

February 21, 2014

VIA HAND DELIVERY

UTAH PUBLIC SERVICE COMMISSION
Heber M. Wells Building
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Re: Docket No. 13-035-197: In the matter of the application of Rocky Mountain Power for approval of the power purchase agreement between PacifiCorp and Utah Red Hills Renewable Park, LLC—REPLY COMMENTS

Dear Commissioners,

Utah Clean Energy hereby submits the following comments in response to the initial comments of the Division of Public Utilities (“Division”) and the Office of Consumer Services (“Office”) regarding Rocky Mountain Power’s (“the Company”) application for approval of a Power Purchase Agreement (“PPA”) with Red Hills Renewable Park, LLC (“Red Hills”).

RED HILLS PPA

Finding that the PPA complies with applicable requirements, the Division recommends and the Office does not oppose Commission approval of the Company’s PPA with Red Hills.¹ For these reasons, and for the reasons outlined in Utah Clean Energy’s initial comments, Utah Clean Energy recommends that the Commission approve the Red Hills PPA as just and reasonable and in the public interest.

FUTURE PPAS UNDER SCHEDULE 38

In its comments, the Division requests that the Commission provide guidance on specific concerns it has with contracts issued under Schedule 38.”² Like the Division, the Office has concerns that it recommends that the Commission consider for future PPAs. The Office recommends that the Commission allow interested parties to review the provisions of

¹ Division comments, page 1; Office comments, page 5.

² Division Comments, pages 6-7.

Schedule 38 in conjunction with comments on the Company’s renewable resource capacity valuation study, which will be filed later this year.³

For reasons discussed below, Utah Clean Energy recommends that the Commission refrain from making recommendations on *future* PPAs in this docket because it would impose “unnecessary barriers to energy transactions”⁴ for other small power producers, without notice, and because there is an insufficient evidentiary basis to do so.

1. The objective of federal and state policies with regard to power purchases from independent energy producers, such as Red Hills, is to encourage their development. Utah Code §54-12-1(1) sets out the state’s policy:

The legislature declares that in order to promote the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy, it is desirable and necessary to encourage independent energy producers to competitively develop sources of electric energy not otherwise available to Utah businesses, residences, and industries served by electrical corporations, and to *remove unnecessary barriers to energy transactions involving independent energy producers and electrical corporations* [emphasis added].

Further, §54-12-1(2) states:

It is the policy of this state to encourage the development of independent and qualifying power production and cogeneration facilities, to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner, and to conserve our finite and expensive energy resources and provide for their most efficient and economic utilization.

Section 210 of the Public Utility Regulatory Policy Act (“PURPA”)—the Federal law requiring that electric utilities purchase electricity from small power producers, such as Red Hills—was enacted with the goal of encouraging the development of electricity generation from small power production facilities.⁵

³ The Office also recommends reviewing Schedule 37. OCS comments, page 5.

⁴ Utah Code Ann. §54-12-1(1) (2013).

⁵ *FERC v. Mississippi*, 456 U.S. 741, 750 (1980). “Section 210 of PURPA’s Title II seeks to encourage the development of cogeneration and small power production facilities.” *Id.*

The Commission is tasked with the responsibility of implementing these policy directives while ensuring that rates are just and reasonable for ratepayers. As is evidenced by the number and complexity of recent Commission dockets implicating power purchases from small power producers, this is no easy task and is heavily fact-dependent.

2. Broadly-applicable changes to power purchase procedures under Schedule 38 must not be made in a docket dedicated to evaluating whether a single PPA complies with existing Commission orders and regulations. In its comments, the Division makes specific recommendations for guidance it recommends that the Commission provide, ostensibly in the current docket, for future PPAs negotiated under Schedule 38. Under Schedule 38, PPA pricing for small power producers is established through a Commission-approved methodology. Because pricing parameters are set, the number of other terms a small power producer is able to negotiate in a PPA is limited.

The Division's recommendations would further limit the ability of small power producers to negotiate PPAs. Moreover, the Division's recommendations, if approved in the current docket, would unreasonably and without notice undermine the ability of small power producers currently negotiating PPAs with Rocky Mountain Power to continue negotiating workable terms and agreements. This is inconsistent with federal and state policy directives to encourage independent power production and remove unnecessary barriers to energy transactions with small power producers.

It would be improper for this Commission to change the procedures guiding other small power producers currently negotiating PPAs with Rocky Mountain Power but not participating in the current docket, which is dedicated to approving a single PPA with a single energy producer.

3. Allegations of deficiencies in the currently effective Schedule 38 procedures have not been reviewed or evaluated in the current docket sufficiently to support making changes at this time. The Office, like the Division, has concerns with the procedures currently effective under Schedule 38. The Office alleges that small power producers are allowed to improperly play or excessively game existing Schedule 38 procedures.⁶ However, because the current docket is a review of whether the negotiated terms of the Red Hills PPA comply with existing Commission orders and regulations (and all parties agree they do), these allegations

⁶ Office comments, pages 3-4.



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cannot be and have not been addressed or evaluated sufficiently for the Commission to make a determination in that regard.

The matter before the Commission is whether the Red Hills PPA complies with effective Commission orders and regulations, and that is what the Commission must determine. Commission determinations affecting other parties must be subject to proper process, i.e. provide notice and an opportunity to address relevant issues and present evidence. Not allowing for such process would significantly impair the rights of parties, impose unnecessary barriers to energy transactions with small power producers and harm Utah's ability to attract investment in small power projects in Utah.

CONCLUSION

Utah Clean Energy appreciates the opportunity provide comments on this matter and again urges the Commission to approve the Red Hills PPA as just and reasonable and in the public interest. Not only will the Red Hills project diversify ratepayers' resource mix, it will lock in reasonable prices for 20 years, in the face of volatile and rising fuel prices and increasing environmental compliance costs.

Sincerely,

A handwritten signature in blue ink that reads "Sarah Wright".

Sarah Wright, Executive Director
UTAH CLEAN ENERGY