State of Utah
Department of Commerce
Division of Public Utilities

FRANCINE GIANI
Executive Director

THOMAS BRADY
Deputy Director

CHRIS PARKER
Director, Division of Public Utilities

GARY HERBERT.
Governor

SPENCER J. COX
Lieutenant Governor

ACTION REQUEST RESPONSE

TO: Public Service Commission

FROM: Division of Public Utilities:
Chris Parker, Director,
Artie Powell, Energy Manager
Abdinasir Abdulle, Technical Consultant
Charles Peterson, Technical Consultant

DATE: February 5, 2014

DOCKET: Docket No. 13-035-197, Purchase Power Agreement between PacifiCorp and Utah Red Hills Renewable Park, LLC.

RECOMMENDATIONS (Approve, with guidance for future agreements)

The Division of Public Utilities (Division) recommends that the Commission approve the Purchase Power Agreement (Agreement or PPA) between PacifiCorp (Company) and Utah Red Hills Renewable Park, LLC (Red Hills). As discussed below, while the Division believes that the Commission can approve this Agreement as just and reasonable and in the public interest, the Division has some concerns that it recommends the Commission address for future contracts issued under Schedule 38. Specifically, the Division recommends that the Commission give as guidance on future Schedule 38 contracts that include the following:

- The Commission expects that a developer has its project in a position to quickly complete any financing, procurement, and construction arrangements after the approval of an agreement by the Commission.
- If not previously completed and signed, the Commission expects that the final transmission interconnection agreement will be completed and signed

within a reasonably short time period after the purchase power agreement is signed. Generally, the transmission interconnection agreement should be signed within 90 days after the purchased power agreement is signed.

- The online date for a project generally should be no more than two years (24 months) from the date of the power purchase agreement. If more than two years is required the Commission may want to consider requiring a price re-opener in the contract in order to protect ratepayers.

ISSUE

On December 9, 2013, PacifiCorp filed an Application for Approval of Power Purchase Agreement between PacifiCorp and Utah Red Hills Wind Park, LLC. On December 19, 2013, the Commission issued a Scheduling Order requiring comments from the Division of Public Utilities (Division) and any other interested party by February 7, 2014. This memorandum serves as the Division's comments and recommendations in this matter.

ANALYSIS

General

The Agreement covers a period of 20 years from the online date,[1] which is expected to be December 31, 2016[2]—approximately three years from now. Red Hills is a proposed 80 megawatt photovoltaic solar project with single axis tracking[3] located near PacifiCorp transmission facilities west of Parowan, Utah.[4] The project developer is Scatec Solar North America which is a wholly owned subsidiary of the Norwegian company Scatec Solar.[5]

Generally the Agreement appears to be patterned after other PPAs that the Division has previously reviewed for wind QFs. The language therefore appears to be mostly generic to these types of contracts.

[1] Power Purchase Agreement, Section 2.1, page 15.
[2] Ibid., page 12.
[3] Ibid., page 1.
[4] A slide show on the project dated April 2011 is located at http://utsolar.org/images/uploads/%283%29Eric-Perreca---Scatec-Solar-North-America-2011-04-16.pdf accessed January 9, 2014.
[5] Scatec Solar's website is http://www.scatecsolar.com/ accessed January 9, 2014.

Pricing Terms

The Division has reviewed the pricing set forth on Exhibit 5.1 of the PPA and it appears to be consistent with the Commission's previous orders. Particularly, the PPA pricing is consistent with the Commission's Order in Docket No. 12-035-100 in which issues related to wind QFs were extensively litigated and some issues related to wind and solar QFs were also discussed. The Company appears to have correctly applied the Proxy/PDDRR method approved by the Commission along with the 84 percent capacity contribution the Commission approved in Docket No. 12-035-100 on an interim basis.

Green Tags

Green tags, also known as renewable energy credits (RECs), are retained by Red Hills as set forth in Section 4.6, page 23 of the Agreement.

Transmission Interconnection Agreement

As a "milestone" the PPA requires that Red Hills enter into a final transmission interconnection agreement by May 31, 2014, almost six months after the PPA was signed. Based upon an answer to data requests by the Division,[6] Red Hills in 2010 requested a transmission facilities impact study from PacifiCorp for a 40 MW facility with a June 2011 online date. This study was completed in August 2010. This shows that some work has been underway on this project for a number of years. While undoubtedly this study would have to be updated to reflect the 80 MW of the signed PPA, the Division believes that previous studies would only require updating and not redone from scratch. The Division understands the May 31, 2014 date to simply be the result of negotiations between the Company and Red Hills.

Based on discussions with the Company in this and other recent QF dockets, the Division understands that this interconnection agreement milestone was put in place to protect the

[6] DPU DR 1.4

Company and its ratepayers, and to provide some assurance that the project was viable and capable of completion by the scheduled online date.

Relative to transmission interconnection agreements, Schedule 38 states the "The Company reserves the right to condition execution of the power purchase agreement upon simultaneous execution of an interconnection agreement between the owner and the Company's power delivery function, as discussed in Part II."[7] Over the past year or so the Division understands that the Company has exercised this right in some cases, and in other cases allowed up to about 8.5 months from the purchase power agreement signing date for the interconnection agreement to be signed. As discussed further below, the Division believes that it is in the public interest for the Commission to expect that significant investment not only in dollar terms, but in the overall development of the project has been made into a project by a developer before a power purchase agreement is brought forward for approval. This would provide some assurance that the project is "real" and not merely a speculative idea that has a long way to go before it can be completed. The Division does not want to remove all flexibility in negotiating a power purchase agreement; however, in light of recent events, the Division recommends that the Commission provide guidance in the implementation of the Schedule 38 going forward. The Division recommends that the Commission give guidance that, absent exceptional circumstances, it expects that a transmission interconnection agreement will be signed no more than 90 days after the signing of a power purchase agreement.

<u>Scheduled On-line Date: December 31, 2016</u>

The Agreement provides for a project online date of December 31, 2016, over three years from the date the Agreement was signed. By comparison, other recent renewable purchase power agreements had online dates between 22 and 30 months from the agreement signing dates.[8] Both the Division and the Office of Consumer Services (Office) submitted data requests asking for the reasons behind the relatively long time before the expected online date. The responses to those data requests essentially were that the developer needed time to complete design and engineering

[7] Schedule 38, paragraph I.B.7.
[8] See Docket Nos. 13-035-115, 13-035-116, 13-035-117and 13-035-118.

studies, obtain financing, procure equipment, obtain a construction contractor, and finally to construct the project. With regard to the latter, Red Hills indicated that actual construction is expected to take about 8 months.[9] Particularly concerning to the Division is that substantial design and engineering work remains to be done (continuing until about October 2014[10]) before the procurement and construction phases of the project can move forward. While it is understandable that it might take a few months after the Agreement is approved by the Commission to finalize such things as financing, procurement and contracting with a construction contractor, the Division would have expected a capable developer to be well on the way to obtaining all of items necessary before construction starts by the time the PPA is signed. This is especially true when this particular developer and its parent company is apparently a large, globally connected developer of renewable energy projects.

The Division believes that part of the public interest and ratepayer indifference entails that the agreements brought before the Commission represent rapidly maturing projects, where the developer has already expended significant effort in getting the project ready, and not something that is largely still in the planning stage.

One solution that might keep ratepayers indifferent to a project with an online date that is several years in the future is to have a price re-opener built into the contract. For example, if avoided costs have changed by more than ten percent, pricing and possibly other terms would be re-opened. Depending on the terms of the re-opener, the Division might support it.

In addition to ratepayer indifference, is an issue of fairness to other potential developers. During a lengthy post-PPA development period, as long as PacifiCorp considers the project to be an active one, Red Hills maintains its position in the Company's avoided cost queue. The effect is that any developer that is lower in the queue will receive lower prices than Red Hills since Red Hills is deferring higher cost power. If the Red Hills project were ultimately to fail, then potentially Red Hills blocked other, possibly more viable projects, for up to three years. The

[9] Office DR 3.1.
[10] Ibid.

Division believes that holding a position in the queue for such a lengthy time without coming online is not in the public interest. Again, a re-opener in the contract could incentivize QF developers to bring projects online in a timely manner.

Therefore, the Division recommends that the Commission give guidance that it expects, absent exceptional circumstances, that the schedule online date for a power purchase agreement be no more than 24 months from the date the agreement is signed. In cases where more lead time is needed by the developer, the Commission should inform the Company that it may require re-openers in the contract to protect ratepayer, as well as other potential developers, interests.

CONCLUSION

The Red Hills PPA is the first large solar project brought before the Commission. As discussed above, the PPA appears to be in compliance with Schedule 38 and existing Commission orders. Based upon the forgoing analysis, the Division recommends that the Commission approve the Agreement as just and reasonable and in the public interest.

However, the Division has several concerns. Given that the above criticisms of the proposed PPA concern items that have not been well defined either in Schedule 38 or in Commission orders, the Division recommends that the Commission provide the following as guidance for future contracts:

- The Commission expects that a developer has its project in a position to quickly complete any financing, procurement, and construction contracts after the approval of an agreement by the Commission. Commission approval should not be the signal to start seriously working on project design and engineering and to search for financing, procurement, and construction contractors.
- While it is not required that a final transmission interconnection agreement be in place at the time the purchase power agreement is signed and presented for approval, the Commission expects that the final transmission agreement will be completed and signed within a reasonably short time period after the purchase power agreement is signed. Generally, the

transmission interconnection agreement should be signed within 90 days after the purchased power agreement is signed.

- In order to protect ratepayers, the online date for a project generally should be no more than two years from the date of the power purchase agreement.

cc: Michele Beck, Committee of Consumer Services
Cheryl Murray, Committee of Consumer Services
Dave Taylor, PacifiCorp
Paul Clements, PacifiCorp
Daniel Solander, PacifiCorp
Service List