

ORDER NO. 03-356

ENTERED JUN 12 2003

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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UM 1079

In the Matter of	)	
	)	
PACIFIC POWER & LIGHT (dba	)	
PACIFICORP)	)	ORDER
	)	
Request for Proposals in Compliance with	)	
Competitive bidding guidelines established by	)	
Order No. 91-1383.	)	

**DISPOSITION: APPLICATION APPROVED WITH CONDITIONS**

On April 7, 2003, Pacific Power & Light (PacifiCorp) filed a draft Request for Proposals – Electric Resources (RFP 2003-A) with the Public Utility Commission of Oregon (Commission), and asked the Commission to approve the process by which PacifiCorp would request and evaluate proposals from third parties to fulfill a portion of the supply-side resource need identified in PacifiCorp's Integrated Resource Plan.

The matter came before the Commission at its May 7, 2003 Public Meeting. At that meeting, several parties expressed concerns regarding PacifiCorp's RFP. To provide the parties an opportunity to comment on the bidding process, the Commission deferred consideration of the matter until a future public meeting.

The Citizens' Utility Board of Oregon, Renewable Northwest Project, Northwest Independent Power Producers Coalition and PacifiCorp filed comments. These comments are summarized in the May 28, 2003 Staff Report attached as Appendix A.

The matter again came before the Commission at the June 3, 2003 Public Meeting. Staff recommended that the Commission find that PacifiCorp's RFP 2003-A is in compliance with supply-side bidding guidelines established in Order No. 91-1383, and is consistent with PacifiCorp's filed 2003 Integrated Resource Plan. Staff further recommended procedures for PacifiCorp to utilize for future RFPs it may wish to issue. The Commission adopted Staff's recommendations and approved PacifiCorp's request.

**ORDER**

IT IS ORDERED that:

1. PacifiCorp's Request for Proposals is in compliance with the competitive bidding guidelines established by Order No. 91-1383, and is consistent with PacifiCorp's filed 2003 Integrated Resource Plan. PacifiCorp may issue RFP 2003-A on or after June 4, 2003, consistent with the Staff recommendations set forth in Appendix A.
2. PacifiCorp must comply with the following for any future Request for Proposals it may wish to issue:
  - a. Use an independent consultant to administer, validate and audit the RFP process.
  - b. Provide a clear synopsis of the RFP process and offer a pre-bid workshop.

Made, entered and effective \_\_\_\_\_.

BY THE COMMISSION:

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**Becky Beier**  
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

**ITEM NO. 5**

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: June 3, 2003**

**REGULAR**   X   **CONSENT** \_\_\_\_\_ **EFFECTIVE DATE** \_\_\_\_\_   June 4, 2003  

**DATE:** May 28, 2003

**TO:** John Savage through Lee Sparling and Jack Breen III

**FROM:** Bill McNamee

**SUBJECT:** PACIFIC POWER AND LIGHT: (Docket No. UM 1079) Staff recommendations regarding interested parties' concerns with RFP compliance to Commission Order No. 91-1383.

**STAFF RECOMMENDATION:**

I recommend the Commission find that PacifiCorp's Request for Proposals for Supply-Side Resources (RFP 2003-A) is: (1) In compliance with supply-side bidding guidelines established by Order No. 91-1383; and (2) Consistent with Pacific's 2003 Integrated Resource Plan, which is currently under review in OPUC Docket LC 31. I further recommend that future RFPs that Pacific may issue should include consideration of the recommendations discussed in this memo.

**DISCUSSION:**

On April 7, 2003, Pacific submitted to the OPUC a **Request for Proposals – Electric Resources (RFP 2003-A)**. The filing was docketed as UM 1079. At the May 7, 2003, Commission public meeting, Staff recommended that the Commission find that PacifiCorp's Request for Proposals for Supply-Side Resources was: (1) In compliance with supply-side bidding guidelines established by Order No. 91-1383; and (2) Consistent with Pacific's 2003 Integrated Resource Plan, which is currently under review in OPUC Docket LC 31.<sup>1</sup>

At the May 7, 2003, public meeting several stakeholders expressed concerns regarding Pacific's RFP. In general, they were uncertain whether or not the proposed RFP would ensure a process that properly balances the expected costs and risks of new resource acquisitions. The Commission decided to set over a final decision regarding Pacific's proposed RFP 2003-A.

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<sup>1</sup> The staff memo for the May 7, 2003, public meeting is attached.

In a May 15, 2003, memorandum, the Administrative Law Judge adopted the following schedule for UM 1079.

Comments due	May 22
Staff memo issues	May 29
Public meeting	June 3

Stakeholders were requested to submit written comments on how the Pacific RFP should be modified to ensure that the process for selecting new resources is fair and objective. The following provided written comments:

Citizens' Utility Board of Oregon  
Renewable Northwest Project  
Northwest Independent Power Producers Coalition  
PacifiCorp

The comments are summarized as follows:<sup>2</sup>

**CITIZENS' UTILITY BOARD OF OREGON:** The RFP process must be fair and transparent in order to give competitors confidence that the process is worth bidding into. A critical concern is that a utility's self-build option not receive preference over the potential for development of less-expensive non-utility resources. An objective bid evaluation and selection process is necessary to ensure that the RFP process results in acquisition of least-cost resources.

Given Pacific's near-term need for new resources for its east-side control area, CUB states that RFP 2003-A may be too far along to stop. CUB also indicates that the self-build concern may not be an issue in this specific RFP. CUB suggests, however, that the Commission may want to conduct a more comprehensive review prior to issuance of future RFPs. Toward this end, the following recommendations are made:

1. In the draft RFP, the utility should provide a clear synopsis of the RFP process and offer a workshop for non-bidders to discuss the bidding and selection process.
2. The utility should engage an independent evaluator/referee to manage flow of information and ensure equal treatment between participants and the utility.
3. There should be a wall between utility personnel who work on the RFP responses and those that work on the self-build option.

While rate making treatment is not part of the RFP process, CUB recommends that the Commission make it clear that when a utility asks for cost recovery of a self-built plant, that the Commission will expect the utility to share with rate case participants the cost assumptions of that plant and the competitive bid options that were rejected.

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<sup>2</sup> The written comments are included as attachments to this memo.

**RENEWABLE NORTHWEST PROJECT:** RNP is concerned that RFP 2003-A may be issued prior to Commission acknowledgement of Pacific's IRP.<sup>3</sup> Issuance prior to IRP acknowledgement may preclude parties from fully reviewing the Company's 2003 plan for resources. RNP is particularly concerned with the potential for Pacific's IRP resource portfolio to include the addition of a new coal plant.

RNP requests further clarification regarding how self-built resources will be compared to a developer's proposed resources. Toward this end, RNP indicates that it supports Pacific's plan for an independent consultant to administer the RFP process.

In reviewing the environmental risk factors set forth in Order No. 91-1383, RNP claims that the biomass and geothermal damage factors are too high. RNP recommends that future RFPs address the allocation of financial and CO2 risk among parties – company, customer, and developer.

**NORTHWEST INDEPENDENT POWER PRODUCERS COALITION:** NIPPC maintains that consumers are best served if the utility conducts a fair and inclusive procurement process. The Coalition submitted the following specific comments:

1. NIPPC believes that Pacific's RFP 2003-A meets the flexible guidelines specified in Order No. 91-1383. NIPPC supports the retention of an independent consultant to "validate consistency" during the process of bid evaluation.
2. NIPPC believes that there is inadequate assurance that least cost resources will be acquired through the bidding process. NIPPC recommends that a utility's self-built option be subjected to contemporaneous competitive solicitation, independently evaluated. In the event that a self-built project is selected, the utility's shareholders should assume full responsibility for all energy costs in excess of that established upon the conclusion of the competitive bid.
3. An RFP process that is not perceived as being truly competitive will result in several unintended consequences, including:
  - IPPs may select to bypass the solicitation;

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<sup>3</sup> Pacific's 2003 IRP will be considered at the Commission's July 1, 2003, public meeting.

- Lack of IPP participation will reduce the probability of achieving the lowest possible competitive prices for energy and capacity;
  - Evaluation of a utility's self-built plant at the time of rate recovery may be too late to ensure that the least cost resource was acquired.
4. The utility needs to provide detailed, written descriptions of how it proposes to handle its forthcoming RFPs.
  5. Lastly, NIPPC addresses the roles it believes appropriate for the three parties responsible for the conduct of a utility's RFP. These parties include: the utility, the commission, and the independent consultant retained by the utility. NIPPC states that it understands that the Commission may choose not to apply its recommendations to Pacific's RFP 2003-A, but NIPPC requests that its recommendations be considered in future resource acquisition processes.

**PACIFICORP:** Pacific notes that its comments are intended to summarize information provided at a May 19, 2003, workshop on the Company's RFP 2003-A, to which all IRP participants were invited. Pacific understands that the central fairness concern is the potential for manipulation of the RFP process to artificially support a utility-built resource over a superior market resource. The Company contends that its proposed RFP guards against self-dealing in several ways:

1. RFP 2003-A relies on an independent third-party consultant to validate, administer, and audit the RFP process.
2. Under RFP 2003-A, Pacific will prepare a next best alternative (NBA) analysis for each of the four components of the RFP. For the super-peak and 25 MW firm components, Pacific states its NBA will be based upon market projections. For the 200 MW peakers and 570 MW baseload components, the NBA will be based upon Pacific's cost to construct, own, and operate such a plant in 2005 and 2007, respectively. (*Pacific maintains that a coal plant will not be considered in the NBA for the 570 MW baseload component. This is because it is not feasible to site and construct a coal plant prior to the 2007 timeline.*)  
To prevent gaming of the NBA analysis against bids, Pacific states that it will prepare the NBA analysis prior to the receipt of any bids under RFP 2003-A. The independent consultant will validate the NBA cost assumptions prior to review and evaluation of the blinded bids. Pacific further contends that because the independent consultant will be administering the RFP, there will be separation between those preparing the NBA analysis and those administering the RFP.
3. Pacific states that, given commercial confidentiality constraints, the process and results of RFP 2003-A will be as transparent as possible. At the end of the process, the independent consultant will prepare a summary report to validate the fairness and impartiality of RFP 2003-A. Further, in any subsequent

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prudence review, the parties and the Commission will be able to review all aspects of the RFP process and results, subject to protective order where appropriate.

### **STAFF REVIEW**

After review of the comments, Staff makes the following observations and recommendations regarding Pacific's RFP 2003-A and future RFPs that the Company may issue:

- Staff supports Pacific's intent to use an independent consultant to administer RFP 2003-A and recommends that future RFPs should use the independent consultant concept. The specific nature of the consultant's role should be an evolving process that must be allowed to adapt as new information and knowledge is gained.  
While an independent consultant to help administer and validate an RFP process was not envisioned in Order No. 91-1383, the order did recognize that it is essential that needed course directions be identified, agreed upon, and executed in a timely fashion. All UM 1079 commentors are in agreement that an independent consultant can help to ensure the efficacy of the RFP process.
- For future RFPs, the utility should provide a clear synopsis of the RFP process and offer a pre-bid workshop for non-bidders to discuss the bidding and selection process. Staff notes that the May 19, 2003, workshop which Pacific conducted helped to answer several questions regarding how the Company intends to conduct the RFP 2003-A bid evaluation and selection process. Future utility RFP processes should adopt this approach.
- The environmental ranking procedure outlined in Order No. 91-1383 should be revisited. While this review could take place in a new investigatory docket, Staff believes the appropriate forum for considering a different environmental assessment procedure is in the utility's least cost planning process. As indicated in the competitive bidding order, the utility has the option to use an alternative environmental assessment that is part of an acknowledged least cost plan.
- The utility should not be allowed to game the bid process to favor a self-built option. This concern is addressed in Order 91-1383 by not allowing the utility or its affiliate to participate in the utility's own RFP. Nevertheless, stakeholders are concerned that the utility may reject all bid offers and proceed with a self-built option. Staff believes that Pacific's proposed use of an independent third-party consultant to validate, administer, and audit the results of RFP 2003-A represents an positive step toward addressing this concern. Staff recommends that, after the RFP 2003-A process is complete, the role of the independent consultant be

reviewed. If determined successful, the Commission may want to revisit the current guideline in Order No. 91-1383 that the utility or its affiliate may not participate in the utility's own RFP.

As a further check on the RFP process and self-built option, Pacific states that, at the end of the bid process, the independent consultant will prepare a summary report to validate the fairness of the bid evaluation and selection. Staff recommends that, recognizing confidentiality issues, this report be as thorough as possible. In addition, in any future prudence review parties will have the opportunity to review the RFP process and results.

- Staff believes that it is not necessary to delay issuance of the RFP 2003-A until Pacific's 2003 IRP is acknowledged by the Commission. No commentor challenged that Pacific has a identified need for peaking resources beginning in 2004. Therefore, given the short time frame for conducting a bid solicitation, Staff recommends that the Commission find that PacifiCorp's Request for Proposals for Supply-Side Resources (RFP 2003-A) is: (1) In compliance with supply-side bidding guidelines established by Order No. 91-1383; and (2) Consistent with Pacific's 2003 Integrated Resource Plan, which is currently under review in OPUC Docket LC-31.

**PROPOSED COMMISSION MOTION:**

Pacific's RFP be found in compliance with the competitive bidding guidelines established by Order No. 91-1383 and consistent with the Company's filed 2003 IRP. Pacific may issue its RFP 2003-A on or after June 4, 2003. Future RFPs which the Company may wish to issue should follow the Staff recommendations discussed above.

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