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IDAHO PUBLIC UTILITIES COMMISSION

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Attorneys for Defendant PacifiCorp

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

| | | |
|-----------------|---|--------------------------|
| WINDLAND, INC., |) | |
| Complainant, |) | Case No. PAC-E-10-05 |
| |) | |
| v. |) | ANSWER |
| |) | AND AFFIRMATIVE DEFENSES |
| PACIFICORP, |) | |
| Defendant. |) | |

- 1 Pursuant to IDAPA Rule 31.01.01.057, PacifiCorp, dba Rocky Mountain Power¹
- 2 ("Rocky Mountain Power"), hereby answers the Complaint filed by Windland, Inc.
- 3 ("Windland") in Case No. PAC-E-10-05.

¹ In as much as PacifiCorp engages in regulatory proceedings before this Commission as Rocky Mountain Power, and includes resources such as the one in dispute here in rates set by this Commission for Rocky Mountain Power, we will throughout this proceeding refer to PacifiCorp as Rocky Mountain Power for consistency with the utility's regulatory presence before the Commission.

1 Power did not execute the March 29 PPAs, but responded in writing on April 1 to Windland's
2 March 12 letter and its March 29 litigation threat. Rocky Mountain Power stated in its April 1
3 letter that it would forward two complete draft PPAs to Windland on April 2, 2010. It also asked
4 Windland to affirm its willingness to post delay default security. Rocky Mountain Power made
5 this request in response to Windland's statement, in its March 12, 2010 materials, that the
6 Commission does not require QFs to post security for contracts based on non-levelized rates. On
7 April 2, 2010, Rocky Mountain Power sent Windland two draft PPAs ("April 2 PPAs") and
8 asked Windland for its comments. The April 2 PPAs contained the new avoided cost prices and
9 provisions requiring Windland to post delay default security. On April 6, Windland filed this
10 Complaint seeking as relief two PPAs, with avoided cost prices in effect on March 12, 2010, and
11 with no delay default security requirement. Rocky Mountain Power denies that Windland is
12 entitled to the prices in effect on or before March 12, 2010 because Windland did not establish a
13 legally enforceable obligation with Rocky Mountain Power on or before that date, under PURPA
14 and related Idaho law and regulation. Rocky Mountain Power denies, further, that the
15 Commission does not allow Rocky Mountain Power to require delay default security as a
16 condition to a standard QF power purchase agreement based on non-levelized rates.

17 **B. PRELIMINARY MATTERS**

18 Copies of all pleadings and other correspondence in this matter should be served upon
19 counsel for Rocky Mountain Power at:

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C. ANSWER

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Rocky Mountain Power hereby answers Windland's Complaint in the above-captioned proceeding and states as follows:

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1. Rocky Mountain Power admits the allegations of paragraph 1.⁴

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2. Having insufficient information or knowledge regarding the truth or falsity of the allegations of paragraph 2, Rocky Mountain Power denies the allegations contained therein and leaves Windland to the proof thereof.

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3. The allegations of paragraph 3 are conclusions of law requiring no response.

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4. The allegations of paragraph 4 are conclusions of law requiring no response.

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5. Rocky Mountain Power admits the allegations of paragraph 5.

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6. Rocky Mountain Power admits the allegations in paragraph 6.

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7. Rocky Mountain Power admits that Windland, as part of the 2007 discussions between the parties, granted consent for PacifiCorp Transmission Services to communicate with PacifiCorp Commercial and Trading and that, in February 2005, PacifiCorp Transmission Services conducted interconnection studies for Windland's proposal to interconnect a wind project of up to 150 MW. Rocky Mountain Power otherwise denies the allegations of paragraph 7.

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8. Rocky Mountain Power admits the allegation of paragraph 8.

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9. Rocky Mountain Power admits the allegation of paragraph 9.

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10. Rocky Mountain Power admits that counsel for Windland filed notices of self-certification of Power County Wind Park North, LLC and Power

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⁴ In this section, "paragraph" refers to the correspondingly numbered paragraph in Windland's Complaint.

- 1 County Wind Park South, LLC as QFs after 5:00 pm MPT on March 2,
2 2010. Rocky Mountain Power admits that each of the Power County QFs
3 proposes a nameplate capacity of 21.6 MW. Rocky Mountain Power admits
4 that QFs are entitled to sell power to any electric utilities, including Rocky
5 Mountain Power, under PURPA. Rocky Mountain Power otherwise denies
6 the allegations of paragraph 10.
- 7 11. Rocky Mountain Power denies the allegations of paragraph 11.
- 8 12. Rocky Mountain Power admits that it is not required under Idaho law and
9 has not filed with the Commission a list of information Idaho QFs must
10 provide for Rocky Mountain Power to complete a standard PURPA PPA.
11 Rocky Mountain Power otherwise denies the allegations in paragraph 12.
- 12 13. Rocky Mountain Power admits that Windland's response to Rocky
13 Mountain Power's March 10 additional information request was prompt.
14 Rocky Mountain Power otherwise denies the allegations of paragraph 13.
- 15 14. Rocky Mountain Power denies that any of its actions have unreasonably
16 delayed the process for negotiating and executing a PURPA contract for
17 Idaho QFs under 10 aMW.
- 18 15. Rocky Mountain Power denies that it delayed the PPA negotiation process
19 by insisting on information regarding Windland's creditworthiness. Rocky
20 Mountain Power further denies that information regarding Windland's
21 creditworthiness is irrelevant to Rocky Mountain Power's preparation of
22 Windland's requested PURPA contracts. As Rocky Mountain Power
23 explained to Windland in its April 1, 2010 letter, Rocky Mountain Power

1 uses creditworthiness information to consider downward adjustment to a
2 QF's delay default security. When Windland refused to provide such
3 information, Rocky Mountain Power was required to determine the delay
4 default security requirement without input from Windland.

5 16. Rocky Mountain Power denies that it insists on delay default security in
6 order to delay a QF's PURPA contract negotiation. Rocky Mountain Power
7 denies that it would incur no damages in the event of a delay default at one
8 or both of Windland's projects.

9 17. Rocky Mountain Power admits that the parties have not executed a PPA for
10 either Power County QF as of April 29, 2010, but otherwise denies the
11 allegations of paragraph 17.

12 18. The allegations of paragraph 18 have been previously addressed, above.

13 19. Whether Windland has attempted to negotiate in good faith is a conclusion
14 of law requiring no response. Rocky Mountain Power otherwise denies the
15 allegations in paragraph 19.

16 20. Rocky Mountain Power denies the allegations of paragraph 20.

17 21. Rocky Mountain Power denies the allegation of paragraph 21.

18 22. Rocky Mountain Power denies the allegations of paragraph 22.

19 Rocky Mountain Power denies any allegation not specifically admitted above. Rocky
20 Mountain Power reserves the right to supplement this Answer or file a new Answer in the event
21 Windland amends or otherwise modifies its Complaint. Rocky Mountain Power reserves the
22 right to assert and file any affirmative or special defense that may become known by discovery
23 proceedings or other means.

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D. AFFIRMATIVE DEFENSES

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For its FIRST AFFIRMATIVE DEFENSE, Rocky Mountain Power states Windland is not entitled to the relief sought in its Complaint because Windland and Rocky Mountain Power did not execute any PPA for the Power County QFs prior to March 15, 2010.

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For its SECOND AFFIRMATIVE DEFENSE, Rocky Mountain Power states Windland is not entitled to the relief sought in its Complaint because Windland denies that it is required to post delay default security in order to execute a small QF PPA with non-levelized avoided cost prices.

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For its THIRD AFFIRMATIVE DEFENSE, Rocky Mountain Power states Windland is not entitled to the relief sought in its Complaint because, even if Windland did first provide all essential information to Rocky Mountain Power on March 12, 2010, Windland cannot create a legally enforceable obligation on that same date as a matter of law.

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For its FOURTH AFFIRMATIVE DEFENSE, Rocky Mountain Power states Windland is not entitled to the relief sought in its Complaint because the facts alleged do not show that Rocky Mountain Power acted in bad faith as a matter of law.

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For its FIFTH AFFIRMATIVE DEFENSE, Rocky Mountain Power states that Windland is not entitled to the relief sought in its Complaint because Windland's Power County QF projects were not sufficiently mature to form a legally enforceable obligation on or before March 12, 2010, as a matter of law.

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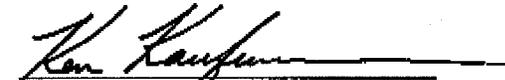
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WHEREFORE, Rocky Mountain Power hereby respectfully requests that the Commission declare that Windland's Power County QFs are not entitled to Idaho's avoided cost rates in effect prior to March 15, 2010.

Dated this 29th Day of April 2010.

Respectfully submitted,



Mark C. Moersch USB 2284
Daniel E. Solander USB 11467
Rocky Mountain Power

Kenneth E. Kaufmann, OSB 982672
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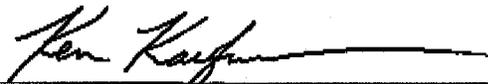
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 29th day of April, 2010, I served a true and correct copy of the foregoing Rocky Mountain Power's *Answer and Affirmative Defenses* in Case No. PAC-E-10-05 on the following named persons/entities by hand delivery or U.S. Mail as specified below, properly addressed with postage prepaid, and by electronic mail:

| | |
|---|--|
| <p>Jean Jewell Commission Secretary Idaho Public Utilities Commission 472 W Washington Boise, ID 83702 jean.jewell@puc.idaho.gov (Hand Delivery)</p> <p>Mark C. Moench Rocky Mountain Power 201 South Main Street, Suite 2300 Salt Lake City, UT 84111 mark.mocneh@pacificorp.com (First Class U.S. Mail)</p> <p>Daniel E. Solander Rocky Mountain Power 201 South Main Street, Suite 2300 Salt Lake City, UT 84111 daniel.solander@pacificorp.com (First Class U.S. Mail)</p> | <p>Gregory M. Adams Richardson & O'Leary PLLC PO Box 7218 Boise, ID 83707 greg@richardsonandoleary.com (First Class U.S. Mail)</p> <p>Peter J. Richardson Richardson & O'Leary PLLC PO Box 7218 Boise, ID 83707 peter@richardsonandoleary.com (First Class U.S. Mail)</p> |
|---|--|

DATED this 29th day of April, 2010.

LOVINGER KAUFMANN LLP



Kenneth E. Kaufmann
Attorney for PacifiCorp