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IDAHO PUBLIC
UTILITIES COMMISSION

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,)	
Complainants,)	Case No. PAC-E-10-08
)	
vs.)	XRG LLC's BRIEF ON RECONSIDERATION
)	
PACIFICORP, DBA ROCKY MOUNTAIN ENERGY,)	
Defendant.)	

INTRODUCTION

1
2 This Brief on Reconsideration is filed by XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-
3 10, LLCs (collectively "XRG") pursuant to the Idaho Public Utilities Commission's (the
4 "Commission") Order on Reconsideration (No. 32588) and Notice of Scheduling (Order No.
5 32600) in the above captioned matter. Now that Rocky Mountain Power has finally provided
6 XRG with discovery previously requested in this matter, XRG respectfully moves the
7 Commission to grant summary judgment in XRG's favor, and respectfully requests that the
8 Commission grant the relief requested in XRG's initial complaint or alternatively its amended
9 complaint. Specifically, XRG respectfully requests that the Commission order Rocky Mountain

1 Power to enter into four standard qualifying facility (“QF”) power purchase agreements
2 (“PPAs”) containing published rates in effect by Order No. 30744 prior to March 10, 2010.
3 Alternatively, if the Commission determines XRG is not entitled to those rates, XRG respectfully
4 requests that the Commission order Rocky Mountain Power to enter into four standard QF PPAs
5 with the rates in Order No. 31025, which were in effect on the date XRG filed its meritorious
6 complaint in this matter.

7 RECONSIDERATION

8 The Commission granted XRG’s Petition for Reconsideration for the purpose of
9 giving the parties a final opportunity to assert a position on the merits of the underlying XRG
10 complaint, “whether and to what extent XRG is entitled to pre-March 16, 2010, published
11 avoided cost rates.”¹ This Brief on Reconsideration hereby incorporates by reference XRG’s
12 previously filed pleadings in this matter. One of the reasons XRG sought reconsideration was to
13 complete discovery on the important question relative to Rocky Mountain Power’s abuse of its
14 dual role as the transmission provider and PURPA contract administrator. XRG has finally
15 received Rocky Mountain Power’s responses to discovery into that issue, and relevant portions
16 are attached hereto as Exhibit 1. Based upon that discovery and the other evidence in the record,
17 XRG now respectfully moves the Commission to grant summary judgment in its favor.

18 APPLICABLE LEGAL STANDARDS

19 On a motion for summary judgment, “The judgment sought shall be rendered forthwith
20 if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show
21 that there is no genuine issue as to any material fact and that the moving party is entitled to a
22 judgment as a matter of law.”² At issue before the Commission on reconsideration are cross

¹ Scheduling Order No. 32600, p. 2.

² I.R.C.P. 56(c).

1 motions for summary judgment regarding whether XRG is entitled to “grandfathered” avoided
2 cost rates pursuant to the Commission’s implementation of the Federal Energy Regulatory
3 Commission’s (“FERC”) QF regulations.

4 FERC’s regulations entitle QFs to long term contract rates set at the purchasing utility’s
5 full avoided costs at the time the QF commits itself to a legally enforceable obligation to
6 deliver its project’s output over a specified term.³ Under the IPUC’s implementation of PURPA,
7 a QF obtains grandfathered rates even without an executed contract if it can “demonstrate that
8 ‘but for’ the actions of [the utility, the QF] was otherwise entitled to a power purchase contract.”

9 ⁴
10 The most onerous test the Commission has ever used for determining grandfather
11 eligibility is the pre-filed complaint test. This test requires, prior to the effective date of the rate
12 change, the QF must have obtained an executed contract, or have filed a meritorious complaint at
13 the Commission alleging it is entitled to a contract.⁵ The Commission has not applied this
14 onerous pre-filed complaint test consistently. The Commission has employed much less onerous
15 tests in the past.⁶ Indeed, the Commission has approved grandfathered rates where no formal
16 writing was even exchanged or complaint filed prior to the date the previous rates became
17 unavailable.⁷

³ 18 C.F.R. § 292.304(a), (b), (d)(2)(ii); *Cedar Creek Wind LLC*, 137 FERC ¶ 61,006, ¶¶ 30-37 (2011).

⁴ *Earth Power Resources, Inc. v. Washington Water Power Company*, Case No. WWP-E-96-6, Order No. 27231 (1997) (finding utility delayed negotiations and therefore QF was entitled to grandfathered rate); *see also Blind Canyon Aquaranch v. Idaho Power Company*, Case No. IPC-E-94-1, Order No. 25802 (1994).

⁵ *See A.W. Brown Co., Inc. v. Idaho Power Co.*, 121 Idaho 812, 816-18, 828 P.2d 841, 845-47 (1992).

⁶ *See, e.g., Blind Canyon Aquaranch*, Order No. 25802; *Earth Power Resources, Inc.*, Order No. 27231.

⁷ *See In re Approval of a Firm Energy Sales Agreement with Yellowstone Power Company*, Order 32104, at 12 (2010) (approving of grandfathered rates despite “the apparent lack of any written documentation . . . evidencing that the terms of a power purchase agreement were materially complete [before the rate change]” in part because QF had “familiarity with PURPA projects and the standard terms of Idaho Power’s power purchase agreements”); *see also In the Matter of Cassia Wind to Determine Exemption Status*, Case No. IPC-E-05-35, Order No. 29954, at pp. 2-4 (2006) (finding wind QF entitled to grandfathered rates when it had merely submitted a completed application for interconnection study, including the applicable fee, and had performed wind studies, commenced preliminary permitting and licensing activities, and made efforts to secure sites to place turbines).

1

2 **ABUSE OF TRANSMISSION FUNCTION**

3 The order being reconsidered in this matter concluded that “Based on these facts, we
4 cannot find that Rocky Mountain Power was attempting to impede negotiations with XRG by
5 failing to acknowledge the Populus to Terminal Transmission upgrades.”⁸ However, based on
6 Rocky Mountain Power’s responses to discovery (attached as Exhibit 1) it is now apparent that
7 Rocky Mountain Power is not in compliance with its Open Access Transmission Tariff
8 (“OATT”). Instead of proceeding in good faith to negotiate four PPAs, Rocky Mountain Power
9 improperly ignored its ability to negotiate and execute four contingent PPAs in order to
10 commence proper network transmission investigations in an effort to impede QF negotiations
11 with XRG. Further, given that Rocky Mountain Power’s Merchant function was well aware of
12 the Populus to Terminal Transmission upgrade and its impact on XRG’s ability to effect its
13 proposed sale, it was incumbent upon them to make inquiry of Rocky Mountain Power’s
14 Transmission function of the ability of the system to accept all of XRG’s proposed projects.

15 Rocky Mountain Power’s response to XRG Data Request 26 provides:

16 PacifiCorp Merchant (Commercial and Trading/C&T) used publicly available
17 information from OASIS to determine available transmission capacity for XRG QF
18 requests at the proposed point of delivery.
19

20 Because no inquiry was made by the Merchant function to the Transmission function, Rocky
21 Mountain intentionally put blinders on and misled XRG as the true nature of the available
22 transmission capacity. The purported reason for the Merchant function’s failure to inquire of the
23 Transmission function as to the availability of transmission capacity is further explained in
24 Rocky Mountain Power’s response to XRG Data Request 26:

⁸ Order No. 32553 at 10.

1 PacifiCorp Merchant does not request specific Network Resource designation until a
2 power purchase agreement (PPA) with the resource is executed. PacifiCorp
3 Transmission OATT Section 29.2 (viii) requires an executed PPA with the resource for
4 Network Resource designation application or attestation that execution of a PPA is
5 eminent which must then be provided within two weeks by PacifiCorp Merchant.
6

7 Quite to the contrary, PacifiCorp's OATT does not require an executed contract to be in
8 place or even to be eminent prior to its making a request for a Network Resource designation.
9 The very same section of its cited OATT goes on to provide that a request for Network Resource
10 designation may be made, "where execution of a contract is contingent upon the availability of
11 transmission service." In fact, as any contract negotiator at Rocky Mountain Power should
12 know, FERC's rules allow Rocky Mountain Power Merchant to attest that it has the right to a
13 network resource through a contract that is contingent upon obtaining network resource status.⁹
14 FERC has stated, "Network customers are therefore not required to commit to purchasing a
15 resource prior to submitting a request to designate that resource."¹⁰

16 Hence, Rocky Mountain Power abused its tariff to, what can only be described as,
17 intentionally prevent XRG from successfully contracting with Rocky Mountain's Merchant
18 function. Had Rocky Mountain Merchant made execution of the PPA contingent upon the
19 availability of transmission service request, rather than rely on just the "publicly available"
20 blinder approach, Rocky Mountain Power Transmission would undoubtedly have informed
21 Rocky Mountain Power Merchant that sufficient transmission would ultimately be available for
22 the XRG projects by the time of the proposed online date. Indeed, the record reflects that Rocky
23 Mountain Power Merchant personnel internally recommended making the PPAs contingent on

⁹ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order 890-B, 123 FERC ¶
61,299, ¶ 183 (June 23, 2008) (order on rehearing and clarification).

¹⁰ *Id.*

1 availability of network transmission to pursue contingent execution to allow submittal to
2 transmission personnel.

3 Specifically, on January 29, 2010, Mr. Partouw (of the Company's Merchant function)
4 responded to an inquiry from the Company's QF negotiator regarding acceptance of the XRG
5 projects' output. Mr. Partow stated, "Import to Utah system on a firm basis is limited to 23 MW
6 total for these transactions Another 250 MW exists but APS has first rights to schedule on
7 the path."¹¹ Mr. Partouw further elaborated by stating:

8 Will need to request Network Resource status for this resource. Please notify when you
9 want request for Network Resource status submitted (will need to have signed attestation
10 of C&T commitment). Suggest PPA be contingent upon receiving Network Resource
11 status. Without Network Resource status for this resource, we will need to use
12 PacifiCorp PTP capacity and schedule the energy to load on the PTP reservation.¹²
13

14 Yet Rocky Mountain Power Merchant's QF contract administrators never made that option
15 available to XRG. That is the critical point in this case. Rocky Mountain Power QF negotiators
16 knew they had the ability to execute PPAs contingent upon network resource designation but
17 refused to make that option available for a QF in the same manner it would be available for a
18 non-QF generator or the Company's own generation resources.

19 That Rocky Mountain did not make the contingent availability option known to XRG is
20 evidenced by Rocky Mountain Power's response to XRG Data Request 31. When asked to
21 admit or deny that Rocky Mountain Power did not offer the option to XRG to make the
22 requested PPA's "contingent upon receiving Network Resource status," Rocky Mountain Power
23 replied: "Deny. All of PacifiCorp's QF purchases are Network Resources." Of course, all of a
24 utility's QF purchases are Network Resources, but the question was whether or not the

¹¹ XRG Answer in Opposition to Rocky Mountain Power's Motion for Summary Judgment Exhibit No. 2 at pp. 16-19.

¹² *Id.* (emphasis added).

1 contingent availability option was made known to XRG – not whether QF resources are
2 ultimately designated as Network Resources.

3 In the second part of XRG Data Request 31, Rocky Mountain denied that it failed to offer
4 XRG the option to make the requested PPAs contingent upon receiving Network Resource
5 status. Finally, when asked in XRG Data Request 31 to provide supporting evidence of its
6 having made the option of making the requested PPAs contingent upon receiving Network
7 Resource status, Rocky Mountain pointed only to an email dated May 11, 2009, from Mr.
8 Griswold to Mr. Carkulis.¹³ The email does not offer, or even mention, the possibility of
9 designating XRG’s proposed projects as being contingent upon receiving Network Resource
10 status. In fact, the email repeats the wholly inaccurate assertion that there is limited transmission
11 available, which inaccuracy would have been revealed had such a contingent request been made.

12 All of this is contrary to established FERC practices and is obviously done for the sole
13 purpose of frustrating this QF developer from access to the market in favor of Rocky Mountain
14 Power’s own resources. “Section 205 of the Federal Power Act prohibits public utilities, with
15 respect to any jurisdictional transmission or sale, from granting an undue preference or
16 subjecting any person to any undue disadvantage.”¹⁴ “FERC acted upon evidence of pervasive
17 discrimination in the transmission of electric power by completing a massive regulatory revision,
18 culminating in Order No. 888.”¹⁵ FERC promulgated “a pro forma Open Access Transmission
19 Tariff (‘OATT’) that includes the minimum terms and conditions under which transmission
20 providers may offer service.”¹⁶ “Part II of the OATT, is transmission service from a specified
21 point of receipt to a specified point of delivery,” and FERC requires utilities to use Part II to

¹³ The May 11, 2009, email is attached as Exhibit 2.

¹⁴ *In Re Portland General Electric Company*, 131 FERC ¶ 61,224, ¶ 8 (June 4, 2010).

¹⁵ *Entergy Service, Inc. v. FERC*, 375 F.3d 1204, 1205-06 (D.C. Cir. 2004) (citing 16 U.S.C. §§ 824(b), 824d and 824e).

¹⁶ *Id.* at 1206.

1 serve their own wholesale and/or unbundled retail load.¹⁷ In contrast, “Part III of the OATT, is
2 a flexible service, which allows the transmission provider to service a network customer’s load
3 by using multiple receipt and delivery points,” and FERC allows utilities to use Part III (as a
4 network customer) to serve bundled retail loads.¹⁸ Thus, FERC required the utilities themselves
5 to become transmission customers and comply with the terms of the OATT. To overcome the
6 inherent “incentive to reserve certain capacity simply to prevent everyone else from using it,”
7 FERC “required a network transmission customer [including a utility], as a prerequisite to
8 obtaining network transmission service, to designate those ‘network resources’ that would
9 generate the power to be transmitted over the reserved capacity.”¹⁹ FERC also adopted standards
10 of conduct for transmission providers.²⁰ Other protections included that a utility may not
11 withhold the availability of planned transmission lines from open access to all users solely on
12 account of the utility’s own future plans to use the lines.²¹

13 Rocky Mountain Power’s failure to provide XRG with accurate transmission availability
14 information on a contingent basis is the proximate cause for the project’s inability to secure
15 power purchase agreements. Instead of doing so, Rocky Mountain Power’s QF contract
16 administrator stated to XRG that necessary network transmission upgrades “likely would take
17 four to five years to complete.”²² This position was supported by no transmission study and was
18 in fact directly contrary to public information that the upgrade to the Populus line would be
19 complete by year end 2010, before XRG’s initially proposed online date. Rocky Mountain
20 Power Merchant should have been aware of the ongoing upgrades themselves because XRG

¹⁷ *Id.* (citing 18 C.F.R. § 35.28(c)(2)).

¹⁸ *Id.*

¹⁹ *Id.* at 1207 (internal quotations and alterations omitted).

²⁰ See 18 C.F.R. § 358.5(b)(1) (prohibiting market function employees from conducting transmission functions or having access to the system control center); *id.* at § 358.6 (prohibiting anyone from being a “conduit” of non-public transmission information between the transmission and merchant functions).

²¹ See *Puget Sound Energy, Inc.*, 133 FERC ¶ 61,160, ¶¶ 7, 10 (November 18, 2010).

²² *Rocky Mountain Power Summary Judgment Exhibit A* at 209.

1 discussed the issue with them on November 10, 2009, and the Company had even obtained and
2 requested various forms of cost-recovery for the upgrades in multiple ratemaking forums.²³

3 There is no material dispute of fact that Rocky Mountain Power knew (or should have
4 known) that transmission capacity would be available for four PPAs by the proposed online date,
5 but used a false pretense of unavailability of transmission to stall negotiation and execution of
6 four PPAs. But for Rocky Mountain Power's bad faith conduct, XRG would have progressed to
7 executed agreements prior to March 10, 2010 when the published rates first decreased, and
8 certainly by December 14, 2010, when even the lowered published rates became unavailable.
9 Thus, the Commission should grant summary judgment in XRG's favor, and Rocky Mountain
10 Power should be required to tender the appropriate grandfathered contracts to XRG.

11 Moreover, XRG's position taken during negotiations regarding transmission availability
12 proved to be correct. The Populas line upgrade was in fact complete on or before July 15, 2010.
13 That information became publically available on PacifiCorp's OASIS on that date. XRG filed its
14 complaint against Rocky Mountain Power on July 29, 2010. So even before XRG was forced to
15 file its complaint, Rocky Mountain Power's Merchant function had full public knowledge that it
16 had the ability to accept XRG's output. But more importantly, is the fact that the upgrade was in
17 the public domain well before July 15, 2010. The exchange, during oral argument,²⁴ between
18 Commissioner Smith and Counsel for Rocky Mountain Power is instructive on this point:

19 COMMISSIONER SMITH: So, Mr. Kaufmann, I guess I'm trying to sort this through.
20 Regardless of what XRG did or didn't do, which will stand on the record and the
21 Commission will decide was it adequate or not, what was the game PacifiCorp was
22 playing with regard to the Populus line and the fact that you claimed you only had room
23 for one when at least some people knew or should have known that the Company was
24 planning this large upgrade that had every intention of being on-line in 2010?²⁵

²³ See XRG's Answer in Opposition to Rocky Mountain Power's Motion for Summary Judgment at 7 (citing Rocky Mountain Power Summary Judgment Exhibit A at 289, 296).

²⁴ June 9, 2011.

²⁵ Tr. 48 (emphasis provided).

1
2 Of course, that is the essence of XRG's complaint in this case. It WAS common
3 knowledge that the Populus line was being upgraded and it WAS common knowledge that
4 Rocky Mountain Power was able to accept the full output of XRGs proposed projects. That is
5 what held up the negotiations and that is the bad faith act of the utility. As Commissioner Smith
6 aptly stated "*at least some people knew or should have known that the Company was planning*
7 *this large upgrade.*" Rocky Mountain Power even requested that the Commission put the
8 Populus line in rate base prior to the date XRG filed its complaint.²⁶ Couple the fact that "at
9 least some people knew" with Rocky Mountain Power's complete misreading of its OATT to the
10 effect that a signed contract is a required prerequisite to making a Network Transmission request,
11 see discussion of XRG Data Request 26 above, and the picture is complete. There is now no
12 material factual dispute that Rocky Mountain Power "was attempting to impede negotiations by
13 XRG by failing to acknowledge the Populus to Terminal Transmission upgrades."²⁷

14 Rocky Mountain Power's unreasonable conclusion that it lacked available transmission
15 capacity until months after XRG filed its complaint is the critical issue in this case. Rocky
16 Mountain Power refused to negotiate four PPAs with XRG on that basis alone.²⁸ Rocky
17 Mountain Power's refusal to agree to proceed in negotiating four PPAs due to a non-existent
18 transmission constraint materially hindered development of the projects. Rocky Mountain
19 Power's conduct effectively denied XRG's right to obtain four executed agreements prior to the
20 date of the rate change on March 10, 2010, and even prior to the eligibility cap rate change on
21 December 14, 2010, several months after the filing of XRG's complaint.

22 XRG acknowledges that the order being considered on reconsideration assumed that

²⁶ See IPUC Case No. PAC-E-10-07.

²⁷ Order No. 32553 at 10.

²⁸ See *Rocky Mountain Power's Summary Judgment Motion* at 5; *Rocky Mountain Power's Summary Judgment Motion Exhibit A* at 209; see also Tr. 38-41.

1 because Rocky Mountain Power offered to negotiate one PPA, Rocky Mountain Power did not
2 impede XRG's efforts to progress to four executed PPAs. But this answers the wrong question.
3 XRG did not request only one PPA. XRG sought to develop four projects, and the complaint
4 regards four PPAs. XRG was acting well within the Commission's existing regulations and
5 framework at the time by requesting four PPAs for four separate wind QFs each distanced one
6 mile from each other. FERC itself has very recently rejected attempts undermine multiple QFs'
7 individual rights under PURPA when those multiple QFs are properly distanced and meet the
8 applicable criteria for QF status.²⁹ _The same rule should apply for eligibility for published
9 avoided cost rates, as that eligibility existed at the time XRG sought four PPAs. It is no excuse
10 to pretend as though there is only transmission for one project and then refuse to negotiate PPAs
11 for four projects.

12 **ALTERNATIVE CLAIM FOR RATES IN ORDER NO. 31025**

13 Finally, XRG still maintains that its original complaint should be construed to allow for
14 the alternative relief of the avoided cost rates in effect at the time of the filing of the original
15 complaint. Although XRG maintains no amendment was necessary, XRG has provided a formal
16 amendment of the complaint at the Commission's request. Rocky Mountain Power has had
17 adequate opportunity and notice that XRG seeks alternative entitlement to the rates in effect in
18 Order No. 31025 since at least the date of filing of XRG's Answer to Rocky Mountain Power's
19 Motion for Summary Judgment on February 22, 2011.³⁰ Rocky Mountain Power's own
20 summary judgment briefing stated that a QF is entitled to avoided cost rates in effect on the date

²⁹ *Northern Laramie Range Alliance*, 138 FERC ¶ 61,171, (2012), reh'g denied 139 FERC ¶ 61,190 (2012) (rejecting challenge to QF status of two wind QFs separated by one mile even though collectively their capacity exceeded the 80 MW threshold for eligibility as a small power production facility).

³⁰ *See XRG's Answer in Opposition to Rocky Mountain Power's Motion for Summary Judgment* at 18 & n.9 (arguing that the original complaint's request for any other relief the Commission deems necessary should be read to include an alternative request for an order entitling it to 4 PPAs containing the rates in Order No. 31025).

1 that it files a meritorious complaint. By Rocky Mountain Power's own arguments, XRG was at
2 least entitled to rates in effect on the date it filed its meritorious complaint.

3 The Commission should reject Rocky Mountain Power's new argument, in response to
4 the filing of the amended complaint, that a Ninth Circuit rule on amendment of pleadings
5 precludes XRG from obtaining the rates in effect on the date it filed its meritorious complaint.
6 Rocky Mountain Power is misleading the Commission regarding the Ninth Circuit's precedent
7 on amendment of complaints. The Ninth Circuit decision cited by Rocky Mountain Power
8 affirmed a district court's refusal to allow for a plaintiff to file a second amended complaint
9 following an order granting summary judgment.³¹ The Circuit Court determined that after final
10 judgment has been entered, a Fed. R. Civ. Pr. 15(a) motion may be considered only if the
11 judgment is first reopened under Fed. R. Civ. Pr. 59 or 60 because the district court lacks
12 jurisdiction to entertain such amendment after it enters final judgment.³² Here, XRG argued the
13 claim set forth in the amended complaint prior to entry of any order (final or otherwise). XRG
14 even offered to amend its complaint if the Commission thought doing so was necessary prior to
15 entry of any orders. Then, XRG in fact filed an amended complaint setting forth the already-
16 articulated claim once the Commission re-opened its final order on reconsideration. That is
17 critical. XRG filed an amendment only after the Commission granted reconsideration and re-
18 opened its order. Under the Commission's rules, an order is not final and appealable until after
19 reconsideration. The Commission clearly still has jurisdiction to rule on the matter.

20 Moreover, unlike the Ninth Circuit case Rocky Mountain Power cites, the initial order
21 now being reconsidered denied Rocky Mountain Power's motion for summary judgment. It
22 dismissed the complaint on other unspecified grounds, Under those circumstances, the Ninth

³¹ *Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th Cir. 1996).

³² *Id.*

1 Circuit in fact has a very liberal rule regarding amendment of complaints. Indeed, in the Ninth
2 Circuit, the policy of granting free leave to amend a complaint “is to be applied with extreme
3 liberality.”³³ “Dismissal with prejudice and without leave to amend is not appropriate unless it is
4 clear on de novo review that the complaint could not be saved by amendment.”³⁴ Under that
5 rule, which is similar to the Idaho Supreme Court’s rule,³⁵ if the Commission’s order dismissing
6 XRG’s complaint had become final and not-reopened, it would have erroneously failed to allow
7 XRG to amend its complaint to present a claim with an obvious likelihood of success.³⁶
8 Therefore, as argued in defense of Rocky Mountain Power’s motion for summary judgment, the
9 Commission should consider XRG’s entitlement to the avoided cost rates in effect prior to March
10 10, 2010, and alternatively the rates in Order No. 31025 in existence on the date of the filing of
11 the complaint.

12 CONCLUSION

13 Based on the foregoing, and XRG’s preceding pleadings in this matter, it is now clear
14 that XRG was improperly impeded from successfully negotiating power purchase agreements
15 with Rocky Mountain Power due to that utility’s abuse of its role as PURPA contract
16 administrator and transmission provider. XRG therefore respectfully requests that the
17 Commission issue an order on reconsideration that requires Rocky Mountain Power to enter into
18 a standard power purchase agreement for each of the four QFs containing standard provisions
19 and the published avoided cost rates in Order No. 30744 in effect prior to March 10, 2010, or
20 alternatively the rates in Order No. 31025 in effect on the date XRG filed its initial complaint.³⁷

³³ See *Eminence Capital LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).

³⁴ *Id.* at 1052.

³⁵ See *Hines v. Hines*, 129 Idaho 847, 853, 934 P.2d 20, 26 (1997) (“in the interest of justice, district courts should favor liberal grants of leave to amend a complaint.”).

³⁶ See *Eminence Capital LLC*, 316 F.3d at 1053 (stating “most importantly, it appears that plaintiffs had a reasonable chance of successfully stating a claim if given another opportunity”).

³⁷ Order No. 30744.

Respectfully submitted this 7th day of September 2012,

RICHARDSON AND O'LEARY, PLLC

A handwritten signature in black ink, appearing to read "Peter J. Richardson". The signature is written in a cursive style with a horizontal line underneath the name.

Peter J. Richardson (ISB No: 3195)
Attorney for XRG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of September, 2012, a true and correct copy of the within and foregoing XRG LLCs' BRIEF ON RECONSIDERATION was served in the manner shown to:

Jean Jewell
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**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

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

vs.

PACIFICORP, DBA ROCKY MOUNTAIN
POWER,
Defendant.

Case No. PAC-E-10-08

AFFIDAVIT OF PETER
RICHARDSON IN SUPPORT OF XRG
LLCs' BRIEF ON
RECONSIDERATION

I, Peter J. Richardson, do declare the following and if called to testify, would and could competently testify thereto:

1. I am over the age of 18, and am associated with the law firm of Richardson and O'Leary, PLLC. In such capacity, I am the legal representative, along with Peter J. Richardson, of Complainant qualifying facilities ("QFs") named XRG-DP-7, LLC, XRG-DP-8, LLC, XRG-DP-9, LLC, and XRG-DP-10, LLC (referred to collectively as "XRG LLCs").

2. I have personal knowledge of the facts set forth in this affidavit based upon my representation of the XRG LLCs in this matter.

3. I have personal knowledge of all of the documents submitted as Exhibits 1 and 2 to XRG LLC's BRIEF ON RECONSIDERATION. Those documents are true and correct copies of Rocky Mountain Power's responses to XRG Data Requests 24-27, 31-35, 40, 45, & 47.

I declare under penalty of perjury under the laws of the United States and under laws of the state of Idaho that the foregoing is true and correct.

DATED this 7th day of ~~July~~ ^{September} 2012.

By 
Peter J. Richardson

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 7th day of September 2012, before me, a Notary Public in and for the State of Idaho, personally appeared Peter J. Richardson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in the instrument.

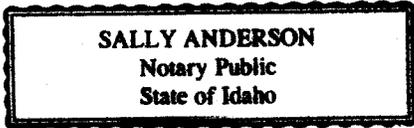
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Sally Anderson

NOTARY PUBLIC for the State of Idaho

Residing at Boise,

Idaho



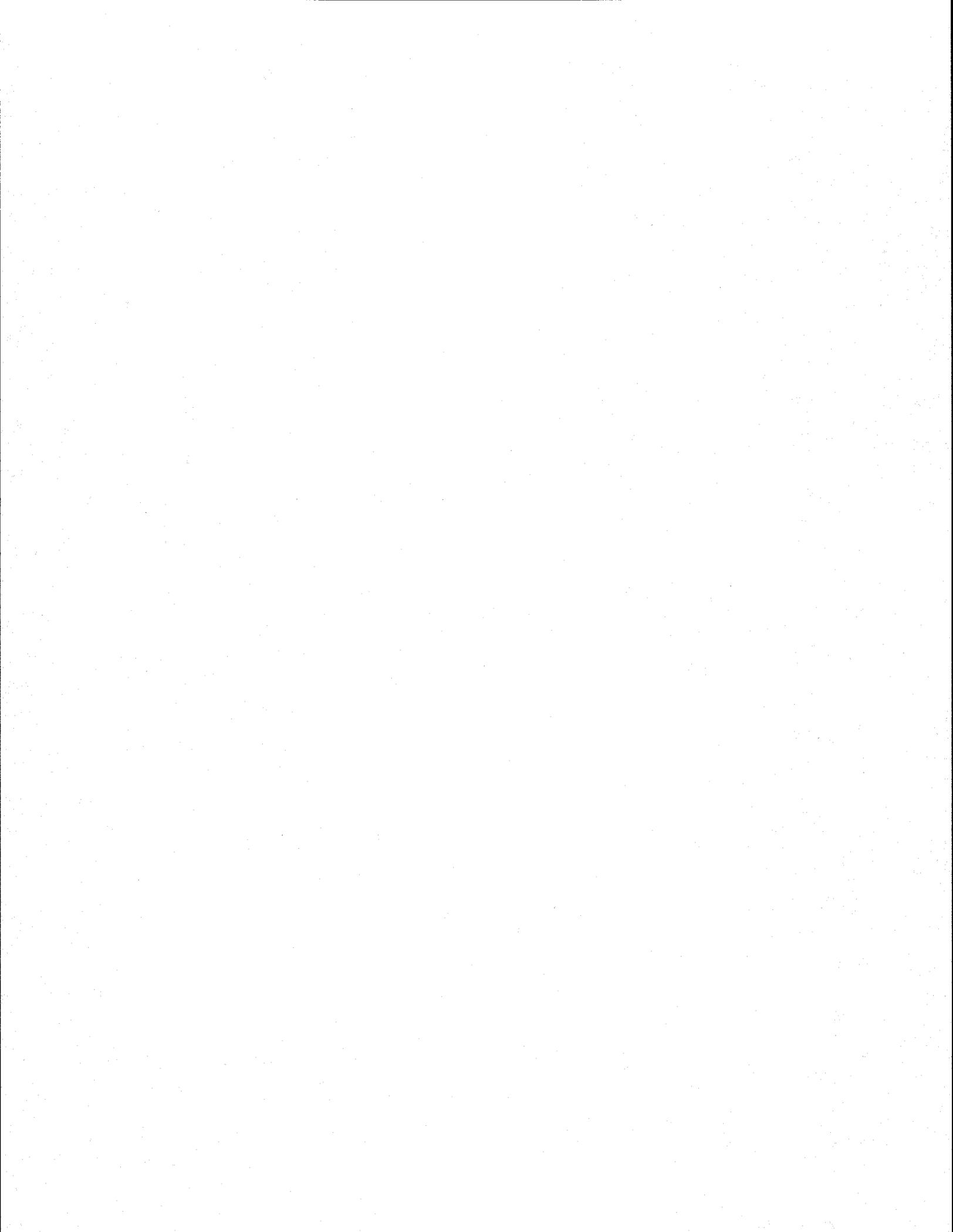
My Commission expires

01-24-18

XRG LLC's BRIEF ON RECONSIDERATION

EXHIBIT 1

**Rocky Mountain Power's Production Request Responses
to XRG's Data Requests No. 24 – 27, 31-35, 40, 45, & 47**





August 16, 2012

Peter J. Richardson
Gregory M. Adams
Richardson & O'Leary, PLLC
515 N. 27th Street
P.O. Box 7218
Boise, Idaho 83702
Telephone: (208) 938-7901
Fax: (208) 938-7904
peter@richardsonandoleary.com
greg@richardsonandoleary.com (W)

RE: ID PAC-E-10-08
XRG Data Request (24-63)

Please find enclosed Rocky Mountain Power's responses to XRG Data Requests 24-27, 31-35, 40, 45, & 47. Also provided are Attachments 24, 31, and 45.

If you have any questions, please feel free to call me at (801) 220-2963.

Sincerely,

J. Ted Weston / uw

J. Ted Weston
Manager, Regulation

Enclosure

C.c.: Jean Jewell/IPUC (3 copies of CDs) Jean.jewell@puc.idaho.gov
Jeffrey S. Lovinger/lovinger@LKLaw.com (W)
Kenneth E. Kaufmann/Kaufmann@LKLaw.com (W)
Mark C. Moench/Rocky Mountain Power Mark.moench@pacificorp.com (W)
Daniel E. Solander/Rocky Mountain Power Daniel.solander@pacificorp.com (W)

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2012 AUG 16 PM 3:47

IDAHO PUBLIC
UTILITIES COMMISSION

201 South Main, Suite 2300
Salt Lake City, Utah 84111

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 24

XRG Data Request 24

Please identify and provide evidence of any correspondence from XRG to Rocky Mountain Power wherein XRG agreed to forego PPA execution on account of Rocky Mountain Power's concerns regarding transmission availability at XRG's proposed points of delivery at Brady or Borah.

Response to XRG Data Request 24

Please refer to Attachment XRG 24.

Recordholder: Bruce Griswold
Sponsor: To Be Determined

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 25

XRG Data Request 25

Please admit or deny that XRG consistently maintained its belief that transmission would be available at its proposed points of delivery, and consistently requested PPAs for all 4 projects despite Rocky Mountain Power's perception of a transmission problem. If denied, please provide supporting evidence that XRG agreed with Rocky Mountain Power that transmission was a fatal flaw.

Response to XRG Data Request 25

PacifiCorp objects to this request on the basis that PacifiCorp does not possess the requested information. In this data request PacifiCorp is asked to admit or deny XRG's "belief" relative to the availability of transmission. PacifiCorp does not know what "belief" XRG held and does not have information to ascertain XRG's "belief." Without waiving its objection and reserving its right to renew this objection at hearing, PacifiCorp provides the following response.

Deny. PacifiCorp does not have sufficient information to ascertain XRG's "belief" relative to transmission availability. XRG did not consistently request PPAs for all four projects. In an e-mail communication dated April 1, 2009 from James Carkulis to Bruce Griswold, XRG instructed PacifiCorp to move forward with only XRG-DP10 "until we figure out the rest."

Recordholder: Bruce Griswold
Sponsor: To Be Determined

PAC-E-10-08/Rocky Mountain Power
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XRG Data Request 26

XRG Data Request 26

Reference Rocky Mountain Power's Response to XRG Request No. 16 and Answer ¶ 8. Please explain how Bruce Griswold (or anyone else at PacifiCorp C&T) requested information regarding transmission availability for network resource designation of the XRG projects. Provide all supporting evidence of PacifiCorp C&T's request and PacifiCorp Transmission's response, and please explain how the evidence provided supports Rocky Mountain Power's position stated to XRG from on or about March 23, 2009 to September 21, 2010, that transmission access would only be available for 23 MW and thus only one of the XRG QFs. If PacifiCorp C&T did not contact PacifiCorp Transmission regarding the Company's ability to designate the XRG projects as network resources, please state so.

Response to XRG Data Request 26

PacifiCorp Merchant (Commercial and Trading/C&T) used publicly available information from OASIS to determine available transmission capacity for XRG QF requests at the proposed point of delivery. PacifiCorp Merchant does not request specific Network Resource designation until a power purchase agreement (PPA) with the resource is executed. PacifiCorp Transmission OATT Section 29.2 (viii) requires an executed PPA with the resource for Network Resource designation application or an attestation that execution of a PPA is eminent which then must be provided within two weeks by PacifiCorp Merchant.

PacifiCorp did not contact or apply to PacifiCorp Transmission for Network Resource designation because it did not have an executed PPA with XRG during the referenced time period.

Recordholder: Bruce Griswold
Sponsor: To Be Determined

XRG Data Request 27

Reference Rocky Mountain Power's Response to XRG's First Production Request, Attachment XRG 5 (Rocky Mountain Power's September 21, 2010 Letter).

- (a) Please admit or deny that Rocky Mountain Power's revised determination that transmission capacity was available for all 4 XRG projects did not result from physical upgrades or changes to the transmission system.
- (b) Please describe the changed circumstances that resulted in Rocky Mountain Power's determination regarding additional transmission availability. Please provide all supporting evidence of the changed circumstances cited, and please define "Point of Service" as used in the letter and response, including a reference to where that term is defined in PacifiCorp's OATT or publicly available Business Practices.
- (c) Please identify the dates on which transmission was in fact physically available for delivery of over 23 MW from the XRG projects at Brady after January 21, 2009.
- (d) Admit or deny that a posting on an OASIS website regarding transmission availability can be an incorrect approximation of actual transmission availability.
- (e) Did PacifiCorp's OASIS website inaccurately post available transmission capacity on the paths necessary for integration of energy delivered to Brady or Borah at any time after January 21, 2009? If no physical upgrades were completed, please explain how the available capacity postings were correct prior to the times listed in the September 21, 2010 letter.

Response to XRG Data Request 27

- (a) PacifiCorp admits the revised determination did not result from physical upgrades or physical changes to the transmission system. The revised determination resulted from a modification to include Path C as a Point of Service (for network reservations) on OASIS July 15, 2010 which did not result from physical upgrades or physical changes to the transmission system.
- (b) The circumstance that changed was a modification made to include Path C as a Point of Service (for Network reservations) on OASIS. The definition for "point of service" is a point in a path for scheduling purposes only. Unlike a point of receipt or a point of delivery, a transmission request cannot originate or end at a point of service.
- (c) No determination was done, and therefore no identifiable dates were established, for physical transmission availability for the delivery of over 23 MW from the XRG projects at Brady. PacifiCorp Energy letter of

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 27

September 21, 2010 (the referenced Attachment XRG 5) refers to availability of firm scheduling service for the XRG projects.

- (d) Without additional context from the complainant, PacifiCorp cannot provide a meaningful response. It appears complainant is associating available OASIS path scheduling transfer capability with available physical transmission facility capability which would be out of context for PacifiCorp Energy letter of September 21, 2010 (the referenced Attachment XRG 5). OASIS is the most accurate and current information available regarding system capabilities. It can and does change over time as information and use of the system changes.
- (e) No, PacifiCorp's OASIS website did not inaccurately post available transmission capacity on the paths necessary for integration of energy delivered to Brady or Borah at any time after January 21, 2009.

The postings were correct. As was explained in PacifiCorp's response to data request 21 (b), Idaho Power's decision to split the postings for Borah and Brady resulted in the need to also separate the two physical points on PacifiCorp's OASIS. Splitting the points, allowed PacifiCorp to identify and post some additional firm scheduling flexibility for both paths independently.

Recordholder: Kenneth Houston / Jim Portouw
Sponsor: To Be Determined

PAC-E-10-08/Rocky Mountain Power
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XRG Data Request 31

XRG Data Request 31

Reference Rocky Mountain Power's Response to XRG's First Production Request, Attachment XRG 1, Part 2 (containing emails from Jim Partouw, a Trader for PacifiCorp C&T, to John Younie, PacifiCorp C&T, on January 29, 2009, stating in response to Mr. Younie's inquiry into transmission capacity: "Suggest PPA be contingent upon receiving Network Resource status").

- (a) Please admit or deny that Rocky Mountain Power did not offer the option to XRG to make the requested PPAs "contingent upon receiving Network Resource status."
- (b) If admit, please explain why Rocky Mountain Power did not offer the option to XRG to make the requested PPAs "contingent upon receiving Network Resource status."
- (c) If deny, please provide supporting evidence.

Response to XRG Data Request 31

Please note the correct spelling for "Jim Partouw" is Jim Portouw.

- (a) Deny. All of PacifiCorp's QF purchases are Network Resources.
- (b) Please refer to the Company's response to subpart (a) above.
- (c) Please refer to Attachment XRG 31, an email delivered to Mr. Carkulis on May 11, 2009.

Recordholder: Bruce Griswold
Sponsor: To Be Determined

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 32

XRG Data Request 32

Reference Rocky Mountain Power's Response to XRG's First Production Request, Attachment XRG 1, Part 2 (containing email from Jim Partouw, a Trader for PacifiCorp C&T, to John Younie, PacifiCorp C&T, on January 23, 2009, stating: "We currently have 250 MW of PTP import capability from Brady, but we have sold an option to APS to use this capacity so it will not always be available. . . ." and on and January 29, 2009, stating, "Without Network Resource status for this resource, we will need to use PacifiCorp PTP capacity and schedule the energy to load on the PTP reservation.").

- (a) Please provide the public scheduling numbers and OASIS reservation number for the 250 MW PTP import capability referenced.
- (b) Please explain for what purpose PacifiCorp had reserved this 250 MW of PTP transmission.
- (c) Please provide information regarding the designated network resources supporting the entire quantity of the 250 MW PTP capacity reservation. Reference PacifiCorp's OATT §§ 28.2 and 29.2.
- (d) Why was excess 250 MW PTP capacity available such that PacifiCorp was able to sell an option to use it to APS, and such that Mr. Partouw believed PacifiCorp could schedule XRG energy to load on the PTP reservation?
- (e) How has PacifiCorp used the 250 MW of PTP import capability referenced by Mr. Partouw between January 21, 2009 and the date of this request?

Response to XRG Data Request 32

Please note the correct spelling for "Jim Partouw" is Jim Portouw.

- (a) Subpart (a) was withdrawn by XRG in its "Withdrawal of Production Requests Pending Resolution of Summary Judgment Proceedings" dated June 9, 2011.
- (b) PacifiCorp C&T owns the 250 MW PTP Brady import transmission to fulfill contractual obligations with Arizona Public Service Company (APS) in the 1995 Restated Transmission Agreement. In this agreement, PacifiCorp granted APS 250 MW of firm transfer rights from Brady to Four Corners/Glen Canyon Substations.
- (c) Subpart (c) was withdrawn by XRG in its "Withdrawal of Production Requests Pending Resolution of Summary Judgment Proceedings" dated June 9, 2011.
- (d) The APS and PacifiCorp contract executions done in 1995 were a combination of asset change, power exchange, power sale, exchange of transmission rights, and transmission agreements. Please note the time of

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 32

APS contract execution in 1995 was before Open Access Transmission Tariff and, therefore, there was no distinction between PTP and Network. With regard to PTP transmission reservations, there is no restriction on the utilization as there is for Network transmission. Therefore should PTP reservations owned by PacifiCorp C&T be set aside to fulfill APS obligations not being used by APS in any particular hour, they can be used by PacifiCorp C&T for any legitimate purpose, including the import of XRG energy to load.

- (e) PacifiCorp C&T has used the import capability to fulfill the APS obligations described earlier in this response. When not used by APS, PacifiCorp C&T will use the import capability to transfer Network and non-network resources into the Utah system.

Recordholder: Jim Portouw
Sponsor: To Be Determined

PAC-E-10-08/Rocky Mountain Power
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XRG Data Request 33

XRG Data Request 33

Reference Rocky Mountain Power's Response to XRG's First Production Request, Attachment XRG 1, Part 2 (containing Jim Partouw's e-mail on January 29, 2009 to John Younie stating, "Another 250 MW exists but APS has first rights to schedule on the path. If APS schedules from Brady we could attempt to wheel through Borah but this would be non-firm.")

- (a) Please provide evidence that the non-firm option discussed was communicated to XRG, or admit that this information was not communicated to XRG.
- (b) Please identify "APS."
- (c) Please identify the public scheduling numbers or the OASIS reservation number for the APS rights. Provide supporting evidence that such rights existed at all times between January 29, 2009 and through September 21, 2010.

Response to XRG Data Request 33

Please note the correct spelling for "Jim Partouw" is Jim Portouw.

- (a) Admit. PURPA requires that QF generation is a Network Resource to serve network load for the utility which requires the use of firm transmission service from the resource to network load. Use of non-firm transmission is not allowed for serving network load. Since the XRG QF resources would be network resources, firm transmission is required and the non-firm option was dismissed as a non-viable option. PacifiCorp communicated on multiple occasions that firm transmission is a requirement. Please refer to the Company's response to XRG Data Request 24; specifically Attachment XRG 24.
- (b) Subpart (b) was withdrawn by XRG in its "Withdrawal of Production Requests Pending Resolution of Summary Judgment Proceedings" dated June 9, 2011.
- (c) Subpart (c) was withdrawn by XRG in its "Withdrawal of Production Requests Pending Resolution of Summary Judgment Proceedings" dated June 9, 2011.

Recordholder: Bruce Griswold
Sponsor: To Be Determined

XRG Data Request 34

Reference Rocky Mountain Power's Responses to XRG Requests No. 5 and No. 16.

- (a) Please explain how the emails between Jim Partouw and John Younie constitute studies sufficient for PacifiCorp C&T to conclude that PacifiCorp had transmission capacity for no more than 23 MW delivered at Brady. Did PacifiCorp's investigation into the feasibility of designating the XRG projects as network resources constitute "separate OASIS requests for service to allow PacifiCorp the opportunity to review and respond according to Section 32 of the OATT?" Why or why not? Reference Transmission Business Practice No. 9.
- (b) At the time of the emails was Mr. Partouw authorized to grant or deny transmission service requests? Was Mr. Partouw listed as a market function employee? Was Mr. Griswold or Mr. Younie list as a market function employee?
- (c) List the information used by Mr. Partouw in his response. Was this information publicly available? If so, where could XRG have located all information in Mr. Partouw's emails? Did Mr. Partouw consult with PacifiCorp Transmission on the requests? Please provide supporting evidence, or state the name of the person who can testify as to the answer.
- (d) Did Mr. Partouw consider future transmission upgrades, such as the Populus-Terminal line contemplated in the FERC Order at 125 FERC ¶ 61,076 (October 21, 2008)?
- (e) Did Mr. Partouw base his investigation into available transmission capacity on an online date proposed for the XRG contracts, or did he rely on the date of his emails, or some other date?

Response to XRG Data Request 34

Please note the correct spelling for "Jim Partouw" is Jim Portouw.

- (a) Emails between Jim Portouw and John Younie do not constitute studies; they contain summaries of evaluation and other information deemed necessary to manage potential transmission alternatives and issues. No, PacifiCorp evaluation of the feasibility of XRG projects did not include separate OASIS requests for Network Resource status. As noted in the emails, there remained a need to request Network Resource status. The process for obtaining Network Resources designation is described in the response to XRG Data Request 26.
- (b) No, Mr. Portouw is an employee of PacifiCorp C&T. Only employees of PacifiCorp Transmission are authorized to grant or deny transmission service

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 34

requests. Mr. Portouw and Mr. Younie are not Market Function employees; Mr. Griswold is a Market Function employee.

- (c) Primary information used in the response was historical knowledge of transmission topology, business practices, existing transmission reservations and APS contractual obligations. The existing topology, business practices and transmission reservations were available on PacifiCorp OASIS. APS contractual obligations would be embedded in FERC filed agreements. Mr. Portouw does not recall any consultation with PacifiCorp Transmission on the requests. Mr. Portouw would be the person to testify to his actions and information used.
- (d) No. Proposed XRG resource is delivered by Bonneville to PacifiCorp at Brady. There were no known facility upgrades from Brady to PacifiCorp system.
- (e) Evaluation of XRG resource at Brady was based on dates in the Term section of the project summary stated in the emails.

Recordholder: Jim Portouw
Sponsor: To Be Determined

XRG Data Request 35

Reference the following assertion in Ken Kaufmann's letter dated April 13, 2010: "Before PacifiCorp Merchant will agree to purchase more than 20 MW of new capacity at Borah or Brady, it must make a formal request to PacifiCorp Transmission and receive confirmation from PacifiCorp Transmission that Transmission is available. PacifiCorp Transmission will charge PacifiCorp Merchant approximately \$15,000 per project to perform a system integration study. At that point, PacifiCorp Merchant will know when and if sufficient capacity will be available at Borah or Brady to accept more than 20 MW of new capacity."

- (a) Please state PacifiCorp's policy regarding the level of inquiry it will conduct during QF contract negotiations to determine whether the Company will have adequate transmission capacity to integrate a QF delivery to commence on a future date. Please provide any internal or publicly available written statement of this policy, if any exists.
- (b) Please identify and provide the correspondence prior to this letter in which PacifiCorp notified XRG of the option to conduct system impact studies to determine transmission availability, including the cost of the study and how XRG could request PacifiCorp complete the studies. If no prior communication exists, please state so.
- (c) Please admit or deny that Transmission Business Practice No. 9 states that requests for network resource designations shall be made through separate OASIS requests "to allow PacifiCorp the opportunity to review and respond according to Section 32 of the OATT."
- (d) Please admit or deny that the Section 32.1 of the OATT states, "After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed."
- (e) Did Mr. Kaufmann or PacifiCorp C&T ever lodge an OASIS request for the XRG projects, or otherwise consult with the Transmission Provider regarding the necessity for a system impact study? If not, how did Mr. Kaufmann know that a system impact study would be required?

Response to XRG Data Request 35

- (a) Please refer to the Company's response to XRG Data Request 26.
- (b) Please refer to the Company's response to XRG Data Request 26.
- (c) Admit.
- (d) Admit.
- (e) Please refer to the Company's response to XRG Data Request 26.

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 35

Recordholder: Bruce Griswold
Sponsor: To Be Determined

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 40

XRG Data Request 40

Reference Exhibits A-9 and A- 19 to Rocky Mountain Power's First Production Request to XRG.

- (a) On what basis did Mr. Griswold conclude that, "In order to accommodate your request to deliver the full 235 MW, PacifiCorp merchant must request network upgrades from PacifiCorp Transmission, and we understand that such upgrades likely would take four to five years to complete"? Please provide all documents or other evidence supporting Mr. Griswold's statement.
- (b) Did PacifiCorp C&T follow the procedures set out in Section 32 of PacifiCorp Transmission's OATT to reach this conclusion?
- (c) Was Mr. Griswold effectively denying a transmission service request with his statement that transmission capacity was unavailable? Could XRG have contacted PacifiCorp Transmission directly itself regarding PacifiCorp C&T's ability to integrate to the output of the QFs? If so, please provide reference to the OATT sections providing XRG that right.

Response to XRG Data Request 40

- (a) Response was based on PacifiCorp Merchant (Commercial and Trading/C&T) using publicly available information from OASIS to determine available transmission capacity for XRG QF requests at the proposed point of delivery.
- (b) Yes.
- (c) No. No. Transmission service requests for QF resource integration are the responsibility of the merchant function accepting delivery from the resource.

Recordholder: Bruce Griswold
Sponsor: To Be Determined

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 45

XRG Data Request 45

Reference Exhibits A-1 and A-2 of Rocky Mountain Power's First Production Request to XRG.

- (a) Did Rocky Mountain Power ever provide IRP-method rates for the two 78 MW PURPA wind projects proposed?
- (b) If yes, please provide the correspondence providing XRG with the rates.
- (c) If no, please explain why Rocky Mountain Power did not provide such rates, and identify the correspondence where it relayed its decision not to provide IRP method rates to XRG. Please reconcile the response with Rocky Mountain Power's statement in its Initial Comments in Case No. GNR-E-10-04, p. 11, wherein Rocky Mountain Power advocates for use of the IRP method.

Response to XRG Data Request 45

- (a) No.
- (b) Please refer to the Company's response to subpart (a) above.
- (c) Please refer to Attachment XRG 45. PacifiCorp explained in an email dated March 23, 2009 there was only 23MW of available transmission capacity at XRG's point of delivery; therefore, there was only sufficient capacity to do one of XRG's published rate QF requests.

Recordholder: Bruce Griswold
Sponsor: To Be Determined

PAC-E-10-08/Rocky Mountain Power
August 16, 2012
XRG Data Request 47

XRG Data Request 47

Please admit or deny that Rocky Mountain Power requested that the cost of the Populus to Terminal project be placed in rate base in PAC-E-10-07. Please explain the impact of completion of this project on Rocky Mountain Power's ability to accept delivery of the 4 XRG projects referred to in the Complaint in this case at Borah or Brady.

Response to XRG Data Request 47

Admit.

The question does not state where the power from the 4 XRG projects is to be delivered. The Populus to Terminal project increased southbound capability across Path C into Utah with the upgrades adding 650 MW of capacity southbound. All the additional Path C capacity, including the incremental 650 MW of capacity is currently subscribed to network service requirements and is not available for firm purchase on PacifiCorp's OASIS. The upgrades did not affect the availability of capacity from Brady or Borah to Path C other than providing scheduling flexibility from Brady into Utah and from Borah into Populus. Per PacifiCorp's OASIS website, there is currently no available transmission capacity from Brady into Utah or from Borah into Utah. There is posted capability from Borah to Populus.

Recordholder: Kenneth Houston
Sponsor: To Be Determined

XRG LLC's BRIEF ON RECONSIDERATION

EXHIBIT 2

**Excerpt from Attachment to Rocky Mountain Power's Production Request Response
to XRG's Data Request 31**

Jean Jewell

From: Griswold, Bruce {Mkt Function} [Bruce.Griswold@PacifiCorp.com]
Sent: Monday, May 11, 2009 5:26 PM
To: 'James T. Carkulis'
Cc: Younie, John; 'Ken Kaufmann'
Subject: RE: contracts
Attachments: 11May09 draft Idaho MAG PPA.doc; Re: PURPA contract requests

James

Please find the attached draft Idaho standard QF PPA to be used for a wind project. It should include all the recent Idaho commission orders. It does not include Addendum W which is the bolt-on addendum for an off-system project delivering to PacifiCorp. I will send that separately. Per our last communication (attached), we indicated PacifiCorp does not have sufficient transmission at Borah or Brady to accept any project greater than 23MW and you selected one project, XRG-DP 10, that would be developed into a PPA. Please provide a redline to this document with your proposed changes for discussion. If you or your team, have questions on the PPA, please call.

Bruce Griswold
PacifiCorp C&T
503-813-5218 Office
503-702-1445 Cell
503-813-6260 Fax

From: James T. Carkulis [<mailto:mtli@in-tch.com>]
Sent: Monday, May 11, 2009 5:35 AM
To: Griswold, Bruce {Mkt Function}
Subject: contracts

Bruce:

In January, PacifiCorp agreed the strategy with XRG was to have all 6 contract requests before the IPUC by the end of April. To date, not one draft has been tendered by PacifiCorp. We realize these are exciting times and all are very busy, but all the Aurora work should have been accomplished on JR1 and Jack Ranch by now, the 4 drafts on XRG-DP 7 thru 10 should be in our hands for review.

We would appreciate if we could receive these contracts for review and comment to move to execution.

Thank you.

Regards,

James T. Carkulis
Confidential & Proprietary
Successfully Merging Free Market Principles with Societal Expectations
Exergy Development Group, LLC
[p] 208.336.9793
[f] 208.336.9431
[m] 408.459.3013
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