

April 25, 2008

VIA Electronic and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem, OR 97308-2148

Re: In the Matter of PACIFICORP, dba PACIFIC POWER Application for
approval of a solicitation process for flexible resources starting in 2012
through 2017
Docket No. 1360

Dear Filing Center:

Enclosed please find the original and one (1) copy of the Petition to Intervene and
Comments of LS Power Associates, L.P. in the above-referenced matter.

Thank you for your assistance.

Sincerely,

/s/ David B. Hennen
David B. Hennen

Enclosures

Cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Petition to Intervene and Comments on behalf of LS Power Associates, L.P. upon the parties, shown below, on the official service list by causing the foregoing document to be deposited, postage-prepaid, in the U.S. Mail, or by service via electronic mail to those parties who have waived paper service.

Dated at St. Louis, Missouri, this 25th day of April, 2008.

/s/ David B. Hennen

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1360

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER)	PETITION TO INTERVENE
)	AND COMMENTS OF
Application for approval of a solicitation)	LS POWER ASSOCIATES, L.P.
Process for flexible resources starting in)	
2012 through 2017)	
_____)	

PETITION TO INTERVENE

Pursuant to ORS § 756.525 and OAR § 860-012-0001, LS Power Associates, L.P. petitions the Public Utility Commission of Oregon (“OPUC” or the “Commission”) to intervene in this proceeding with full party status as described in OAR § 860-011-0035(5). In support of this petition, LS Power Associates, L.P. represents as follows:

The business address of LS Power Associates, L.P. is:

David Hennen
LS Power Associates, L.P.
400 Chesterfield Center, Suite 110
St. Louis, Mo 63017

All documents relating to these proceedings should be served on the following individuals at the following addresses:

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LS Power Associates, L.P., along with its predecessors and affiliates (collectively “LS Power”), is an independent power producer that develops, owns, operates and manages large-scale power generation projects in the United States. LS Power has developed eleven individual electric generation facilities in the United States which total approximately 7,200 megawatts of generation capacity. LS Power currently has a number of natural gas, coal, and renewable generation projects under development throughout the United States. LS Power has managed for itself or third-party owners over 20,000 megawatts of generation capacity. LS Power has an in-depth and up-to-date understanding of the financial markets as they relate to the financing of power generation projects. In the past 3 years, LS Power has raised in excess of \$10 billion in debt and equity.

LS Power has a substantial interest in Pacificorp’s Application for approval of a solicitation process for flexible resources starting in 2012 through 2017. LS Power is an active market participant and is interested in supplying Oregon and PacifiCorp customers with low-cost, reliable generation. LS Power participates in many requests for proposals for power generation resources in the U.S.

LS Power has reviewed the proposed solicitation process and is hereby filing comments. The comments submitted herewith by LS Power will assist the Commission in resolving the issues and will not unreasonably broaden the issues, burden the record, or delay this proceeding.

As described above, LS Power has a unique interest in this proceeding that will not be adequately be represented by any other party, and may be affected by any

Commission determination made in connection with these proceedings. It is in the public interest to allow LS Power to intervene in this proceeding.

LS Power waives paper service of documents in this proceeding.

LS Power Comments

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.

LS Power provided comments on the February 15, 2008 Draft RFP to the Public Service Commission of Utah, and feels that the Oregon Commission could also benefit by hearing the perspective of a potential bidder. LS Power's comments on the February 15, 2008 Draft RFP filed in Utah are attached as Attachment 1.

Credit Requirements

LS Power’s comments on the February 15, 2008 Draft RFP acknowledged that PacifiCorp has a need to protect itself against the credit of counterparties, and the requirement 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 in the Final Draft RFP 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 a built-in bias towards self-build projects.

Accion Group, Inc. (“Accion”), one of the Oregon IEs, provided comments on the credit requirements in the RFP. Accion states that “PacifiCorp has appropriately imposed obligations on less creditworthy parties in an effort to mitigate the risk to Oregon consumers and its shareholders of operational or economic defaults.” LS Power

disagrees with Accion on this point and points out that many of the risks that would be mitigated by the required security are present in the Company's benchmark resources with the risk placed on captive ratepayers. LS Power has successfully negotiated PPAs with other investor-owned utilities in which the security requirements were orders of magnitude smaller than what PacifiCorp is proposing.

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 will do more than increase a bidder's costs, it will outright eliminate many otherwise qualified competitive bidders.

LS Power believes that a more appropriate level of security would be to require 10% to be posted prior to financial closing with the remaining 90% to be posted when project financing is achieved. 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 incentives 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 an appropriate incentive.

Merrimack Energy Group, Inc. (“Merrimack Energy”), the Utah IE in this RFP, 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. However, 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

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. Boston Pacific stated that “based on our observations, we fear that participation in PacifiCorp RFPs is declining, and could affect bid results.” (Boston Pacific IE’s Comments at p. 28). Boston Pacific continues to explain the trend of declining bids and calls the trend “problematic” and that “if bidders don’t show up to this RFP, then we will be in danger of not having a positive result.” (Boston Pacific IE’s Comments at p. 28).

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. Boston Pacific acknowledges the importance of 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.” (Boston Pacific IE’s Comments at p. 2). Merrimack Energy also commented on the comparability issue, identifying it as “the most important and most complex issue in the design of competitive bidding processes.” (Utah PSC, Docket No. 07-035-94, Report of the Utah Independent Evaluator Regarding PacifiCorp’s All Source Request for Proposals, p. 41) LS Power agrees with Boston Pacific and Merrimack Energy that comparability issues must be addressed in order to assure that ratepayers are getting the best deal.

Bidders are required to provide a capacity price in which at least 60% is fixed and up to 40% is indexed based on the CPI and the PPI. At 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 the risk of rising construction costs 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. Boston Pacific identifies "chief dangers" with the "cost plus" bidding approach including "(a) lowballed initial cost estimates, (b) project mismanagement, and (c) rising prices for construction inputs." (Boston Pacific IE's Comments at p. 2). Boston Pacific continues to explain that they believe ratepayers care about the ultimate price and not the Company's rate-of-return or profit that is supported by "cost plus" bidding.

LS Power agrees with Boston Pacific that the ideal situation would be that bids and PacifiCorp's benchmark resources be held to the same bidding standards including price and performance guarantees. However, given PacifiCorp's objection to giving up the luxury of "cost plus" bidding, and the complexity of the issue it is unlikely that the proper regulatory framework could be in place for purposes of the present RFP. As a solution Boston Pacific offers some ways to more fairly evaluate the Company's benchmark bids against other bids, they include: (1) the Company submits a price band around its bid to serve as a cap or floor on cost recovery, the evaluation would be

performed on the upper price; (2) evaluators penalize the self-build bids by adding costs to reflect the possibility of overruns; (3) create a before-the-fact “PPA-like” bid to set the cost recovery at the bid price and determine operating requirements; and (4) the Company submits a “best offer” and a “not to exceed” price, the cost recovery would be subject to the cap. LS Power believes that all of these suggestions would be improvements to the existing process and suggests that if PacifiCorp bids in a “cost plus” manner then the risks of underperformance should be properly assessed.

Merrimack Energy offered some additional suggestions in Utah in their “hybrid model” approach 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, CO2 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 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

The Final Draft RFP contains several requirements that are unreasonable and will limit participation from potential bidders. 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.

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

LS Power also recommends that bidders 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.

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. The suggestions from Boston Pacific and Merrimack Energy's "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 captive ratepayers.

WHEREFORE, LS Power respectfully requests that the Commission grant its petition to intervene with full party status in this proceeding and accept these comments.

Dated this 25th day of April, 2008.

Respectfully submitted,

/s/ David B. Hennen
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Attachment 1

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

LS Power Associates, L.P., through its counsel and pursuant to the Scheduling Order issued by the Public Service Commission on March 4, 2008, hereby submits the following Comments on PacifiCorp's 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. LS Power Associates, L.P. and its predecessors and affiliates ("LS Power") have developed eleven individual electric generation facilities in the United States which total approximately 7200 megawatts of generation capacity. LS Power currently has a number of natural gas, coal, and renewable generation projects under development throughout the United States. It has managed for itself or third-party owners over 20,000 megawatts of generation capacity. LS Power has an in-depth and up-to-date understanding of the financial markets as they relate to the financing of power

generation projects. In the past 3 years, LS Power has raised in excess of \$10 billion in debt and equity.

2. LS Power is an active market participant and is interested in supplying Utah with low-cost generation. LS Power participates in many requests for proposals for power generation resources in the U.S. LS Power has reviewed the draft “2008 All Source - Request for Proposals” (the “Draft RFP”) and offers the following comments relating to two primary areas of the Draft RFP: credit requirements and comparability.

Credit Requirements

3. LS Power acknowledges that it is important to establish the creditworthiness and experience of bidders, and to place on bidders the burden to establish sufficient creditworthiness and experience to supply PacifiCorp under a long-term supply arrangement. LS Power’s concern with the Draft RFP is that strict application of unduly high credit requirements will severely limit participation in the process, and limit available alternatives for ratepayers.

4. The need for PacifiCorp to protect itself against the credit of its counterparties is understandable. The approach of requiring bidders to either be investment grade or post security at a certain level is reasonable. Because most independent power suppliers are not investment grade, the industry standard practice is to post security for transactions. However, the required amounts of security in the Draft RFP are unreasonably high, and provide a disadvantage to third party suppliers. Security has a cost associated with it which will increase the cost under a proposal.

5. The levels required in the Credit Matrix place an undue burden on bidders and give PacifiCorp’s self-build options a significant advantage. A reasonable amount of security should be required in order to balance the need for performance assurance with

the costs associated with providing a letter of credit or other security. The requirement of higher levels 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 requiring a reasonable amount of credit support to protect the purchaser, and imposing excessive requirements that increase the costs to be incorporated into the proposals and potentially passed on to ratepayers. Ultimately, the level of credit support should be established which does not discourage participation in the process and cause those excessive costs to ratepayers. PacifiCorp's Credit Matrix proposes an unreasonably high level of proposed credit support. While the Credit Matrix presents what appears to be an objective analysis of risk, it is not an approach we have seen in any other RFP in the country and the results are wholly unreasonable.

6. By way of illustration, under PacifiCorp's proposed requirements, the worst case security requirement could be \$120/MWh for every potential megawatt hour delivered over a 5 year term.¹ PacifiCorp contends that this requirement is based on the additional cost of supplying replacement power at some arbitrarily chosen risk-adjusted level. This would imply, based on PacifiCorp's forward price in 2012 of \$91.09/MWh and escalating in years beyond, that replacement power prices would be above \$210/MWh on average for all on-peak summer hours for 5 years. While this example illustrates the "worst case" scenario, even the credit requirements for asset-backed

¹ The Credit Matrix for a non-asset backed resource for a 5-year term beginning in 2016 is \$62,177,400 for 100 MW. For a proposal of Third Quarter power, defined as 16 peak hours from July through September, this results in $\$62,177,400 / (100 \text{ MW} \times 16 \text{ hours per day} \times 5 \text{ days per week} \times 13 \text{ weeks per year} \times 5 \text{ years}) = \$120/\text{MWh}$. Note that this conservatively assumes a 5 x 16 product without dispatch rights. To the extent the resource is dispatchable and has a lower capacity factor, the security requirement may be much higher.

resources are 5-10 times higher than LS Power has negotiated with third-party purchases at arms length for new generation resources.

7. The proposed Credit Matrix presents a hurdle that many projects, including those financed on a traditional project finance basis, will not be able to meet. 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 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. LS Power recommends that PacifiCorp adopt a similar approach to avoid imposing unreasonably high costs on the bidders' proposals.

Comparability

8. Several provisions of the RFP present the opportunity for PacifiCorp's own proposals to be evaluated more favorably than third-party bids. The potential lack of comparability troubles LS Power as a potential bidder, and will likely have a chilling effect on some bidders.

9. One primary concern is with the lack of comparability in pricing. Bidders are required to propose a price in which at least 60% is fixed and up to 40% is indexed, although the indexing is limited in scope. It is LS Power's understanding that PacifiCorp's proposal will be an estimate only. As a rate-based proposal, PacifiCorp's bid will be subject to differences in the actual construction costs compared to the estimate, and also subject to differences in the actual financing costs compared to the estimate. In an environment of rising construction costs, and interest rates, its ratepayers are likely to bear the risk that PacifiCorp's bid will not meet the estimate, while third-party bidders

are required to assume all interest rate risk and the risk of cost overruns. The result is that bidders are at a significant disadvantage, because their proposals need to cover the risk of rising construction costs and interest rates. In fact, the same is true for many other factors. Bidders are required (or must be willing), for example, to commit to fuel efficiency operating costs, and unit availability, while PacifiCorp provides only estimates of those items, free from the risk of being aggressively low. The fact that bidders are required to take into account a premium for risk results in a incompatible comparison between the proposals of PacifiCorp's proposals and third-party bidders' proposals.

10. In addition to the disparity between certain requirements for PacifiCorp and those of the bidders, there are significant benefits to third party suppliers such as performance guarantees², increased wholesale competition³, and diversification of suppliers⁴ which are not captured in the evaluation. LS Power recommends that the Commission examine whether the evaluation criteria are designed to yield a fair and reasonable comparison between PacifiCorp and third party bidders.

Conclusion

11. The Draft RFP does not allow for fair and reasonable consideration of third-party bids relative to PacifiCorp's self-build proposals. The credit requirements for third party bids are unreasonably high. In addition, an approach which allows risk-free estimates for a self-build option, and requires fixed price third-party bids lacks

² For an extreme example, consider the worst-case scenario of a generation project poorly performs in terms of efficiency and output. In the case of a utility sponsored project, ratepayers will continue to pay the higher fuel costs and the capital cost of the project. In the case of an independent power producer with a power purchase agreement, ratepayers will only pay for fuel at the guaranteed heat rate, and only pay for the actual tested capacity of the facility.

³ Studies have estimated the savings to consumers resulting from wholesale electricity competition in the U.S. at nearly \$5 billion annually.

⁴ Currently, ratepayers have significant exposure to PacifiCorp as the primary supplier of energy. Purchasing power from a third-party supplier under a power purchase agreement diversifies this exposure.

comparability. PacifiCorp's bids should be held to the same standards as third party bids, so that the risks and benefits to ratepayers from third party bids can be fairly considered in the evaluation. LS Power requests that the Commission consider these comments and take the necessary steps to ensure a reasonable process and a level playing field for all bidders, and to ensure the best outcome for all ratepayers.

Dated this 21st day of March, 2008.

/s/ William J. Evans

William J. Evans

Michael J. Malmquist

Attorney for LS Power Associates