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IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for the Commission Staff

WINDLAND, INC.

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) **CASE NO. PAC-E-10-05**

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) **COMMENTS OF THE**
) **COMMISSION STAFF**

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STAFF COMMENTS

BACKGROUND

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 (the "LLCs") dated August 18, 2010 (the LLCs). In addition to the two PPAs, Rocky Mountain Power, Windland, and the LLCs entered into a Settlement and Release Agreement ("Settlement Agreement"). By its terms, the Settlement Agreement operates as a full and complete general release of Rocky Mountain Power by Windland and the LLCs from any and all claims, demands, actions, suits, and causes of action arising out of, or in any way related to the subject matter of Windland's complaint in Case No. PAC-E-10-05 filed on or about April 6, 2010 with regard to the Power County Wind Park North project and the Power County Wind Park South project.

The total nameplate capacity for each of the two small power wind generation facilities (QFs) is 21.78 MW. Agreements, Recital A. Average monthly output for each facility will be below 10 aMW. Agreements, Exh. D. The estimated average annual net output of each facility is 67,311,441 kWh (North) and 60,523,733 kWh (South). Agreements, Recital D. The QFs have elected December 31, 2011 as the scheduled commercial operation date for their facilities.

STAFF ANALYSIS

With only two exceptions, the terms and conditions in the two Agreements are identical to the terms and conditions in other recently approved PURPA contracts. Those two exceptions are; 1) the rates in the Agreements, and 2) the amount of delay security required in the event the projects do not come online as scheduled. These two exceptions were the primary reasons for the initial complaint filed in this case.

Windland and the LLCs have waived their claims to grandfathered rights to the higher avoided cost rates contained in Order No. 30744. Application, ¶ 7. The Power Purchase Agreements contain the current, lower non-levelized published avoided cost rates established in Order No. 31025. Staff estimates that over the 20-year life of the Agreements, the difference between the higher rates of Order No. 30744 and the lower rates of Order No. 31025 is approximately \$17.3 million for the two Agreements combined. The \$6.50/MWh wind integration charge approved by the Commission for PacifiCorp (Order No. 31021) and all other applicable interconnection charges and monthly O&M charges under the generation interconnection agreement with PacifiCorp Transmission will also be assessed to the LLCs. Agreements, 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. Other recent PURPA agreements have required delay security in an amount of \$45 per kW of capacity. For each of these Agreements, the difference between the \$25 per kW and the \$45 per kW of Delay Security is \$435,600. Delay Security is intended to create a source of liquid funds which the utility can draw upon in the event damages are incurred if the project does not meet its scheduled online date. 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.

The Commission has not previously mandated a specific amount of Delay Security to be included in PURPA contracts. As discussed above, Delay Security creates a source of liquid funds that can be drawn upon in the event delay damages are incurred. However, if the Project failed to meet its scheduled online date and PacifiCorp was forced to go to the market to acquire replacement power, Staff believes the prospect that PacifiCorp will incur actual delay damages is reduced because market prices are currently low and are forecasted to remain relatively low for at least the next year or more. At least in the short term, the chances appear good that PacifiCorp could acquire

replacement power at lower cost than if the Project met its scheduled online date. Consequently, a lower Delay Security requirement does not seem unreasonable.

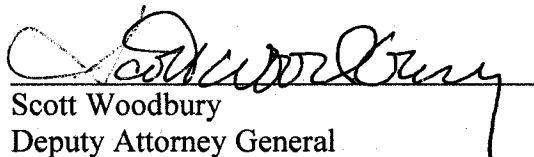
Under the terms of the Settlement, Windland and the LLCs have agreed to accept the lower avoided costs of Order No. 31025, and PacifiCorp has agreed to require a lower amount of Delay Security. As discussed above, the difference in rates between Order Nos. 30744 and 31025 over the lives of the Agreements far exceeds the difference in Delay Security. Perhaps it could be argued that Windland and the LLCs are not entitled to either the higher grandfathered rates or the lower security amount. Nevertheless, resolution of the complaint over these issues through continued proceedings before the Commission could occupy several more months and delay the projects long enough that potential tax incentives are no longer available, making the projects no longer cost effective. Because the parties have negotiated and reached mutual agreement on these two issues, Staff does not believe that the Commission should stand in the way of the Agreements.

However, notwithstanding Staff's recommendation for approval of the Agreements, Staff does not believe that a Delay Security requirement of \$25 per kW should become standard for future PURPA contracts. Staff's recommendation for approval of the Agreements is based on the facts of this specific case, and is conditioned upon approval of both the lower rates of Order No. 31025 and the \$25 per kW delay security requirement.

STAFF RECOMMENDATION

Staff recommends that the Commission approve all the Agreements' terms and conditions and declare that all payments that PacifiCorp makes to the LLCs for purchases of energy from the Power County wind parks will be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 30th day of September 2010.


Scott Woodbury
Deputy Attorney General

Technical Staff: Rick Sterling

i:umisc:comments/pace10.5swrps comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 30TH DAY OF SEPTEMBER 2010, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. PAC-E-10-05, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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