

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
PacifiCorp for Approval of an IRP-based) DOCKET NO. 03-035-14
Avoided Cost Methodology for QF Projects)
Larger than One Megawatt)
)
In the Matter of the Application of Rocky) DOCKET NO. 12-035-101
Mountain Power for Approval of Changes to)
Tariff Schedule No. 38, Qualifying Facility)
Procedures) ORDER ON TARIFF MODIFICATIONS
)

ISSUED: March 21, 2013

By The Commission:

This matter is before the Public Service Commission of Utah (“Commission”) upon the October 19, 2012, application of PacifiCorp (“Application”), a public utility doing business in Utah as Rocky Mountain Power (“Company”), in Docket No. 12-035-101 for the approval of proposed modifications to Electric Service Schedule No. 38, “Qualifying Facility (“QF”) Procedures” (“Schedule 38”). The modifications were filed to comply with Ordering Paragraph 13, at page 34 of the Commission’s Report and Order issued on October 31, 2005, in Docket No. 03-035-14 (“2005 Order”) , captioned above. Ordering Paragraph 13 of the 2005

Order states:

13. The Company is directed to work with parties to develop a proposed revision to Schedule No. 38 incorporating language informing QFs of available informal and formal dispute resolution procedures. Also the revision should include language informing QFs of the bidding process requirements for QFs 100 megawatts or greater and seeking terms of ten years or more. We further direct the Company to create on its [website] (with reference to this site shown on Schedule No. 38) a transparent check list or table which incorporates the decisions in this order and allows QF developers to view the process for determining indicative pricing.

The Application proposed additional language stating QFs which are 100 megawatts or greater in size and seeking a contract term of ten years or more must participate in a Company competitive bidding process. The new language included a website link to information regarding the Company's competitive bidding processes. Additionally, the Company stated in the Application: "The Company is also implementing on its website a transparent check list or table which incorporates the decisions in this order and allows QF developers to view the process for determining indicative pricing."

On November 19, 2012, the Utah Division of Public Utilities ("Division") and the Office of Consumer Services ("Office") filed comments addressing the Application. The Division recommended the Commission approve the Company's proposed changes to Schedule 38. The Office, however, noted the requisite language described in Ordering Paragraph 13 pertaining to informing QFs of available informal and formal dispute resolution procedures was missing from the Company's proposed changes. To address this issue, the Office recommended the Commission clarify its intent regarding the dispute resolution process addressed in the 2005 Order and, if appropriate, require the Company to include the dispute resolution process information in Schedule 38. The Office also recommended the Commission direct the Company to file a notice with the Commission when the website check list, also required in Ordering Paragraph 13, is complete.

On December 5, 2012, the Commission notified the Company it concurred with the Office that available informal and formal dispute resolution procedures in the proposed language changes to Schedule 38 were absent and directed the Company to work with parties to

develop a proposed change to Schedule 38 incorporating such language. Further, the Commission directed the Company to file a notice with the Commission when the website check list was completed.

On December 19, 2012, the Company filed additional proposed changes to Schedule 38 (“December Changes”) incorporating proposed dispute resolution procedures and addressing the Commission’s request that the Company notify the Commission when the website check list is complete.

The Company proposes to revise Page 38.7 of Schedule 38 by incorporating the following language informing QFs of available formal dispute resolution procedures:

III. Process for Filing a Complaint with the Commission on Contract Terms

Before filing a complaint with the Utah Public Service Commission on any specific power purchase agreement term not agreed upon between the counterparty and the Company, a counterparty must wait 60 calendar days from the date it notifies the Company in writing that it cannot reach agreement on a specific term. This includes but is not limited to any disputes that are not resolved through the procedures set forth in I.B.6.

The Company indicates, as directed in the Commission’s December 2012 correspondence, it had reviewed the language with parties and understands the parties agree said language meets the requirement.

Additionally, the Company responds to the Commission’s request that it notify the Commission when the website check list is complete. The Company changes its position as presented in its Application regarding the development of a website check list. The Company now maintains the purpose of the website check list is to inform QFs of the information required in order to obtain indicative pricing. The Company states Schedule 38, which is readily

available on the Company's website, meets this requirement since it clearly shows in Section I.B.2., the list of items required to obtain indicative pricing. Therefore, the Company submits it has fulfilled this requirement.

On January 17, 2013, the Division filed comments on the Company's December Changes. The Division indicates the Company discussed with the Division and other parties its proposed dispute resolution process to be incorporated into Schedule 38. No party opposed the Company's proposed language. The Division maintains this language is the same as that used by the Company in its Wyoming tariff and explains the Company indicated that the 60-day waiting period is intended for the Company and the counterparty to continue to try resolving the dispute. The Division believes the proposed language meets the Commission's requirement. The Division also indicates it reviewed Section I.B.2 of Schedule 38 and concludes the information in this section meets the Commission requirement for a website checklist and this is already available on the Company's website. Therefore, the Division concludes the Company complies with this requirement.

DISCUSSION, FINDINGS AND CONCLUSIONS

A. Application of Schedule 38 to QFs Greater than 100 Megawatts for 10 Years or More

Based on the Division's recommendations, we find the additional language provided by the Company in its Application to address the applicability of Schedule 38 to QFs greater than 100 megawatts and seeking a contract term of ten years or more is reasonable and complies with our 2005 Order. We, therefore, approve the modified language.

B. Dispute Resolution Procedures

In Docket No. 03-035-14, parties expressed the need for an efficient dispute resolution process and expressed consensus that existing Commission dispute resolution procedures adequately addressed parties concerns pertaining to avenues for conflict resolution.¹ In fact, in surrebuttal testimony filed in that docket, in response to the question of whether it agreed an efficient issue resolution process was already in place, the Company stated: “Yes, the Company agrees that there is currently an efficient and speedy issue resolution process available to QFs and the Company. No additional process needs to be established by the Commission at this time.”²

Additionally, on September 29, 2005, the Division filed a memorandum with supporting Exhibit A – Joint Exhibit Matrix (“Matrix”). In this memorandum the Division states “the matrix has been viewed by and received input from all of the parties that have testimony on the record.” Line 24 of the Matrix, addressing the Issues Resolution/Negotiation Process, indicates the Company, the Division, the Office, and Wasatch Wind support the “Process as already in place: Schedule 38 will have language informing QFs of process.”³

Accordingly, on page 30 of our 2005 Order we found and concluded:

3. Issue Resolution PacifiCorp, Division, Committee, UAE, US Mag and Wasatch Wind all believe there is already a process in place to resolve disputes involving QF contracts or the negotiation of such and all agree that the Company’s Tariff Schedule No. 38 should have language informing QFs of available informal and formal dispute resolution procedures. We concur and direct the Company to work with parties to develop a proposed revision to

¹ See Surrebuttal Testimony of Bruce W. Griswold, filed September 19, 2005, Rebuttal Testimony of Andrea Coon, filed September 8, 2005, Rebuttal Testimony of Philip Hayet on Behalf of the Committee of Consumer Services, filed September 8, 2005, and Prefiled Testimony of Scott Gutting, filed July 29, 2005, in Docket No. 03-035-14.

² Id., Surrebuttal Testimony of Bruce W. Griswold, filed September 19, 2005, at 8, lines 166-16.

³ Id., Matrix Memo and Exhibit A – Joint Exhibit Matrix, filed September 29, 2005.

Schedule No. 38 incorporating language informing QFs of available informal and formal dispute resolution procedures.

While we recognize the Company's interest in having similar tariffs in the various jurisdictions in which it operates, the Company's proposal to introduce a 60-calendar-day waiting period prior to filing a complaint with the Commission was neither introduced nor agreed to by parties in Docket No. 03-035-14. Neither the Company nor the Division identifies which parties have agreed to the December Changes. Additionally, the Company's proposed language does not inform the QF of available informal and formal dispute resolution procedures as directed in the 2005 Order; it simply introduces a 60-calendar-day waiting period.

Therefore, we deny the Company's request to incorporate language introducing a 60-calendar-day waiting period prior to filing a complaint with the Commission. We direct the Company to incorporate in a new Section III of Schedule 38 a reference to the Commission's informal and formal complaint processes. These processes are identified on the Commission website at the following address: <http://www.psc.utah.gov/complaints/index.html>. The Schedule 38 reference could simply state the Commission has informal and formal dispute resolution processes which can be reviewed at the aforementioned website.

C. Website Checklist

In its December Changes, the Company does not explain its change in position from its Application in which it stated, "The Company is also implementing on its website a transparent check list or table which incorporates the decisions in this order and allows QF developers to view the process for determining indicative pricing." It now maintains Schedule 38, which is already available on-line, fulfills the Commission's requirements. Ordering

Paragraph 13 directs “the Company to create on its [website] (with reference to this site shown on Schedule No. 38) a transparent check list or table which *incorporates the decisions in this order* and allows QF developers to view the process for determining indicative pricing.” This requirement differs from the Company’s interpretation that the intent of the website check list is to inform QFs of the information required in order to obtain indicative pricing.

There are several decisions in our 2005 Order that have the potential to affect QFs which are not addressed in Schedule 38. For example, the discussion in the 2005 Order which addresses the process for obtaining QF pricing for QFs 100 megawatts or greater also specifies a QF may petition the Commission for a waiver of the 100 megawatt limit based on the provisions in Utah Code Ann. § 54-17-201(3). This provision is absent from the Company’s Schedule 38. We continue to find it important for the Company to create on its website a transparent check list or table which incorporates the decisions in the 2005 Order and allows QF developers to view the process for determining QF pricing. We suggest, at a minimum, the Company cite or provide a direct link to the ordering paragraphs in our 2005 Order and any relevant orders on reconsideration. We direct the Company to file notification of the location of the checklist or table on the Company’s website by April 15, 2013.

D. Other Issues

In our review of the issues addressed in this order, we observe Schedule 38 has not been updated, materially, since 2006. Since that time the Commission has approved the

Company's distribution interconnection procedures in Docket Nos. 10-035-44 and 10-035-45.⁴ Therefore, we direct the Company to update the last paragraph in Schedule 38, which addresses interconnections on the Company's distribution system. Consistent with the language presented in the first paragraph on Page 38.7, Section II.B of Schedule 38, we direct the Company to update the last paragraph on Page 38.7 Section II.B to inform QFs that applications for interconnection at the distribution level will be processed in accordance with Utah Admin. Code R746-312 Electrical Interconnection using the Company's Commission-approved interconnection forms and agreements. The location of electronic copies of the Company's Utah Interconnection forms and agreements should also be specified.

ORDER

Wherefore, pursuant to the foregoing discussion, findings and conclusions made herein, we order:

1. The modified language addressing QFs, which are greater than 100 megawatts and seeking a contract term of ten years or more, is approved as filed in the Application;
2. The Company shall file, by April 15, 2013, Schedule 38 modifications addressing dispute resolution procedures consistent with the decision contained herein;

⁴ See *In the Matter of the Rocky Mountain Power Proposed Standardized Interconnection and Net Metering Service Agreements and Net Metering Facilities*, Docket No. 10-035-44, *In the Matter of the Rocky Mountain Power Proposed Standardized Non-Net Metering Agreements*, Docket No. 10-035-45, Report and Order, issued April 21, 2011.

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3. The Company shall develop, and notify the Commission of its location, a checklist or table to be posted on its website which incorporates the decisions in the 2005 Order and allows QF developers to view the process for determining indicative pricing by April 15, 2013.
4. The Company shall file, by April 15, 2013, a revision to Schedule 38, Section II.B to include references to the Commission-approved electrical interconnection rules and Company forms and agreements pertaining to distribution interconnection, as discussed herein.

DATED at Salt Lake City, Utah, this 21st day of March, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#242842

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this 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 does not grant a request for review or rehearing within 20 days after the filing of the request, 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 §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of March, 2013, a true and correct copy of the foregoing ORDER ON TARIFF MODIFICATIONS, was delivered upon the following as indicated below:

By Electronic-Mail:

Data Request Response Center (datarequest@pacificorp.com)
PacifiCorp

Dave Taylor (dave.taylor@pacificorp.com)
Daniel E. Solander (daniel.solander@pacificorp.com)
Rocky Mountain Power

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, UT 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
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Administrative Assistant