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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IDAHO PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
PACIFICORP DBA ROCKY MOUNTAIN )  
POWER FOR A DETERMINATION )  
REGARDING A FIRM ENERGY SALES ) **CASE NO. PAC-E-11 -01**  
AGREEMENT BETWEEN ROCKY MOUNTAIN )  
POWER AND CEDAR CREEK WIND, LLC )  
(RATTLESNAKE CANYON PROJECT) )

IN THE MATTER OF THE APPLICATION OF )  
PACIFICORP DBA ROCKY MOUNTAIN )  
POWER FOR A DETERMINATION )  
REGARDING A FIRM ENERGY SALES ) **CASE NO. PAC-E-11-02**  
AGREEMENT BETWEEN ROCKY MOUNTAIN )  
POWER AND CEDAR CREEK WIND, LLC )  
(COYOTE HILL PROJECT) )

IN THE MATTER OF THE APPLICATION OF )  
PACIFICORP DBA ROCKY MOUNTAIN )  
POWER FOR A DETERMINATION )  
REGARDING A FIRM ENERGY SALES ) **CASE NO. PAC-E-11-03**  
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 ) **CASE NO. PAC-E-11-04**  
AGREEMENT BETWEEN ROCKY MOUNTAIN )  
POWER AND CEDAR CREEK WIND, LLC )  
(STEEP RIDGE PROJECT) )

IN THE MATTER OF THE APPLICATION OF )  
PACIFICORP DBA ROCKY MOUNTAIN )  
POWER FOR A DETERMINATION )  
REGARDING A FIRM ENERGY SALES ) **CASE NO. PAC-E-11-05**  
AGREEMENT BETWEEN ROCKY MOUNTAIN )  
POWER AND CEDAR CREEK WIND, LLC )  
(FIVE PINE PROJECT) )

**STIPULATION OF SETTLEMENT AND REQUEST FOR  
APPROVAL OF POWER PURCHASE AGREEMENTS**

This Stipulation of Settlement and Request for Approval of Power Purchase Agreements ("Stipulation and Request for Approval") is entered into by and among Cedar Creek Wind, LLC ("Cedar Creek"), Staff for the Idaho Public Utilities Commission ("Staff"), PacifiCorp dba Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" and which may be referred to herein individually as a "Party" and collectively with Cedar Creek and Staff, the "Parties") in order to resolve all disputes between or among the Parties in, and related to, the above-captioned dockets and, in light of such resolution, and the agreements herein, to hereby request that the Idaho Public Utilities Commission ("Commission") modify its July 27, 2011 Order on Reconsideration (the "*July 27 Order*") and approve three of the five Firm Energy Sales Agreements as amended by this Stipulation and Request for Approval, namely, the North Point Project (Case No. PAC-E-11-03), the Five Pine Project (Case No. PAC-E-11-05) and the Coyote Hill Project (Case No. PAC-E-11-02) (together, the "Agreements"). The Agreements are attached hereto, and incorporated herein by reference, respectively as Exhibit A (North Point Project), Exhibit B (Five Pine Project) and Exhibit C (Coyote Hill Project). Rocky Mountain Power, with Cedar Creek's support, hereby withdraws the Applications requesting approval of the Firm Energy Sale Agreements for the Steep Ridge Project (Case No. PAC-E-11-04) and the Rattlesnake Canyon Project (Case No. PAC-E-11-01) (together, the "Withdrawn Agreements") pursuant to Rule 68, IDAPA 31.01.01.068.

**SUMMARY**

1. The Parties agree that this Stipulation and Request for Approval represents a fair, just and reasonable resolution of the issues in this proceeding, is in the public interest, and is in

accordance with law and applicable regulatory policies. As further delineated herein, the Parties agree that as of at least December 13, 2010, Cedar Creek had a “legally enforceable obligation” with Rocky Mountain Power. Accordingly, the Parties respectfully request that the Commission, pursuant to its authority, approve the Stipulation and Request for Approval and all of its terms and conditions, amend such orders and make such additional findings or take such notice as it deems necessary and appropriate, and approve the Agreements. *See* IDAPA 31.01.01.326, 352-354.

### **BACKGROUND**

2. This proceeding concerns the Commission’s review of five qualifying facilities (“QFs”) power purchase agreements between PacifiCorp and Cedar Creek filed with the Commission in the above captioned cases on January 10, 2011 (the “Original Agreements”). Under the Original Agreements, Cedar Creek committed to sell, and Rocky Mountain Power committed to buy, all of the energy and capacity from each of Cedar Creek’s five wind generating facilities (the “Projects”). The Original Agreements were the result of months of negotiation between Cedar Creek and Rocky Mountain Power.

3. With a view toward resolving the issues raised in the pending Commission cases (PAC-E-11-01 through PAC-E-11-05), in FERC Docket No. EL11-59-000, and in Idaho Supreme Court Docket No. 39134-2011, representatives of the Parties met on October 20 and 27, November 16, and December 1, 2011, pursuant to IDAPA 31.01.01.352, to engage in settlement discussions. On the basis of these settlement discussions, the Parties stipulate and agree to the following:

## **TERMS OF THE STIPULATION AND REQUEST FOR APPROVAL**

4. The evidence in the administrative record of the above-captioned Commission dockets establishes that no later than December 13, 2010, Cedar Creek had committed itself to sell to Rocky Mountain Power the output of the Projects, and Cedar Creek had demonstrated to the satisfaction of Rocky Mountain Power its ability to deliver on its commitment. By such date, then, Cedar Creek had created a legally enforceable obligation under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and Federal Energy Regulatory Commission ("FERC") regulations implementing PURPA, thereby committing itself to sell, and Rocky Mountain Power to buy, the output of each of Cedar Creek's five Projects.

5. Because Cedar Creek had established a legally enforceable obligation no later than December 13, 2010, the Parties hereby respectfully request that the Commission modify its *July 27 Order* to find that Cedar Creek was at the time entitled under PURPA to have the Original Agreements approved by the Commission at the published rates available to 10 aMW QFs as were in effect as of December 13, 2010. The Parties agree and request that the Agreements as contained in Exhibits A, B, and C be substituted for the Original Agreements, and such substituted Agreements be approved by the Commission at the avoided cost rates contained in the Original Agreements.

6. The Parties affirm their support for such approval together with a request that the Commission find that the payments and terms set forth under the Agreements are just and reasonable, in the public interest, and prudently incurred expenses of Rocky Mountain Power for ratemaking purposes. In addition, the Parties request that the Commission determine that the payments made under the Agreements are subject to the inter-jurisdictional cost allocation agreements in effect between PacifiCorp and its retail state jurisdictions (including this Commission, *i.e.*, the "2010 Protocol") or a successor agreement. As identified in the 2010

Protocol, costs associated with the Agreements which exceed the costs PacifiCorp would have otherwise incurred acquiring Comparable Resources, will be assigned on a situs basis to the State approving such contract. The Commission will allow Rocky Mountain Power to recover the costs associated with the Agreements in this proceeding in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said net expenses.

7. Cedar Creek and Rocky Mountain Power agree to modify the Original Agreements as set forth in Exhibits A, B, and C. The Parties agree to support such modifications and Commission approval of the Agreements. For the avoidance of doubt, in no event (including upon any assignment or transfer of the Agreements) shall the combined Facility Nameplate Capacity of the Agreements exceed 133.4 MW. Further, in no event shall the sum of the net output from the Agreements in any given calendar year exceed a cumulative 438,000 megawatt hours (MWh). In the event the sum of the net output from the Agreements exceeds 438,000 MWh in any given calendar year, PacifiCorp shall determine the number of megawatt hours that exceeded the 438,000 MWh calendar year cap by taking the sum of the net output of the Agreements for the particular calendar year and subtracting 438,000 MWh. That amount shall be known as "Cap Inadvertent Energy". The Cap Inadvertent Energy shall be subtracted from the net output of the Coyote Hill Project, if any such net output exists, prior to calculating payment for the Coyote Hill Project for the December billing period of the particular calendar year. In the event the Cap Inadvertent Energy exceeds the net output of the Coyote Hill Project for the December billing period, the net output for the Coyote Hill project for billing purposes for December shall be zero, and the remaining Cap Inadvertent Energy shall carryover to subsequent months. A similar calculation will then be performed in however many subsequent months are required until such time as the Cap Inadvertent Energy equals zero.

8. Any assignment or transfer of the Agreements following the approval of this Stipulation and Request for Approval shall be made subject to the provisions of this Stipulation and Request for Approval.

9. Cedar Creek and Rocky Mountain Power hereby withdraw the request for approval of the Withdrawn Agreements. The Parties agree to support such withdrawals.

10. The Parties further request that the Commission (1) approve this Stipulation and Request for Approval, (2) modify its *July 27 Order* to approve the Agreements, and (3) issue such approvals as soon as possible but no later than 14 days after this Stipulation and Request for Approval is submitted to the Commission for its review.

11. Upon issuance of an amended Order by the Commission approving the Agreements and this Stipulation and Request for Approval, Cedar Creek agrees to withdraw its Idaho Supreme Court appeal in Docket No. 39134-2011, and the Parties agree to waive any right to file any action authorized by or in connection with the amended Order or the order issued by FERC in Docket No. E11-59-000 or any appeal concerning the matters expressed herein.

#### **GENERAL PROVISIONS**

12. The Parties agree that this Stipulation and Request for Approval represents a fair, just and reasonable resolution of the disputed claims and positions of the Parties on all issues in this proceeding, and that this Stipulation and Request for Approval, and all of its terms and conditions, are fair, just and reasonable, and are consistent with law and applicable regulatory policies. Other than the above referenced positions and any comments or testimony required by the Commission to be filed in support of the approval of this Stipulation and Request for Approval, and except to the extent necessary for a Party to explain before the Commission its own statements and positions with respect to the Stipulation and Request for Approval, all

negotiations relating to this Stipulation and Request for Approval shall not be admissible as evidence in this or any other proceeding regarding the subject matters of this Stipulation and Request for Approval. Rule 352, IDAPA 31.01.01.352.

13. The Parties submit this Stipulation and Request for Approval to the Commission and recommend that the Commission approve the Stipulation and Request for Approval in its entirety pursuant to Commission Rules 354 and 355, IDAPA 31.01.01. 354-355. If requested by the Commission, the Parties shall support this Stipulation and Request for Approval before the Commission, and no Party shall appeal any portion of this Stipulation and Request for Approval or any Order approving the same or approving the Agreements, except as expressly provided in Paragraph 14 of this Stipulation and Request for Approval. If this Stipulation and Request for Approval is challenged by any person not a party to the Stipulation and Request for Approval, each Party reserves the right to cross-examine witnesses and put on such case as it deems appropriate to respond fully to the issues presented, including the right to raise issues that are incorporated in this Stipulation and Request for Approval. Notwithstanding this reservation of rights, the Parties agree that they will continue to support the Commission's adoption of the terms of this Stipulation and Request for Approval and the Commission's approval of the Agreements.

14. In the event the Commission rejects or materially modifies any part or all of this Stipulation and Request for Approval or the Agreements, or imposes any additional material conditions on approval of this Stipulation and Request for Approval or the Agreements, each Party reserves the right, upon written notice to the Commission and the other Parties to this proceeding, within 3 business days of the date of such action by the Commission, to withdraw from this Stipulation and Request for Approval (including the Agreements). In such case, no

Party shall be bound or prejudiced by the terms of this Stipulation and Request for Approval, and each Party shall be entitled to any available means of redress under law, including without limitation an appeal to the Idaho Supreme Court of any order issued by the Commission in this proceeding, or in further proceedings before the Commission, or in a court of competent jurisdiction.

15. No Party shall be bound, benefited, or prejudiced by any position asserted in the negotiation of this Stipulation and Request for Approval, except to the extent expressly stated herein. Nor shall this Stipulation and Request for Approval be construed as a waiver of the rights of any Party unless such rights are expressly waived herein. No findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Stipulation and Request for Approval. This Stipulation and Request for Approval represents a negotiated compromise between the Parties. No Party admits any fault or liability in connection with the negotiations, proceedings or other events associated with the Original Agreements, the Agreements, the Withdrawn Agreements, or agreements between Cedar Creek and PacifiCorp regarding transmission for the Projects. Nothing in this Stipulation and Request for Approval is intended to be precedent regarding any of the matters discussed herein in any other judicial or Commission proceeding.

16. The obligations of the Parties under this Stipulation and Request for Approval are subject to the Commission's approval of this Stipulation and Request for Approval in accordance with its terms and conditions.

17. Except as set forth in Paragraph 14, this Stipulation and Request for Approval resolves all issues raised by any Party in the captioned dockets, in the FERC Proceeding, and in Cedar Creek's appeal to the Idaho Supreme Court. Each Party, for good and valuable



consideration received, waives, releases and discharges the other Parties from any and all causes of action, suits, claims, demands, and liabilities whatsoever in law or equity, whether heretofore, now or hereafter existing or arising, of every kind and nature, whether known or unknown with respect to, or arising from, the allegations, facts, circumstances or contentions raised by, known to or reasonably should have been known to any Party in any proceeding or related activity (including the negotiation and preparation of the Original Agreements, the Agreements, the Withdrawn Agreements, this Stipulation and Request for Approval, or agreements between Cedar Creek and PacifiCorp regarding transmission for the Projects) referred to in this paragraph as of the execution date of this Stipulation and Request for Approval. Nothing in this Stipulation and Request for Approval shall restrict the rights of any Party to pursue any dispute or form of relief necessary to enforce the terms of this Stipulation and Request for Approval or arising out of conduct related to, or any events in connection with, the Parties' performance of the Agreements which occurs after Commission approval of the Agreements.

18. The Parties shall remain free to participate in any existing proceeding, or to initiate or participate in any future proceeding, addressing any matter not settled in this Stipulation and Request for Approval, included, but not limited to generic issues concerning QFs, the calculation of avoided costs, and any Integrated Resource Plan (IRP) proceedings.

19. This Stipulation and Request for Approval may be executed in counterparts.

Respectfully submitted this 14<sup>th</sup> day of December, 2011.

**Rocky Mountain Power**

By Mark C. Moench  
Mark C. Moench  
Senior Vice President and General Counsel

**Cedar Creek Wind, LLC**

By Thomas L. Cameron  
Thomas L. Cameron  
Vice President  
DANA C. SASSER  
MANAGER

**Idaho Public Utilities Commission Staff**

By Kristine A. Sasser  
Kristine A. Sasser  
Deputy Attorney General

**PLEASE SEE EXHIBIT A  
(NORTH POINT POWER PURCHASE AGREEMENT)  
IN CASE NO. PAC-E-11-03**

**PLEASE SEE EXHIBIT B  
(FIVE PINE POWER PURCHASE AGREEMENT)  
IN CASE NO. PAC-E-11-05**

**PLEASE SEE EXHIBIT C  
(COYOTE HILL POWER PURCHASE AGREEMENT)  
IN CASE NO. PAC-E-11-02**

**POWER PURCHASE AGREEMENTS IN  
CASE NOS. PAC-E-11-01 (RATTLESNAKE CANYON)  
AND PAC-E-11-04 (STEEP RIDGE)  
WERE WITHDRAWN PER STIPULATION**