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## ACTION REQUEST RESPONSE

To: Public Service Commission

From: Division of Public Utilities  
Chris Parker, Director  
Artie Powell, Manager  
Charles Peterson, Technical Consultant

Date: August 29, 2012

Re: **Docket No. 12-035-90**, Cottonwood Hydro, LLC's Request for Agency Action regarding its power purchase agreement with PacifiCorp.

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### RECOMMENDATION (Schedule)

The Division of Public Utilities (Division) recommends that the Commission hold a scheduling conference to set a formal process to consider the issues raised by the Cottonwood Hydro, LLC's Request for Agency Action (Request).

### ISSUE

In an application dated August 1, 2012 Cottonwood Hydro, LLC (Cottonwood) filed a Request for Agency Action, asking the Commission to require PacifiCorp to continue to purchase power from Cottonwood under the terms of its current contracts with PacifiCorp for up to three years, through December 14, 2015. On August 9, 2012, the Commission issued an Action Request to the Division requesting response by September 4, 2012. This memorandum is the Division's response to the Action Request.

## **DISCUSSION**

Cottonwood entered into two power purchase agreements (PPAs) with PacifiCorp for its two hydro generation facilities located in Little Cottonwood Canyon in Salt Lake County on December 14, 2011. Continuation of the PPAs past July 14, 2012 was contingent upon Cottonwood either being licensed by FERC or receiving a waiver from FERC of FERC's jurisdiction (licensing requirement). Cottonwood initially asked FERC to waive its jurisdiction in July 2011. In May 2012 FERC informed Cottonwood that it would not waive jurisdiction and that Cottonwood must start a licensing process. Cottonwood requested a rehearing on the waiver issue, and pursuant to the PPAs allowing for a six-month extension of the licensing requirement to December 14, 2012, Cottonwood requested and PacifiCorp granted the six-month extension.

Subsequently, Cottonwood has become concerned that its processes at FERC could last for years. Consequently Cottonwood requested that PacifiCorp further extend the licensing requirement to December 14, 2015. Such a three year extension is outside of the terms of the current PPAs and PacifiCorp has refused to grant this extension. Cottonwood is concerned that PacifiCorp will cease purchasing power from it after December 14, 2012; therefore, Cottonwood has appealed to the Commission to require PacifiCorp to continue to purchase power from it under the terms of the PPAs at least through December 14, 2015.

While at first glance this matter appears to be a contract dispute that the Commission would normally not have jurisdiction to resolve, after consultation with the Division's legal counsel, the Division believes that there is a possibility that the Commission could take up this matter for adjudication. The Division believes that a schedule should be established in order to consider legal briefs from PacifiCorp, Cottonwood, the Division and any other interested parties and hold a hearing on the jurisdictional question. Furthermore, there are policy issues that could be raised regarding the promotion of distributed and relatively environmentally friendly electric generation resources, once the jurisdictional question is resolved.

Consequently the Division believes that these issues deserve a formal process for determination by the Commission. Therefore, the Division recommends that the Commission hold a scheduling conference to set a formal schedule in this matter.

CC:

Susannah Williams, Cottonwood Hydro, LLC.

Dave Taylor, Rocky Mountain Power/PacifiCorp

Michele Beck, Office of Consumer Services