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IDAHO PUBLIC
UTILITIES COMMISSION

January 26, 2011

Idaho Public ~~Service~~ Utilities Commission
472 W. Washington Street
Boise, ID 83702

ATTN: Jean D. Jewell
Commission Secretary

Re: In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreements Between Rocky Mountain Power and Cedar Creek Wind

Dear Jean:

Please find enclosed the original and seven (7) copies of Comments of Cedar Creek Wind LLC in Support of Rocky Mountain Power's Application for Approval of a Power Purchase Agreement, together with Affidavit of Dana Zentz, in each of the following actions:

Rattlesnake Canyon	PAC-E-11-01
Coyote Hill	PAC-E-11-02
North Point	PAC-E-11-03
Steep Ridge	PAC-E-11-04
Five Pine	PAC-E-11-05

Sincerely,

Ron Williams

Ronald L. Williams

RLW/jr
Enclosures

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Attorneys for Cedar Creek Wind, LLC

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BEFORE THE IDAHO PUBLIC UTILITES COMMISSION

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF POWER PURCHASE AGREEMENTS BETWEEN RMP AND CEDAR CREEK WIND LLC	Case No. PAC-E-11-02 COMMENTS OF CEDAR CREEK WIND LLC IN SUPPORT OF ROCKY MOUNTAIN POWER'S APPLICATION FOR APPROVAL OF A POWER PURCHASE AGREEMENT

Cedar Creek Wind, LLC ("Cedar Creek" or "CCW") files these comments in support of the Application in this case by Rocky Mountain Power ("RMP" or "PacifiCorp") for approval of the Power Purchase Agreement ("PPA") between RMP and Cedar Creek for the Coyote Hill Wind Project (the "Project"). For the reasons stated below, Cedar Creek requests that the Commission approve the PPA.

STATEMENT OF FACT

For a full and complete statement of the facts in this case please see the accompanying affidavit of Dana Zentz.

The electrical interconnection study process for this Project and the other four CCW wind projects commenced in 2008 and is now at a very mature stage. *Zentz Affidavit,* ¶ *6.* System impact studies for this Project were completed by RMP in 2009, a final facilities study report was issued by RMP in March of 2010 and CCW paid in April

2010 a $100,000 deposit for RMP to commence detailed interconnection engineering and procurement of interconnection parts. *Id.* All other material milestones needed for electrical interconnection, short of actual facilities construction, have been met. In total, Cedar Creek has paid over $475,000 to RMP for interconnection and PTP application, along with cost studies, transmission system impact studies and for project specific engineering and procurement. *Id.*

Cedar Creek Wind was an unsuccessful bidder of approximately 150 MW of wind generation in PacifiCorp's 2008/2009 Requests for Proposals for renewable energy. Instead, PacifiCorp selected Wyoming based wind generation in that RFP process. As a result, in late 2009, CCW began negotiations with RMP for the sale of power from two 78 MW wind Qualify Facilities. In early 2010 Cedar Creek asked RMP to run its integrated resource (IR) model to calculate the PURPA rate for two 78 MW wind projects. In late April 2010, RMP responded with IR model results showing a first year (2012) non-levelized PURPA rate of $37.01/MWh (which included the $6.50/MWh wind integration charge). This "calculated" avoided cost rate was 35% below the 2012 non-levelized net avoided cost rate of $57.47/MWh established by the Commission on March 16, 2010 for PacifiCorp. *Id.,* ¶ *5*. More importantly, the non-negotiable rate offered by RMP to CCW was uneconomic and un-financeable for purposes of developing the Cedar Creek wind project.

At this point in the spring of 2010 CCW had two choices: (i) contest before the Commission the accuracy of RMP's modeling of its avoided cost, or (ii) reduce the amount of gross generation and sacrifice the economies of scale associated with two 78 MW wind projects and reconfigure into five separate PURPA projects not greater than 10

aMW, in order to qualify for Surrogate Avoided Resource ("SAR") based avoided cost rates. Cedar Creek chose the latter option, as a contested case before the Commission challenging PacifiCorp's IR model would have been extremely expensive and involved delay likely fatal to the Project. *Id.,* ¶¶ *2-5.*

Starting in early May 2010, RMP and CCW were in almost constant communication and then negotiations concerning PPAs for the five Cedar Creek 10 aMW wind projects. Much of the data and detail concerning the CCW projects requested by PacifiCorp was beyond the scope considered reasonable and necessary for a PURPA PPA, but CCW complied with all of PacifiCorp's requests fully, even though doing so further delayed the eventual delivery of a first draft PPA from PacifiCorp. *Zentz Affidavit,* ¶¶ *14, 15* While PacifiCorp's motive for these requests may or may not have been to delay the execution of the PPAs, the facts of the case are that the PPAs would have been ready for execution several months before the end of 2010, but for these requests.

Likewise, contract negotiations concerning ownership of renewable energy credits further stalled a final PPA. Nonetheless, Cedar Creek and PacifiCorp still came to a meeting of the minds and agreed to final terms and conditions of a PPA for this Project by November 29, 2010. <u>On that date, PacifiCorp transmitted to CCW a "proposed final redline" PPA, and on that same date Cedar Creek responded "we have nothing further</u>." *Id.,* ¶ *16.*

While the PPA for this Project should have been signed the first week of December, PacifiCorp started to slow the process down again, by failing to deliver an executable PPA to CCW, based on a newly announced need for additional credit, legal and management review of this Project's PPA and the other four Cedar Creek PPAs.

This "new" review was focused on standard form contract language created by PacifiCorp and on parts of those standard agreements which had not changed materially if at all, since negotiations began. At that time CCW argued, to no avail, that the standard contract language was well vetted with PacifiCorp management in advance of the completion of the negotiations in November. *Id., ¶ 17.*

While CCW can not know why PacifiCorp inserted these new requirements at the 11th hour of the contracting process, the fact remains that the PPA for this Project was ready to execute the first week of December, 2010, and CCW was assured that PacifiCorp was ready to execute, prior to the introduction of these new review requirements. A final form, executable PPA for the Project was eventually delivered from PacifiCorp to CCW on December 9, 2010 with the statement from RMP that RMP would be prepared to execute the Project's PPA on Monday, December 13, 2010. *Id., ¶ 20.* Cedar Creek executed the PPA for this Project on Monday, December 13, 2010 and hand-delivered the same to PacifiCorp at its office in Portland Oregon. PacifiCorp did not execute this Project's PPA until December 22, 2010, twenty-three days after acknowledging that the PPA was "in final form" and ready for execution and receiving CCW's execution of the same.

PacifiCorp acknowledges in three separate pleadings before this Commission that this Project's PPA, and the other four like them, were mature contracts with a meeting of the minds reached between the parties before December 14, 2010. First, in its Application for contract approval in this case, PacifiCorp states: "The five [CCW] projects . . . complied with all PURPA's regulation including the 1-mile separation requirement, <u>and met all Idaho rules and Commission Orders</u>." *Application of Rocky Mountain Power,*

Case No.PAC-E-11-01 through 05, p.p. 5,6. PacifiCorp's Application further acknowledges that this Project's PPA was prepared by PacifiCorp, was executed by CCW on December 13, 2010, and complied with relevant Commission Order Nos. 29632, 30423, 31021, and 31025. *Id., p. 8.*

Further, Bruce Griswold, in his affidavit filed on January 19, 2010, in Case No. GNR-E-1-04, states: "Because Rocky Mountain Power and Cedar Creek Wind LLC reached agreement on all terms of their power purchase agreements including price prior to December 14, 2010, Rocky Mountain Power executed final power purchase agreements and, on January 10, 2010, filed them with the Commission." *Case No. GNR-E-10-4, Griswold, B., (Di), p. 5.*[1]

As a final acknowledgement that this PPA was agreed to and effectively entered into by PacifiCorp and CCW prior to December 14, 2010, PacifiCorp states in its *Joint Utility Docket* Reply Comments of January 19, 2011 that: "If Rocky Mountain Power and the QF (under 10 aMW) both executed the power purchase agreement or reached agreement on all final terms of a PPA prior to December 14, 2010, Rocky Mountain Power will pay Seller the published avoided cost prices." *Reply Comments of RMP, pp 5-6.* A footnote immediately following specifically references Cedar Creek: "An example is the Cedar Creek Wind LLC QF development consisting of five separate and distinct facilities each sized 10 aMW or less. . . .[wherein] . . . Rocky Mountain Power and Cedar Creek finished negotiations of all terms prior to December 14, 2010." *Id., Fn. 10.*

[1] matters contained in parenthesis are omitted

STATEMENT OF LAW

In the *Notice of Joint Petition,* Order No. 32131[2], the Commission ordered that the Commission's decision regarding whether or not to reduce the published avoided cost eligibility cap would become effective on December 14, 2010. PacifiCorp, in its Application in this case, asks the Commission for an Order "accepting or rejecting" this Project's PPA between Cedar Creek and RMP. However, RMP provides no guidance to the Commission or evidence to support either of the two recommendations and instead uses the Application to continue 'pleading its case' in the *Joint Utilities Docket* for a reduction in the published avoided cost rate eligibility cap.[3] Unfortunately, the Application is virtually void of any representations or proof as to whether this Project's PPA was "ripe" before December 14, 2010. Consequently, Cedar Creek is compelled to explain and document the facts that warrant approval of this Project's PPA. To that effect please refer to the accompanying affidavit of Dana Zentz and attachments thereto.

It is clear from the record, as supplemented by this filing, as well as excerpts of the record from the *Joint Utilities Docket*, that this Project's PPA should be approved by the Commission and that CCW is entitled to the rates, terms and conditions contained therein and that existed before December 14, 2010. Specifically, Cedar Creek is entitled to a contract with rates established by this Commission on March 16, 2010 in Order No. 31025, for a PURPA QF wind project that contracts with PacifiCorp and does not generate in excess of 10 aMW in any given month, in compliance with IPUC order No.

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[2] *See, Joint Petition of Idaho Power Company, Avista Utilities and Pacificorp,* GNR-E-10-04.
[3] *Id.*

30497.[4] This entitlement is due to Cedar Creek and PacifiCorp having resolved and agreed to all material outstanding contract issues prior to December 14, 2010. As discussed below, both the Idaho Supreme Court and the Commission have previously reviewed the question of maturity needed for a QF project to be entitled to vintage rates or terms applicable before a certain date.

The Supreme Court first stated that a project must be "a QF" and "ready willing and able to sign a contract" with a utility in order to be entitled to standardized PURPA rates. *Empire Lumber Co. v. Wash. Water Power Co.*, 114 Idaho 191, 755 P.2d 1229, 1232 (1987). The Court in a later case also approved of the Commission's establishment of a more detailed set of requirements for QF contracts seeking vintage QF rates where it agreed with the Commission that: "The QF must be able to exhibit that is has laid a proper foundation entitling it to contract consideration" and that a "CSPP [QF] is not entitled to contract rates until it is ready, willing and able to sign a contract." *A.W. Brown Co., Inc., v. Idaho Power Company*, 121 Idaho 812,817; 828 P.2d 841 (1992). The Court in *A.W. Brown Co.* went on to further affirm the Commission's decision that the "ready, willing and able" standard of "substantive negotiation" will "entail making a comprehensive binding offer showing with reasonable specificity, design and size characterizes and indicating a willingness to rely on proposed contract terms and proceed thereunder." *Id.*

Two recent QF contract approvals by the Commission continue a long line of decisions wherein the Commission reviews the relevant facts and circumstances to determine whether a QF is entitled to vintage rates or terms. Some of the factors recently

[4] Case No. PAC-E-07-07: In the Matter of the Petition of Rocky Mountain Power for an Order Revising Certain Obligations to Enter Into Contracts to Purchase Energy Generated by Wind-Powered Small Power Generation Qualifying Facilities.

noted by the Commission as determinative, when taken together, include: (i) whether a QF developer is materially down the path of facility interconnection with the utility, (ii) whether the developer obtained QF status from the FERC, (iii) whether the parties had exchanged contract drafts and project specific information, and (iv) whether the parties reached a meeting of the minds as to the material contract terms and conditions. *Order No. 32104* [5]; *See also Order No. 32068* [6] In both of these instances – *Yellowstone Power and Grand View Solar* – the Commission approved contracts that were executed substantially after March 16, 2010, but contained the higher vintage PURPA avoided cost rate applicable to pre-March 16, 2010 contracts. [7] In both of these cases it was Idaho Power's assertion that it and the developer "had resolved all material outstanding contract issues prior to March 16, 2010." *Order No. 32068, p. 2.* The Commission also found in *Grand View Solar* the representations of Idaho Power "that all outstanding contract issues had been resolved prior to March 16, 2010" to be a convincing and accurate portrayal of the parties having come to a meeting of the minds. *Id. at p. 5.*

The affidavit of Dana Zentz similarly demonstrates that "all outstanding contract issues" were resolved between PacifiCorp and Cedar Creek prior to December 14, 2010. PacifiCorp is in agreement with this statement of fact; although it could not apparently admit so directly in this case and instead made such statements in the *Joint Utilities Docket.*

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[5] Case No. IPC-E-10-22; In the Matter of the Application of Idaho Power Company for Approval of a Firm Energy Sales Agreement with Yellowstone Power Inc.

[6] Case No. IPC-E-10-19; In the Matter of the Application of Idaho Power Company for Approval of a Firm Energy Sales Agreement with Grand View Solar PV 1.

[7] The contract between Yellowstone Power Inc. and Idaho Power was dated July 28, 1020, more than four months after the change in rates. Idaho Power and Grand View Solar executed their contract on June 8, 2010, not quite three months after the change in rates.

PacifiCorp's Application to Commission for approval or rejection of this Project's PPA presents the Commission three policy reasons favoring the latter: (i) that the five CCW projects are a significant part (e.g., 30%) of the inundation of Idaho wind power onto PacifiCorp[8]; (ii) that the five CCW projects will create system instability or unreliability[9], and (iii) the cost of energy from CCW is in excess of RMP's avoided cost and will have adverse impacts on RMP's retail rates in Idaho.[10] None of these reasons are relevant to the Commission's determination in this case. Nor are the statements in PacifiCorp's Application accurate.

From 2005 to date, only eight wind contracts between developers and PacifiCorp (including the five CCW PPAs) have been submitted to this Commission for approval. None of these eight have yet commenced construction and none are yet delivering energy to RMP. Whether or not an additional two or three hundred MW of wind capacity is about to be contracted for by PacifiCorp, subject to pre or post December 14, 2010 rates, terms and conditions is simply a matter of speculation. Furthermore, a PacifiCorp system perspective must also be kept in mind. Energy needed by PacifiCorp in 2011 is projected to be slightly over 61 million MWhs.[11] If PacifiCorp were to absorb an additional 350 MWs of Idaho based wind nameplate generation into its system, it would amount to approximately 3.5 percent of PacifiCorp's projected 2011 coincident system peak. More relevant, energy provided by 350 MWs of nameplate wind would equal approximately 1.5% of PacifiCorp's projected energy needed in 2011.

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[8] Application of RMP, ¶ 6.
[9] *Id.*,¶ 8.
[10] *Id.*, ¶¶ 6-8.
[11] *See PacifiCorp 2011 IRP Public Meeting Handout*, October 5, 2010, p. 16, at:http://www.pacificorp.com/content/dam/pacificorp/doc/Energy_Sources/Integrated_Resource_Plan/2011IRP/PacifiCorp_2011IRP_PIM4_10-05-10.pdf

Nor do the five CCW wind projects adversely impact RMP's "electrical system and reliability" in eastern Idaho. PacifiCorp has been very clear that CCW will pay, and CCW has agreed to pay, for all electrical system impacts related to the projects. Cedar Creek has also paid for all RMP studies that have, in great detail, determined the extent to which CCW will pay RMP for any and all reliability impacts on the electrical system.

Finally, as inappropriate as it is in this case, the argument that the SAR calculated avoided cost rate is significantly above an IR calculated rate is simply a wrong and misleading comparison. As discussed in the Zentz affidavit[12], the PacifiCorp IR model appears heavily biased against independent wind projects, in that it produces a first year average rate of $37.05/MWh. Instead, that IR modeled rate should be compared to the recent Idaho Power IR modeled rate for Rockland Wind Project, or to the $/kWh incurred by PacifiCorp in developing 480 MW of Company owned wind generation in Wyoming or in acquiring an additional 400 MW of independently owned Wyoming wind. While confidential, Wyoming wind purchase or development costs can be reviewed by the Commission in the most recent PacifiCorp Idaho ratecase.[13] All will show costs/kWh significantly greater than $37.05/MWh.

SUMMARY

Prior to December 14, 2010 Cedar Creek had fully perfected its right for a less than 10 aMW SAR avoided cost PPA with PacifiCorp for this Project. Significant milestone compliance events are summarized as follows: (1) By May of 2010 CCW and RMP had reached a mature point in studying and understanding the interconnection and transmission system impacts caused by the Project and CCW had paid PaciCorp in

[12] ¶ 6.
[13] IPUC Case No. PAC-E-10-07

excess of $475,000 for such studies. (2) Qualifying Facility status was perfected with the FERC for this Project on June 23, 2010. (3) PacifiCorp provided the first draft PPA to CCW in July, 2010 and multiple drafts were exchanged between the parties over the course of the next several months. (4) In September CCW presented PacifiCorp with detailed Project specific notebooks with equipment specifications, wind data, site layout, electrical diagrams, etc. and which were acknowledged by RMP as being "complete." (5) On November 29, 2010 Cedar Creek and RMP had reached full agreement as to the "final" rates, terms and conditions of a PPA for this Project, with "nothing further" to negotiate, add or discuss. (6) PacifiCorp prepared the final draft of this PPA for execution by the parties and Cedar Creek signed and delivered the PPA to PacifiCorp on December 13, 2010.

For the reasons stated above and in accordance with previous decisions, Cedar Creek respectfully asks that the Commission approve the PPA for the Coyote Hill Wind Project.

Dated this 26th day of January, 2011.

Respectfully submitted,

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of January, 2011, I caused to be served a true and correct copy of the foregoing document upon the following individuals in the manner indicated below:

Ted Weston **Rocky Mountain Power** 201 South Main, Suite 2300 Salt Lake City, UT 84111 E-Mail: ted.weston@pacificorp.com	☐ Hand Delivery ☐ US Mail (postage prepaid) ☐ Facsimile Transmission ☐ Federal Express ☒ Electronic Transmission
Daniel E. Solander **Rocky Mountain Power** 201 South Main, Suite 2300 Salt Lake City, UT 84111 E-Mail: daniel.solander@pacificorp.com	☐ Hand Delivery ☐ US Mail (postage prepaid) ☐ Facsimile Transmission ☐ Federal Express ☒ Electronic Transmission
Data Request Response Center PacifiCorp 825 NE Multnomah, Suite 2000 Portland, OR 97232	☐ Hand Delivery ☐ US Mail (postage prepaid) ☐ Facsimile Transmission ☐ Federal Express ☒ Electronic Transmission

Ronald L. Williams