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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

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To: The Public Service Commission of Utah

From: The Office of Consumer Services

Michele Beck, Director

Béla Vastag, Utility Analyst

Date: October 20, 2015

Subject: Office of Consumer Services Comments. Docket No. 15-035-70, Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Three Peaks Power, LLC

Introduction

On August 27, 2015 Rocky Mountain Power (Company) filed an application with the Utah Public Service Commission (Commission) requesting approval of a Power Purchase Agreement (PPA) executed on August 13, 2015 between PacifiCorp and Three Peaks Power, LLC (Three Peaks). On September 10, 2015, the Commission issued a scheduling order setting a deadline of October 20, 2015 by which parties may submit initial comments in this docket.

The Office of Consumer Services (Office) offers the following comments regarding the PPA between the Company and Three Peaks Power.

Background

The Three Peaks facility will use tracking solar photovoltaic power generation technology and be located in Iron County Utah near the town of Cedar City. Three Peaks plans to operate as a Qualifying Facility (QF) pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act (PURPA).

In Utah, Rocky Mountain Power Electric Service Schedule No. 38 (Schedule 38) governs the process that the Company and a QF use to develop a PPA. The Schedule 38 requirements governing this process, including the prices in PPAs, were recently updated by the Commission in Docket No. 14-035-140 in two Orders dated June 9, 2015 and June 26, 2015.

The primary issue with this PPA is whether or not it complies with the changes instituted by the Commission in these two Orders, i.e. is it compliant with the current requirements of Schedule 38.

Docket No. 14-035-140 – Schedule 38 QF Procedures & Other Related Issues

The Commission initiated a new proceeding in Docket No. 14-035-140 on October 27, 2014. This new proceeding was requested by the Utah Division of Public Utilities (Division) with support from other parties in order to comprehensively review several issues related to Schedule 38 and QF PPAs. These issues included capacity contribution values for wind and solar QFs, management of the QF pricing queue and PPA milestones. Scatec Solar, the developer of the Three Peaks project, was granted intervention in 14-035-140 on December 9, 2014.

The Commission issued an Order approving new QF pricing queue procedures and PPA milestones on June 9, 2015 and an Order approving new capacity contribution values on June 26, 2015.

Comments on the Three Peaks PPA

As stated above, the Office questions whether this PPA complies with the Commission's Orders in Docket No. 14-035-140. It is unclear whether or not the PPA prices were required to be updated for new capacity contribution values and for compliance with Section I.B.9. of Schedule 38 (six month required pricing update). For convenience in reviewing the issues described below, a timeline of the progression of the Three Peaks PPA is included with this memo as Attachment 1.

Capacity Contribution Values

The Commission's June 26, 2015 Order in Docket No. 14-035-140 approved a 39.1% capacity contribution value for tracking solar QFs for determining Schedule 38 QF PPA pricing. The prices in this Three Peaks PPA were derived using an 84% capacity contribution value. This was an interim value established by the Commission's August 16, 2013 Order in Docket No. 12-035-100. In its June 26, 2015 Order establishing the new 39.1% capacity contribution for tracking solar, the Commission stated: "The current interim capacity contribution values for wind and solar QF resources pursuant to our August 16, 2013 Order on Phase II Issues in Docket No. 12-035-100 are discontinued."¹

The Office notes that the Commission has already provided guidance on whether changes in avoided cost methods require new avoided cost calculations. In its Order dated April 25, 2014 in Docket No. 14-035-24, it stated that: "the Commission fully anticipated the possibility that a change in its avoided cost method would result in the application of new avoided cost calculations for all large wind QF projects not in possession of executed power purchase agreements when the Phase II order was issued."²

¹ June 26, 2015 Order in Docket No. 14-035-140, page 18.

² Page 21 of the April 25, 2014 Order In the Matter of the Formal Complaint of Ellis-Hall Consultants against PacifiCorp/Rocky Mountain Power.

To maintain consistency in its policies, it appears that the Commission would require new avoided cost calculations for any PPA executed after a Commission order changing the avoided cost method. In this case, the new method involves new capacity contribution values which were derived in a capacity contribution study filed by the Company in October 2014 and litigated through four rounds of prefiled testimony³ (these new values replaced significantly different interim capacity contribution values).

The Three Peaks PPA was executed on August 13, 2015 or over one and half months after the Commission's order changing the capacity contribution value (June 26, 2015.) Since the PPA was not executed at the time the new capacity contribution value was ordered, consistent application of the Schedule 38 Tariff may require that the prices in the Three Peaks PPA be updated using the 39.1% factor.

Schedule 38 Required Pricing Update

The current Schedule 38 Tariff filed July 9, 2015 and effective August 8, 2015 states:⁴

9. **Required Pricing Update.** The prices in the proposed power purchase agreement provided by the Company under Section I.B.6 shall be recalculated by the Company using the most recent available pricing inputs and methods approved by the Commission, but without a change in the QF project's pricing queue priority, if the QF Developer and the Company have not executed a power purchase agreement within six (6) months after indicative pricing was provided by the Company under Section I.B.4, except to the extent delays are caused by Company actions or inactions, which may include delays in obtaining legal, credit or upper management approval by the Company.

As shown in the timeline in Attachment 1 to this memo, the indicative prices used in the Three Peaks PPA were provided by the Company to Three Peaks on January 16, 2015. The PPA was executed on August 13, 2015. This is well beyond the six months required in Schedule 38 for prices to be recalculated. However, based on initial discussions with the Company, including responses to discovery requests, the Office believes that Three Peaks or the Company might show that delays in PPA execution were "caused by Company actions or inactions."

General Comments on QF PPAs

In previous PPA approval dockets, the Office has raised concerns that prices in PPAs were outdated. For example, in our most recent comments on QF PPAs dated June 5, 2015, we raised concerns about pricing being "over 7 months old at the time of the PPA signings."⁵ In our comments we also stated: "While the Office has some concerns about these PPAs, we believe that the Settlement in Docket No. 14-035-140 will alleviate these types of

³ Docket No. 14-035-140, <http://www.psc.utah.gov/utilities/electric/elecindx/2014/14035140indx.html>

⁴ Utah Schedule 38 Original Sheet No. 38.8, effective August 8, 2015.

⁵ See Docket Nos. 15-035-40, 15-035-41, 15-035-42 & 15-035-43. The Office of Consumer Services' comments on these PPAs can be found at:

<http://www.psc.utah.gov/utilities/electric/15docs/1503540/266720Comments%20from%20OCS%206-5-2015.docx>

concerns in future PPAs if the Commission approves the Settlement.” The Commission has approved the settlement in 14-035-140 but alas we are still seeing issues with outdated PPA pricing.

Recommendation

The Office is unable to provide a recommendation on this PPA at this time due to the uncertainty surrounding the two Schedule 38 compliance issues that we have raised above – capacity contribution value and required six month price update. We expect that Three Peaks and the Company will provide supporting information showing that the PPA is in compliance with Schedule 38. However, if compliance is still uncertain at that time, parties may need to ask the Commission to issue a ruling on these two issues.

CC: Chris Parker, Division of Public Utilities
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