

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION</b>	)	
<b>OF PACIFICORP DBA ROCKY MOUNTAIN</b>	)	<b>CASE NO. PAC-E-09-05</b>
<b>POWER FOR APPROVAL OF A POWER</b>	)	
<b>PURCHASE AGREEMENT BETWEEN</b>	)	
<b>PACIFICORP AND LOWER VALLEY</b>	)	<b>ORDER NO. 30864</b>
<b>ENERGY, INC.</b>	)	

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On May 28, 2009, PacifiCorp dba Rocky Mountain Power (PacifiCorp; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a May 22, 2009 Power Purchase Agreement (Agreement) between PacifiCorp and Lower Valley Energy, Inc. (Lower Valley). The Commission in this Order approves PacifiCorp’s Power Purchase Agreement with Lower Valley as more fully set forth below.

**THE AGREEMENT**

Lower Valley intends to construct, own, operate and maintain a run-of-river hydroelectric generating facility for the generation of electric power located in or near the town of Afton, Lincoln County, Wyoming, with an expected nameplate capacity rating of 940-kilowatts (the Facility). The project is located on Swift Creek in Lincoln County, Wyoming, partially within the Bridger-Teton National Forest at approximately 42° 43' north and 110° 54' west. The Facility will be a qualified small power production facility (QF) under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 (PURPA).

The Agreement between PacifiCorp and Lower Valley is for a three-year term expiring May 1, 2012. Agreement ¶ 2.1. Under terms of the Agreement (¶ 5.1) PacifiCorp will pay Lower Valley non-levelized, conforming energy or non-conforming energy purchase prices for capacity and energy adjusted for seasonality and on-peak/off-peak hours in accordance with Commission Order No. 30480.

The Swift Creek facility is interconnected to Lower Valley’s electrical system and Lower Valley will transmit net output to PacifiCorp at the Goshen Substation in Idaho by way of transmission facilities operated by Bonneville Power Administration (BPA). Lower Valley will acquire and pay for a transmission services agreement to schedule and deliver the power to PacifiCorp and PacifiCorp intends to accept scheduled firm delivery by way of BPA of Lower Valley’s net output.

The total nameplate capacity of the Swift Creek facility is 940 kW. Lower Valley will be required to provide data on the Facility that PacifiCorp will use to determine whether under normal and/or average conditions: (1) the feasibility that Facility net energy will equal or exceed 4,696,298 kWh in each full calendar year for the full term of the Agreement; and (2) the likelihood that the Facility, under average design conditions, will generate at no more than 10 MW in any calendar month. Agreement ¶ 7. Should the Facility exceed 10 aMW on a monthly basis, PacifiCorp will accept the energy (Inadvertent Energy) that does not exceed the maximum capacity amount, but will not purchase or pay for this Inadvertent Energy. Agreement ¶ 5.3. Lower Valley has elected June 1, 2009 as the commercial operation date for the Swift Creek Facility. Agreement ¶ 2.2.5.

PacifiCorp requests that the Commission approve the Power Purchase Agreement without change or condition. The Company also requests that the Commission declare that the prices for energy and capacity are just and reasonable, in the public interest, and that the costs incurred by PacifiCorp for purchasing capacity and energy from Lower Valley are legitimate expenses, all of which the Commission will allow PacifiCorp to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses.

On June 17, 2009, the Commission issued a Notice of Application and Modified Procedure in Case No. PAC-E-09-05. The deadline for filing written comments was July 9, 2009. Commission Staff was the only party to file comments.

#### **COMMENTS**

Commission Staff recommends approval of the Agreement as submitted. The rates are those established in avoided cost Order No. 30480 and the terms and conditions in the Agreement, Staff contends, are typical of those contained in previous QF contracts approved by the Commission. Staff in its comments notes that probably the most unique feature of this Agreement is that the owner of the generation facility is an electric utility rather than a private developer. Lower Valley Energy is a rural electric cooperative with over 13,000 members. Lower Valley's service territory roughly covers the Jackson/Afton area in Wyoming and extends to cover the Swan Falls/Palisades area in Idaho. This Agreement would mark the first in Idaho in which a project is developed as a PURPA qualifying facility by one utility and the output sold to another regulated utility. Prior to 2006, PURPA (18 C.F.R. § 292.206) required that a

cogeneration facility or small power production facility not be owned by a person primarily engaged in the generation or sale of electric power. Effectively, this restricted electric utilities to a minority interest in a QF project. The Energy Policy Act of 2005 eliminated the ownership restriction.

### **COMMISSION FINDINGS**

The Commission has reviewed the filings of record in Case No. PAC-E-09-05, including the underlying Agreement and the filed comments and recommendation of Staff. We continue to find it reasonable to process the Company's Application under Modified Procedure. IDAPA 31.01.01.204.

PacifiCorp has presented a Firm Energy Sales Agreement with Lower Valley Energy, Inc. for Commission consideration and approval. The Agreement is for a 940 kW hydro-generating facility located on Swift Creek in Lincoln County, Wyoming. As represented and pursuant to Agreement, PacifiCorp will accept delivery of generation from Swift Creek at the Goshen Substation in Idaho. Under normal and/or average conditions the project will not exceed 10 aMW on a monthly basis. We thus find the project is qualified to receive the published avoided cost rates approved by the Commission.

The Commission finds that the Agreement submitted in this case contains acceptable contract provisions and includes the non-levelized published rates approved by the Commission in Order No. 30480. We find it reasonable that the submitted Agreement be approved without further notice or procedure. We further find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

### **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over PacifiCorp dba Rocky Mountain Power, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed-term obligations with the purchase of energy from qualified facilities and to implement FERC rules.

**ORDER**

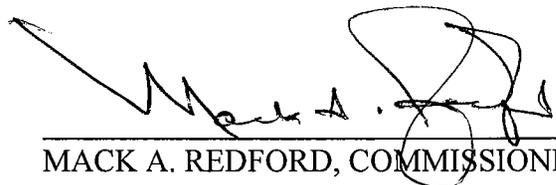
In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission approves the May 22, 2009, Power Purchase Agreement between PacifiCorp dba Rocky Mountain Power and Lower Valley Energy, Inc.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 16<sup>th</sup> day of July 2009.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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