

DECISION MEMORANDUM

**TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: SCOTT WOODBURY
DEPUTY ATTORNEY GENERAL**

DATE: AUGUST 26, 2010

**SUBJECT: CASE NO. PAC-E-10-05 (PacifiCorp)
COMPLAINT (AND CONTINGENT MOTION TO DISMISS)
WINDLAND, INC.
TWO POWER PURCHASE AGREEMENTS – POWER COUNTY WIND
PARK NORTH LLC AND POWER COUNTY WIND PARK SOUTH LLC**

COMPLAINT

On April 6, 2010, Windland, Inc. (Windland) filed a complaint with the Idaho Public Utilities Commission (Commission) against PacifiCorp dba Rocky Mountain Power. Windland claimed entitlement to and requested that PacifiCorp be required to execute two standard PURPA Power Purchase Agreements for Windland's Power County Wind Park North and Power County Wind Park South small power generation projects at the published PURPA avoided cost rates in effect prior to March 12, 2009, i.e., the higher grandfathered rates of Order No. 30744.

On April 28, 2010, a Summons was issued by the Commission directing PacifiCorp to file an answer within 21 days. On April 29, 2010, PacifiCorp filed an answer with the Commission requesting a Commission determination that Windland's Power County wind projects are not entitled to grandfathered rates.

POWER PURCHASE AGREEMENTS (and Contingent Motion to Dismiss Complaint, Application ¶ 3)

On August 20, 2010, PacifiCorp filed an Application with the Commission requesting approval of two Power Purchase Agreements (PPAs; Agreements) entered into between PacifiCorp dba Rocky Mountain Power and Power County Wind Park North LLC and Power County Wind Park South LLC dated August 18, 2010 (the LLCs). The locations of the two wind facilities are described as follows:

North: T8S, R31E, Section 13 and T8S, R32E, Sections 6, 7, 8, 17, 18, Power County, Idaho

South: T8S, R32E, Sections 19, 20, 29 and 30, Power County, Idaho

Agreements, Exhibit A.

The total nameplate capacity for each of the two small power wind generation facilities is 21.780 MW. Average monthly output for each facility will be below 10 MW. The estimated average annual net output of each facility is 67,311,441 kWh (North) and 60,523,733 kWh (South). Agreement, Recital D. The QFs have elected December 31, 2011 as the scheduled commercial operation date for their facilities.

Windland and the LLCs have waived their claims to grandfathered rights to the avoided cost rates contained in Order No. 30744. Application, ¶ 7. The Power Purchase Agreements contain the current non-levelized published avoided cost rates established in Order No. 31025. The \$6.50/MWh wind integration charge approved by the Commission (Order No. 31021) and all other applicable interconnection charges and monthly O&M charges under the generation interconnection agreement with PacifiCorp transmission will be assessed to the LLCs. Agreement; Section 5.1.

Section 11.1 of the PPAs provides for Delay Security of \$25 multiplied by the Maximum Facilities' Delivery Rate measured in kilowatts. This results in delay security of \$544,500 under each PPA. Pursuant to Section 11.1.4 one-quarter of the Delay Security amount is to be refunded to the QFs as each of four milestones are achieved. The approach to delay security has been agreed to by the parties in compromise of Windland's pending complaint in Case No. PAC-E-10-05 and is not intended to establish any precedent.

As reflected in Section 2.1 of the Agreements, the Agreements will not become effective until the Commission has approved all the Agreements' terms and conditions and declares that all payments that PacifiCorp makes to the wind projects for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

COMMISSION DECISION

Procedure in the underlying complaint in Case No. PAC-E-10-05 has been informally stayed by the parties and is subject to a Contingent Joint Motion to Dismiss. Application, ¶ 3. Submitted for Commission approval are two Power Purchase Agreements for wind facilities in Power County, Idaho. The Agreements are for 20-year terms and contain the current non-

levelized published avoided cost rates for energy deliveries not exceeding 10 aMW on a monthly basis. Staff recommends that the Agreements be processed pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. Does the Commission agree with Staff's recommended procedure?



Scott Woodbury
Deputy Attorney General

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