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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

COMMENTS OF LS POWER ASSOCIATES, L.P. ON PACIFICORP'S MOTION TO SUSPEND ITS REQUEST FOR PROPOSALS

Docket No. 07-035-94

1. LS Power Associates, L.P. ("LS Power"), through its counsel, submits the following comments on Rocky Mountain Power's ("RMP" or "Company") Motion to Suspend its Request for Proposals, Amend its 2012 Request for Proposals and Request for Expedited Treatment ("Motion to Suspend" or "Motion"). LS Power has previously filed comments in this docket as an interested public commenter. LS Power recognizes the efforts of the Commission and the IE in administering the solicitation process and appreciates the chance to comment on the Motion to Suspend.

2. Rocky Mountain Power filed its Motion to Suspend ("Motion") on February 26, 2009, seeking from the Commission leave to suspend its All Source Request for Proposals ("2008 RFP"). The Motion states that in view of the current global economic condition, continuing with the 20-08 RFP is not in the best interests of the Company's customers. Motion at 2. RMP states

that the slow economic conditions have resulted in “reduction of customer loads, reduction in price of commodities, potential reduction of future construction costs.” Id. RMP further states that “there is a reasonable possibility that more favorable bids may be received in the future as economic and market conditions continue to change.” Id.

3. The Company proposes to give notice of the suspension to bidders by letter, and to offer bidders the option of “to either 1) withdraw their proposals or 2) leave their proposals in the RFP and have the opportunity to refresh them when the RFP resumes.” Exhibit A to Motion. The Company proposes that “Bidders’ bid fees will be returned if they withdraw their proposals at this time. Existing Bidders who remain in the RFP will not be required to pay bid fees upon refreshing their existing proposals.” Id.

4. The objective of this RFP is to arrive at a resource selection that is in the public interest and “will most likely result in the acquisition, production and delivery” of electric power “at the lowest reasonable cost to the retail customers” of Rocky Mountain Power. Id. at § 54-17-201(2)(c); 54-17-102(3)(b). The solicitation process must be “fair” and “reasonable,” and “reasonably designed to comply with all of the Commission’s rules,” flexible enough to allow consideration of a variety of resources, and calculated to solicit a “robust set of bids.” R746-420-3(1). 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.

5. The information that the Company has provided with its Motion does not allow bidders to make a reasoned decision on how to respond to the suspension of the RFP. It is indefinite, for example, about the consequences of withdrawing from the RFP now. If a bidder withdraws and the Company later resumes the RFP, it is not clear that the bidder would be

allowed back in the process. It is also unclear whether the resumed RFP would be closed except to those who leave their bids in during the period of suspension. The Company says only that it “may request new bids” at that time. Motion at 2. LS Power seeks clarification on these points of the proposal.

6. The Company’s proposal also does not say whether the Company would refund bid fees paid by bidders who elect to remain in the RFP if the RFP is not resumed, or if the RFP is resumed but is ultimately terminated without selecting a resource. The Division of Public Utilities, in comments that it filed on March 5, 2009, raised the same concern. It recommended that if the Company ultimately decides to cancel the RFP after reconsidering the new or refreshed bids, “given the unique circumstances of this case, the Division suggests that the Commission may find it advisable to order the Company to refund all bidder fees.”

7. LS Power supports the concept recommended by the Division. Given the uncertainty of whether the RFP will ever resume, however, there seems to be no reason that the Company should hold the bid fees during the period of suspension. Instead, the Commission may consider requiring the Company to return the bid fees now, and allow bidders to re-submit their fee when they refresh their bids upon resumption of the RFP. In addition to allowing the bidders the use of their money during the period of suspension, this might resolve one of the issues raised in paragraph 5 above about whether a bidder who withdraws now would be allowed back in the RFP when it is resumed. All bidders would be allowed to refresh their bids upon resumption of the RFP if they pay the bid fees again.

8. The Company’s proposal does not set any time limit to the suspension. It states that the Company will continue to “assess the market over the next six to eight months,” but it

does not provide any time for terminating the RFP if the Company does not reinstate it. The Division noted that the indefinite period of suspension may be an incentive for bidders to withdraw, and may affect the fairness of the process. It recommended that any suspension be “for a time certain such as four to six months.” DPU Comments at 3. LS Power agrees that the uncertainty will be detrimental to maintaining a robust pool of bidders. Given the need for resources in future years, it supports the Division’s recommendation limit the suspension to no longer than six months.

9. The Company filed its Motion to Suspend the RFP one day before the “short list” of bidders was to be released. LS Power recognizes that, due to the suspension, the short list will not be used in the solicitation process, and that if and when the RFP is resumed, a new short list will be developed based on refreshed or new bids. During the period of time that the RFP is suspended, bidders will be required to assess whether and to what extent to continue to invest further in their proposed resources. Knowing whether the resource was included on the shortlist would be helpful to bidders in making the decision whether to stay in the RFP. If the Company would advise bidders whether they are on the current short list, bidders would be in a better position to decide whether to stay in the RFP during its suspension, and whether to continue to develop resources that may provide benefits to ratepayers.

10. In contrast, the Company’s self-build proposal(s) automatically makes the shortlist, because it remains under consideration by the Company, which would likely continue to develop it. The Company has offered no information relating to the development of its own benchmark resource, does not plan to notify bidders of whether they are on the shortlist, is proposing an indefinite period of suspension, and has obtained market intelligence by reviewing

competing bids prior to suspension. LS Power is concerned that if and when the RFP is reinstated, the Company may have an advantage over bidders simply by virtue of having suspended the RFP while continuing to develop its benchmark resources and by allowing a refresh of the bids after reviewing the competitive position of the benchmark resources. By not providing bidders notice whether they were on the shortlist and continuing to develop its own self build project, the Company would be showing undue preference to its benchmark resource. LS Power suggests that the Commission should be especially vigilant in scrutinizing the treatment of self-build proposal upon reinstatement this RFP or future RFPs as necessary to preserve the fairness of the process.

11. The Company states that it wants to suspend the RFP because of “global economic conditions” that have resulted in a “reduction of customer loads, reduction in price of commodities, potential reduction of future construction costs.” Motion at 2. LS Power is not in a position to say whether these reasons justify suspension of the RFP. If the RFP is cancelled, however, the Commission should require that the Company refrain from acquiring any resource that would come on-line between 2012 and 2017 through any process other than this RFP or another, new, full, completed RFP, including through power purchase agreements.

12. LS Power recommends that the Commission consider requiring the Company (1) to refund all bid fees now and allow bidders who wish to refresh their bids to re-submit the fees in the same amount if and when the RFP resumes; (2) to clarify whether new bidders would be allowed to enter the RFP upon resumption; (3) to resume or to cancel the RFP within six months; (4) to propose a procedure by which the 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) to inform bidders whether they were on the short list that was developed before suspension occurred; and (6) to refrain from acquiring any resource during the period of this RFP and for a reasonable time afterward.

Dated this 10th day of March, 2009.

PARSONS BEHLE & LATIMER

/s/ William J. Evans

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2009, I caused to be e-mailed, a true and correct copy of the foregoing **COMMENTS OF LS POWER ASSOCIATES, L.P. ON PACIFICORP'S MOTION TO SUSPEND ITS REQUEST FOR PROPOSALS**, to:

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