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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Complainant Windland, Inc.

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

WINDLAND, INC.,  
Complainant,

vs.

PACIFICORP,  
Defendant.

Case No. PAC-E-10-05

FORMAL COMPLAINT

1 **INTRODUCTION**

2 This is a formal complaint filed by Windland, Inc. ("Windland") with the Idaho Public  
3 Utilities Commission (the "Commission") pursuant to Idaho Administrative Rules 31.01.01.054.  
4 Prior to March 12, 2010, Windland repeatedly requested, that PacifiCorp, dba Rocky Mountain  
5 Power ("PacifiCorp"), execute two standard Public Utility Regulatory Policies Act of 1978  
6 ("PURPA") power purchase agreements ("PPAs") for wind qualifying facilities ("QFs") under  
7 10 aMW for Windland's two QFs –Power County Wind Park North and Power County Wind  
8 Park South. Because PacifiCorp has refused to enter into such PPA's at the published avoided  
9 cost rates effective prior to March 12, 2010, Windland respectfully requests that the Commission  
10 issue a declaratory judgment that Windland is entitled to such PPAs and further requests that the

1 Commission order PacifiCorp to enter into two PPAs at the rates in effect prior to March 12,  
2 2010.

3 **PRELIMINARY MATTERS**

4 Copies of all pleadings and other correspondence in this matter should be served upon  
5 counsel for Windland at:

6 Peter J. Richardson  
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15 [greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

16 **In support of this Complaint, Windland alleges as follows:**

17 **IDENTITY OF PARTIES**

18 1. PacifiCorp is an Oregon corporation that conducts business in the intermountain  
19 states of Idaho, Utah, and Wyoming as Rocky Mountain Power. PacifiCorp is a public utility  
20 subject to the jurisdiction and regulation of the Idaho Public Utilities Commission pursuant to  
21 I.C. § 61-129. PacifiCorp is also subject to the jurisdiction of, among others, the Federal Energy  
22 Regulatory Commission (“FERC”) and the Public Utility Commission of Oregon.

23 2. Windland, Inc., a California corporation is a developer of wind energy projects,  
24 with its principle place of business being located at 7669 W. Riverside Drive, Suite 102, Boise,  
25 Idaho 83714. Windland, Inc. is the manager and sole member of Power County Wind Park  
26 North, LLC and Power County Wind Park South, LLC.

27

1 **JURISDICTION**

2 3. This case involves PURPA’s avoided cost provisions and FERC implementing  
3 regulations thereto, which PURPA directs states to implement. *See* 16 U.S.C. § 824a-3 (a)-(g);  
4 *FERC v. Mississippi*, 456 U.S. 742, 751 (1982). In Idaho, the Commission possesses jurisdiction  
5 over complaints regarding rates of public utilities, including PURPA rates. I.C. §§ 61-129, -501,  
6 -502, -503, -612; *see also Afton Energy Inc. v. Idaho Power Co.*, 111 Idaho 925, 929, 729 P. 2d  
7 400, 404 (1986). The Commission has jurisdiction to issue declaratory judgments regarding  
8 utility contracts pursuant Idaho’s Declaratory Judgment Act, I.C. § 10-1203. *See Utah Power*  
9 *and Light v. Idaho Pub. Utilities Commission*, 112 Idaho 10, 12, 730 P.2d 930, 932 (1986).

10 **APPLICABLE LAWS AND REGULATIONS**

11 4. Section 210 of PURPA requires electric utilities to purchase power produced by  
12 small power producers that obtain QF status under section 201. 16 U.S.C. § 824a-3(a)(2). FERC  
13 rules provide QFs with the option of selling electricity and capacity to a utility based on the  
14 utility’s “avoided costs” at the time the QF incurs a legally enforceable obligation to deliver  
15 energy or capacity over a specified term. *See* 18 C.F.R. § 292.304(d)(2)(ii). Thus, “a QF, by  
16 committing itself to sell to an electric utility, also commits the electric utility to buy from the QF;  
17 these commitments result either in contracts or in non-contractual, but binding, legally  
18 enforceable obligations.” *JD Wind I, LLC*, “Notice of Intent Not to Act and Declaratory Order,”  
19 129 FERC ¶ 61,148, at p. 10-11 (November 19, 2009).

20 **FACTUAL BACKGROUND**

21 5. Windland possesses leases and other rights to develop the wind resources in  
22 Power County, Idaho.

1           6.       In 2007, Windland engaged in negotiations with PacifiCorp for PacifiCorp to  
2 purchase the rights to develop a utility scale wind project at Windland's site in Power County.

3           7.       As part of those negotiations, Windland granted consent for PacifiCorp  
4 Transmission to communicate with PacifiCorp Commercial and Trading, and PacifiCorp  
5 Transmission completed interconnection studies for a wind project of up to 150 MW. PacifiCorp  
6 made no indication at that time that interconnection or transmission would present problems for  
7 bringing the project online.

8           8.       Those 2007 negotiations did not result in PacifiCorp acquiring any of Windland's  
9 Power County wind or other rights.

10          9.       Subsequently, Windland pursued independent development of two separate wind  
11 projects utilizing its Power County wind rights – the Power County Wind Park North and the  
12 Power County Wind Park South.

13          10.      Power County Wind Park North and Power County Wind Park South each  
14 possess a nameplate capacity of 21.6 MW, and are each QFs under PURPA entitled to power  
15 purchase agreements at PacifiCorp's published avoided cost rates for QFs under 10 aMW.

16          11.      In February 2010, Windland provided PacifiCorp with the essential elements of  
17 20-year PURPA power purchase agreements for these two QFs and committed itself to deliver  
18 energy and capacity from the QFs to PacifiCorp pursuant to those essential elements at the non-  
19 levelized rates for non-fueled projects approved by the Commission in Order No. 30744.

20 Windland committed to use the same point of interconnection for both projects as that studied by  
21 PacifiCorp contemporaneously with the parties' 2007 negotiations regarding Windland's Power  
22 County wind rights.

1           12.   PacifiCorp does not have on file in Idaho a list of information Idaho QFs must  
2 provide for PacifiCorp to complete a standard PURPA power purchase agreement. So Windland  
3 provided to PacifiCorp, among other information, each of the eleven (11) items of information  
4 (a) through (k) contained in PacifiCorp's Schedule 37 on file with the Public Utility Commission  
5 of Oregon. Those are the items PacifiCorp states QFs must provide to receive a power purchase  
6 agreement in Oregon.

7           13.   Windland has diligently responded to PacifiCorp's additional information  
8 requests. Windland has reiterated its commitments to deliver energy and capacity, and has not  
9 changed the essential elements of its proposed contracts.

10          14.   PacifiCorp has delayed the process to achieving executed power purchase  
11 agreements by, among other actions, failing to make publicly available to QFs a list of required  
12 project information for inclusion in a PPA or a standard PURPA contract.

13          15.   PacifiCorp also delayed the process by insisting on information regarding  
14 Windland's creditworthiness, which is irrelevant to a PURPA contract – particularly in the  
15 context with non-levelized rates that are not front-loaded where overpayment in excess of  
16 avoided cost rates cannot occur.

17          16.   PacifiCorp likewise delayed by insisting on delay security of \$45/kW as  
18 liquidated damages for Windland's failure to achieve the contracts' projected online dates.  
19 PacifiCorp insisted on delay security knowing that the market rates to purchase energy at the  
20 projected online date are below the published PURPA avoided cost rates. Therefore, PacifiCorp  
21 should have known it would incur no damages if it were forced to mitigate in the event of a delay  
22 default by purchasing the power on the market to meet its load requirements.



1 C.F.R. § 292.304(d)(2)(ii); *Blind Canyon Aquaranch v. Idaho Power Company*, Case No.  
2 IPC-E-94-1, Order No. 25802 (November 1994).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Windland respectfully requests that the Commission issue an Order:

- 5 1. Declaring that PacifiCorp is in violation of PURPA, FERC's implementing  
6 regulations, and the Commission's orders.
- 7 2. Requiring PacifiCorp to execute two standard PURPA power purchase  
8 agreements for Windland's Power County Wind Park North and Power County Wind Park South  
9 QFs at PacifiCorp's avoided cost rates on file for wind QFs under 10 aMW prior to March 12,  
10 2010.
- 11 3. Granting any other relief that the Commission deems necessary.

Respectfully submitted this 6<sup>th</sup> day of April 2010,

  
Peter J. Richardson  
Attorney for Windland, Inc.  
ISB No: 3195

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 6<sup>th</sup> day of April, 2010, a true and correct copy of the within and foregoing **FORMAL COMPLAINT OF WINDLAND, INC.** was served in the manner shown to:

Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 W Washington  
Boise ID 83702

- Hand Delivery
- U.S. Mail, postage pre-paid
- Facsimile
- Electronic Mail

  
Nina Curtis