

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In The Matter of the Petition of Pioneer)
Ridge LLC & Mountain Wind For) DOCKET NO. 05-035-09
Approval of a Contract For the Sale of)
Capacity and Energy from its Existing) REPORT AND ORDER
and Proposed of Facilities)

ISSUED: May 19, 2006

By the Commission:

BACKGROUND AND PROCEDURAL HISTORY

On June 28, 2004, the Commission approved a Stipulation in Docket No. 03-035-14 providing, for an interim period, avoided energy and capacity cost payments for 20-year purchase contracts from large Qualifying Facility (“QF”) projects based on an interim generic avoided cost methodology.¹ On January 28, 2005, Pioneer Ridge LLC and Mountain Wind LLC (together “Wind Generators”) filed a Petition in Docket No. 05-035-09 seeking approval of generic contracts to provide approximately 48 megawatts of power from their Qualifying Facilities to PacifiCorp under modified Stipulation pricing. On April 1, 2005, the Commission denied the Wind Generator’s petition,

¹ Docket No. 03-035-14 originated from PacifiCorp’s Application for Commission approval of an Integrated Resource Plan-based avoided cost method for QF projects larger than one megawatt. Under the Public Utility Regulatory Policies Act of 1978 (“PURPA”), electric utilities such as PacifiCorp have an obligation to purchase electricity from QF generators (small power producers or cogeneration facilities as defined in PURPA’s implementing regulations) pursuant to PURPA and state law. Essentially, an electric utility is required to purchase electricity from a QF, at a price equal to its “avoided costs,” the costs/expenses which the utility avoids by not having to purchase or build additional generation. An electric utility is required to produce and maintain publicly available information from which its avoided costs can be determined, giving a QF an opportunity to have some indication of the price it may receive for electricity provided by an existing or contemplated QF facility. PacifiCorp’s application in Docket No. 03-035-14 sought Commission approval of a method by which PacifiCorp’s avoided costs would be calculated.

DOCKET NO. 05-035-09

-2-

ordered PacifiCorp (“Company”) to enter into good faith negotiations with the Wind Generators and set a conference in Docket No. 03-035-14 to schedule proceedings to resolve the pricing issues associated with QFs over one megawatt, including establishing a Commission-approved method to calculate indicative prices under Electric Service Schedule No. 38 (“Schedule No. 38”).²

In Orders issued October 31, 2005, February 2, 2006, and April 19, 2006, in Docket No. 03-035-14 (respectively “October Order”, “February Order”, and “April Order”), the Commission adopted methods for calculating indicative prices for QFs under Schedule No. 38, and resolved various other related pricing issues.

On March 10, 2006, Pioneer Ridge filed direct testimony in Docket No. 05-035-09, offering a contract for Commission approval based on the pricing methods approved in the October and February Orders. Pioneer Ridge also requested hearing on an expedited schedule to facilitate project advancement.

On March 21, 2006, PacifiCorp requested, and the Commission granted, a scheduling conference for March 28, 2006. On March 28, 2006, Wasatch Wind, LLC (“Wasatch Wind”) filed a motion to intervene which the Commission granted on April 17, 2006. On March 30, 2006, the Commission issued a scheduling order, setting expedited dates for responsive testimony and hearing. Pursuant to the scheduling order, PacifiCorp and Wasatch Wind filed rebuttal testimony on April 19, 2006, and the

² Schedule No. 38 establishes procedures for purchases of power by PacifiCorp from QFs larger than the limit in Electric Service Schedule No. 37 (one megawatt for cogeneration facilities and three megawatts for small power production facilities).

DOCKET NO. 05-035-09

-3-

Division of Public Utilities (“Division”) filed testimony on April 28, 2006. Also on April 19, 2006, Pioneer Ridge filed supplemental direct testimony. At hearing, Pioneer Ridge withdrew its April 19, 2006, supplemental direct testimony and offered supplemental direct testimony dated May 1, 2006.

Pursuant to notice, a hearing was held on May 1, 2006. PacifiCorp appeared through counsel Dean Brockbank; the Division appeared through Assistant Attorney General, Patricia Schmid; the Committee of Consumer Services (“Committee”) appeared through Assistant Attorney General, Paul Proctor; Pioneer Ridge appeared through its Vice President of Regulatory Affairs, Roger Swenson; and Wasatch Wind appeared through Richard Collins. PacifiCorp, the Division, Pioneer Ridge and Wasatch Wind presented witnesses who testified, were cross-examined, and responded to Commission questions.

POSITIONS OF THE PARTIES

Pioneer Ridge offers, for Commission approval, an unsigned QF power purchase contract for approximately 70 megawatts of power between Pioneer Ridge and PacifiCorp. The contract is not executed because the parties disagree on its terms. Specifically, Pioneer Ridge raises two issues for Commission decision. First, it requests the Commission approve its method for converting the prices in the wind proxy contract to prices reflecting Pioneer Ridge’s wind profile and its desire for differentiated prices for power delivered in peak and off-peak hours of the year. Second, Pioneer Ridge requests the Commission order PacifiCorp to permit Pioneer Ridge to post development security within 180 days of the effective date of the contract. Alternatively, Pioneer

Ridge requests it be allowed to post the development security twelve months prior to the commercial operation date and to establish the contract effective date as the date development security is posted. Pioneer Ridge argues the Company's requested security posting deadline of ten days after the contract effective date does not provide adequate time to obtain financing and is onerous.

The wind proxy for indicative prices for Pioneer Ridge provides for a flat price throughout the year, that is, the price per kilowatt hour delivered is the same each hour of the year, annually escalating through the contract term. Pioneer Ridge agrees with the Company's method for making price adjustments to reflect wind QF characteristics but argues the Company has incorrectly interpreted the Commission's February Order by using an incorrect ratio to convert the flat prices to time-differentiated prices. Pioneer Ridge argues the most accurate approach for converting flat prices to peak and off-peak prices is to use the ratio of off-peak to peak prices calculated through the Company's production cost model, GRID, approved for use in the Differential Revenue Requirements ("DRR") avoided cost method for non-wind QFs. Pioneer Ridge states this is more accurate than using market prices because it represents the value of the wind output to the utility system and therefore also sends appropriate price signals to wind QF developers. Further, it claims, this is also consistent with the Commission's February Order stating Pioneer Ridge's testimony on this issue is a reasonable starting point for wind profile adjustments. Pioneer Ridge testifies it used the off-peak and peak prices from an avoided cost example filed by the Company in Docket No. 03-035-14, and

therefore the Commission essentially approved use of GRID for developing the off-peak to peak price ratio.

The Company proposes to use a method that closely replicates the method described by Pioneer Ridge in Docket No. 03-035-14 and ordered by the Commission as the starting point for wind profile adjustments. However, the Company proposes a different basis than Pioneer Ridge for determining the ratio of off-peak to peak pricing. The Company proposes a ratio derived from its in-house forward market price curve in place at the time of the wind proxy's contract evaluation and execution rather than a ratio based on system avoided cost as derived from a GRID run. The Company testifies that in Docket No. 03-035-14, Pioneer Ridge had derived a ratio from the off-peak and peak prices contained in Utah Electric Service Schedule No. 37, but argues these prices are not reflective of the wind proxy contract. Further, the Company interprets the Commission's February Order to prohibit use of GRID to calculate the off-peak to peak price ratio. The Company argues its forward price curve is more reflective of the proxy contract, provides a clear ratio of the off-peak to peak prices, is used by the Company in its other resource decisions, and would be available to all QF projects for verification.

The Company employed its March 2005 forward price curve to evaluate the prices contained in the current wind proxy contract. The Company proposes to use the Palo Verde forward prices for Utah wind QF profile adjustments.

The Company describes its proposed wind profile adjustment method in essentially two steps. First, at the time a wind contract is signed as the result of the Company's Request for Proposals, the price for the first contract year is split into

monthly peak and off-peak prices based on the official forward price curve used in the evaluation of the proxy contract. Second, the annual escalation / de-escalation in the proxy contract is applied to the monthly prices each year.

With respect to the date required for posting development security, the Company proposes receipt ten days after the effective date of the contract. The Company testifies it requires development security sooner than the 180 days proposed by Pioneer Ridge because it has the obligation to purchase the output of Pioneer Ridge upon the effective date of the contract and therefore development security should be posted as close to that date as possible. Upon assuming this obligation, the Company plans for the Pioneer Ridge resource to come online at the scheduled commercial operation date. This resource is included in Company position reports to identify system load and resource balance for planning purposes on the date the contract is effective and therefore the resource is, essentially, an obligation to purchase at that point in time. Project security provides assurance the resource will be online at the agreed-upon time and allows for recovery of any costs the Company incurs if the project is delayed or cancelled. The Company also stated it would consider the Division's compromise recommendation, discussed below.

Wasatch Wind supports the Company's wind profile price adjustment method. It advocates use of the Company's forward price curve as the basis for converting wind proxy prices to wind QF prices in this case because it was used to evaluate and execute the current wind proxy contract. Wasatch Wind states this method is simple and easily replicated, is readily obtainable and takes into account the time of

day and seasonality of the wind profile. Wasatch Wind testifies the Commission should adopt the method the Company uses to evaluate the wind contract that becomes the wind proxy for wind avoided costs. In this case, and for this wind proxy, this is the Company's forward price curve, but in the future, the peak and off-peak prices used to evaluate wind contracts may be different. Wasatch Wind opposes use of the GRID model for wind profile adjustments because it produces counter-intuitive results not adequately explained by the Company, produces vastly different indicative prices depending on how the QF wind profile compares to the projected wind profile of the proxy, creates added uncertainty and retards QF development.

The Division supports use of a market-based adjustment for wind profiles rather than using GRID to model avoided system cost because it is consistent with the adoption of a market-based wind proxy. The Division testifies it is logically inconsistent to base the initial price on a market valuation rather than a system one and then base adjustments on a system valuation rather than a market one.

Regarding the date for posting development security, the Division proposes what it views as a reasonable middle ground between the Company's and Pioneer Ridge's proposals. The Division recommends one half of the security be required on the contract effective date with the other half due in three months. The Division notes this is consistent with the Commission's decision on this same issue in Docket No. 05-035-08.

DISCUSSION, FINDINGS AND CONCLUSIONS

First, we clarify our February Order, which directed parties to use Pioneer Ridge's method as a starting point for making wind profile adjustments; we approved its use in concept rather than with respect to its details or actual application. We expected such adjustments would be made on a case-by-case basis and presented in the context of contract approval. Indeed, Pioneer Ridge's testimony describing the method was fairly generic. For example, one component of the method, the ratio of peak to off-peak prices, appears as a fixed numerical input in an exhibit with a vague reference regarding its source. Nonetheless, it was the only testimony addressing the issue of converting the wind contract proxy prices into wind QF prices. Our statement that we had not approved use of GRID for wind profile adjustments was a statement of fact rather than a prohibition against its consideration for determining the ratio of peak to off-peak prices.

No party objects to the calculation method that is based on Pioneer Ridge's testimony in Docket No. 03-035-14 and proposed by the Company for adjusting the wind proxy prices to account for wind QF profile differences in this case. This method takes into account the time of day and seasonality of the wind profile and provides appropriate economic signals to developers. However, parties disagree on the source of data used in determining the ratio between off-peak and peak prices which is a component of the method.

Two alternatives are proposed in this case for calculating the ratio of off-peak to peak prices. Both the system avoided cost approach proposed by Pioneer Ridge

and the forward market price approach supported by the Company, Division and Wasatch Wind have merit, as aptly described by the parties.

For analytical consistency, we conclude the data used to convert wind proxy prices to wind QF prices must be consistent with the data used by the Company to evaluate the wind contract prices that are the referent for the wind QF prices.

To evaluate the wind proxy that is the referent for pricing the Pioneer Ridge QF, the Company testifies, and no one disputes, it used the peak and off-peak prices from its March 2005 forward price curve. Consistent with our conclusion above, we direct the Company to make wind profile price adjustments for the Pioneer Ridge QF using the peak and off-peak prices from the March 2005 forward price curve it used to evaluate the wind proxy that is the referent for pricing the Pioneer Ridge QF.

When a new wind contract is executed by the Company as a result of a Request For Proposals (“RFP”) and becomes a wind proxy contract, the data, i.e., the peak and off-peak prices, used by the Company to evaluate those wind proxy prices will become the basis for making wind profile adjustments for wind QFs receiving indicative prices based on that wind proxy. We direct the Company to file such peak and off-peak prices after executing a new wind contract that becomes a proxy wind contract for QF pricing.

With respect to the appropriate date for posting development security, we conclude 12 months prior to the contract commercial operation date is reasonable for Pioneer Ridge. We are persuaded by testimony of the financing and contracting hurdles faced by relatively small wind QFs in proceeding from contract negotiation to delivery of

power. We conclude we must find a balance between encouraging small power production and maintaining the Company's ability to reliably and cost-effectively serve customers when contracting with such power producers. The Company testifies once signed, the contracted wind QF output is relied upon for planning purposes. We must balance the size of the risk of wind QF non-performance to the utility, and ultimately its ratepayers, against the perceived or real impediments posed by timing requirements for posting development security for relatively small wind developers. The consequences of wind QF non-performance will vary from contract to contract. We conclude the consequences of non-performance of the Pioneer Ridge QF is adequately covered by posting of development security 12 months prior to the contract commercial operation date. We note that this conclusion applies only to the Pioneer Ridge QF.

We refrain from approving the proposed contract, as requested by Pioneer Ridge, and await the filing for approval of a signed contract whose terms comport with this Order.

ORDER

Wherefore, pursuant to our discussion, findings and conclusions made herein, we:

1. Approve the method proposed by the Company for adjusting wind proxy prices to account for wind QF profile differences.
2. Direct the Company to convert wind proxy prices to wind QF prices with the same data, i.e., peak and off-peak prices, used by the Company to evaluate the wind contract prices that are the referent for the wind QF prices.

DOCKET NO. 05-035-09

-11-

3. Direct the Company to file the peak and off-peak prices used to evaluate each future wind proxy contract resulting from an RFP.

4. Direct the Company to provide contract terms to permit Pioneer Ridge to post development security 12 months prior to the contract commercial operation date.

Pursuant to Utah Code 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 19th day of May, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#49044