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IDAHO PUBLIC
UTILITIES COMMISSION

July 27, 2012

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

**RE: PAC-E-10-08 – FIRST AMENDED FORMAL COMPLAINT FROM XRG-
DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLC**

Dear Ms. Jewell:

Enclosed please find the prepared First Amended Formal Complaint from XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLC. Per the Commission's Rules of Procedure, we have enclosed an original and seven (7) copies.

Sincerely,

Chynna C. Tipton
Richardson & O'Leary PLLC

encl.



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Attorneys for Complainants XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLCs

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLCs,)	Case No. PAC-E-10-08
Complainants,)	
vs.)	
)	
PACIFICORP, DBA ROCKY MOUNTAIN ENERGY,)	FIRST AMENDED FORMAL COMPLAINT
Defendant.)	

INTRODUCTION

1
2 This is a First Amended Formal Complaint filed by XRG-DP-7, XRG-DP-8, XRG-DP-
3 9, XRG-DP-10, LLCs (collectively "XRG") with the Idaho Public Utilities Commission (the
4 "Commission") pursuant to Idaho Administrative Rules 31.01.01.054. Prior to March 16, 2010,
5 XRG requested, that PacifiCorp, DBA Rocky Mountain Power ("Rocky Mountain Power" or the
6 "Company"), execute standard Public Utility Regulatory Policies Act of 1978 ("PURPA")
7 power purchase agreements ("PPAs") for qualifying facilities ("QFs") under 10 average monthly
8 mega-watts ("aMW) for XRG's wind energy QFs near Malta, Idaho. Because Rocky Mountain
9 Power rejected XRG's attempt to obligate itself to the terms of a standard PPA at the published

1 avoided cost rates effective prior to March 12, 2010, XRG respectfully requests that the
2 Commission issue a declaratory judgment that XRG is entitled to such PPAs and further requests
3 that the Commission order Rocky Mountain Power to enter into PPAs at the rates in effect prior
4 to March 12, 2010. Alternatively, if the Commission determines XRG is not entitled to the rates
5 in effect prior to March 12, 2010, XRG expressly requests the alternative relief that the
6 Commission issue a declaratory order that XRG is entitled to the rates from Order No. 31025
7 that were in effect at the time XRG filed its original Complaint.

8 **PRELIMINARY MATTERS**

9 Copies of all pleadings and other correspondence in this matter should be served upon
10 counsel for XRG at:

11 Peter J. Richardson
12 Gregory M. Adams
13 Richardson & O'Leary, PLLC
14 515 N. 27th Street
15 P.O. Box 7218
16 Boise, Idaho 83702
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19 peter@richardsonandoleary.com
20 greg@richardsonandoleary.com

21 **In support of this Complaint, XRG alleges as follows:**

22 **IDENTITY OF PARTIES**

23 1. PacifiCorp does business in Idaho as Rocky Mountain Power. Rocky Mountain
24 Power is an electric company and a public utility subject to the jurisdiction and regulation of the
25 Idaho Public Utilities Commission pursuant to I.C. § 61-129. Rocky Mountain Power is subject
26 to the jurisdiction of the Commission, the Public Utility Commission of Oregon, and the Federal
27 Energy Regulatory Commission ("FERC").

FACTUAL BACKGROUND

1
2 5. XRG has been actively engaged in the development of a 4 wind energy projects
3 near Malta, Idaho for the past several years.

4 6. Three of the four XRG projects will be nameplate 20 MW and the fourth will be
5 nameplate 10 MW, and each is a self-certified QF under PURPA.

6 7. XRG must secure a power purchase agreements with Rocky Mountain Power –
7 the nearest utility, and XRG therefore initiated contact with Rocky Mountain Power in 2007.

8 8. Over the three years since initiating contact with Rocky Mountain Power, XRG
9 has incurred substantial expenses. Rocky Mountain Power has indicated that interconnection
10 and transmission capacity may be an issue, but XRG does not believe it is insurmountable.

11 9. XRG has also had extensive contact with Rocky Mountain Power regarding PPAs
12 for the project, and in response to XRG's request, Rocky Mountain Power delivered one draft
13 PPA to XRG in May 2009, containing the avoided cost rates contained in Order No. 30744. But
14 Rocky Mountain Power has not delivered any of the other three contracts to XRG.

15 10. In part in reliance on the rate structure contained in that draft PPA, XRG has
16 made substantial investments in development of the project, including finalizing site control, and
17 indentifying potential equity and debt financing opportunities.

18 11. Nevertheless, before the service date of Order No. 31025 and the new rates
19 contained therein, XRG provided Rocky Mountain Power with the essential elements regarding
20 the four projects to complete the PPAs with the rates contained in Order No. 30744. XRG
21 obligated itself to enter into four draft PPAs for the projects.

22 12. On March 9, 2010, Rocky Mountain Power received a letter from the
23 Commission's Staff, stating that the published avoided cost rates would be recalculated. The

1 letter included Staff's recalculation of the avoided cost rates, which were substantially lower than
2 those in Order No. 30744 and included in the draft PPA Rocky Mountain Power sent to XRG.

3 13. Rocky Mountain Power concurred in Staff's recalculation on March 12, 2010,
4 without providing XRG with notice of Staff's recalculated rates or Rocky Mountain Power's
5 concurrence.

6 14. Because Rocky Mountain Power continued to refuse to negotiate PPAs for all
7 four projects, XRG filed its initial Complaint in this docket on July 29, 2010.

8 15. Rocky Mountain Power admitted in its Answer that it informed XRG in writing
9 on March 23, 2009, May 11, 2009, and October 2, 2009, that available transmission capacity
10 from the proposed delivery point - Brady substation - was insufficient for accepting more than
11 23 megawatts of net output from XRG's proposed qualifying facilities.

12 16. XRG filed initial discovery requests, inquiring, in part, into Rocky Mountain
13 Power's determination that it lacked transmission capacity to accept the output from all four
14 projects.

15 17. On September 21, 2010, Rocky Mountain Power sent XRG a letter admitting that
16 transmission was now available for all 4 QFs.

17 18. Rocky Mountain Power's September 21, 2010 letter contained, for the first time
18 since XRG contacted Rocky Mountain Power on January 21, 2009, a standard matrix of
19 additional project information for each of the 4 QFs that Rocky Mountain Power believed XRG
20 needed to provide in order for Rocky Mountain Power to prepare standard contracts and
21 complete due diligence.

22 19. XRG entered into settlement negotiations in good faith in hopes of foregoing
23 further litigation and simply securing PPAs for its projects.

1 20. XRG accepted Rocky Mountain Power's request to stay discovery, and settlement
2 negotiations commenced in October 2010.

3 21. On November 5, 2010, Rocky Mountain Power, along with Idaho Power
4 Company and Avista Corporation, filed a Joint Motion to Adjust Published Avoided Cost Rate
5 Eligibility Cap in GNR-E-10-04, requesting reduction in the eligibility cap from 10 average
6 monthly megawatts to 100 kilowatts of nameplate capacity.

7 22. On December 3, 2010, the Commission issued Order No. 32131, wherein it
8 declined to immediately reduce the eligibility cap, but stated that its final decision on the
9 eligibility cap issue would be retroactively effective on December 14, 2010.

10 23. By e-mail dated December 16, 2010, Rocky Mountain Power unilaterally lifted
11 the stay on discovery pending settlement of XRG's Complaint and re-commenced litigation.

12 24. On February 7, 2011, the Commission issued Order No. 32176, in Case No.
13 GNR-E-10-04, reducing the published avoided cost rate eligibility cap to 100 kw for wind QFs
14 effective December 14, 2010. This order made unavailable to the XRG projects the published
15 rates that were otherwise available in Order No. 31025 at the time XRG initially filed its
16 Complaint on July 29, 2010.

17 25. Rocky Mountain Power has asserted that XRG is not even entitled to four PPAs
18 with the rates that were in effect at the time XRG filed its Complaint on July 29, 2010.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, XRG respectfully requests that the Commission issue an Order:

3 1. Declaring that Rocky Mountain Power is in violation of PURPA, FERC's
4 implementing regulations, and the Commission's orders.

5 2. Requiring Rocky Mountain Power to execute standard PURPA power purchase
6 agreements for XRG's four QF projects at Rocky Mountain Power's avoided cost rates on file
7 for QFs under 10 aMW prior to March 12, 2010.

8 3. Alternatively, if the Commission determines XRG is not entitled to the rates in
9 existence on March 12, 2010, requiring Rocky Mountain Power to execute standard PURPA
10 power purchase agreements for XRG's four QF projects at Rocky Mountain Power's avoided
11 cost rates on file for QFs under 10 aMW when XRG filed its Complaint prior to December 14,
12 2010.

13 4. Granting any other relief that the Commission deems necessary.

Respectfully submitted this 27th day of July 2012,

RICHARDSON AND O'LEARY, PLLC



Peter J. Richardson (ISB No: 3195)
Gregory M. Adams (ISB No. 7454)

Attorneys for the XRG LLCs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of July, 2012, a true and correct copy of the within and foregoing XRG LLCs' FIRST AMEND FORMAL COMPLAINT was served in the manner shown to:

Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
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Boise, ID 83702
jean.jewell@puc.idaho.gov

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By:



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