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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

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REDACTED VERSION

To: The Public Service Commission of Utah

From: The Office of Consumer Services
Michele Beck, Director
Cheryl Murray, Utility Analyst
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Date: February 7, 2014

Subject: Office of Consumer Services Comments. Docket No. 13-035-197, Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Utah Red Hills Renewable Park, LLC

Introduction

On December 9, 2013 Rocky Mountain Power (Company) filed an application with the Utah Public Service Commission (Commission) requesting approval of a Power Purchase Agreement (PPA) dated December 5, 2013, between PacifiCorp and Utah Red Hills Renewable Park, LLC (Red Hills). On December 19, 2013, the Commission issued a scheduling order setting a deadline of February 7, 2014, by which parties may submit initial comments.

The Office of Consumer Services (Office or OCS) offers the following comments regarding the PPA between the Company and Utah Red Hills Renewable Park, LLC.

Background

In this PPA, Red Hills has received pricing as a qualifying facility (QF) pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act (PURPA). The Federal Energy Regulatory Commission (FERC) has issued regulations and rulings which provide guidance to states as to how QF pricing shall be determined under PURPA. The FERC has delegated the authority to states to actually establish the specific prices that QFs will be paid for the power that they produce provided that the states follow FERC's guidance. Accordingly, the Commission has established the methodology that is used for determining QF PPA pricing in Utah and that methodology was recently updated by the Commission's August 16, 2013 Order in Docket No. 12-035-100 (2013 Avoided Cost Order).

While the pricing methodology for QF PPAs is governed by the 2013 Avoided Cost Order, the process that is used by QFs and the Company to actually negotiate a PPA is set forth in Rocky Mountain Power's Electric Service Schedule No. 38 (Schedule 38). Schedule 38 details the procedures the parties must use to create a PPA. It is important to note that the terms and conditions contained in a PPA are not specified by Schedule 38 but are left for the Company and the QF to determine. However, Schedule 38 specifically states that prices, terms and conditions in the PPA are not final and binding until the PPA has been approved by the Commission. It is through this Commission approval process that the Office, the Division of Public Utilities (Division) and other parties can review the terms of a PPA to determine if they are just and reasonable and in the public interest.

The Red Hills QF is planned as [redacted] solar powered project using photovoltaic (PV) panels that incorporate sun tracking capabilities. The 2013 Avoided Cost Order provides that Red Hills will receive pricing based on the Proxy/PDDRR method using the ordered interim capacity value of 84% for tracking solar. The Order also required the Company to complete a new capacity value study which will provide capacity values for solar projects based on the actual operating characteristics of the Company's system. This study will be filed with the Commission and when approved, the capacity values from the study will replace the current interim estimated values in future renewable QF PPAs.

According to the Company, the interim methodology produces 20 year levelized pricing for Red Hills as presented in Table 1 below.

Table 1 – Red Hills 20-Year Levelized PPA Prices ($/MWh)[1]

All Hours	$[redacted]
High Load Hours	$[redacted]
Low Load Hours	$[redacted]

As indicated above, the Red Hills PPA was signed on December 5, 2013. The PPA states that Red Hills' Scheduled Commercial Operation Date (Scheduled Operation Date) is December 31, 2016. This means that Red Hills is locking in guaranteed pricing from ratepayers well over three years before its facility is planned to be operational.

<u>Comments on the PPA</u>

The Office makes the following comments regarding the Red Hills PPA:

1. The Red Hills facility has a Scheduled Operation Date which is over 3 years after the date the PPA was signed. Additionally, since indicative pricing under Schedule 38 is provided to the developer before the PPA drafting process is begun, the avoided cost based prices in the PPA would have been determined by the Company well before this PPA was signed. Market conditions and the Company's needs change fairly frequently as evidenced by the Company's recent Integrated

[1] Company's responses to Division Data Requests 1.2 & 1.3.

Resource Plans (IRPs). Establishing avoided cost pricing which is not implemented until 3+ years in the future commits ratepayers to prices based on costs that will most likely end up being very out of date and inaccurate at the time the QF is actually operational.

2. Pricing for the Red Hills PPA incorporates the Commission ordered interim capacity value of 84%. This capacity value is an estimate pulled from a National Renewable Energy Laboratory technical report and is only intended to fill the gap until the Company completes a new capacity value study specific to its operating area. The Company expects preliminary results from the new study this summer – which would still be more than two years before the Red Hills Scheduled Operation Date.[2] Being able to use a capacity value developed from the Company's new study would provide more accurate avoided cost pricing for this PPA.

3. If the Red Hills project produces energy prior to its Scheduled Operation Date, the PPA provides that this energy, called test energy or net output, will be purchased by the Company not at avoided cost pricing but at a price tied to the Company's Firm Market Price Index. The price will also be adjusted by a scaling factor to account for whether the energy is delivered during a high-load or low-load hour. However, Exhibit 5.1.1 of the Red Hills PPA which should contain these scaling factors is blank. This omission should be corrected.

4. In contrast to other QF PPA projects that the Office has reviewed, the Office notes that Red Hills already has a signed transmission Interconnection Agreement (IA) - dated May 27, 2011 - for an earlier version of this project.[3] The Office spoke with PacifiCorp Transmission personnel who confirmed that the May 2011 IA is still valid for the proposed Red Hills project outlined in this PPA. Having a signed IA means that Red Hills has already overcome one of the major time consuming hurdles that a QF faces in reaching commercial operations.

Comments Regarding QF PPAs in General

In negotiating a QF PPA, the Company must balance the interests of ratepayers, the interests of project developers and federal and state policies designed to encourage the development of QFs. The Office has observed that the Company tries to be careful to provide such balance and also appears not to establish any unnecessary barriers for a developer who is trying to build a QF power project.

In contrast, the QF developer is waiting to optimize several factors before actually beginning construction on a project: site control, governmental requirements, transmission access, generation equipment costs, tax credits (PTC, etc), financing and, of course, PPA pricing. As we see from Red Hills' IA process and from the pace of progress on other QF projects[4], a QF developer will often "wait" for many years trying to align all these factors and over the course of these years will ask the Company for Schedule 38

[2] Company's response to OCS Data Request 3.2.

[3] https://www.oasis.oati.com/PPW/PPWdocs/pacificorplgiaq.htm, see Queue #324.

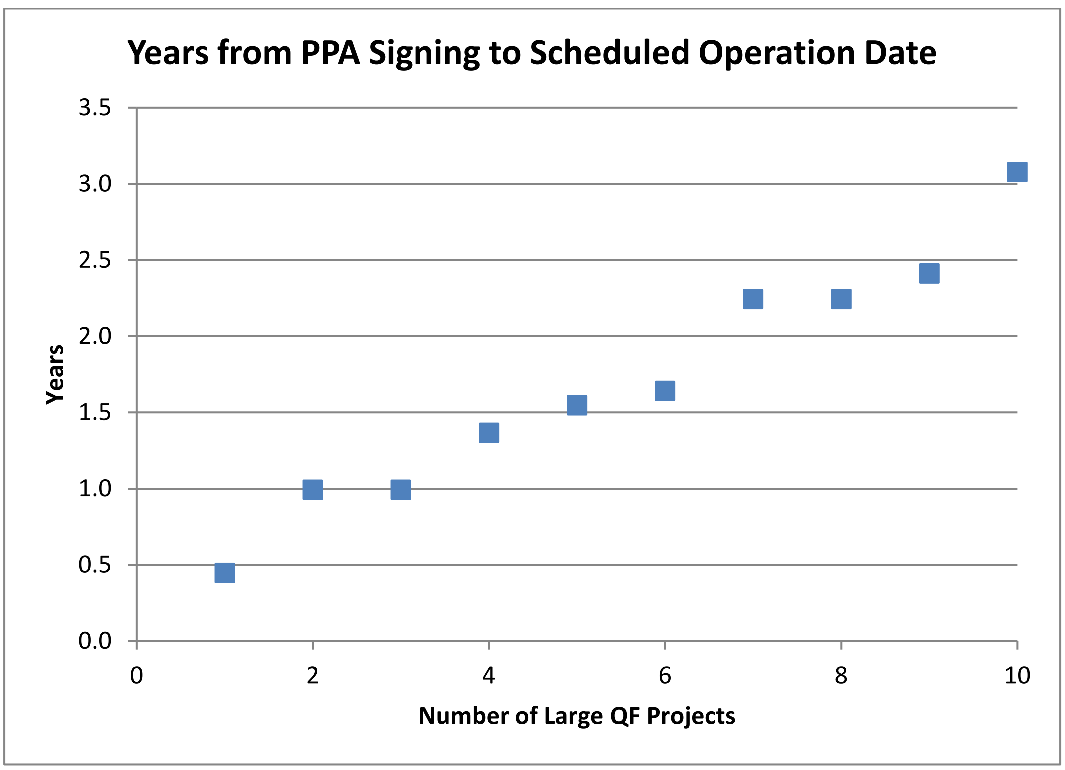
[4] For example, the Latigo QF wind project has been in development since 2006 but has yet to be constructed. See information from Wasatch Wind in Docket No. 12-035-100 (Stay) and PPA Docket No. 13-035-116.

PPA indicative pricing many times. Then, when PPA prices are favorable, many developers suddenly sign PPAs and come before the Commission at the same time seeking approval for their new PPAs – as occurred in July 2013 for four (4) wind QFs.[5] The Company has indicated that there are currently other large solar QF projects in the works that have yet to sign a PPA, but expects some contracts to be forthcoming. Furthermore, the Company signed seven (7) solar QF PPAs under Schedule 37 in October 2013[6], suggesting that pricing is currently also very favorable for solar QF projects under that schedule.

While the QF developers are allowed to "play" the system for years, the ratepayer, on the other hand, is obligated to buy the QF's power under PURPA at the specific point in time that a PPA is negotiated by the Company and approved by the Commission. In order to provide the ratepayer some protection against excessive gaming of PPA prices and terms by the QF developer, the Office asserts that the Commission should establish some limits and milestones that a QF must meet and define these as part of Schedules 37 and 38.

For example, it may be appropriate to require a maximum two year window between the signing of a PPA and the beginning of a QF's scheduled commercial operations. This two-year period is supported by a review of new, large QF PPAs (greater than 3 MW) signed by PacifiCorp in the last two years. This review found the typical Scheduled Operation Date to be approximately two years or less from the PPA execution date.[6] See Figure 1 below.

Figure 1 – New Large QF PPAs Signed by PacifiCorp – 2012 & 2013[7]



[5] See Docket Nos. 13-035-115, 13-035-116, 13-035-117 and 13-035-118.
[6] Company's response to OCS Data Request 4.1.
[7] Includes only large QFs, greater than 3 MW. Note: Project #10 is the Red Hills QF.

Recommendation Regarding the Red Hills PPA

While the Office has some concerns about the Red Hills PPA being signed so far in advance of the Scheduled Commercial Operation Date, our review indicates that the PPA is in compliance with the applicable schedules and Commission orders. Therefore, the Office does not oppose the approval of the Red Hills PPA. However, the Office recommends that the Commission require the Company to file an updated version of the Red Hills PPA that includes the missing scalar factors from Exhibit 5.1.1.

Recommendation for Future Consideration

The Office also recommends that interested parties be allowed to review the provisions of Schedules 37 and 38 in a future proceeding and make recommendations to the Commission for changes. Based on lessons learned from its review of recent QF PPAs and its desire to strengthen ratepayer protections in PPA contracts, the Office suggests that the issues to be considered include:

1. Requiring that a QF have a signed interconnection agreement prior to executing a PPA with the Company.
2. Requiring that the Scheduled Commercial Operation Date be no more than 2 years from the date the Company signs the PPA and/or the date the Company provided indicative avoided cost pricing for the PPA.

The 2013 Avoided Cost Order directs the Company to file a new capacity value study with the Commission. At that time, the Commission may want to ask the Company hold a technical conference and then ask interested parties to submit comments on the new study before determining whether or not to approve it. The Office proposes that this process be designed to also provide parties the opportunity to review and comment on other elements of Schedules 37 and 38 such as the issues raised above.

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Service List