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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF PACIFICORP FOR APPROVAL OF AN IRP-BASED AVOIDED COSTS METHODOLOGY FOR QF PROJECTS LARGER THAN ONE MEGAWATT	Docket 03-035-14

RESPONSE TO REQUEST FOR RECONSIDERATION AND PETITION FOR REHEARING OR RECONSIDERATION

Pursuant to Utah Code §§54-7-15 and 63-46b-12, Pioneer Ridge LLC (Pioneer) hereby responds to the request for reconsideration of the Utah Committee of Consumer Services (Committee) and the petition for rehearing or reconsideration by Pacificorp (Company) of the Utah Public Service Commission's (Commission) Report and Order dated October 31, 2005 (Report and Order).

Argument

I. The Report and Order is a Final Order

The Committee erroneously states that the Report and Order is not a final order in this Docket. This error is based on a misreading by Committee of the cases cited in support of its argument (*Barker v. Utah Public Service Com'n*, 970 P.2d 702 (Utah 1998), *Sloan v. Board of Review of Indus. Com'n of Utah*, 782 P.2d 463 (Utah 1989), and *Union Pacific R.R..v. Utah State Tax Com'n*, 999 P.2d 17(Utah 2000*).* The Court specifically held in *Barker* that:

"Because of the nature of agency proceedings, final actions often take place seriatim, disposing completely of discrete issues in one order while leaving other issues for later orders." (*Barker* at 706. See also *Union Pacific* at 16 .) The Report and Order set a specific deadline for a working group to provide a methodology for determining fact dependent transmission and line loss adjustments to contract pricing. The Commission has provided a final decision regarding contract pricing and a process and methodology that allows making adjustments to a specific contract price and provides a method to resolve disputes. Issues regarding the appropriate transmission and line loss adjustment in each and every contract will involve specific factual differences regarding a project's location and the transmission resources available at the time that particular project is scheduled to commence commercial operation. In no way does this price adjustment methodology prevent the Report and Order from constituting a final order under the principles outlined in *Barker* and the three part test outlined by the Court in *Union Pacific* (at 16) for assessing whether agency orders are final under Utah law: agency decision making is at a stage where judicial review will not disrupt the orderly process; legal consequences flow from agency action; and agency action, in whole or in part, is not preliminary, preparatory, procedural or intermediate. The Report and Order meets all three tests. (*Sloan* , which involved a remand for further proceedings, is clearly not applicable to the facts here.) Accordingly, the Report and Order constitutes a final order under Utah law.

II There is Sufficient Evidence of Market Determined Pricing in the Report and Order.

The Committee erroneously argues that there is not sufficient evidence to come to the conclusion that a market-determined pricing using the most recently executed Company wind contract resulting from its renewable RFP is a satisfactory market price proxy for determining the indicative price/avoided cost for wind QF's in Utah. The basis for the Committee's position seems to be that the Company did not include in the RFP process a Company build option to an alternative competitively bid contracted resource. The Committee then asserts that since Company did not use a Company built alternative in the competitive bid RFP process, the resulting pricing in some unspecified way does not meet the requirements of FERC for the determination of avoided cost rates. The Committee assertion is not supported by any authority and is simply erroneous. The pricing established by the Commission in the Report and Order does meet the standards set forth in PURPA and the requirements of FERC for determining avoided cost (as discussed in more detail below) and does have a sufficient evidentiary basis.

III. THE PURPA and FERC rules for determining avoided costs are incorporated into the Commission's Report and Order and the Pioneer Ridge LLC method does comply with those rules.

The price to be paid a QF, wind or non-wind, may be no more than the "incremental cost of alternative electric energy" defined in *16 U.S.C. §824a-3(d)*.

> (d) "Incremental cost of alternative electric energy" defined. For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

Clearly, the pricing as established through the most recent competitively bid renewable RFP process meets the above requirements as the pricing resulting from such process is reflected in market contracts entered into by the Company at the incremental cost to it of purchasing comparable alternative energy.

The Committee erroneously states that the Report and Order has not "considered" the rules adopted by the FERC in determining the incremental cost of the electric energy from a wind QF. Pioneer's position is that all specified factors have been considered to the extent practicable. *18 CFR 292.304(e)* Factors affecting rates for purchases, states:

> In determining avoided costs, the following factors shall, *to the extent practicable, be taken into account [emphasis added]*:
>
> (1) The data provided pursuant to Sec. 292.302(b), (c), or (d), including State review of any such data;
>
> (2) The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:
>
> (i) The ability of the utility to dispatch the qualifying facility;
>
> (ii) The expected or demonstrated reliability of the qualifying facility;
>
> (iii) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;
>
> (iv) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;
>
> (v) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;
>
> (vi) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and
>
> (vii) The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities; and
>
> (3) The relationship of the availability of energy or capacity from the qualifying facility as derived in paragraph (e)(2) of this section, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and
>
> (4) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

The market-determined wind QF pricing in the Report and Order meets the requirements set forth above, to the extent practicable, in the following way;

(1)The data considered was the most recent negotiated contract resulting from the most recent competitively bid wind RFP.

(2) The wind QF resource is not dispatchable for either the wind proxy plant or the wind QF and pricing will include any adjustments from the market-determined price based on operating load characteristics and reliability of the wind QF.

(3) The wind QF pricing as derived from the market-determined price includes the value of capacity imbedded in the price and will avoid generation from fossil fuel.

(4) The determination on a contract by contract basis for line losses will be taken into account based on site-specific facts through the methodology of the Transmission Working Group.

In a FERC staff briefing paper titled Assessing the State of Wind Energy in Wholesale Electric Markets, Docket No.AD-04-13-000, FERC staff states " the avoided cost pricing is neither more than nor less than the price the utility would have paid for comparable power from other sources, including other wholesale sources." The methodology to determine wind avoided cost rates called out in the Commission's order achieves the closest direct tie to a "**comparable**" source that is available.

Considering the above, it is clear the avoided cost methodology using the market-determined product of the renewable resource RFP upon which the Commission depends as a method to determine wind QF pricing does comply with PURPA.

IV. The Committee claims that it has no knowledge of the contract or an ability to review the market-determined pricing contract is not accurate.

The confidential contract that is the basis for the market-determined price was available data to the Committee and other Parties in this case. The agreement was available for many months to all Parties and accordingly the Committee may not now claim it did not know its size, location, wind profile, or interconnection voltage and that other information was withheld. The contract was provided in Pioneer data request Wind Projects 1.6 and the wind profile was provided in Wasatch Wind data request 1.2. Factors associated with the transmission interconnection costs and proximity to load will be the subject of adjustments based on site specific differences pursuant to the working group methodology approved in the Commissions Report and Order (Page 21). Accordingly, the pricing methodology in the Report and Order meets the criteria of factors that FERC states should be considered, to the extent practicable.

V. Order, Paragraph 6 does not conflict with PURPA.

The logic behind the Report and Order using the most recent renewable RFP contract as a proxy is that it provides the best indication of the lowest price for this specific type of resource that has been recently determined through a competitive bid process. For all, the reasons discussed in sections III and IV above it is clear that the pricing methodology in the Report and Order complies with PURPA and applicable FERC rules.

VI. QF's should be allowed to buy back their project RECs Pursuant to the Report and Order.

In its petition for rehearing or reconsideration Pacificorp asserts that the avoided cost pricing cannot be separated from the value of the RECs. Pioneer argues that the value to the utility and ratepayers of energy from wind resources is the fact that there is reduced exposure to natural gas price risk and potential environmental issues. RECs will not provide this benefit to the utility and its customers. The RECs are a means to identify and tag this type of power so those parties that want to encourage this resource can do so by paying something extra to develop the resource. It is appropriate (as provided in the Report and Order) to provide the wind QF developers the option to buy back this encouragement value associated with their renewable project if they have a more favorable offer available from a buyer that values RECS more highly than the Company. (If the Company has set the value appropriately the Company will retain the RECs as the Wind developer will not have a higher and better offer available). Allowing a market for RECS will provide the opportunity for parties who wish to encourage the development of renewable resources to do so through a process of market decisions. FERC Staff Briefing Paper Docket No. AD-04-13-000, Assessing the State of Wind Energy in Wholesale Electricity Markets states that " the Commission granted a declaratory order finding that PURPA contracts for the sale of QF capacity do not convey renewable energy credits or similar tradeable certificates to the purchasing utility absent agreement among the parties." Accordingly, the treatment of REC buybacks as provided in the Report and Order should be maintained.

Pioneer Ridge LLC Conclusion

The remedies sought by the Committee in its request for reconsideration are based on erroneous arguments regarding the nature of the Report and Order (it is a final order under Utah law) and on erroneous arguments regarding the nature of the pricing methodology approved in the Report and Order (this methodology fully complies with PURPA and FERC rules) and therefore ought to be disregarded. The Report and Order does meet the requirements of PURPA and FERC. As a result of the Report and Order Ratepayers will benefit from the increased development of the sources of electric energy production that conserve precious and valuable natural resources and from the Company's purchase of electricity from wind resources at appropriately determined avoided cost rates. Moreover allowing developers to buyback RECs associated with their projects as provided in the Report and Order is appropriate and should be maintained as it will allow parties wishing to encourage the development of renewable resources to do so through a process of market decisions.

RESPECTFULLY SUBMITTED this 15th day of December 2005.

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Roger Swenson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Reconsideration was served upon the following by e-mail November 30, 2005:

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