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IDAHO PUBLIC
UTILITIES COMMISSION

Kenneth E. Kaufmann
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April 8, 2011

Via Electronic Mail and Overnight Mail

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 W Washington Street
PO Box 83720
Boise, ID 83720-0074

Street Address for Express Mail:
472 W. Washington
Boise, ID 83702-5918

Re: Case Nos. PAC-E-11-01, PAC-E-11-02, PAC-E-11-03, PAC-E-11-04, PAC-E-11-05
IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY
MOUNTAIN POWER FOR A DETERMINATION REGARDING FIRM ENERGY
SALES AGREEMENTS BETWEEN ROCKY MOUNTAIN POWER AND CEDAR
CREEK WIND, LLC

Dear Ms. Jewell:

Enclosed for filing in the above-captioned docket are an original and seven (7) copies of
REPLY COMMENTS OF ROCKY MOUNTAIN POWER.

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-11-01 Service List

Enclosures

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Attorneys for Rocky Mountain Power

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
PACIFICORP DBA ROCKY MOUNTAIN)
POWER FOR A DETERMINATION)
REGARDING A FIRM ENERGY SALES)
AGREEMENT BETWEEN ROCKY)
MOUNTAIN POWER AND CEDAR CREEK)
WIND, LLC (RATTLESNAKE CANYON)
PROJECT)

Case No. PAC-E-11-01

IN THE IN THE MATTER OF THE)
APPLICATION OF PACIFICORP DBA ROCKY)
MOUNTAIN POWER FOR A)
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN)
ROCKY MOUNTAIN POWER AND CEDAR)
CREEK WIND, LLC (COYOTE HILL PROJECT)

Case No. PAC-E-11-02

IN THE MATTER OF THE APPLICATION OF)
PACIFICORP DBA ROCKY MOUNTAIN)
POWER FOR A DETERMINATION)
REGARDING A FIRM ENERGY SALES)
AGREEMENT BETWEEN ROCKY)
MOUNTAIN POWER AND CEDAR CREEK)
WIND, LLC (NORTH POINT PROJECT))

Case No. PAC-E-11-03

IN THE MATTER OF THE APPLICATION OF)
PACIFICORP DBA ROCKY MOUNTAIN)
POWER FOR A DETERMINATION)
REGARDING A FIRM ENERGY SALES)
AGREEMENT BETWEEN ROCKY MOUNTAIN)
POWER AND CEDAR CREEK WIND, LLC)
(STEEP RIDGE PROJECT))

Case No. PAC-E-11-04

IN THE MATTER OF THE APPLICATION OF)
PACIFICORP DBA ROCKY MOUNTAIN)
POWER FOR A DETERMINATION)
REGARDING A FIRM ENERGY SALES)
AGREEMENT BETWEEN ROCKY MOUNTAIN)
POWER AND CEDAR CREEK WIND, LLC)
(FIVE PINE PROJECT))

Case No. Pac-E-11-05

**REPLY COMMENTS OF
PACIFICORP DBA
ROCKY MOUNTAIN
POWER**

Comes now PacifiCorp dba Rocky Mountain Power and files these Reply Comments in response to Reply Comments of Cedar Creek Wind.¹ Without recommending that the Commission approve or disapprove the five Cedar Creek Wind power purchase agreements, Rocky Mountain Power notes the following facts and law for the Commission's consideration.

Background

Rocky Mountain Power and Cedar Creek Wind completed negotiation of all terms of the power purchase agreements ("PPAs") for Cedar Creek Wind's five, 10aMW wind qualifying facilities ("QFs") prior to December 14, 2010. Rocky Mountain Power is aware the Public Utility Regulatory Policies Act of 1978 ("PURPA") does not permit a utility to delay signing a PPA while it waits for a pending rate change to take effect and Rocky Mountain Power acted with reasonable speed to execute the PPAs given the number of documents and complexity of

¹ Rocky Mountain Power's Reply Comments, as well as the Reply Comments of Cedar Creek Wind filed on April 5, are out of the prescribed window to comment set forth by the Commission in its February 24, 2011 Order No. 32192. Rocky Mountain Power therefore requests that the Commission either strike both Replies or accept both Replies.

review of the multiple transactions requested by Cedar Creek Wind. It is important to note that the Company's contract review and execution procedure must comply with Sarbanes Oxley ("SOX") regulatory requirements. Beginning when the PPA is in near-final form, various functions in the Company review the draft PPA and make a preliminary determination of what is needed for final review and approval. From these reviews, the Company determines if there are any major issues that need to be addressed with the QFs and what follow-up information is needed for final approval. Once the parties agree to a final draft, the final draft then undergoes a detailed review and sign-off by management, merchant transmission, accounting, financial reporting (FAS133, Fin 46, etc.), credit, legal, billing, and delegation of signing authority by the appropriate Company executive for execution of the agreement. As this final review requires the involvement of several functions across the Company and detailed scrutiny of the final PPA draft, the typical time for this final review and execution phase is 5 to 10 business days. Seldom does this review result in any material changes to the draft PPA. Rather, the final review process confirms that the contract complies with the Company's SOX requirements, documents that all PPA requirements were met, and moves the PPA to execution. Each executed contract is documented for validation and signed-off by the various functions and a copy of the PPA and documentation is retained for compliance auditing purposes.

The Company commenced internal review of a near-final draft of the Coyote Creek PPA on November 15, 2010, and continued the internal review process in parallel with the parties' ongoing negotiations of the near-final draft and a related transmission agreement. After those negotiations finished, Cedar Creek Wind signed and delivered original copies of all five PPA agreements without exhibits to Rocky Mountain Power's Portland office late on the afternoon of December 13, 2010. Cedar Creek Wind did not deliver final conformed exhibits for each PPA

until December 14, 2010. Once Rocky Mountain Power received the conformed exhibits from Cedar Creek Wind, the Company verified every page of each PPA (including exhibits), documented the review, obtained internal approvals, executed the originals, and made copies before returning a complete set of executed originals to Cedar Creek Wind. During the review, the Company identified discrepancies in several of the PPA exhibits which were corrected and confirmed by Cedar Creek Wind on December 16, 2010. These discrepancies included; incorrect project names in Exhibit D for Five Pine, North Point, Rattlesnake Canyon and Steep Ridge, incorrect QF number for Rattlesnake Canyon, and changes by Cedar Creek Wind to the Five Pine and North Point PPA exhibits that were incorrectly made on the Coyote Hill exhibits. The Company also performed additional legal and technical analysis to confirm that the five projects did not violate the 1-mile rule codified at 18 C.F.R. §292.204, and that the addendum to the PPAs allocating comingled line losses and station service comported with PURPA and transmission system interconnection requirements. The Company completed final review and executive approval was received December 22, 2010. The Company executed the five PPAs on December 22, 2010 and delivered copies of the signature page to Cedar Creek Wind that same day with a fully conformed original for each PPA following by mail.

The Company completed review and execution of all five PPAs in 7 business days--well within the typical range of time that the Company has completed final reviews with other QF projects. It is unlikely that Rocky Mountain Power could have completed its review in a timelier manner and in no event could the Company have been diligent and still executed the contracts prior to December 14, having received signed PPAs with no conformed exhibits from Cedar Creek Wind at the end of the business day on December 13, 2010.

At the time Rocky Mountain Power executed the agreements, there was uncertainty about the correct avoided cost rate for all small Idaho QFs over 100kW. On November 5, 2010, Rocky Mountain Power, Idaho Power Company, and Avista Corporation jointly petitioned the Commission to immediately reduce the eligibility cap for published avoided cost rates from 10aMW to 100kW.² The Commission, on December 3, 2010, issued Order No. 32131, in which it declined to immediately reduce the 10aMW eligibility cap, but simultaneously announced its intent to review the eligibility cap at a January 27, 2011 hearing and to apply the outcome of that process effective December 14, 2010.³ Order No. 32131 gave Rocky Mountain Power and Cedar Creek Wind notice that the eligibility status of the Cedar Creek Wind QFs might change, effective December 14, 2010.⁴ However the parties did not know, and could not know, the post-December 14 status of those projects until the Commission's final decision (Order No. 32176), issued February 7, 2011.⁵ Under those circumstances, Rocky Mountain Power did what it believed it was obligated to do—it executed the five agreements (the “December 22 PPAs”) with the terms and conditions the parties agreed to prior to December 14, 2010, and with the published avoided cost rates in effect on December 22, 2010. Rocky Mountain Power did not know, on December 22 or at any time thereafter, whether the Commission would approve the PPAs as executed.

² *Joint Petition to Address Avoided Cost Issues and Joint Motion to adjust the Published Avoided Cost Rate Eligibility Cap*, Case No. GNR-E-10-04, (Nov. 5, 2010).

³ *In the Matter of the Joint Petition of Idaho Power Company, Avista Corporation, and PacifiCorp d/b/a Rocky Mountain Power to Address Avoided Cost Issues and Adjust the Published Avoided Cost Rate Eligibility Cap*, Case No. GNR-E-10-04, Order No. 32121 (2010).

⁴ *Id.*

⁵ On December 22, 2010, it was not yet clear whether the Commission would decide to reduce the eligibility cap for published avoided cost rates effective December 14, 2010, and it was therefore not clear on December 22, 2010, that Cedar Creek Wind's QF development—a large development which had been disaggregated into five QFs under 10aMW—would not qualify for published avoided cost rates after December 14, 2010.

Discussion

Cedar Creek Wind argues, in its Reply Comments (page 4), that it is entitled to approval of its contracts because the parties “had a meeting of the minds” prior to December 14, 2010. However, under their terms, the December 22 PPAs are not effective until approved by the Commission. Section 2.1 of each of PPA provides:

This Agreement shall become effective after execution by both Parties and after approval by the Commission (“**Effective Date**”); *provided*, however, this Agreement shall not become effective until the Commission has determined, pursuant to a final and non-appealable order, that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the costs incurred by PacifiCorp for purchases of capacity and energy from Seller are legitimate expenses, all of which the Commission will allow PacifiCorp to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses.

Per the language above, the December 22 PPAs cannot become effective until the Commission finds that: (1) the prices to be paid for energy and capacity are just and reasonable; (2) the contract is in the public interest; and (3) costs incurred by the Company for purchases of capacity and energy from Seller are legitimate expenses, all of which the Commission will allow the Company to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses.

On previous occasions where QFs sought grandfathered rate treatment the Commission has, without exception known to the Company, made the above findings and approved grandfathered rates where the parties fully executed a PPA prior to the date of a rate change. The Commission also authorizes grandfathered treatment where the parties did not fully execute the PPA and the QF files a meritorious complaint prior to the rate change alleging that the utility’s foot dragging prevented full execution of a PPA before the rate change. These two recognized fact patterns embody what Rocky Mountain Power has referred to before the Commission as the “bright line” rule for grandfathered rate treatment announced by the

Commission and affirmed by the Idaho Supreme Court in the 1990s.⁶ Under the bright line rule, Cedar Creek Wind could have assured itself of obtaining the pre-December 14, 2010 published avoided cost rates if it had either obtained fully executed PPAs by December 14 or filed a meritorious complaint by December 14 alleging that Rocky Mountain Power improperly refused to execute PPAs. Cedar Creek Wind did neither and Cedar Creek Wind therefore is not entitled to the certain relief of the bright line rule.

Cedar Creek Wind requires an exception to the bright line rule to allow its QFs to qualify for pre-December 14 published avoided cost rates. There is recent Commission precedent for granting grandfathered rate treatment in circumstances where the seller failed the bright line test. In 2010, Idaho Power Company requested, and the Commission granted, grandfathered rate treatment to both the Grand View Solar and the Yellowstone Power Inc. QFs.⁷ The Commission noted that there was a meeting of the minds prior to the rate change but also based its grant of grandfathered rate treatment on other, equitable, reasons. In *Grand View Solar*, the Commission found that “but for consideration by the Company of a non-PURPA contract for the project, a contract would have been signed prior to March 16, 2010.”⁸ In *Yellowstone*, the Commission found that a “combination of factors, coupled with evidence of an agreement prior to March 16, 2010, make it clear that approval of the Agreement' s grandfathered avoided cost rate is in the

⁶ *A.W. Bown Co., Inc. v. Idaho Power Co.*, 121 Idaho 812, 816, 828 P.2d 841 (1992); *See, also, In the Matter of the Application of Idaho Power Company for Approval of a Firm Sales Agreement with Yellowstone Power, Inc. for the Sale and Purchase of Electric Energy*, Case No. IPC-E-10-22, Comments of the Commission Staff, at 3 (2010).

⁷ *See, In the Matter of the Application of Idaho Power Company for Approval of a Firm Energy Sales Agreement with Grand View Solar PV 1, LLC for the Sale and Purchase of Electric Energy*, Case No. IPC-E-10-19, Order No. 32068 (2010); *In the Matter of the Application of Idaho Power Company for Approval of a Firm Sales Agreement with Yellowstone Power, Inc. for the Sale and Purchase of Electric Energy*, Case No. IPC-E-10-22, Order No. 32104 (2010).

⁸ Order No. 32068, at 5.

public interest.”⁹ These cases may be factually distinguished from Cedar Creek Wind QFs, based on the “other factors” unique to the Cedar Creek Wind projects. Whereas, Grand View and Yellowstone are both single QFs with capacity less than 10 aMW, the five Cedar Creek QFs are, in substance, a single 133 MW project, disaggregated into 10 aMW projects, apparently for the purpose of qualifying for that to which it otherwise is not entitled—the published avoided cost rate. The policy implications of grandfathering Cedar Creek Wind PPAs are not the same as the implications for grandfathering either Grand View or Yellowstone.

Conclusion

Rocky Mountain Power concurs with Cedar Creek Wind’s statement (on page 3 of its Reply) that the two parties reached agreement on all terms of their December 22 power purchase agreements prior to December 14, 2010. This fact alone does not, however, compel the Commission to approve those contracts.

Dated this 8th day of April, 2011.

Respectfully Submitted,



Kenneth Kaufmann
Lovinger Kaufmann, LLP
Of Attorneys for Rocky Mountain Power

⁹ Order No. 32104, at 12.

CERTIFICATE OF SERVICE

I herby certify that I have this 8th Day of April, 2011, served the foregoing **Reply Comments of PacifiCorp, d/b/a Rocky Mountain Power**, in Case No. PAC-E-11-01_02_03_04_05, by electronic and overnight mail, to the following:

<p>Jean Jewell Commission Secretary Idaho Public Utilities Commission 472 W. Washington PO Box 83720 Boise, ID 83720-0074 jean.jewell@puc@idaho.gov secretary@puc.idaho.gov</p> <p>Ted Weston ID REG Affairs MGR Rocky Mountain Power 201 South Main, Suite 2300 Salt Lake City, UT, 84111 E-Mail: ted.weston@pacificorp.com</p>	<p>Daniel Solander Rocky Mountain Power 201 South Main, Suite 2300 Salt Lake City, UT, 84111 E-Mail: daniel.solander@pacificorp.com</p> <p>Ronald L. Williams Williams Bradbury PC 1015 W. Hays St Boise, ID 83702 E-Mail: ron@williamsbradbury.com</p>
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