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NON-CONFIDENTIAL VERSION

Attorneys for:
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Milford Wind Corridor Phase II, LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of an Electric Service Agreement for Milford Wind Corridor Phase II, LLC.	RESPONSE OF MILFORD WIND CORRIDOR PHASE II TO REPORTS OF OCS AND DPU Docket No. 11-035-17
In the Matter of the Application of PacifiCorp for Approval of an Electric Service Agreement for Milford Wind Corridor Phase I, LLC.	RESPONSE OF MILFORD WIND CORRIDOR PHASE I TO REPORTS OF OCS AND DPU Docket No. 09-035-55

Pursuant to the Scheduling Order of the Utah Public Service Commission (“Commission”) in these combined dockets dated February 9, 2011, Milford Wind Corridor Phase I, LLC (“Milford I”) and Milford Wind Corridor Phase II, LLC (“Milford II”) (collectively, “Milford”), hereby submit this Response to the Reports of the Office of Consumer Services (“Office” or “OCS”) and the Division of Public Utilities (“Division” or “DPU”), which were filed on March 17, 2011.

1. Milford commends the OCS and the DPU for their timely investigation and review of this matter, and expresses appreciation for their favorable recommendations. Both the OCS and DPU have recommended approval of the Master Electric Service Agreement (“MESA”) between Milford II and Rocky Mountain Power (“RMP” or the “Company”). The DPU also recommends approval of the First Amendment to the Milford I MESA.¹ The OCS also recommends that any changes or cancellation to the Milford II MESA be filed with the Commission.

2. Needless to say, Milford agrees that the Applications should be approved, and has no objection to filing any future changes or cancellations of the electric service agreements with the Commission as recommended.

3. In addition to its recommendation to approve the Applications, the DPU has commented on “Milford’s request for expedited treatment in both dockets.” DPU Comments at

4.

4. The Division’s Comments state:

In its current Motion in Docket No. 09-035-55, Milford II describes its delay in seeking approval from the Commission as a result of PacifiCorp’s need to obtain engineering studies and to secure a wholesale supply of power to serve Milford II, and due to need (sic) of PacifiCorp’s wholesale supplier, Los Angeles Department of Water and Power (LADWP), to obtain approval from the City of Los Angeles. However, on February 24, 2010 (sic), the Company filed Responsive Comments to correct the implication that the Company was in any way responsible for delays. The Division reviewed the Company’s Motion (sic) and finds the same.

¹ The OCS did not address the Milford I Application in its Report.

Id. The Division, evidently accepting RMP’s explanation as refutation of the representations made in Milford’s Request for Expedited Hearing,² admonished Milford to engage in “consideration and planning” so that “expedited hearings and motions do not become problematic.” *Id.*

5. Milford did not respond to RMP’s Responsive Comments because Milford believed that the cause of the delay was unimportant to the merits of the Application for Approval of the Milford II MESA and because, that being the case, a response would only serve to create a dispute about facts that were not of record and were not the subject of the adjudication anyway. Unfortunately, the Division’s Comments, particularly its “finding” that the Company is not “in any way” responsible for the delay, have made it necessary for Milford to set forth its version of events in support the statements made in its Request for Expedited Hearing in order to avoid a misperception that might negatively impact Milford in future proceedings before the Commission.

RMP’s Responsive Comments to Milford’s Request for Expedited Hearing

6. On January 24, 2011, Milford filed a joint Request for Expedited Hearing. Milford stated in its Request that expedited treatment was necessary because of “delays occasioned by PacifiCorp, including its need to obtain engineering studies and to secure a wholesale supply of power to serve Milford II; and due to further delays occasioned by the need for RMP’s wholesale supplier, Los Angeles Department of Water and Power (“LADWP”), to obtain approval from the City of Los Angeles of a wholesale power purchase agreement with PacifiCorp.” Request for Expedited Hearing at 2, Docket Nos. 09-035-55, 11-035-17 (January

² The DPU cites no support for accepting the Company’s version of events, offers no statement about what investigation it made of the Company’s claims, and did not consult with or request data from Milford.

24, 2011). Milford stated that, as a consequence of these delays, the “Milford II MESA could not be submitted to the Commission for approval until January 24, 2011” and that expedited treatment would be necessary to avoid economic harm to Milford.

7. On February 24, 2011, RMP filed in both of these dockets, Responsive Comments to Milford Wind Corridor Phase I, LLC, and Milford Wind Corridor, Phase II, LLC’s Request for Expedited Hearing (“Responsive Comments”), for the purpose of denying “any inference that [RMP] intentionally or negligently delayed the process.” RMP postulated, instead, that “the lapse of time is attributable to the time necessary to secure financing and power resources for Milford II’s project.” Responsive Comments at 2.

8. As explained below, the statements in RMP’s Responsive Comments do not align with Milford’s record of the events that transpired over the year that it took for RMP to enter into a service agreement with Milford II.

Delay in Obtaining Engineering Studies

9. Milford first contacted RMP to request service on January 7, 2010. (See Exhibit 1, email from William Evans to Barbara Ishimatsu, January 7, 2010).³ In response, RMP informed Milford [REDACTED]. (Exh. 1, email from Paul Clements to Evans, January 7, 2010). One week later, RMP told Milford II that, instead, [REDACTED]. (Id., email from Tom Heaton to Bryan Harris, January 14,

³ The documentation supporting Milford’s statement of the relevant facts consist largely of the email messages attached as exhibits to these Comments. They are but a few of literally hundreds of email messages that were exchanged between the parties. Because they contain communications in the course of negotiating the contracts submitted to the Commission for approval in these dockets, Milford claims them to be “Confidential” and subject to Rule R746-100-16 or any protective order issued in these dockets. The exhibit numbers are organized by subject matter and, because email usually displays the most recent messages first, arranged in *reverse* chronological order under each exhibit number.

2010). On January 29, RMP again stated that it planned [REDACTED] [REDACTED] (*Id.*, email from Heaton to Harris, January 29, 2010). In the meantime, on January 27, RMP informed Milford II that it would need to file the usual service request and provide load data. (*Id.* email from Heaton to Harris, January 27, 2010). Milford II submitted the service request on the same day it was requested, January 27, 2010. (A copy of the completed service request and transmittal email message is attached as Exhibit 2).

10. RMP was already providing service to Milford I through the interconnection at the Intermountain Power Project because [REDACTED] [REDACTED] Even though RMP said it [REDACTED], RMP notified Milford II on February 19, 2010, that RMP would require an engineering study as “a matter of policy.” (Exh. 3, email from Heaton to Harris, February 19, 2010).

11. Milford does not have any record showing that RMP sent it a draft Engineering Services Agreement (“ESA”) in February. On March 5, 2010, Milford prodded RMP for the draft ESA. (*Id.*, email from Harris to Heaton, March 5, 2010). In response, RMP sent a draft ESA on March 12, 2010, but did not send an editable copy until March 25, 2010. (*Id.*, email from James Herrman to Heaton, and from Heaton to Harris, March 25, 2010). Milford promptly reviewed the draft ESA, proposed a revision, and submitted its comments to RMP on the same day, March 25, 2010. (*Id.*, email from Harris to Heaton, March 25, 2010).

12. On April 22, 2010, having received no response from RMP to Milford’s proposed revisions to the draft ESA, Milford again prodded RMP. (*Id.*, email from Harris to Heaton, April 22, 2010). RMP responded with a reply draft on April 26, 2010, more than one month after receiving Milford II’s edited draft. (*Id.*, email from Heaton to Harris, April 26, 2010). After

further negotiation, Milford II signed the ESA on May 13, 2010. (*Id.*, ESA signed by Milford, May 13, 2010). Milford sent a check a week or so later, on or about May 21, 2010, for the required [REDACTED] engineering study fee. (*Id.*, email from Harris to Heaton, May 14, 2010). Contrary to the assertion of the Company, the 90-day deadline for RMP to complete the study and inform Milford of the results, therefore, should have been on or about August 21, 2010. (*See id.*, ESA at ¶ 2.3).

13. RMP's Responsive Comments state that "it was not until late May, 2010, that Milford II entered into the Engineering Service Agreement," intimating that Milford had somehow delayed in "entering into" the agreement. Responsive Comments at 3. To the contrary, the correspondence shows that Milford acted promptly in negotiating and entering into the ESA, while RMP delayed in sending the initial draft and in responding to Milford II's comments.

14. RMP's Responsive Comments also give the false impression that RMP timely completed its engineering study. The Responsive Comments state that the "estimated time of completion stated in the ESA was 90 days from the effective date, or late September 2010," and that "Milford II gave notice of intent to proceed to master electric service agreement stage of the contracting process ... on October 28, 2010." RMP Responsive Comments at 3. However, having entered into the ESA in "late May," RMP's engineering study was due to be completed in late August, not late September. (*See* Exh. 3, ESA at ¶ 2.3). Even so, RMP did not "complete" the study by late September. In fact, other than as stated in the following paragraph, RMP never provided Milford with a report of its findings about [REDACTED]

[REDACTED] or a report of the estimated construction costs, as the ESA requires it to do. (See *id.*, ESA at ¶ 2.1).

15. On October 28, 2010, Milford inquired about the results of the engineering study. (Exh. 4, email from Evans to Clements, October 28, 1020). On November 2, 2010 (165 days after receiving the signed ESA), RMP notified Milford that it [REDACTED] [REDACTED] (*Id.*, email from Heaton to Harris, November 2, 2010). RMP gave the following report of its engineering study: [REDACTED]

[REDACTED] (*Id.*, email from Heaton to Harris, November 2, 2010). Thus, five and one half months after entering into the ESA (nine months after Milford II applied for service), after exacting a [REDACTED] fee from Milford, and after having been prodded once again to action, RMP notified Milford that [REDACTED] [REDACTED], just as RMP had indicated in the correspondence exchanged in January 2010.

16. The engineering study (to the extent it was done) only confirmed what RMP and Milford already knew. Evidently in RMP's view, however, it was the "completion" of the engineering study and Milford's "acceptance" of the results that determined Milford's place in the queue for consideration of a special contract. (*Id.*, email Ishimatsu to Evans, November 10, 2010; email from Heaton to Harris, November 10, 2010; email between Mark Klein and Mark Moench, November 12 – 15, 2010). Thus, because of the delay in completing the engineering study, RMP did not send the first draft of the retail Master Electric Service Agreement

(“MESA”) to Milford until November 19, 2010. (*Id.*, email from Heaton to Harris, November 19, 2010).

17. RMP’s suggestion in its Responsive Comments that Milford delayed in “entering into” the ESA, or that Milford’s financing somehow caused delay simply does not correspond to Milford’s record of events. From Milford’s perspective, RMP was slow to determine whether it would require the study, slow to provide the draft ESA, slow to respond to Milford II’s efforts to negotiate the ESA, late in completing the study and late in advising Milford of the “obvious” decision that [REDACTED], all of which served to delay the negotiation of Milford’s contract. The record of correspondence cited above thus supports Milford’s statement in its Request for Expedited Hearing that expedited treatment was necessary because of “delays occasioned by PacifiCorp, including its need to obtain engineering studies.”

Delay in Finalizing the Wholesale PPA with LADWP

18. Milford stated in its Request for Expedited Hearing that part of the reason for the delay in filing the Applications was “the need for RMP’s wholesale supplier, Los Angeles Department of Water and Power (“LADWP”), to obtain approval from the City of Los Angeles of a wholesale power purchase agreement with PacifiCorp.” Request for Expedited Hearing, at 2.

19. RMP stated in its Responsive Comments that it “met with Milford II and LADWP November 1, 2010, to discuss metering issues Milford II needed to resolve before LADWP could proceed with the PacifiCorp wholesale agreement.” Responsive Comments at 3. RMP’s comment fails to adequately inform the Commission of the total circumstances. While such a

meeting did take place, it was long after Milford had informed RMP of “metering issues,” after Milford had provided all of the information that RMP requested on metering, and after Milford had taken affirmative steps to repeatedly urge and facilitate RMP’s discussions with LADWP.

20. Milford notified RMP of the metering issues on January 7, 2010, when it first requested service for Milford II. (Exh. 1, email from Evans to Ishimatsu, January 7, 2010). RMP contacted LADWP to begin discussions in April, 2010, and found LADWP to be “slow in responding.” (Exh. 5, email from Heaton to Harris, April 6, 2010). In June, Milford inquired about how discussions with LADWP were progressing, and RMP replied that LADWP had been “unwilling to respond” to RMP. (Exh. 5, Harris to Heaton and Heaton to Harris, June 8-9, 2010). RMP enlisted Milford’s help in contacting LADWP “to get this rolling so that we can finalize an agreement with them for you.” (*Id.*)

21. Milford cooperated with RMP, setting up telephone conference calls between LADWP and RMP and making Milford’s personnel available to assist with technical requirements to facilitate RMP and LADWP’s negotiations of the wholesale power purchase agreement (“PPA”). (Exh. 5, email from Harris/Clements, August 18, 2010 – September 7, 2010). On October 4, 2010, Milford provided RMP switching diagrams for metering at M-1 and M-2, and, later in October, asked RMP whether it needed additional information to finalize its agreements. (*Id.*, email from Harris to Mo Bashir and Clements, Oct. 4, 2010; email from Harris to Clements, October 26, 2010).

22. Because Milford is not a party to the PPA, it does not have complete information on how the negotiations progressed between the Company and LADWP. But, it must be mentioned that it is RMP’s responsibility – not the customer’s responsibility – to secure

wholesale power to meet RMP's retail commitments. Despite Milford's efforts, the negotiations that the Company initiated in April 2010 did not result in a PPA until seven months later, on or about November 30, 2010. (*Id.*, email from Clements to Harris, November 30, 2010).

23. By November 30, 2010, unfortunately, it was too late for the PPA to be included on the LADWP Board's agenda for December, 2010. (Exh. 6, LADWP Board Agenda for December 7, 2010.) Because the LADWP Board met only once in December, there was no opportunity for approval of the PPA until the Board's next meeting on January 4, 2011. In addition, an agreement approved by the Board cannot be signed by the Los Angeles City Council until the City Council has met five times following Board approval. (*See* Exh. 7, email from Faranak Sarbaz to Harris, January 7, 2011). Thus, it was entirely accurate for Milford to state in its Request for Expedited Hearing that the delayed filing with the Commission was, in part, due to "the need for RMP's wholesale supplier, Los Angeles Department of Water and Power ("LADWP"), to obtain approval from the City of Los Angeles of a wholesale power purchase agreement with PacifiCorp." Request for Expedited Hearing at 2.

24. Finally, it should be noted that RMP's filing of the Application for Approval of the MESA was further delayed several days because, even after the LADWP Board had approved the PPA and the City Council had signed it, RMP did not bother to obtain a signed copy. On January 19, 2011, in response to Milford's request that RMP file the Application for Approval of the MESA, RMP stated that it did not yet have a copy of the signed PPA, and could not file the Applications without it. (Exh. 8, email from Ishimatsu to Evans, January 19, 2011). On January 20, 2011, RMP reported once again that it still had not received a copy of the signed PPA. (*Id.*, email from Ishimatsu to Evans, January 20, 2011.) Milford easily obtained a copy of

the fully executed PPA and delivered it to RMP on that same day, January 20, 2011. (*Id.*, email from Evans to Ishimatsu, January 20, 2011).

25. Upon receiving the signed PPA, RMP informed Milford that [REDACTED] and, once [REDACTED], RMP would file the Application with the PSC. (*Id.*, email from Evans to Ishimatsu, January 20, 2011). Four days later, on January 24, 2011, RMP filed the Application – three days short of a full year after Milford formally requested electric service.

The Retail MESA

26. Milford never claimed that RMP delayed in completing the MESA for Milford II. Yet, in its Responsive Comments, RMP defends the timeliness of its actions in negotiating the Milford II MESA. Responsive Comments at 3. At the same time, RMP contends that LADWP's approval of the PPA was a "precondition for Rocky Mountain Power to enter into the master electric service agreement." *Id.* at 2. For that reason, LADWP's approval of (and signature on) the PPA controlled the timing of RMP's execution of the MESA, and thus the filing of the Applications.

27. Milford does not dispute that the MESA was signed at the same time as the PPA, on the day before RMP filed the Applications. Milford's point is only that the PPA could have, and should have, been ready in time to make it onto the LADWP Board's agenda for the December 2010 meeting, but it did not because RMP and LADWP had not yet completed their negotiations, through no fault of Milford.

Conclusion

28. Milford acknowledges that it has requested expedited treatment repeatedly from the Commission as the DPU has pointed out, and that, in many instances, the requests for expedited treatment have been because of the exigencies imposed by Milford's financing. Milford is appreciative of the fact that the Commission, the DPU and the OCS have always graciously accommodated those requests. In the future, Milford will continue to make every effort to give consideration and planning to its Commission filings, as the Division recommends, so that expedited hearings and motions do not become problematic. In this case, however, expedited treatment was, just as Milford stated in its Request for Expedited Hearing, because of delays occasioned by RMP in completing the ESA, and by LADWP's need to have the PPA approved by the LADWP Board. Accordingly, Milford requests that if the Commission finds it necessary to comment on the expedited treatment in this particular case, it do so with these additional facts on hand.

DATED this 31st day of March, 2011.

/s/ Vicki M. Baldwin
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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2011, I caused a non-confidential version of the foregoing **RESPONSE OF MILFORD WIND CORRIDOR PHASE II TO REPORTS OF OCS AND DPU REPORTS** in Docket No. 11-035-17, and **REPOSENSE OF MILFORD WIND CORRIDOR PHASE I TO REPORTS OF OCS AND DPU** in Docket No. 09-035-55, to be sent via electronic mail, and a confidential version of the same to be hand-delivered to the following:

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