

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
PacifiCorp, by and through its Rocky) DOCKET NO. 11-035-73
Mountain Power Division, for Approval of a)
Solicitation Process for an All-Source) COMMISSION'S SUGGESTED
Resource for the 2016 Time Period) MODIFICATIONS AND ORDER
)

ISSUED: January 3, 2012

SHORT TITLE

PacifiCorp All Source RFP 2016 Suggested Modifications and Order

SYNOPSIS

The Commission suggests modifications to PacifiCorp's All Source Request for Proposals for Resources ("RFP") for 2016. The Commission suggests modifying the RFP to: 1) include coal resources without restriction and, 2) allow all post-2016 IRP resources in the bid evaluation process to "float." These suggestions are provided to ensure the RFP will produce the lowest-cost, least-risk resources. The Commission also directs further work on establishing a due diligence process to keep parties informed of issues in a timely manner.

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APPEARANCES:

Yvonne R. Hogle,
Senior Counsel

For PacifiCorp

Patricia Schmid
Assistant Attorney General

" Division of Public Utilities

Paul Proctor
Assistant Attorney General

" The Office of Consumer Services

I. PROCEDURAL HISTORY

On March 31, 2011, PacifiCorp (“PacifiCorp” or “Company”), through its Rocky Mountain Power division, filed its 2011 Integrated Resource Plan (“IRP”) which provides the Company’s least cost portfolio of resources to meet future expected demand for electricity, given its assumptions regarding future loads, resource costs, risks and uncertainties. On April 4, 2011, in accordance with Utah Administrative Code (“UAC”) R746-420-1(3)(a), the Company notified the Public Service Commission of Utah (“Commission”), of its intent to conduct a solicitation process for a flexible resource, expected to be in service in 2016. The Company indicated its intention to file a draft solicitation and solicitation process by July 29, 2011. The Company also requested the Commission appoint an independent evaluator for the solicitation process.

On September 1, 2011, in accordance with R746-420-1(3)(b), the Company conducted a pre-issuance bidders’ conference, to provide general information about the solicitation to interested bidders. On October 5, 2011, the Company filed an application (“Application”), and draft request for proposals (“RFP”) with the Commission, requesting approval of a solicitation process for an all source resource for the 2016 time period.

On November 9, 2011, the Commission issued a notice indicating Merrimack Energy was hired as the Utah independent evaluator (“IE”) in this docket. On October 13, 2011, a duly-noticed scheduling conference was held. Pursuant to the scheduling conference, on October 19, 2011, the Commission issued a scheduling order and set a hearing date in this matter. Additionally, the Commission noted Utah Code Ann. § 54-17-201(2)(f) requires Commission action within 60 days of the Application date unless the Commission determines additional time to analyze the proposed solicitation process is warranted and in the public

interest. The Commission found the parties agreed upon a schedule which was incompatible with the statutory deadline and, therefore, in order to permit the requisite level of analysis, the Commission found and concluded a deviation from the 60-day statutory time for review was warranted and in the public interest.

On November 18, 2011, in accordance with the scheduling order, the Division of Public Utilities (“Division”), the Office of Consumer Services (“Office”), and the Utah Association of Energy Users (“UAE”) each filed comments on the Application. On November 28, 2011, the IE filed the Report of the Independent Evaluator Regarding PacifiCorp’s Draft 2016 RFP (“IE’s Report”).

On December 7, 2011, the Company filed reply comments and a revised, final draft 2016 RFP (“2016 RFP”) incorporating changes based on comments received from the IE, Division, Office, and UAE. On December 7, 2011, the Office filed reply comments focusing on the five issues addressed in the IE’s Report. On December 9, 2011, a technical conference was held to discuss the remaining unresolved issues. On December 12, 2011, a hearing was conducted to hear testimony on the unresolved issues.

II. DISCUSSION, FINDINGS AND CONCLUSIONS

A. INTRODUCTION AND BACKGROUND

On February 25, 2005, the Utah Legislature enacted the Energy Resource Procurement Act (“Act”), codified at Utah Code Ann. §§ 54-17-101, *et. seq.* This Act requires any PacifiCorp significant energy resource (“SER”) acquisition of 100 megawatts (“MW”) or greater for 10 years duration or longer to be competitively bid unless a waiver is granted. In the absence of a waiver, the Act requires the Company to conduct a solicitation process that is

approved by the Commission. The Act also requires the Company to obtain Commission approval of its SER decision prior to construction or entering into a binding agreement, unless a waiver is granted.

In ruling on the request for approval of a solicitation process, the Act requires the Commission to determine whether the solicitation process is in the public interest, taking into consideration: 1) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to Utah retail customers; 2) long-term and short-term impacts; 3) risk; 4) reliability; 5) financial impacts on the affected electrical utility; and, 6) other factors determined by the Commission to be relevant. The Act requires the Commission to appoint an IE to actively monitor the solicitation process for fairness and render an opinion as to whether the solicitation process is fair and in compliance with the Act, and whether any modeling used by the affected electrical utility to evaluate bids is sufficient.

The Company represents the 2016 RFP solicits bids to fulfill a portion of the capacity and energy resource needs for the 2016 time period identified in the Company's 2008 and 2011 IRPs, which require the acquisition of a significant energy resource by June 2016. The Company proposes bids from new or existing coal resources will only be considered if such proposals are consistent with multi-state legal and regulatory requirements regarding new and existing coal resources and will be limited to less than a five-year term. Bidders may propose any of eight different resource alternative structures in three separate bid categories. The bid categories are separated into base load, intermediate load, and summer peak resources. Each bid category will be screened to determine the initial shortlist and the top bids will then be evaluated using the Company's IRP models to determine a final shortlist. The Company will not submit a benchmark resource for any category.

At hearing, outstanding issues were raised for Commission consideration and determination as to whether the Commission should approve, suggest modification to, or reject the December 7, 2011, draft 2016 RFP, as required by Utah Code Ann. § 54-17-201(2)(f). Of the issues identified, the parties represented that most had been resolved by agreement or adoption by the Company. We address the remaining unresolved issues as follows: due diligence; schedule; indexing; bid evaluation; lack of benchmark option; and, resource eligibility.

B. DUE DILIGENCE

In the Final Report for the 2008 RFP in Docket No. 07-035-94, the IE raised several concerns with the due diligence process for acquisition of an existing generation resource. Although an attachment to the 2016 RFP identifies due diligence issues, the IE suggests the Company brief the IE on a more regular basis on the due diligence process and provide analysis of due diligence issues as they are completed.

The Office supports the IE's recommendation but also recommends the Commission require the IE and the Division to report to the Commission on issues of concern immediately. When issues of significance arise, a technical conference, briefing or some other means should be used to inform other parties who might be disadvantaged by not receiving adequate notice of problems. The Office asserts the Commission should emphasize the need for parties who have more direct and immediate access to information, such as the IE and the Division, to bring concerns forward early to minimize or avoid issues such as those associated with the 2008 RFP.

In response, the Company agrees to set up a process to better inform interested parties of due diligence issues related to the purchase of an asset. To the extent the final shortlist results in an asset purchase of an existing resource, the Company commits to provide due diligence reports to the IE. The Company's only concern is the confidential nature of such an asset; however, it is willing to work with the parties to address confidentiality. The Division also shares the same willingness to share due diligence information in a timely manner.

We encourage the timely communication of due diligence issues, as they arise in this RFP, to all interested parties. We direct the Company to provide parties more timely notification of due diligence concerns as proposed. We also note the IE is required by UAC R746-420-6 (40)(a)(i) to provide monthly progress reports to the Commission, Division and Company. At the Office's request, the Commission has directed the IE to also provide the monthly progress reports to the Office which should, in part, address timely notification to the Office of due diligence concerns.

C. SCHEDULE

The IE has concerns with the proposed schedule for the 2016 RFP. In particular, the Company proposes a longer period between the time of issuance of the RFP and the due date for bids. As a result, the time allotted to complete the short list evaluation and the time available for bidders to prepare a best and final offer has been reduced. The IE proposes a slightly revised schedule designed to provide additional time for bid evaluation and preparation of the best and final offer and less time to prepare the initial bid such that the schedule will be consistent with the 2008 All Source RFP.

The Division believes the Commission should approve the RFP schedule but agrees there should be some flexibility to allow the Company to meet the January 7, 2013, resource selection date. The Division proposes the Commission approve the schedule as submitted with the caveat the Company will seek Commission approval for any deviation in the milestone dates of more than five business days.

In response to comments from the parties, the Company agrees the time to submit initial bids could be reduced, however not to the extent recommended by the IE. The Company agrees with the IE regarding allowing sufficient time to evaluate short listed bids. The Company provides a modified schedule between initial shortlist and best and final shortlist to address the IE concerns. The Company also requests clarification as to whether the Commission requires approval of the schedule or whether it is considered an anticipated schedule. Regardless, the Company requests the schedule have some flexibility to allow the Company to manage the process effectively.

We find the Division's recommendation is reasonable and provides a fair and flexible approach for establishing the schedule. We approve the schedule shown in the revised, draft 2016 RFP with the condition the Company will seek Commission approval if the schedule, as shown, deviates by more than five business days.

D. INDEXING

The Company proposes several changes in its 2016 RFP to the indexing of prices. In response to the IE's Report, the Company includes language to allow bidders to index operation and maintenance costs to selected indices.

However, the Company disagrees with the IE's proposal to also index capital or capacity costs to selected indices for several reasons. First, the Company indicates the market has changed. Manufacturers are now comfortable quoting firm prices and the Company cites the fact that no bid on the short list for the 2008 All Source RFP selected any price indexing options for capital or capacity-related costs. Second, engineering, procurement and construction ("EPC") vendors have indicated indexing is not a viable option because there is not a good index that correlates well to actual costs. Third, the option for EPC bids to include partial indexing was originally put into place to allow bidders the opportunity to submit a partially floating bid and to lock in a fixed price once the EPC contract was executed. However, the RFP now has a two step process to allow bidders to submit firm proposals with an update at the second stage, thus accomplishing the same goal as the index option originally intended.

The IE maintains the indexing option for capital or capacity costs should be allowed and, if requested by a bidder, the Company, in conjunction with the IE, would make the determination that the proposed index was transparent and the risk could be managed by the Company. The IE argues this is important to ensure comparability between power purchase agreements and utility-owned resources, which are subject to cost-of-service regulation. However, the IE testifies an EPC contract would lock in some capital costs and this, coupled with the use of the indicative bid and best and final offer approach, serves to mitigate some of the need for indexing because the vast majority of costs are fixed at the time the contract is signed. If the Commission approves the Company's proposal to eliminate indexing of capital and capacity related costs, the IE maintains indexing for operation and maintenance costs should definitely be re-instituted, as this is consistent with industry practice.

The Division believes the Company should include the option of allowing for limited inflationary adjustments, so as not to discourage bidders. The Division supports the Company's indexing proposal. The Office also supports indexing options for fixed and variable operation and maintenance costs.

We note bidders have not utilized the indexing option in previous RFPs and the IE notes the number of bids in the most recent RFP was reasonable. We are persuaded the Company's proposal to include the option for bidders to index the operation and maintenance costs, but exclude the indexing of capital/capacity costs, provides a reasonable balance between bid comparability and customer risk.

E. BID EVALUATION

Bid Category Determination:

Based on its experience with the 2008 All Source RFP, the IE argues some bidders were uncertain as to which bid category (i.e., base load or intermediate load) was appropriate for their bid. This appeared to be an issue particularly for existing units. While most bidders can probably render a "guess" regarding the appropriate category based on the capacity factor over the proposed term, some bidders may be uncertain as to how their project will operate within the Company system over the 20-year contract term. In the proposed 2016 RFP, a bidder will be required to post a bid fee of an additional \$10,000 for its bid to be evaluated within both the base load and intermediate load categories. The IE argues this unduly penalizes bidders relative to the effort required to undertake an assessment regarding the appropriate category for the bid.

To eliminate “guess work” on the part of the bidder, the IE suggests the Company consider the following revisions to the RFP: 1) Don’t require bidders to identify the bid category in which they would be evaluated and instead allow the evaluation process to decide the category for the bid based on the estimated capacity factor of the unit from the Step 1 modeling results; and/or, 2) provide bidders the option under “Proposal Options” on page 21 (bidders are allowed to offer up to two alternatives to the same proposal for the same bid fee) to select whether they want their bid to be evaluated in each bid category based on payment of the appropriate fee. The Company is in a much better position based on its knowledge of its system and modeling capabilities to determine if a particular proposal will operate at a greater than 60 percent capacity factor or between 20-60 percent based on its heat rate and variable fuel and operating costs.

The Company disagrees bid fees for additional analysis should be waived. The Company argues its actions not to waive bid fees are consistent with its practice in the previously approved 2008 All Source RFP which transpired after having significant discussions with the bidders on how to develop the three resource bid categories. To date, the Company has not had any bidders complain the bid fees are too high. Further, the bid fees are used to offset the cost of the IE. The Company believes bidders are sophisticated enough to best understand which category they should bid into. The Company contends offering bidders the opportunity to bid into any category, at no cost, will encourage them to bid into all categories regardless of the resource. In addition, the Company should not be responsible for trying to categorize the multiple bids provided by the bidders. The Company is not in the best position to determine how to categorize the bids as these are the bidders’ generation resources. The Company does not want to run the risk of litigation if a disgruntled bidder feels the Company incorrectly

categorized its bid. The Division concurs with the Company that the bidder should determine the category in which its bid will be evaluated.

We accept the Company's arguments bidders should determine the bid category in which their resource should compete. We are sympathetic to the Company's concerns regarding the risk of litigation if the Company were to select a category and a bidder concluded its bid was categorized incorrectly. However, we also note the IE's concerns and direct the IE to provide an assessment of this issue in its final report on the 2016 RFP. For example, the IE should offer an opinion on whether any bid might have been rejected because it was bid into the wrong category.

Fixed Post-2016 Resources:

The IE does not believe the Company has provided adequate justification to propose a fixed resource plan after 2016, especially given the Commission's statement in Docket No. 10-035-126¹ that allowing future resources to float has merit. The IE advocates post-2016, gas-fired IRP resources should float, meaning the resources can be selected by the model. This should enable the development of a more optimized portfolio by allowing bids to delay the date such resources are added.

The Division opposes the Company's proposal to fix post-2016 IRP resources as part of its bid evaluation method. The Division maintains fixing IRP resources in the outer years of the study does not allow bidder proposals potentially to defer those IRP resources and thus,

¹ See Docket No. 10-035-126, "In the Matter of the Application of Rocky Mountain Power for Approval Of a Significant Energy Resource Decision Resulting from the All Source Request for Proposals," Report and Order, dated April 20, 2011.

may understate the total potential value of the proposal. The Division testifies allowing all post-2016 resources to float will help ensure the RFP produces a least-cost resource.

The Company agrees with the IE and the Division to a certain extent. The Company proposes to allow post-2016 front office transactions and gas resources to float. However, the Company does not agree wind, DSM and other resources should be allowed to float. The quantity of wind in the preferred portfolio is based on the results of a number of scenarios and was chosen based on what the Company believes is reasonable given the assumption of a “green” future (potential CO₂ tax, federal RPS, extension of federal credits, etc.). The amount of wind in the preferred portfolio is fixed to address this risk. If wind resources were allowed to float in the RFP bid analysis, the Company would need to re-do the preferred portfolio allowing wind to float, thereby changing the risk profile of the preferred portfolio.

We concur with the Division there is merit in allowing all post-2016 resources to float, including wind resources and DSM, and suggest the Company modify its 2016 RFP accordingly. This suggestion is also consistent with the approach approved in our February 24, 2010, Order on Economic Modeling Issues, in Docket No. 07-035-94.² Further, consistent with our prior orders in the Company’s past two RFPs, we suggest the Company, in the initial short list evaluation process, select resources by fuel type within each eligible resource category for advancement to the next steps of the evaluation process. This will ensure bids of all fuel types

² See Docket No. 07-035-94, “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.”

are subject to the full evaluation of cost, risk, and uncertainty. And we remind the Company, as in past RFP orders and orders on the IRP, one of the CO₂ emissions cost scenarios must include a zero cost per ton assumption.

Preferred Portfolio:

The Company proposes using its 2011 IRP preferred portfolio as the basis for the evaluation of bids. The Office argues this will result in a biased analysis. Of particular concern is the extent to which the Company's preferred portfolio results from hand-selected resources and hard-wired restrictions, rather than selection based on superior performance in robust scenario evaluations where risk, cost, and reliability are balanced. To the extent the preferred portfolio is not reflective of an optimal portfolio, it also cannot be relied upon to select the best result from the RFP process.

The Office is not only concerned the Company intends to use its flawed IRP preferred portfolio in the evaluation of bid resources, but also that the evaluation method itself will potentially create further bias in the evaluation process by simply removing one specific plant from its preferred portfolio and comparing bids in this context. This will prevent examination of whether a resource with fundamentally different characteristics may provide a more cost-effective and lower risk option for customers. The Office recommends the Commission require the Company to evaluate bids based on the outcome of a robust IRP analysis and not the Company-determined preferred portfolio. In response to questioning by the Commission, the Office acknowledged it did not have an alternative portfolio it could offer.

No party offers an alternative portfolio despite concerns raised with the use of the Company's preferred portfolio. Therefore, we find no basis to reject its use in this RFP.

Moreover, the criticisms of the preferred portfolio do not undermine our confidence in its use given our prior suggestion the Company modify its evaluation process to allow all post-2016 IRP resources to float, and to evaluate bids in each eligible bid category by fuel type for the initial shortlist.

F. LACK OF BENCHMARK OPTION

The Company has not offered a benchmark option because of the additional cost incurred with including a benchmark, the additional time necessary to develop the benchmark, and the time needed for the IE to examine the benchmark bid. Instead, the Company proposes allowing bidders to submit EPC bids at its existing Currant Creek site.

In reply comments, the Company clarifies the EPC category in the 2016 RFP means there will be one RFP for EPC options as opposed to two separate RFPs for EPC options. In the 2008 All Source RFP, the Company used the first RFP for EPC options to identify its benchmark. It then solicited EPC vendors to compete again against the benchmark EPC in the 2008 All Source RFP. The Company believes one RFP for EPC contractors is a more effective means of establishing a competitive Company-owned resource option. The 2016 RFP will allow the most competitive EPC bid to be compared to all of the other eligible resource categories without having to run two separate RFP processes. The Company represents EPC counter parties in the prior benchmark process, and the 2008 All Source RFP, prefer competing in one process. The Company contends two EPC RFP processes would not yield more EPC bids than the alternative of including an EPC category in the 2016 RFP. The Company asserts including the EPC category, without a benchmark, will result in the least cost for customers as all of the potential EPC vendors will be competing against one another under the same rules and timelines

and not under two separate RFP processes for EPC options. The Company also agrees with the IE that in order to ensure optimal competition at the Currant Creek site, an Asset Purchase and Sale Agreement (“APSA”) should be added as a bid option for the site, and this is reflected in the 2016 RFP.

At hearing, the Division testified it was satisfied with the Company’s reasoning for not including a benchmark, given the proposed bid structure to include an EPC and APSA option at the current site. The Division’s support is conditioned on a robust bid process which includes a minimum of three bids per eligible category. However, the Division remains concerned that without a benchmark, the Company has no alternative if the RFP process is unsuccessful in acquiring a least-cost, least risk resource.

We agree with the parties that limiting the RFP’s for an EPC vendor to one process and allowing both EPC and APSA bid options at the Company’s Currant Creek site should produce competition to ensure the RFP process will produce a least-cost resource, especially if there is a sufficient number of bidders. With no opposition remaining, we accept the Company’s proposal and find it is unnecessary to include a separate benchmark option in the 2016 RFP. However, we note the first recommendation to the Commission in the outside evaluator’s report to the Commission in Docket No. 03-035-29,³ was to encourage the Company to continue using cost-based benchmarks as an effective means of gauging the cost competitiveness of bids received from the market.⁴ Since this is our first experience approving a

³ See Docket No. 03-035-29, “In the Matter of the Application of PacifiCorp for a Certificate of Convenience and Necessity Authorizing Construction of the Currant Creek Project.”

⁴ See Confidential Navigant Consulting’s Final Report on PacifiCorp’s RFP 2003-A, dated February 11, 2004, at 2.

solicitation process without a cost-based benchmark, we direct the IE to provide its opinion on the impact of this decision on the outcome of the 2016 RFP and provide any recommendations for future RFPs in its final report on the 2016 RFP.

G. RESOURCE ELIGIBILITY

In the 2016 RFP, the Company states bids from new or existing coal resources will only be considered by the Company if such proposals are consistent with multi-state legal and regulatory requirements regarding new and existing coal resources and are limited to contract terms of less than five years.

The IE argues the Company's proposal to limit coal options to contract terms of one to five years means no new coal projects, or even proposals for PPAs from existing coal resources, would likely participate in the RFP, potentially removing a competitive resource option. The IE recommends the Company issue two RFPs, similar to the 2008 All Source RFP, with coal treated as an eligible option for the Utah RFP.

In response to the IE, the Company indicates issuing two separate RFPs was confusing to the bidders during the last RFP. Issuing two separate RFPs for the 2016 RFP will require educating the bidders. However, the Company agrees it is a manageable process.

UAE is concerned the 2016 RFP limits coal resources to contracts with terms of one to five years based on the requirements of other states. This restriction will likely ensure coal resources have no possibility of meaningful participation in this RFP. UAE believes state laws and policies that impose additional costs on the Company system should be assigned directly to the responsible states. Unless coal facilities are permitted to bid and participate in the RFP process under fair and comparable terms as any other resource, the system may be deprived

of the lowest cost resources, and there may be no practical means of determining whether, and to what extent, the laws and policies of other states have imposed greater costs on the system.

UAE submits coal resources should be permitted to bid into the RFP without restriction.

We are not persuaded by the Company that coal resources, or any resource, should be excluded from bidding in this RFP if such bids can comply with the terms and conditions and the need identified in the solicitation. We concur with the IE and UAE. Coal resources should be allowed to participate without additional restrictions in the 2016 All Source RFP and should be subject to the full evaluation process in order to determine optimal least cost and least risk resources. Any state regulatory considerations should be addressed after the full analysis of cost, risk and uncertainty. The Company always bears the burden of demonstrating its resource decisions are prudent in either a resource decision approval or general rate case proceeding. Therefore, we suggest the Company modify its 2016 RFP to allow bids from coal resources without additional restrictions.

III. SUMMARY OF SUGGESTED MODIFICATIONS

Wherefore, pursuant to our discussion, findings and conclusions made herein, we suggest the Company modify the December 7, 2011, All Source RFP 2016 as follows:

1. The language in the RFP 2016 restricting coal resource bid participation should be stricken.
2. All post-2016 resources should be allowed to float in the bid evaluation process.
3. In the initial short list evaluation process, the Company should select resources by fuel type within each eligible resource category for advancement to the next steps of the bid evaluation process.

IV. ORDER

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

1. The Company shall set up a process to inform interested parties of due diligence issues related to the purchase of an asset.
2. The schedule proposed is approved with some flexibility, however, schedule changes of more than five days require Commission approval.

DATED at Salt Lake City, Utah, this 3rd day of January, 2012.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary Widerburg
Commission Secretary
D#213240