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February 4, 2011

**VIA U.S. PRIORITY MAIL**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 W Washington Street  
Boise, ID 83702-5983

Re: Case No. PAC-E-10-08  
XRG, Complainant, vs.  
PACIFICORP dba ROCKY MOUNTAIN POWER, Defendant

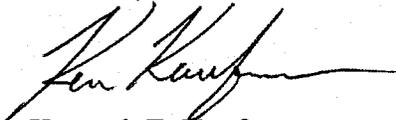
Dear Ms. Jewell:

Enclosed for filing in the above-captioned docket are an original and seven (7) copies of *ROCKY MOUNTAIN POWER'S MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY*.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,



Kenneth E. Kaufmann

cc: PAC-E-10-08 Service List

Enclosures

RECEIVED  
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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

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

v.

PACIFICORP, DBA ROCKY  
MOUNTAIN POWER,  
Defendant.

Case No. PAC-E-10-08

ROCKY MOUNTAIN POWER'S  
MOTION FOR PROTECTIVE ORDER  
TO STAY DISCOVERY

**EXPEDITED REVIEW REQUESTED**

Pursuant to IDAPA Rule 31.01.01.056, PacifiCorp, dba Rocky Mountain Power ("Rocky Mountain Power" or the "Company"), respectfully moves for a protective order partially staying discovery pending resolution of the Company's motion for summary judgment. Because the Company's responses to XRG's Third Production Request are due February 15, 2011, the Company requests expedited review and decision on this motion. The parties have conferred and XRG opposes a stay of discovery.

## I. INTRODUCTION

The Company has filed a motion for summary judgment asking the Commission to find that XRG is not entitled to pre-March 16, 2010 published avoided cost rates as a matter of law. XRG has served the Company with a third set of discovery requests (Requests for Production Nos. 24-63) which the Company must answer by February 15, 2011. The Company intends to file its response to Requests for Production Nos. 53-63 on or before February 15, 2011. The first 29 questions (Requests for Production Nos. 24-52) seek information that is burdensome to produce and which is not relevant to resolving any of the issues raised in the Company's motion for summary judgment. The Company therefore moves to stay all discovery, except the Company's response to Requests for Production Nos. 53-63,<sup>1</sup> until after the Commission rules on the Company's pending motion for summary judgment.

## II. APPLICABLE LAW

Rule 221.05 of the Commission's Rules incorporates Rule 26 of the Idaho Rules of Civil Procedure (I.R.C.P.) to provide discovery procedure not addressed by the Commission's Rules.<sup>2</sup> The Commission's Rules do not address limiting or preventing discovery through a protective order. Therefore, I.R.C.P. 26(c) controls any requests limiting discovery by a protective order before the Commission, and provides:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending...may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including that the discovery not be had.

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<sup>1</sup> While Requests for Production Nos. 53-63 are also not relevant to the issues in the Company's motion for summary judgment, the Company anticipates that responding to them will not be overly burdensome.

<sup>2</sup> IDAPA Rule 31.01.01.221.05; See *Rosebud v. PacifiCorp*, IPUC Case No. UPL-E-92-6; Order No. 25784, 1994 Ida. PUC LEXIS 135, \*1-2 (1994) (following I.R.C.P. 26 with respect to discovery).

### III. APPLICABLE FACTS

XRG filed a complaint on July 29, 2010, seeking grandfathered avoided cost rates. On January 11, 2011, XRG served the Company with a discovery request consisting of 40 questions, attached hereto as Exhibit A. This was XRG's third set of interrogatories served upon the Company in this complaint proceeding. Due to the size of this set of requests, the Company sought and obtained XRG's consent to an extension of time to object or respond to the requests. The Company's responses are due February 15, 2011. The Company filed a motion for summary judgment concurrently with this motion. The motion for summary judgment asks the Commission to deny XRG grandfathered rates as a matter of law because: (A) the written communications between XRG and the Company from January 2009 through March 2010 demonstrate that XRG did not actively negotiate a power purchase agreement prior to the rate change;<sup>3</sup> (B) XRG's plans to transmit output to the Company's system were insufficiently mature to establish entitlement to grandfathered rates;<sup>4</sup> and (C) XRG waited too long to file its complaint, and therefore is not entitled to grandfathered rates.<sup>5</sup>

### IV. ARGUMENT

I.R.C.P. 26(c) provides that discovery may be limited for good cause shown to "protect a party or person from...undue burden or expense." In applying Rule 26(c) protective orders, the court has broad discretion to limit discovery and to promote

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<sup>3</sup> *XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLCs v. PacifiCorp, DBA Rocky Mountain Power*, IPUC Case No. PAC-E-10-08, Rocky Mountain Power's Motion for Summary Judgment § IV(A) (submitted February 4, 2011) (hereinafter "Motion for Summary Judgment").

<sup>4</sup> *Id.* § IV(B).

<sup>5</sup> *Id.* § IV(C).

efficiency.<sup>6</sup> The United States Supreme Court has emphasized that courts administering Federal Rule of Civil Procedure 26(c) should not hesitate to exercise their authority to limit unnecessary discovery in order to prevent abuse and promote efficiency.<sup>7</sup>

Granting a protective order to stay discovery pending resolution of a dispositive motion for summary judgment is appropriate where the discovery information sought is not relevant to the issues presented in the motion for summary judgment.<sup>8</sup> Allowing irrelevant discovery would be both unduly burdensome to the party responding to the discovery request and would harm judicial efficiency.<sup>9</sup> Granting a stay of discovery is appropriate here because none of the information sought by XRG in Requests for Production Nos. 24-52 relates to the issues raised by the Company's motion for summary judgment. Requests for Production Nos. 24-52 relate exclusively to actions the Company took to evaluate whether the Company's system could accommodate XRG's request to deliver 70 MW at Company's Brady Substation. As explained below, the Company's internal evaluation of XRG's requests has no bearing on the three theories the Company advances in its motion for summary judgment. Furthermore, some of XRG's requests are particularly burdensome in both depth and breadth.<sup>10</sup> Rocky Mountain Power would be unduly burdened if required to respond to XRG's request, especially when the information requested by XRG is irrelevant to resolving the issues raised by the Company's motion for summary judgment.

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<sup>6</sup> *Avila v. Wahlquist*, 126 Idaho 745, 749 (1995); *Selkirk v. Forney*, 134 Idaho 98, 104-05 (2000).

<sup>7</sup> *Herbert v. Lando*, 441 U.S. 153, 177 (1979).

<sup>8</sup> *Avila*, 126 Idaho at 749; *see Selkirk*, 134 Idaho 98, 105 (2000).

<sup>9</sup> *Id.*

<sup>10</sup> *See e.g.* Requests for Production Nos. 44-52 of XRG's Third Production Request, Exhibit A at 10-13.

**A. Summary Judgment Theory 1: XRG did not perfect its entitlement to grandfathered rates because it did not actively negotiate the terms of a power purchase agreement.**

The Company's motion for summary judgment states that it is entitled to judgment as a matter of law because XRG has failed to raise a genuine issue of material fact demonstrating that XRG actively negotiated the terms of a power purchase agreement.<sup>11</sup> It is well settled that a qualifying facility is not entitled to grandfathered rates unless it has actively negotiated a power purchase agreement. This includes presenting the purchasing utility with an offer that can be interpreted as a binding commitment to sell power.<sup>12</sup> None of the information sought by XRG Requests for Production Nos. 24-52 addresses whether XRG actively negotiated the terms of a PPA or presented the Company with an offer that could be interpreted as a binding commitment to sell power. Furthermore, XRG has admitted that Exhibit A filed in the Company's motion for summary judgment contains the complete record of written communications between the parties, through July 27, 2010, regarding XRG's request for four power purchase agreements.<sup>13</sup> There is nothing more to discover regarding this issue.

**B. Summary Judgment Theory 2: XRG's plans to deliver output to the Company's system were inadequate to establish entitlement to grandfathered rates.**

The Company's motion for summary judgment states that it is entitled to judgment as a matter of law because XRG has failed to raise a genuine issue of material fact

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<sup>11</sup> Motion for Summary Judgment at Part IV(A).

<sup>12</sup> *Island Power Co. v. Utah Power & Light Co.*, IPUC Case No. UPL-E-93-4, Order No. 25647; 1994 Ida. PUC LEXIS 92; *Cogen Power II, Inc. v. PacifiCorp*, IPUC Case No. UPL-E-94-1, Order No. 25638; 1994 Ida. PUC LEXIS 89.

<sup>13</sup> See Exhibit A to Rocky Mountain Power's Motion for Summary Judgment at 1 (XRG's response to Rocky Mountain Power's Production Request No. 2, in which XRG admits that Exhibit A contains the entire record of correspondences from January 21, 2009 to July 29, 2010).

demonstrating that it has transmission contracts or even a viable plan for transmitting output to Rocky Mountain Power.<sup>14</sup> In *Portland General Electric Co. v. Oregon Energy Co.*, OPUC Docket No. UC 35, Order No. 98-238 (1998), the Public Utility Commission of Oregon held that a wheeling agreement with the intervening utility was a precondition to the purchasing utility's obligation to purchase power from a qualifying facility. A viable transmission and interconnection proposal is also required to present a power sales proposal of sufficient maturity to support a claim for grandfathered rates. None of the information sought by XRG Requests for Production Nos. 24-52 has any nexus to how XRG intended to transmit its output to the Company across electric systems owned by Bonneville Power Administration, Idaho Power Company, and Raft River Electric Cooperative. Any information the Company would produce in response to Requests Nos. 24-52 is irrelevant to resolving this issue.

**C. Summary Judgment Theory 3: XRG waited too long to file its complaint, and therefore is not entitled to grandfathered rates.**

The Company's motion for summary judgment states that it is entitled to judgment as a matter of law because XRG has failed to raise a genuine issue of material fact demonstrating that, prior to the March 16, 2010 rate change, XRG signed a PPA or filed a meritorious complaint seeking pre-March 16, 2010 rates.<sup>15</sup> A qualifying facility seeking grandfathered rate treatment must demonstrate that it signed a PPA or filed a meritorious complaint prior to the rate change.<sup>16</sup> In the alternative, the Company argues that XRG's

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<sup>14</sup> Motion for Summary Judgment at Section IV(B).

<sup>15</sup> Motion for Summary Judgment § IV(C).

<sup>16</sup> *A. W. Brown Co., Inc. v Idaho Power Co.*, 121 Idaho 812, 817 (1992).

complaint is barred as untimely by the doctrine of laches.<sup>17</sup> None of the information sought by XRG Requests for Production Nos. 24-52, would demonstrate that it had either a signed PPA, filed a meritorious complaint prior to the rate change, met an exception to the rule requiring a signed PPA or a timely complaint, or avoided application of the doctrine of laches.

Because any information the Company would produce in response to XRG's Requests for Production Nos. 24-52 is irrelevant to resolving Company's motion for summary judgment, the Company asks the Commission to grant a stay of discovery pending resolution of the Company's motion for summary judgment. In addition to Requests for Production Nos. 24-52, the Company requests that the Commission's protective order stay all other discovery by either party (except for the Company's response to XRG Requests for Production Nos. 53-63), pending resolution of the motion for summary judgment. Issuing a stay in discovery proceedings will allow *both* parties relief from discovery and allow the parties and the Commission to focus on the issues raised by the Company's motion for summary judgment.

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<sup>17</sup> Motion for Summary Judgment § IV(C).

V. CONCLUSION

WHEREFORE, Rocky Mountain Power respectfully requests that the Commission grant a protective order to stay discovery pending resolution of the Company's motion for summary judgment. Dated this 4<sup>th</sup> day of February 2011.

Respectfully submitted,



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

Kenneth E. Kaufmann, OSB 982672  
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Lovinger Kaufmann LLP

*Attorneys for Rocky Mountain Power*

Case No. PAC-E-10-08

Rocky Mountain Power's Motion for Protective Order to Stay Discovery

# **EXHIBIT A**

**XRG's Third Production Request to Rocky Mountain Power  
(January 11, 2011)**

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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

**THIRD PRODUCTION REQUEST TO  
ROCKY MOUNTAIN POWER**

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Pursuant to Rule 225 of the Rules of Procedure of the Idaho Public Utilities Commission (the "Commission"), XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLCs (collectively "XRG" or "Complainants") hereby requests that PacifiCorp dba Rocky Mountain Power provide responses to the following with supporting documents, where applicable, as soon as possible, but no later than **February 1, 2011**.

Please refer to XRG's FIRST PRODUCTION REQUEST for instructions and definitions applicable to this production request.

REQUEST FOR PRODUCTION NO. 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.

REQUEST FOR PRODUCTION NO. 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.

REQUEST FOR PRODUCTION NO. 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.

REQUEST FOR PRODUCTION NO. 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.

REQUEST FOR PRODUCTION NO. 28

Reference Rocky Mountain Power's Response to XRG's First Production Request, Attachment XRG 5 (Rocky Mountain Power's September 21, 2010 Letter), and Reference Rocky Mountain Power's Response to XRG's Request No. 21.

- (a) On whose behalf and for which generation projects or market transactions did PacifiCorp C & T "immediately" request all available capacity on Path C once it discovered the availability as described in Rocky Mountain Power's Response to XRG's Request No. 21(g)? Please provide the date C & T reserved all available capacity along with the public scheduling numbers and the OASIS reservation numbers correlating to the entire reservation.
- (b) Has PacifiCorp reserved capacity on Path C for each of the XRG projects?
- (c) If capacity was reserved for the 4 XRG projects, please state the date PacifiCorp reserved capacity, and provide supporting evidence.
- (d) If capacity was not reserved for the 4 XRG projects, please explain why. Please explain if XRG's prior correspondence, the filing of the complaint in this case, and its subsequent offer to settle for the rates in Order No. 31025 left ambiguity as to whether XRG wished to reserve any necessary capacity on PacifiCorp's system.
- (e) Please identify all entities and the use for which PacifiCorp C&T requested the available capacity on Path C prior to requesting it for use for each of the XRG projects.

REQUEST FOR PRODUCTION NO. 29

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

- (a) Did PacifiCorp C & T request transmission capacity on Path C at any time between January 21, 2009 and September 21, 2010 for entities other than XRG? Please identify the entity for which PacifiCorp C & T requested capacity and provide supporting evidence demonstrating the date and result of the request.

- (b) Did PacifiCorp Transmission reserve transmission capacity on Path C at any time between January 21, 2009 and September 21, 2010 for entities other than XRG? Please identify the entity for which PacifiCorp Transmission reserved capacity and provide supporting evidence demonstrating the date of the reservation.
- (c) At any time between January 21, 2009 and September 21, 2010, did PacifiCorp C & T request transmission capacity enabling integration of energy deliveries to PacifiCorp's system at Brady or Borah? Please identify the entity for which PacifiCorp C & T requested capacity and provide supporting evidence of the result of the request and the date.
- (d) At any time between January 21, 2009 and September 21, 2010, did PacifiCorp Transmission reserve transmission capacity enabling integration of energy deliveries to PacifiCorp's system at Brady or Borah? Please identify the entity for which PacifiCorp Transmission reserved capacity and provide supporting evidence demonstrating the reservation and the date.
- (e) Please reconcile the responses to (a) through (d) with Rocky Mountain Power's indication to XRG prior to September 21, 2010, that transmission was not available for its projects. Reference *Answer 18*.

REQUEST FOR PRODUCTION NO. 30

Did the transmission constraint identified by Rocky Mountain Power to XRG until September 21, 2010 limit Rocky Mountain Power's own generation resources or market trading activities? Please explain when and how the transmission constraint had such an impact.

REQUEST FOR PRODUCTION NO. 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.

REQUEST FOR PRODUCTION NO. 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?

REQUEST FOR PRODUCTION NO. 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.

#### REQUEST FOR PRODUCTION NO. 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?

#### REQUEST FOR PRODUCTION NO. 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?

#### REQUEST FOR PRODUCTION NO. 36

Reference Rocky Mountain Power's Response to XRG Request No. 16 (providing Business Practice # 9 in response to XRG's request for the policy by which it requests network resource status for PURPA projects).

(a) Please admit or deny that for the off-system XRG projects Business Practice #24 would also apply.

(b) Please admit or deny that a transmission customer must follow the process outlined in Section 29.2 of PacifiCorp's OATT to designate a network resource.

(c) Please admit or deny that Section 29.2 of PacifiCorp's OATT states that among the information required the transmission customer must provide the service commencement date and the term of the requested network integration transmission service.

(d) Please admit or deny that the attestation requirement in Section 29.2 of PacifiCorp's OATT allows the network customer to demonstrate it has rights to the power specified by signing a statement stating that it "has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the tariff."

(e) Please admit or deny that these provisions of PacifiCorp's OATT would apply to PacifiCorp C&T's request to designate the output of the 4 XRG QFs as a network resource.

#### REQUEST FOR PRODUCTION NO. 37

Did Rocky Mountain Power ever offer to enter into contracts with the XRG QFs contingent upon availability of transmission service under Part III of the tariff? Why or why not?

REQUEST FOR PRODUCTION NO. 38

What is PacifiCorp's C&T's policy with regard to executing a PURPA contract contingent upon availability of transmission service under Part III of the tariff? Please provide all examples of PacifiCorp executing such a contract.

REQUEST FOR PRODUCTION NO. 39

Has PacifiCorp C&T ever provided a signed statement to PacifiCorp Transmission under Section 29.2 of its OATT stating that it has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the tariff? Please describe the circumstances of each such occurrence, and provide supporting documentary evidence.

REQUEST FOR PRODUCTION NO. 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.

REQUEST FOR PRODUCTION NO. 41

Reference PacifiCorp's OATT, Part II.

(a) If XRG had requested PTP firm transmission service to wheel the 70 MW output of the 4 XRG QFs from Brady to a point in the Utah load center, how would PacifiCorp have processed that request?

(b) In analyzing available capacity, would PacifiCorp have considered the commencement date of the delivery?

(c) Would PacifiCorp have considered the upgrades scheduled for the Populus to Terminal line on Path C if the commencement date was in June 2011, January 2012, January 2013, or some other date?

(d) Did PacifiCorp consider the upgrades scheduled for the Populus to Terminal line on Path C for any entities inquiring into PTP transmission service requested any time between January 21, 2009 and December 31, 2010, for service commencing in June 2011, or January 2012, or some later date? If so, please provide dates of the requests for which PacifiCorp considered the Populus to Terminal Upgrade.

#### REQUEST FOR PRODUCTION NO. 42

Reference PacifiCorp's 2007 IRP, Renewable Energy Action Plan, pp. 11, 13 (March 30, 2007) (stating that upgrades to Path C providing 300 MW of "transfer capability" were "expected to be available by the end of 2010" and that PacifiCorp was "moving ahead with the Path C upgrade project"), available at [http://www.pacificorp.com/content/dam/pacificorp/doc/Environment/Environmental\\_Concerns/Integrated\\_Resource\\_Planning\\_12.pdf](http://www.pacificorp.com/content/dam/pacificorp/doc/Environment/Environmental_Concerns/Integrated_Resource_Planning_12.pdf).

(a) Please describe the status of the upgrade on the following dates: January 21, 2009, October 2, 2009, March 15, 2010, December 31, 2010, and the date of this request.

(b) Are the upgrades complete? If so, please provide the date of completion and the resulting increase in capacity north to south. If not, when does PacifiCorp expect that the upgrades will be complete and what will be the resulting increase in capacity north to south?

(c) Has any entity reserved any of the capacity that will be (or is) made available from the upgrade?

(d) For each of the PacifiCorp personnel listed in XRG Request No. 19, please indicate whether the person was aware of the proposed upgrade to Path C on each of the dates listed in (a) of this request.

#### REQUEST FOR PRODUCTION NO. 43

Reference Exhibit A-19 of Rocky Mountain Power's First Production Request to XRG.

(a) Please reconcile Bruce Griswold's statement that "PacifiCorp estimates that the available transmission capacity in its current configuration at Brady can only accept approximately 20 to 25 MW of new generation," with the plans set forth in PacifiCorp's 2007 Renewable Energy Action Plan cited in the last request.

(b) Did Mr. Griswold consider the proposed upgrades to Path C when he sent this email to XRG? Why or why not?

(c) Was it Rocky Mountain Power's position that XRG would have to pay for upgrades PacifiCorp had already planned for Path C when Mr. Griswold stated, "PacifiCorp will expect you to pay for all resulting interconnection costs including network upgrades . . . such that the ultimate cost to PacifiCorp's customers is not greater than the cost avoided by PacifiCorp not constructing or purchasing an equivalent resource located on a non-constrained portion of its system"? If not, please explain what Mr. Griswold meant.

#### REQUEST FOR PRODUCTION NO. 44

Reference PacifiCorp Transmission Technical Workshop power Point Presentation (January 2010), at slide 19, available at [http://www.pacificorp.com/content/dam/pacificorp/doc/Suppliers/RFPs/All\\_Source2009/Presentations/RFPAS2009-TransWorkshopDraft\\_1-19-10.pdf](http://www.pacificorp.com/content/dam/pacificorp/doc/Suppliers/RFPs/All_Source2009/Presentations/RFPAS2009-TransWorkshopDraft_1-19-10.pdf) (stating after 2010 or later upgrades necessary to receive output at Borah, Brady, or Kingport would be "Zero \$," assuming completion of the Gateway Segment B Populus to Terminal 345-kV line); PacifiCorp Projects in WECC Path Rating Process Power Point Presentation by Tom Tjoelker and Craig Quist, at slides 15-18 (October 20-22, 2010), available at <http://www.wecc.biz/committees/StandingCommittees/PCC/10202010/Lists/Minutes/1/Oct%2022%202010%20PCC%20PAC%20E%20and%20W%20Presentation.pdf> (projecting the Path C upgrade "will increase the transfer capability of the redefined Path C (Path 20) to 1600 MW north to south, and 1250 MW south to north," and will be in service December 31, 2010).

- (a) Are the upgrades complete and in service such that delivery to Borah or Brady would require \$0 in upgrades as stated in the power point? If so, please provide the date of such completion. If not, when does PacifiCorp expect that the upgrades will be complete?
- (b) Has PacifiCorp made the new capacity available on its OASIS website? If yes, please provide the date that the new capacity was listed as available on the OASIS website. If not, please state the date when the new capacity will be listed as available on the OASIS website.
- (c) For each entity that has reserved any of the capacity that will be (or is) made available from the upgrade, please provide the entity's name, its public scheduling number or the OASIS reservation number, the amount of capacity reserved, and the dates for which capacity is reserved.
- (d) For each of the PacifiCorp personnel listed in XRG Request No. 19, please indicate whether the person was aware that delivery to Borah or Brady would require \$0 in upgrades as stated in the power point once Populus-Terminal was complete.

#### REQUEST FOR PRODUCTION NO. 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.

REQUEST FOR PRODUCTION NO. 46

Please provide all documents in PacifiCorp C&T's possession regarding plans for upgrades of Path C, and the impact the upgrades/construction will have on transmission availability. Please provide the name of the record holder, and date the document was generated and the date it was first possessed by PacifiCorp C&T.

REQUEST FOR PRODUCTION NO. 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.

REQUEST FOR PRODUCTION NO. 48

Reference Order No. 29998 (Case No. PAC-E-05-08) (approving Mid American acquisition of PacifiCorp).

- (a) Did the Company commit to "increase Path C capacity by 300 MW (from S.E. Idaho to Northern Utah)" with a "target completion date" of 2010?
- (b) Did the Company subsequently design the Populus to Terminal upgrade to provide "700 MW of immediate additional capacity?" Reference Direct Testimony of Randy Lobb, Case No. PAC-E-10-07, p. 21 (October 14, 2010).
- (c) If so, please explain why Rocky Mountain Power stated in response to XRG Request No. 20 that "completion of the Populus-Terminal upgrade likely would not alleviate constraints across Path C sufficiently to accommodate all 70 MW of XRG's proposed output at Brady[.]" Please provide the study by PacifiCorp Transmission supporting this statement.

REQUEST FOR PRODUCTION NO. 49

Please provide all discovery requests and responses generated in PAC-E-10-07 regarding the Populus-Terminal project. Please also provide all confidential testimony and exhibits filed in that case on the Populus-Terminal project.

REQUEST FOR PRODUCTION NO. 50

Reference Monsanto Exhibit No. 227 (DEP-7), Case No. PAC-E-10-07 (containing Rocky Mountain Power's discovery response which listed as a function of the Gateway Central project (Segment B of which is Populus-Terminal project) that it will "facilitate the integration of potential new energy resources in Wyoming, Utah, Idaho and Oregon, and help support economic development in those states."); Direct Testimony of Darrell Gerrard, Case No. PAC-E-10-07, pp. 4, 8 (May 2010) (same and noting that PacifiCorp used this same basis in the Mid-American acquisition approval case).

- (a) Please explain why Rocky Mountain Power asserts that the project will facilitate integration of new Idaho resources in the context of rate recovery but refused to consider the use of the project in contract negotiations with XRG on the dates listed in the *Answer* ¶8.
- (b) Please explain the usefulness of the project if it cannot be used for new wind generating facilities such as XRG's proposed 70 MW of PURPA projects. Who will use the 700 MW of immediately increased capacity? Please list the potential new Idaho resources for which the Company plans to use the project.
- (c) Is it PacifiCorp's policy to place transmission projects in rate base before it will consider the upgrades' impacts on transmission availability in contract negotiations with PURPA developers? Is the response different for the Company's own generating resources or RFP bidders?
- (d) Is the 700 MW Path C upgrade fully subscribed? Reference Rebuttal Testimony of Darrell Gerrard, Case No. PAC-E-10-07, p. 17 (November 16, 2010).
- (e) Please provide the annual load and resource studies relied upon by PacifiCorp in its decision to construct Populus-Terminal as a 700 MW line. Reference Rebuttal Testimony of Darrell Gerrard, Case No. PAC-E-10-07, p. 15 (November 16, 2010).

REQUEST FOR PRODUCTION NO. 51

Will the Three Buttes project, the Top of the World project, or the Dunlap I project use the Populus-Terminal line? If so, please provide the public scheduling numbers and the OASIS reservation numbers correlating to the entire reservation for each of these projects, including the dates of the reservation.

REQUEST FOR PRODUCTION NO. 52

Reference 125 FERC ¶ 61,076, Docket No. EL08-75-000 (October 21, 2008) (granting in part, and denying in part, incentive rate treatment for PacifiCorp's Energy Gateway Transmission Expansion Project, which includes the Populus-Terminal Line).

- (a) Has PacifiCorp planned since at least the date of this order, that southwestern Idaho would be a "hub," from which "power will be collected and moved in different directions"? If not, please provide the updated filing with FERC clarifying that southwest Idaho is no longer a planned hub. Reference ¶ 3 of the Order.
- (b) List the southwestern Idaho generating resources PacifiCorp had in mind when it filed the petition in this FERC case. Are the XRG projects in southwestern Idaho?
- (c) Given PacifiCorp's assertion that "transmission must be sited 'ahead' of specific generation resources to best position utilities to meet future forecasted load growth," please explain the basis for Rocky Mountain Power's position that it would only provide 1 PPA for the 4 XRG projects. Reference ¶ 13 of the Order and *Answer* ¶ 8.
- (d) Is it Rocky Mountain Power's policy to wait until a transmission upgrade is in service prior to entertaining PURPA contract negotiations for projects that would use that capacity? If so, did PacifiCorp make FERC aware that this would be the policy when PacifiCorp asked for incentive rate treatment for this project? Please explain with regard to Rocky Mountain Power's Responses to XRG Requests No. 2 and 15.

REQUEST FOR PRODUCTION NO. 53

Please admit or deny that, on or about October 15, 2010, the XRG LLCs offered to forego any claim to the higher rates in Order No. 30744 and to accept the rates in Order No. 31025 if Rocky Mountain Power would agree to accept conditional firm transmission delivery.

REQUEST FOR PRODUCTION NO. 54

Please admit or deny that Rocky Mountain Power is able to accept delivery under conditional firm transmission from the 4 XRG QFs at Brady.

REQUEST FOR PRODUCTION NO. 55

Please identify all instances in which Rocky Mountain Power has agreed to accept conditional firm transmission from QF or non-QF generators under long or short term agreements. Please list all such agreements separately, and include the minimum following information: date Rocky Mountain Power agreed to accept conditional firm transmission, date the delivering entity commenced delivery (or is projected to commence delivery), generator-type, entity delivering

energy, and description of the nature of the agreement, e.g. long term PPA, short term market purchase, etc.

REQUEST FOR PRODUCTION NO. 56

Please admit or deny that Rocky Mountain Power requested to stay discovery in this case on or about October 18, 2010, in order to respond to XRG's agreement to accept the Order No. 31025 rates.

REQUEST FOR PRODUCTION NO. 57

Please admit or deny that, on December 16, 2010, Rocky Mountain Power unilaterally lifted the discovery freeze in this case. If admitted, please answer the following:

- (a) Explain why Rocky Mountain Power recommenced litigation after XRG offered to agree to the rates in Order No. 31025, and forego the relief sought in the complaint for the rates in Order No. 30744.
- (b) Does Rocky Mountain Power believe it had an obligation to negotiate with XRG in good faith after filing of the complaint? If not, then between the time of the settlement offer on October 15, 2010, and the date Rocky Mountain Power lifted the discovery stay? Please explain.
- (c) Please explain why discovery is necessary to understand that XRG is willing to enter into standard PURPA PPAs containing the rates in Order No. 31025.
- (d) Please explain the reason Rocky Mountain Power will not provide standard PPAs for the projects containing the rates in Order No. 31025.
- (e) Please explain what terms are unknown in a standard Rocky Mountain Power PURPA PPA for Idaho. Please explain in reference the Windland PPAs approved in Case No. PAC-E-10-05.

REQUEST FOR PRODUCTION NO. 58

Has Rocky Mountain Power's position regarding the availability of the published rates in Order No. 31025 to XRG's projects changed since the filing of the complaint in this case? When did Rocky Mountain Power first become aware that the availability of the rates may change?

REQUEST FOR PRODUCTION NO. 59

What were Rocky Mountain Power's published Idaho avoided cost rates in effect for the time periods from: (a) October 15, 2010 to November 5, 2010; (b) from November 5, 2010 to December 14, 2010; and (c) from December 14, 2010 to the date of this production request? What is the eligibility cap for availability of those rates during the same time periods - 10 aMW.

100 kw, or some other amount? Is the response different for different QF resource types? Please explain and direct XRG to the tariff or rate schedule on file supporting the responses for each date.

REQUEST FOR PRODUCTION NO. 60

How did the information in the response to the last request affected Rocky Mountain Power's consideration of XRG's settlement offer on October 15, 2010, and Rocky Mountain Power's apparent decision to reject the offer on December 16, 2010?

REQUEST FOR PRODUCTION NO. 61

Please provide or describe Rocky Mountain Power's policy regarding when an Idaho QF obligates itself to PPA so as to lock in the rates in effect on a particular date as contemplated in 18 C.F.R. § 292.304(d)(2)(ii)? Which of the following actions are required in Rocky Mountain Power's view to lock in rates on a particular date – submitting a binding offer to enter into a PPA, entering into an interconnection agreement, securing network resource designation, securing any necessary transmission service agreements for an off-system project, filing a complaint alleging the utility failed to negotiate in good faith?

REQUEST FOR PRODUCTION NO. 62

Reference Rocky Mountain Power's comments filed in Case No. IPC-E-10-22 (stating that "Rocky Mountain Power agrees with Staff's characterization of the Commission's grandfather criteria. In order to qualify for grandfathered rates under these criteria [the QF must] . . . (b) *before* the rate change, file with the Commission a meritorious complaint alleging that but for the utility's improper conduct the QF would have secured a power sales contract before the rate changed.")

- (a) Does Rocky Mountain Power still support these criteria, or have its criteria changed?
- (b) Did the Commission approve of Rocky Mountain Power's criteria in Case No. IPC-E-10-22, or some less onerous requirement?
- (c) Admit or deny that XRG meets Rocky Mountain Power's criteria described in its comments with regard to the rates in Order No. 31025.

REQUEST FOR PRODUCTION NO. 63

Please explain how XRG has failed to meet Rocky Mountain Power's test with regard to the rates in Order No. 31025. Is the relief requested in XRG's Complaint's Prayer for Relief unclear as to XRG's commitment to PURPA PPAs?

Thank you for your prompt attention to this Third Request for Production.

Sincerely yours,



Peter J. Richardson

Gregory M. Adams

RICHARDSON & O'LEARY PLLC

Attorneys for Complainant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11<sup>th</sup> day of January, 2011, a true and correct copy of the within and foregoing **THIRD PRODUCTION REQUEST OF XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DO-10, LLCs TO ROCKY MOUNTAIN POWER** was served in the manner shown to:

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By: 

Gregory M. Adams  
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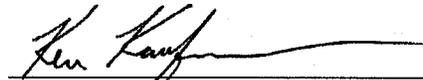
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 4<sup>th</sup> day of February, 2011, I served a true and correct copy of the foregoing *ROCKY MOUNTAIN POWER'S MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY* in Case No. PAC-E-10-08 on the following named persons/entities by U.S. Priority Mail, properly addressed with postage prepaid:

<p>Jean Jewell Commission Secretary Idaho Public Utilities Commission 472 W Washington Street Boise, ID 83702-5983 (U.S. Priority Mail)</p> <p>Mark C. Moench Rocky Mountain Power 201 South Main Street, Suite 2300 Salt Lake City, UT 84111 (U.S. Priority Mail)</p> <p>Daniel E. Solander Rocky Mountain Power 201 South Main Street, Suite 2300 Salt Lake City, UT 84111 (U.S. Priority Mail)</p>	<p>Peter J. Richardson Richardson &amp; O'Leary, PLLC PO Box 7218 Boise, ID 83707 (U. S. Priority Mail)</p> <p>Gregory M. Adams Richardson &amp; O'Leary, PLLC PO Box 7218 Boise, ID 83707 (U.S. Priority Mail)</p>
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DATED this 4<sup>th</sup> day of February, 2011.

LOVINGER KAUFMANN LLP



Kenneth E. Kaufmann  
Attorney for Rocky Mountain Power