposals may unfairly penalize proposals that entail Power Purchase Agreements ("PPAs") and proposals that require transmission upgrades, taking account only of the costs of such proposals without attempting to identify all of the benefits, which could lead to the inefficient result of eliminating the best overall supply resources for ratepayers. LS Power believes that a broad base of bidders serves PacifiCorp's ratepayers best by ensuring the best available intellectual, financial and technical resources are on offer to meet an identified need.

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<sup>1</sup> LS Power understands that for operations in Utah, Wyoming and Idaho, PacifiCorp changed its name to Rocky Mountain Power on July 17, 2006. Because the Commission has apparently not yet made a change in the docket or caption, LS Power has for purposes of these Comments used the name PacifiCorp.

LS Power's Initial Comments addressed the following areas of the Draft RFP:

- Creditworthiness and Experience Standards
- Inferred Debt Penalty
- Transmission Upgrade Costs
- Extension of Proposal Validity

LS Power's current comments address these same areas and again are focused on issues where the RFP as currently proposed will limit the highest quality proposals from third parties.

### LS Power's Current Comments

#### **Creditworthiness**

At the time of its Initial Comments, LS Power did not have access to the RFP's proposed Credit Matrix or the related credit methodology document (RFP 2012 Credit Security Requirements Methodology). We did, however, set forth our general position that while the burden is properly on the bidders to demonstrate sufficient creditworthiness to supply PacifiCorp under a long-term supply arrangement, strict application of unduly stringent credit requirements would severely limit participation in the process, thereby reducing available alternatives for ratepayers. Based on review of PacifiCorp's Credit Matrix and methodology, LS Power concludes that PacifiCorp's approach is both too stringent and too inflexible.

There is no single approach to credit assurances in the industry, but rather a wide assortment of potential credit protections that may be used in various combinations. PacifiCorp's Credit Matrix presents a single approach which is on the extreme end of such requirements, and is among the most restrictive LS Power has seen. The proposed Credit Matrix presents a hurdle that many projects, including projects financed on a traditional project finance

basis, will not be able to meet. Yet the project finance approach has proven capable of supporting an appropriate and reasonable range of credit requirements that is widely accepted in the industry. LS Power acknowledges that step in and second lien rights are fairly standard and appropriate for the market. Limitations on leverage and financial covenants, however, are very subjective and can be unduly restrictive, and therefore costly based on our recent experience. LS Power recently financed its \$1 billion Plum Point Energy Station project on a project finance basis, and negotiated security along with the other necessary long-term off-take arrangements with multiple counterparties, to all the parties' mutual satisfaction. Furthermore, providing a higher level of credit results in real costs being incurred by the bidders and serves to drive up the price of third party bids. There is a balance between providing a reasonable amount of credit support to protect the purchaser without causing excessive costs to be incorporated into the proposals and potentially passing them on to ratepayers.

Rather than a strict application of unduly restrictive credit requirements, LS Power believes the approach which would result in the best outcome for ratepayers is to allow bidders to propose their own credit support requirements. The initial evaluation of proposals should be based on the economics of each bid. Then the most competitive bids should be reviewed with respect to credit support. This approach is employed in many RFP processes throughout the country, including the RFPs conducted by Entergy and Southern Company under the rules of the Louisiana Public Service Commission and Georgia Public Service Commission respectively. In each case the initial evaluation is performed without eliminating any proposals based on credit, then credit is considered for the short-listed proposals.

Bidders should be allowed to negotiate mutually acceptable credit arrangements with PacifiCorp in order to balance the need for performance assurance with the costs associated with

providing such security. There can be significant benefits associated with procuring power from third party suppliers, such as: (a) elimination of ratepayer prepayment of development and construction costs; (b) provision of performance guarantees; (c) increased wholesale competition; and (d) diversification of suppliers. These types of benefits are not captured in the evaluation process proposed in the RFP. By increasing the cost of third party bids without fully considering all of the potential benefits, there is the possibility of inefficient results – that is, selecting self-build resources which are not necessarily the best deal for ratepayers when considering all of the associated costs.

### **Experience Standards**

Our Initial Comments expressed a concern that the RFP’s requirements for the experience of bidders might be too strict or rigid, which could unfairly preclude consideration of qualified bidders and favorable PPAs. Based on our review of the Revised Draft RFP, we believe this concern has been adequately addressed.

### **Inferred Debt Penalty**

In its Initial Comments, LS Power (and several other stakeholders) explained how the RFP’s approach to inferred or imputed debt (which was based on Standard & Poor’s guidance) would result in an inappropriate “penalty” that would unfairly increase the cost of a PPA-based proposal relative to utility-self build proposals. In its Reply to Comments, PacifiCorp stated that it would not consider imputed debt until it got to the “short list” stage of the process, and at that stage a bidder could compel PacifiCorp to “seek an opinion from a ratings agency to substantiate a debt imputation claim in evaluating the bids.” This approach is somewhat of an improvement over the original approach, but still maintains an unjustified imputed debt penalty on third party bids. LS Power would be open to an approach which includes an opinion from the rating agency

regarding the impact of the proposed power purchase agreement on PacifiCorp's credit, if such an approach is possible. In other words, the opinion from Standard & Poor's should not be a general question of the methodology of an imputed debt calculation, but the more direct question as to the impact of a particular proposal on PacifiCorp's credit, if any. In our experience, Standard and Poor's does not typically offer opinions of this type in regulatory proceedings. If, however, it can be confirmed that they will participate in the Commission's regulatory process, and will offer an opinion on the actual impact of a proposal on PacifiCorp's credit, LS Power believes that would be a reasonable resolution to the issue. Alternatively, PacifiCorp could ask Moody's or Fitch's for their opinion of such proposal. Standard and Poor's does not have a monopoly on ratings.

### **Transmission Upgrade Costs**

In its Initial Comments, LS Power noted that in Section 4.C.1, the Draft RFP evaluated only the cost of electrical infrastructure associated with proposals, without recognition of the benefits of such infrastructure (e.g., increased reliability; significant energy savings through efficient generation dispatch and economy energy purchases; fuel diversity including increased access to remote renewable resources; and reduced rates to ratepayers through economy energy sales to third parties). LS Power further noted the existence of Integrated Resource Planning tools that are available to allow PacifiCorp to analyze and account for such benefits. This concern was not addressed in PacifiCorp's Reply to Comments, and also has not been addressed in the Revised Draft RFP, and we continue to believe that the result will be an evaluation that accounts for all of the costs of a proposal, without fully evaluating all of the benefits.

## **Extension of Proposal Validity**

In our Initial Comments, we expressed a concern regarding the detrimental effects of allowing PacifiCorp to indefinitely extend the evaluation period without allowing bidders to refresh their bids. Based on our review of the Revised Draft RFP, we believe this concern has been adequately addressed.

LS Power appreciates this opportunity to participate in the RFP process.

Dated this 13 day of October, 2006.

/s/ MICHAEL J. MALMQUIST  
Attorney for LS Power Associates

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of October, 2006, I caused to be e-mailed and/or mailed, first class, postage prepaid, a true and correct copy of the foregoing **Comments of LS Power**, to:

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