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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects Larger Than Three Megawatts</p>	<p>Docket No. 12-035-100</p> <p>ROCKY MOUNTAIN POWER'S RESPONSE TO ENERGY OF UTAH LLC PETITION FOR REVIEW, REHEARING AND CLARIFICATION</p>
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Pursuant to Utah Code Ann. §§ 54-7-15 and 63G-4-301 and Utah Administrative Code § R746-100-11, Rocky Mountain Power (“Rocky Mountain Power” or “Company”) hereby responds to the petition for review, rehearing and clarification filed by Energy of Utah LLC (“EOU”) with the Public Service Commission of Utah (“Commission”) on August 30, 2013 (“EOU Petition”). EOU requests that the Commission reconsider the order the Commission issued in this docket on August 16, 2013 (“Phase II Order”). The Commission should reject the EOU Petition because EOU failed to execute a power purchase agreement (“PPA”) prior to the date the Commission issued its Phase II Order, as required by the Commission in the Phase I Order (as defined below).

BACKGROUND

In the EOU Petition, EOU argues that the Phase II Order directed the Company to utilize the Partial Displacement Differential Revenue Requirement (“PDDRR”) method pricing for all future pricing requests under Schedule 38. While the Company agrees this is a statement made by the Commission in the Phase II Order, EOU incorrectly assumes it means that EOU and all other similarly situated parties are entitled to market proxy pricing even if they did not have an executed PPA with the Company on the date the Phase II Order was issued. There is no basis for EOU’s assumptions given the Commission’s findings in the Order on Motion to Stay Agency Action issued December 20, 2012 (“Phase I Order”).

ARGUMENT

The Phase I Order Placed EOU on Notice that New Avoided Cost Pricing Would Apply to Parties That Had Not Secured Executed PPAs by the Date the Phase II Order was Issued; Because EOU Failed to Secure an Executed PPA by Such Date, Avoided Cost Pricing Must be Based on the PDDRR Methodology and EOU Is Not Entitled to Relief

In the Phase I Order, the Commission indicated that it would issue a new order on large wind qualifying facility (“QF”) project avoided cost methodology by mid-summer 2013.¹ The Commission shared the Company’s concerns with the market proxy method stating “[W]e find RMP’s concerns regarding the continuing suitability of the Market Proxy method warrant a reexamination of avoided cost calculations for large wind QFs, given RMP’s latest resource plan and the absence of renewable RFPs since 2009.”² Further, the Commission directed the Company to “monitor carefully the avoided cost calculations and other terms of its QF

¹ *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects Larger than Three Megawatts*, Docket No. 12-035-100, Order on Motion to Stay Agency Action, p.17 (December 20, 2012).

² *Id.*, at 14.

transactions in order to maintain the ratepayer indifference standard.”³ While the Commission did not stay the application of the market proxy method for indicative pricing purposes at that time, the Commission took comfort in the flexibility allowed by the Company’s tariff to update its pricing, noting that “Schedule No. 38 is clear; RMP will update its pricing proposals at appropriate intervals to accommodate any changes to avoided cost calculations”⁴ In the Phase I Order, the Commission also stated “[W]e have already placed market participants on notice of the schedule for this examination leading to hearings in June, 2013.”⁵ Most relevant here is the Commission’s acknowledgement in the Phase I Order that,

“the possibility the outcome of the Phase II hearings and the interests of ratepayers may require 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 is issued.” (Emphasis added)

EOU did not have in its possession an executed PPA when the Phase II Order was issued.⁶ The Commission issued its Phase II Order August 16, 2013. In it, the Commission found among other things that the market proxy pricing methodology was no longer in the public interest. As a result, the Commission replaced the market proxy pricing methodology with the PDDRR pricing methodology.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ EOU’s statement in its Petition that PPA negotiations were completed prior to the Commission’s ruling of August 16, 2013 is not correct. While the parties were in the negotiation process, certain PPA terms and conditions were not yet resolved. This was primarily due to the fact that EOU changed its project size in July 2013 and thus required revised indicative pricing, which was delivered August 12, 2013, just four days prior to the August 16, 2013 Phase II Order. The parties were still negotiating credit terms and other PPA terms as a result of the revised pricing, as demonstrated by the multiple email communications between the parties in the week preceding the August 16, 2013 Phase II Order. In fact, in an August 12, 2013 communication, the Company advised that it may take between three and four weeks before the PPA is ready for execution based on the then-current status of negotiations.

Because EOU did not secure an executed PPA prior to August 16, 2013 and given the Commission's findings (1) in the Phase I Order that QF projects without an executed PPA when the Phase II Order was issued would be subject to new avoided costs pricing and (2) in the Phase II Order that the market proxy pricing methodology is no longer in the public interest, there is no basis on which to grant the EOU Petition. Finally, as a participant in the Phase I proceedings in this docket, EOU has no excuse for its untimely filing for reconsideration of the Phase I Order. It knew on December 20, 2012 when the Commission issued its Phase I Order that anyone without an executed PPA on the date the Phase II Order was issued, i.e., August 16, 2013, would be subject to a new avoided cost pricing methodology upon the issuance of the Phase II Order.

CONCLUSION

Based on the foregoing, the Commission must reject the EOU Petition.

DATED this 18th day of September, 2013

RESPECTFULLY SUBMITTED,

ROCKY MOUNTAIN POWER

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