



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

Department of Commerce

Committee of Consumer Services

FRANCINE A. GIANI
Executive Director, Commerce

MICHELE BECK
Director, Committee of Consumer Services

COMMITTEE MEMBERS

Dee Jay Hammon, Chair
Franz Amussen
Kelly Casaday
Robert McMullin
Andrew Riggle
Betsy Wolf

To: The Public Service Commission of Utah

From: The Committee of Consumer Services
Michele Beck, Director
Cheryl Murray, Utility Analyst

Copies To: PacifiCorp
David Taylor, Regulation, Utah
The Division of Public Utilities
Philip Powlick, Director
Artie Powell, Energy Section Manager

Date: April 25, 2008

Subject: Comments on 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 Docket 07-035-94.

Background

On December 21, 2007, PacifiCorp, through its Rocky Mountain Power Division (Company) submitted a draft 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 with the Utah Public Service Commission (Commission). The Application requested approval of a solicitation process and appointment of an independent evaluator, and expedited review.

On March 21, 2008, interested parties, including the Committee of Consumer Services (Committee), filed comments.

On March 28, 2008, the Company filed a new draft (now referred to as the All Source RFP, to avoid confusion with other ongoing RFP processes). On April 11, 2008, the Division of Public Utilities (Division) submitted the *Report of the Utah Independent Evaluator Regarding PacifiCorp's All Source Request for Proposals* (Report) from Merrimack Energy, the Independent Evaluator (IE) retained for this RFP process.

Analysis

The Committee has reviewed both the new draft of the All Source RFP filed by the Company as well as the *Report of the Utah Independent Evaluator Regarding PacifiCorp's All Source Request for Proposals* submitted by the IE. We offer the following additional and updated analysis regarding the All Source RFP.

Compliance with Statutes and Rules

The Committee agrees with the Company's decision to use benchmarks, rather than another form of self-builds, as being consistent with the language and requirements of the statutes. The Committee also agrees with and recommends that the Commission adopt the Independent Evaluator's recommendation on page 52 of the April 11, 2008 Report, pertaining to the IE's review of the benchmark options that the utility will be including in the All Source RFP.

The Committee is concerned that the new draft All Source RFP has incorporated a different issue that is not consistent with the rules. The Committee disagrees that blinding of bids is discretionary, or that it is a requirement that may be waived for convenience sake. The administrative rules governing this issue state, with emphasis added:

- R 746-420-6. Functions of Independent Evaluator.
 - (2) The functions of the Independent Evaluator **shall** include the following:
 - (e) Receive and "**blind**" bid responses;
- R 746-420-3. Solicitation Process.
 - (10) Evaluation of Bids.
 - (a) The Independent Evaluator **shall "blind" all bids** and supply blinded bids to the Soliciting Utility and make blinded bids available to the Division of Public Utilities subject to the provisions of an appropriate Commission-issued protective order.
 - (b) The Independent Evaluator shall supply such information regarding bidders and bids to non-blinded personnel as is necessary to enable such personnel to complete required credit and legal evaluations.
 - (c) The Soliciting Utility must cooperate fully with the Independent Evaluator.

The Committee requests that the Commission clarify that the All Source RFP must comply with the governing administrative rules.

Filing and Availability of IE Reports

The Committee recommends that the Commission adopt a plainly stated procedure for filing with the Commission, the records and reports documenting the Independent Evaluator's activities in connection with the RFP and performance of assigned functions. Establishing such a procedure is necessary if the utility, the Independent

Evaluator, and regulatory authorities seriously want to incorporate into this All Source RFP, lessons learned from the 2012 RFP, Docket No. 05-035-47.

The Committee's recommendation is grounded in the following administrative rule, with emphasis added:

R 746-420-6. Functions of Independent Evaluator.

(4) Reports

(e) **The Independent Evaluator shall document all substantive correspondence and communications with the Soliciting Utility and bidders, shall make such documentation available to parties in any relevant proceedings upon proper request and subject to the terms of a protective order if the request contains or pertains to confidential information.** Within six months after the end of the Solicitation Process, the Independent Evaluator shall provide a copy of this documentation to the Soliciting Utility. The Soliciting Utility shall maintain a complete record of its analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and all materials submitted in response to discovery requests. The Soliciting Utility shall retain such documentation for a period of at least 10 years. A party to a proceeding may petition the Commission to require specified additional materials to be maintained for a specified period.

Substantive evaluations, conclusions and recommendations pertaining to an RFP's compliance with the Energy Resource and Procurement Act, must be made known and available to the affected utility, regulatory agencies and other parties that have a clear and undisputed interest and are by statute entitled to consider the RFP as it is published and as responses are received, or as concerns arise.

In the interest of creating confidence that the Solicitation Process, the Approval Process, and the monitoring and evaluation of the utility's RFP, are fair and equitable, the Committee recommends that the Commission adopt a rule that will accomplish the following:

Reports, substantive communications and correspondence, status reports, any report, evaluation or analysis contemplated by the Energy Resource Procurement Act, or administrative rules, including records or documentation of communications between the Independent Evaluator and the Utah Division of Public Utilities or any independent evaluator or regulatory agency assigned in another state to perform similar functions in connection with the All Source RFP, should be promptly filed with the Commission and identified by the Commission in the docket index and in public electronic files, as having been received, with a general description of its contents, identifying the author and parties to the communication or record. If the record or document does not contain confidential or protected information, it should be available in electronic form. If the record or document contains confidential or protected information, the Commission should so state. Regulatory authorities and parties who may be entitled to view confidential or protected information can request to receive or review the record or document.

In many places and in many ways the Act encourages ongoing and informed participation in the solicitation and approval process by interested parties and regulatory authorities. With participation comes a great obligation to respect the process and the important role played by the Independent Evaluator, and the utility's interest in protecting its competitive position as well as performing its duties under Utah public utility law. The Committee believes that only if there is balance between these respective rights and obligations, can all parties have confidence in the competitive procurement process that the Act is intended to enforce.

Appropriate Role of the IE

The Committee recommends that any description in the All Source RFP of the Independent Evaluator's role or function not expressly defined by statute or administrative rule should be eliminated from the All Source RFP. In particular, those additional functions added by the utility to the All Source RFP that are described in the IE's April 11, 2008 Report in Part IV. Role and Approach of the Independent Evaluator, beginning at page 22, specifically page 25 and 26, should be eliminated.

The Committee is also concerned that the IE is not properly focused on the objectives given to him by the Commission. On page 6 of the IE's Report, the first task listed under the solicitation process approval is to "Review PacifiCorp's proposed solicitation process to assure it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to PacifiCorp's retail customers taking into consideration long-term and short-term impacts, risk, reliability and the financial impacts on PacifiCorp". However, this specific activity (i.e. assurance of lowest reasonable cost) is hardly mentioned anywhere else in the report. For example, on page 22 under "B. Activities of the Independent Evaluator" the focus is solely on undue bias, equitable process, industry standards, and transparency of the process. The best case scenario is that the IE believes that focusing on those activities will inherently result in lowest reasonable cost. However, that relationship has not been established and the Committee would challenge such an assumption.

The IE does not acknowledge the manner in which the Company's selection of projects (either through benchmarks or other self build proposals) could inherently bias the results in a way that either does not result in lowest reasonable cost or results in an outcome that cannot be demonstrated as such. Absent a well accepted and acknowledged IRP result, the Company benchmarks are the only signal to the market and the primary measurement for determining the best resource choice. If the Company, by accident or design, does not offer the resource that would lead to lowest reasonable cost to the consumer, the process would be unlikely to recognize or remedy that situation. The IE does not seem to acknowledge the possibility of such an outcome, as this issue has not been addressed in pages 50 – 51 discussing the issues associated with benchmarks and self-build options.

The Committee requests that the Commission clarify to the IE that the overriding objective of the RFP process is to result in the best possible resource choice for PacifiCorp's retail consumers. All process objectives must tie directly to that outcome.

Proper Modeling and Evaluation

The Committee remains concerned that the Company's evaluation techniques will result in an outcome that can be demonstrated to be least cost. As the Committee noted earlier, the Company will be using the same IRP models that contain many flaws identified by the Committee, the Division, and other intervenors, many of which were referenced in the Commission order. It is without basis to assume that flaws significant enough to warrant withholding Commission acknowledgement of the IRP would not negatively impact the evaluation of the All Source RFP. The Committee urges the Commission to address this issue and develop a process to ensure up front that the evaluation process can reasonably be expected to yield the desired outcome of a least cost resource.

The Committee also concurs with the IE in agreeing with Western Resource Advocates' recommendation that bid categories based on heat rates may not be applicable in all cases. We support the IE's recommendation to classify resources by capacity factor or based upon dispatch and operating characteristics.

Recommendations

The Committee recommends that the Commission take the following actions with respect to the All Source RFP:

- adopt the Independent Evaluator's recommendation on page 52 of the April 11, 2008 Report, pertaining to the IE's review of the benchmark options,
- affirm that the rules require the "blinding" of bids and direct the IE and Company accordingly,
- adopt a plainly stated procedure for filing with the Commission, the records and reports documenting the Independent Evaluator's activities in connection with the All Source RFP and performance of assigned functions,
- clarify to the IE that the primary objective of the All Source RFP is lowest reasonable cost electricity for PacifiCorp's retail consumers, and
- take appropriate action regarding the evaluation process to ensure that it can reasonably be expected to yield a defensible outcome.