

WILLIAMS · BRADBURY

A T T O R N E Y S A T L A W

RECEIVED

2011 APR -5 PM 4:31

IDAHO PUBLIC
UTILITIES COMMISSION

April 5, 2011

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

ATTN: Jean D. Jewell
Commission Secretary

Re: 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

Dear Jean:

Please find enclosed the original and seven (7) copies of Reply Comments of Cedar
Creek Wind LLC 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,



Ronald L. Williams

RLW/jr
Enclosures

Ronald L. Williams, ISB No. 3034
Williams Bradbury, P.C.
1015 W. Hays St.
Boise ID, 83702
Telephone: 208-344-6633
Fax: 208-344-0077
ron@williamsbradbury.com

RECEIVED
2011 APR -5 PM 4:33
IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Cedar Creek Wind LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF) Case No. PAC-E-11-01
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))

IN THE MATTER OF THE APPLICATION OF) Case No. PAC-E-11-02
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))

IN THE MATTER OF THE APPLICATION OF) Case No. PAC-E-11-03
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))

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
CEDAR CREEK WIND LLC**

Comes now Cedar Creek Wind, LLC (“Cedar Creek” or “CCW”) and files these Reply Comments in response to Comments of the Commission Staff and asks the Commission to consider these Reply Comments, for the reasons set forth below.

Cedar Creek is counterparty to the five Firm Energy Sales Agreements with Rocky Mountain Power in the above listed dockets. As the Commission noted in Order 32210 in Case Numbers IPC-E-10-51 through 55, a counterparty such as CCW is an “actual party” in such a case with a “direct interest” in the outcome of these proceedings. For this reason, these Reply Comments are filed because an additional material fact impacting CCW’s direct interest in this case has arisen subsequent to the filing of initial comments by Cedar Creek and the March 24, 2010 date established by Commission Order 32192 for the filing of comments by interested parties.

STATEMENT OF FACT

On March 25, 2011 Rocky Mountain Power filed the Direct Testimony of Bruce W. Griwold in IPUC Case No. GNR-E-11-01 *In The Matter of the Commission’s Investigation Into*

Disaggregation and An Appropriate Published Avoided Cost Rate Eligibility Cap Structure for PURPA Qualifying Facilities. In his direct testimony in this case Mr. Griswold, makes the following statement:

Because the Company and Cedar Creek reached agreement on all terms of their power purchase agreements including the avoided cost price prior to December 14, 2010, (the effective date of Commission Order No 32131) Rocky Mountain Power executed final power purchase agreement and, on January 10, 2010, filed them with the Commission.

Case No. GNR E-11-01, Griswold, Di – 8. (emphasis added) A copy of this page of Mr. Griswold's direct testimony is attached.

This statement of Mr. Griswold is in accord with the facts sworn to by Dana Zentz in his affidavit previously filed by CCW in these cases, where Mr. Zentz said:

16. On November 29, 2009 I received an email from Ken Kaufmann, legal counsel to PacifiCorp, transmitting a "proposed final redline" PPA for the Coyote Hill wind project, with the additional notation that when the Coyote Hill PPA is finalized, PacifiCorp will commence preparing the other four PPAs using the same contract prototype. My response the next day made a couple of annotations in the body of this PPA and otherwise noted that "we have nothing further" to add or request. *See Attachment No. 8 [to Affidavit]* (emphasis original)

24. All material outstanding contract issues between CCW and PacifiCorp were resolved by November 29, 2010 and the parties had, on or before this date, arrived at a meeting of the minds. CCW was simply forced to wait for three weeks for PacifiCorp credit, legal and management reviews of the contracts, before contract execution by PacifiCorp.

See Affidavit of Dana Zentz, p. 10, 12-13.

In spite of both parties to the power purchase agreements (PPAs) confirming in sworn testimony before the Commission that a binding, legally enforceable obligation arose before December 14, 2011, Staff recommends that the Commission reject the five Cedar Creek PPAs because Rocky Mountain Power executed the agreements after December 14, 2010. As Stated by Staff: "Staff views the December 14, 2010 effective date of Order No. 32176 as absolute."

STATEMENT OF LAW

The standard articulated by Staff – that December 14, 2010 is an “absolute” cut-off date – is both a misreading of the Commission Order 32176 in Case No. GNR-E-10-4 and is contrary to established law regarding PURPA rates and contract requirements.

In its *Notice of Joint Petition* in Case No. GNR-E-10-4 the Commission stated its intent to “reduce the published avoided cost eligibility cap” effective on December 14, 2010. *See* Order 32131. After deliberation the Commission in Order No. 32176 held: “Based on the forgoing, the Commission temporarily reduces the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar resources only, effective December 14, 2010.” *Id.* Both Orders establish December 14 as the date of “eligibility” for 10 aMW cap and the standard rates that accompany such a 10 aMW contract. Neither Order requires, or even speaks to, December 14 as the date by which both counterparties must have signed. Both counterparties – Rocky Mountain Power and Cedar Creek – agree that the five CCW contracts were eligible for the 10 aMW rates prior to December 14, 2010. Both also agree that all PPA terms and conditions, including price, had been agreed to before this date. Respectfully, CCW believes Staff is misreading Commission Order No. 32176.

As previously noted in CCW’s initial comments, two recent Qualifying Facility (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 contract terms. Those factors are discussed in CCW’s initial comments in these cases and will not be repeated here, except with respect to the final point: a “meeting of the minds” between counterparties to a PPA.

In *Grand View Solar* the Commission approved a PPA executed by both parties substantially after a change of avoided cost rates, but containing higher vintage PURPA rates.¹ In *Grand View Solar* Idaho Power represented to the Commission that “an agreement [between Idaho Power and Grand View Solar] was materially complete prior to March 16, 2010, and except for routine Idaho Power final processing, an agreement would have been executed by both parties prior to March 16, 2010.” *Order No. 32068* at p. 2. Staff also recommended approval of the Grand View Solar Contract: “Staff concludes that the Company has demonstrated that Grandview [sic] is eligible for grandfathered rates.” *Id.* at p. 3. The Commission approved the Grand View Solar PPA, noting: “We accept the representations of Idaho Power as to the contract negotiations of the parties.” *Id.* at p. 5. The Commission then stated: “We further find the Company’s approach in this case regarding contract rates to be consistent with the spirit of those prior grandfathering cases. *See A. W. Brown Co., Inc., v. Idaho Power Company*, 121 Idaho 812,817; 828 P.2d 841 (1992), *Order No. 29872*, Case No IPC-E-05-22.” *Id.* *See also Yellowstone Power Inc.*² where the Commission also found that Yellowstone was entitled to grandfathered contract terms and rates, as “[t]here is no reason to question the representations of Idaho Power and Yellowstone” as to a meeting of the minds on contract rates and terms. *Order No. 32104.* at p. 11. In this case Idaho Power and Yellowstone Power Inc. also both executed the PPA after March 16, 2010.

Alternatively, if December 14 is in fact considered the “absolute” date by which a contract must be entered into, the counterparties to the Cedar Creek PPAs are in accord that such

¹ 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*. Idaho Power and Grand View Solar executed their contract on June 8, 2010, not quite three months after the change in rates.

² 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.* The contract between Yellowstone Power Inc. and Idaho Power was dated July 28, 1020, more than four months after the change in rates.

a binding commitment or obligation was agreed to between them before December 14, 2010.

The actual date inserted on the face of the PPAs by Rocky Mountain Power was merely a function of “routine final processing”³ of the PPAs by Rocky Mountain Power.

CONCLUSION

Staff’s recommendation to now, and for the first time, establish an “absolute” or “bright line” grandfathering test, as a substitute for the longstanding “facts and circumstances” test (previously employed by the Commission and ratified by the Idaho Supreme Court) is wrong and misguided. Such a new, arbitrary test for determining grandfathered rights to pre-existing rates, terms or conditions is bad public policy because it would simply allow a utility the unilateral ability to “run out the clock” with routine, non-substantive approval matters when the “absolute” date is approaching. A hard-and-fast rule is also contrary to PURPA’s federal mandate that utilities execute power purchase agreements with QF projects that are mature and are ready, willing and able to deliver qualifying power to the utility at the avoided cost applicable at that time.

The Commission has a long history of sifting through and determining which projects and contracts are sufficiently mature to deserve grandfathered PURPA rates, terms or conditions. That well reasoned body of law should not be abandoned here for an arbitrary, “absolute” hard-date test that fails to consider both the facts and the equities of the parties involved. Or, as in this case, sworn testimony by both counterparties to the Cedar Creek PPAs that “[T]he Company and Cedar Creek reached agreement on all terms of their power purchase agreements including the avoided cost price prior to December 14, 2010.” *Id.* Griswold Direct Testimony, p. 8.

³ IPUC Order No. 32068, *Grand View Solar*, p.2.

Dated this 5th day of April, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald L. Williams", written over a horizontal line.

Ronald L. Williams
Williams Bradbury, P.C.
of Attorneys for Cedar Creek Wind

RECEIVED

2011 MAR 25 AM 10:00

IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE)
COMMISSION'S) **CASE NO. GNR-E-11-01**
INVESTIGATION INTO)
DISAGGREGATION AND AN) **Direct Testimony of Bruce W. Griswold**
APPROPRIATE PUBLISHED)
AVOIDED COST RATE ELIGIBILITY)
CAP STRUCTURE FOR PURPA)
QUALIFYING FACILITIES)

ROCKY MOUNTAIN POWER

CASE NO. GNR-E-11-01

March 2011

1 Prior to applying for a QF contract with published prices, Cedar Creek
2 submitted a bid into the Company's 2009 renewable RFP as a single 151 MW
3 project but their bid was not selected by the Company because their proposed
4 price was too high and not competitive with the alternatives. In March 2010, the
5 developer requested QF pricing for two 78 MW projects. The projects' avoided
6 cost prices were determined using the Commission-ordered IRP methodology for
7 Idaho QFs over 10 aMW. The Company prepared and delivered a term sheet
8 containing a twenty-year stream of avoided cost prices. On a twenty-year nominal
9 levelized payment basis the resultant avoided cost price was \$56.06 per MWh
10 assuming a start date in 2012. The avoided cost prices were rejected by the
11 developer due to the price being too low.

12 In May 2010, the developer resubmitted five distinct projects totaling 133
13 MW and requested the published avoided cost prices. Cedar Creek is a large-
14 scale, sophisticated developer with legal and technical assets who disaggregated a
15 single large project that was not selected through the Company's competitive bid
16 process into multiple projects in order to meet the 10 aMW threshold and qualify
17 for much higher published avoided cost contracts.

18 Because the Company and Cedar Creek reached agreement on all terms of
19 their power purchase agreements including the avoided cost price prior to
20 December 14, 2010, (the effective date of Commission Order No. 32131) Rocky
21 Mountain Power executed final power purchase agreements and, on January 10,
22 2010, filed them with the Commission. These contracts are currently before the
23 Commission for review and decision. On a comparative basis, the 20-year