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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Blue Mountain Power Partners, LLC's Request that the Public Service Commission of Utah Require PacifiCorp to Provide the Approved Price for Wind Power for the Blue Mountain Project	Docket No. 12-2557-01 **RESPONSE OF ROCKY MOUNTAIN POWER TO BLUE MOUNTAIN POWER PARTNERS, LLC'S REQUEST FOR AGENCY ACTION**

Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or the "Company"), pursuant to Utah Code Ann. §§ 63G-4-204(1) and Utah Admin. Code R746-100-3 and -4, hereby responds to Blue Mountain Power Partners, LLC's Request for Agency Action dated July 31, 2012 ("Request"). Blue Mountain Power Partners, LLC is a wholly owned affiliate of Champlin/GEI Wind Holdings, LLC ("Champlin"). Champlin requested indicative avoided cost pricing for a project it named in its request Blue Mountain Wind Project ("Project"). Champlin is not entitled to the relief sought in the Request because:

1. The indicative avoided cost pricing the Company provided to Champlin on May 21, 2012 for power generated by the Project is in accordance with the requirements of the Commission's Report and Order in Docket No. 03-035-14 issued October 31, 2005 ("Order").

2. Requiring the Company to provide the incorrect indicative avoided cost pricing requested by Champlin would unduly burden the Company and its customers because such pricing is clearly in excess of the avoided costs to the Company of additional wind resources at this time and is not consistent with the Order.

Although Rocky Mountain Power disagrees with Champlin's interpretations of the Order in relation to the Company's current Integrated Resource Plan ("IRP"), Rocky Mountain Power is willing to accept all material facts alleged in the Request for purposes of this Response and, therefore, respectfully requests that the Commission schedule any briefing or argument deemed necessary to allow the parties to present their positions on the issues and thereafter rule as a matter of law that the indicative avoided cost pricing Rocky Mountain Power has provided to Champlin is the currently approved avoided cost price for qualifying facility ("QF") wind projects in the state of Utah.

This Response is organized into the following sections:

1. Introduction and background recounting general factual information and procedural history.

2. Argument summarizing the reasons the Company's position is correct.

3. The Company's answer to the specific allegations of the Request.

4. The relief sought by the Company.

I. INTRODUCTION AND BACKGROUND

A. Docket No. 03-035-14

In Docket No. 03-035-14, the Commission considered the appropriate generic avoided cost method for pricing contracts for power purchased from QF projects larger than one megawatt for cogeneration facilities and three megawatts ("MW") for small power production facilities under the Company's Rate Schedule No. 38, Qualifying Facility Procedure. After considering the testimony and arguments of the parties, the Commission approved two different avoided cost methods for determining indicative avoided cost pricing for large wind QFs in Utah. The method to be used depended on whether the next deferrable generating resource in the Company's most recent IRP was a wind resource. If the next deferrable resource was a wind resource, the Commission found that the pricing for the most recently executed Request for Proposal ("RFP") contract for a wind resource, prior to the QF's request for indicative avoided cost pricing, would serve as the proxy ("Market Proxy") against which project specific adjustments are made to produce an indicative price for wind QFs in Utah.[1] Order at 21. The Commission cited the argument of the Committee of Consumer Services ("Committee") – "Utah customers should be reasonably indifferent to PacifiCorp buying power from either its own developed and built wind resource, an RFP-based wind resource or a wind QF" – in support of this decision. *Id.* at 20. If the next deferrable IRP resource was not a wind resource, the Commission found that wind QF indicative avoided cost pricing would be based, as it is for non-wind QFs, on the Proxy method for capacity costs and the Partial Displacement Differential Revenue Requirement ("PDDRR") method for energy costs. *Id.* at 33.

[1] The Company believes that the methods approved in the Order currently result in indicative avoided cost pricing for wind QFs that is greater than the cost avoided by the Company and its customers through purchasing power from the wind QF. For example, the Market Proxy, the Dunlap I Wind Plant ("Dunlap I"), is three years old and is in excess of current prices for wind resources. The Company requests that the Commission consider and address this issue in this proceeding or, in the alternative, open a new docket to address it.

The Proxy method uses the capital cost of the next deferrable generating unit in the Company's most recent IRP to calculate avoided generation capital cost per kilowatt ("KW"). *Id.* at 7. The PDDRR method determines avoided energy cost by using the Company's production cost model to simulate the hourly operation of the Company's system. One model run is made using the Company's preferred portfolio in its most recent IRP. The second is made by making two exceptions to the first run: (1) the operating characteristics of the proposed QF are added with its energy dispatched at zero cost and (2) the capacity of the IRP resource is reduced by the QF's capacity. The difference in the two runs is the avoided energy cost. It is divided by the annual proposed QF energy output to determine an energy price per MW-hour ("MWh"). *Id.* at 9.

As applied to wind QFs, the Proxy/PDDRR method provides only volumetric pricing based on peak and off-peak periods. The volumetric pricing for peak periods would include a capacity payment and for off-peak periods would include only the energy component. The Company and Division of Public Utilities ("Division") urged that the on-peak volumetric payment include 20 percent of avoided capacity costs.[2] Wind developers urged that it should include 35 percent of avoided capacity costs. The Commission concluded that "the wind power delivered in high load hours should receive a capacity payment consistent with the wind QF capacity factor in high load hours." *Id.* at 22-23.

The Commission noted in the Order that the current IRP target for wind resources at that time was 1400 MW. *Id.* at 18.

[2] Circumstances have changed since Docket No. 03-035-14 was litigated. The Company believes that the inclusion of 20 percent of avoided costs to the volumetric payment is currently too high and no longer appropriate. The Company requests that the Commission consider and address this issue in this proceeding or, in the alternative, open a new docket to address it.

B. Next Deferrable IRP Resource

During the course of Docket No. 03-035-14, Mid-American Energy Holdings Company ("MEHC") and the Company filed an application with the Commission for approval of MEHC's acquisition of the Company. The Commission conditioned its approval of the acquisition on a variety of commitments and conditions. One of those commitments was an affirmation that the Company would acquire 1400 MW of new renewable resources by 2012.[3] By October 2010, the Company had fulfilled this commitment.[4]

On March 30, 2012, the Company filed its 2011 IRP Update. In it, the next deferrable generation resource is a CCCT plant in 2016. The 2011 IRP Update included 450 MW of wind capacity to be added in 2019 and 2020 in the preferred portfolio to meet the renewable portfolio standards (RPS) compliance requirements in Oregon, Washington, and California. The Company has, therefore, met the IRP target for wind resources with regard to Utah.

C. Proxy If Next Deferrable IRP Resource Were a Wind Resource

Although the next deferrable IRP resource is not a wind resource, the Company acknowledges that if it were, the proxy resource for purposes of indicative avoided cost pricing under the Order would be Dunlap I. If the Market Proxy method is used, the indicative avoided cost pricing for the Project, estimated at a 33.9 percent capacity factor levelized over 20 years at a 7.17 percent discount rate would be $59.68 per MWh rather than the $52.25 per MWh provided by the Company using the Proxy/PDDRR method which is correctly used under the Order because the next deferrable IRP resource is not a wind resource.

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[3] Report and Order, Docket No. 05-035-54 (Utah PSC June 5, 2006), Commitment 40.

[4] 2011 Integrated Resource Plan, Docket No. 11-2035-01 (Utah PSC Mar. 31, 2011) at 100.

D. Project History

Champlin requested indicative avoided cost pricing from the Company for the Project on March 15, 2012. At approximately the same time, the Company completed its 2011 IRP Update and filed it with the Commission March 30, 2012. In considering Champlin's request, the Company evaluated the Order and determined that indicative avoided cost pricing based on the Proxy/PDDRR method was appropriate because under the 2011 IRP Update, the next deferrable resource is a CCCT plant. The Company also evaluated the timing and need of renewable resources under the 2011 IRP Update. The only renewable resources reflected in the 2011 IRP Update are wind resources that are to be added in order to meet RPS requirements in Oregon, Washington and California which are correspondingly expected to be situs-assigned to the Oregon, Washington and California jurisdictions. Based on this, the Company determined that it had met its IRP target for wind resources with regard to Utah. Thus, in accordance with Schedule No. 38 of the Company's tariff, the Company provided indicative avoided cost pricing on May 21, 2012. Request, Exhibit B.

II. ARGUMENT

The principal issue presented by the Request is whether indicative avoided cost pricing for the Project is to be based on the Proxy method or the Proxy/PDDRR method. That issue turns on interpretation of the Order. Principles of interpretation for statutes, rules and contracts provide a sound basis for interpreting the Order. Under those principles, the Commission should look to the plain language of the Order and should read all provisions of the Order together attempting to harmonize and give effect to each of them.[5] In addition, more specific provisions should govern over more general terms.[6]

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[5] *Cf. Sierra Club v. Air Quality Bd.*, 2009 UT 76, ¶ 13, 226 P.3d 719 ("We review administrative rules in the same manner as statutes, focusing first on the plain language of the rule."); *Cafe Rio, Inc. v. Larkin-Gifford-*

The basis for the purchase of power from QFs is Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). 16 U.S.C. § 824a-3. As noted in the Order, PURPA requires "the Company to purchase capacity and energy made available from a QF, and to make such purchases *at no more than* avoided cost." Order at 4 (emphasis added). After noting that the widely used method for determining avoided costs is the Differential Revenue Requirement ("DRR") method in which forecasts reflecting the Company's anticipated costs with and without the QF included in the optimal resource mix over the Company's planning horizon are compared, the Order approves a variant of the DRR method which is a combination of the proxy method for avoided capacity costs and PDDRR method for avoided energy costs. *Id.* at 5-6.

For non-wind QFs, the Order approves the Proxy method for determining avoided generation capacity costs. The proxy resource used in this method is the next deferrable generating unit in the Company's most recent IRP. *Id.* at 7. For avoided energy costs, the Order approves the PDDRR method. Under this method, the Company's production cost model, GRID, is used to simulate the hourly operations of the Company's utility system. A first run is made using the Company's existing resources and its planned resources from its Preferred Portfolio in its most recent IRP. The second run includes the operating characteristics of the QF dispatched at zero cost and reducing the IRP resource by the QF's capacity. The difference in production cost between the two runs is the avoided energy cost. *Id.* at 8-9. The IRP resource

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Overton, LLC, 2009 UT 27, ¶ 25, 207 P.3d 1235 ("[W]e look to the language of the contract to determine its meaning and the intent of the contracting parties … [and] 'consider each contract provision … in relation to all of the others, with a view toward giving effect to all and ignoring none.'") (quoting *Green River Canal Co. v. Thayn*, 2003 UT 50, ¶ 50, 84 P.3d 1134)); *Sill v. Hart*, 2007 UT 45, ¶ 7, 162 P.3d 1099 (stating "each part or section should be construed in connection with every other part or section so as to produce a harmonious whole").

[6] *Cf. Lyon v. Burton*, 2000 UT 19, ¶ 17, 5 P.3d 616 (stating "the rule [is] that a statute dealing specifically with a particular issue prevails over a more general statute that arguably also deals with the same issue").

whose capacity is reduced in this process is the next deferrable IRP resource. Accordingly, in both aspects of the Proxy/PDDRR method, the next deferrable IRP resource is considered.

For wind QFs, all parties agreed, at the time, that the Market Proxy method provides reasonable results when the next deferrable IRP resource is a wind resource, the QF exactly replaces the entire capacity of the next deferrable IRP resource and the QF does not significantly affect plant additions or system operations. *Id.* at 19. The Committee advocated use of the proxy approach with the lower of the IRP wind resource or market price. The Committee argued that "Utah customers should be reasonably indifferent to PacifiCorp buying power from either its own developed and built wind resource, an RFP-based wind resource or a wind QF." *Id.* at 20.

After considering different positions of the parties, the Commission concluded:

> We are persuaded … that the proxy method best reflects the avoided cost of a wind QF up to the IRP target level of wind resources. This IRP target level of wind resources is not an annual target, but the cumulative target from the IRP and we decline to limit the use of the proxy method to 200 megawatts per year. Further, we accept the market price proxy as it is reasonably accurate but also simple and transparent.
>
> … We find the most recently executed RFP contract, prior to the QF's request for indicative pricing, will serve as the proxy against which project specific adjustments are made to produce an indicative price for wind QFs in Utah. The most recently executed contract becomes a rolling target as new RFP contracts are executed.
>
> The avoided cost method recommended by parties for QF wind projects that exceed the IRP target level of wind supply is the Proxy method for avoided generation capital cost and the PDDRR method for avoided energy cost. Thus, once the next deferrable IRP resource is no longer a wind resource, wind QF indicative pricing will be based, as it is for non-wind QFs, on the Proxy and PDDRR methods used for non-wind QFs discussed in Section A of this order with a few distinctions.

Id. at 21-22.

Under the principles of construction stated above, it is clear that the purpose of differentiation between the Market Proxy and Proxy/PDDRR methods as applied to wind QFs was to assure that customers do not pay more than the costs reasonably avoided by the QF. Therefore, if the next deferrable IRP resource is a wind resource, the Commission found that the market-based cost of the most recently acquired RFP wind resource was a reasonable estimate of avoided cost. If the next deferrable IRP resource is not a wind resource, the Commission found that the modeled cost of the next deferrable resource was a reasonable estimate of the avoided cost.

The Commission's use of the phrase "the IRP target level of wind resources" must be read in the context of the overall purpose of the Order and the statute. The Company is required to purchase power from a QF but at a cost that is no more than the cost avoided by doing so. Furthermore, the discussion of the cumulative target versus the annual target was simply to make clear that pricing for wind based on the most recent market acquisition should not be limited to an annual target, but should be left in place so long as the next deferrable IRP resource was a wind resource despite the annual target. When the Commission referred to the IRP target level of wind supply, it was referring to the next deferrable target level of wind supply. This is made clear by the more specific explanatory phrase, "[t]hus, once the next deferrable IRP resource is no longer a wind resource." *Id.* at 22. Use of this language would have been unnecessary if the Commission intended to use the most recent RFP market price for any QF up to the total target level regardless of the character of the next deferrable IRP resource.

For the foregoing reasons, the Commission should conclude that the Company's indicative avoided cost pricing is compliant with the Order and is the correct avoided cost indicative pricing for the Project.

III. ANSWER

With respect to the specific allegations of the Request, the Company admits, denies and avers as follows:

1. The Company admits the allegations of Paragraph 1 of the Request.

2. Paragraph 2 of the Request does not contain allegations of fact, but is rather a summary of Champlin's position on legal issues. Therefore, the Company is not required to respond to the same. However, to the extent any allegation in Paragraph 2 is inconsistent with PURPA or Utah Code Ann. § 54-12-2, the Company denies the allegation.

3. The Company lacks sufficient information to determine the truth of the allegations in Paragraph 3 of the Request and, therefore, denies the same.

4. The Company admits that the Commission issued a Report and Order in Docket No. 03-035-14 on October 31, 2005 and that the Commission approved avoided cost methods for pricing contracts for QF projects in the Order. The Order speaks for itself. To the extent any allegation of Paragraph 4 of the Request is inconsistent with the language of the Order, the Company denies the allegation.

5. The Company admits that the Commission's decision in the Order provided two different methods for determining the avoided cost for pricing contracts for QF projects. The Order speaks for itself. To the extent any allegation of Paragraph 5 of the Request is inconsistent with the language of the Order, the Company denies the allegation.

6. The Company admits the language from the Order quoted in Paragraph 6 of the Request appears in the Order. The Order speaks for itself. To the extent any allegation of Paragraph 6 of the Request is inconsistent with the language of the Order, the Company denies the allegation.

7. The Company admits the language from the Order quoted in Paragraph 7 of the Request appears in the Order. The Order speaks for itself. To the extent any allegation of

Paragraph 7 of the Request is inconsistent with the language of the Order, the Company denies the allegation.

8. The Company admits that it filed a Quarterly Compliance Filing – 2012.Q1 Avoided Cost Input Changes ("Model Update") in Docket No. 03-035-14 on March 8, 2012 and that the language from the Model Update quoted in Paragraph 8 of the Request appears in that filing. The Model Update speaks for itself. To the extent any allegation of Paragraph 8 of the Request is inconsistent with the language of the Model Update, the Company denies the allegation.

9. The Company admits the language from the Model Update quoted in Paragraph 9 of the Request appears in that filing. The Model Update speaks for itself. To the extent any allegation of Paragraph 9 of the Request is inconsistent with the language of the Model Update, the Company denies the allegation.

10. The Company admits the language from the Model Update quoted in Paragraph 10 of the Request appears in that filing. The Model Update speaks for itself. To the extent any allegation of Paragraph 10 of the Request is inconsistent with the language of the Model Update, the Company denies the allegation.

11. The Company admits that the "Blue Mountain wind project" was listed as a signed QF wind resource in the Model Update, but denies the remaining allegations of Paragraph 11 of the Request.

12. The Company admits that it filed its 2011 IRP Update. The 2011 IRP Update speaks for itself. To the extent any allegation of Paragraph 13 of the Request is inconsistent with the language of the 2011 IRP Update, the Company denies the allegation. Specifically, only

225MW of wind are included in 2019 and 225MW of wind are included in 2020, from the 2011 through 2021period in the preferred portfolio.

13. On information and belief, the Company admits the allegations in Paragraph 15 of the Request.

14. The Company is without sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 16 of the Request and, therefore, denies the same. In addition, the Company affirmatively alleges that the PPA was not assumed by REDCO in the bankruptcy proceeding and was not an asset of the bankruptcy estate. On information and belief, the Company affirmatively alleges that Cedar City Wind purchased REDCO's interests in the scheduled assets "as is" in the bankruptcy proceeding and that Cedar City Wind's ownership interests in the scheduled assets are being disputed.

15. The Company admits that Champlin requested and received a Response to Indicative Avoided Cost Pricing Request dated May 21, 2012 from the Company and that a copy of the Response to Indicative Avoided Cost Pricing Request is attached as Exhibit B to the Request. The Company denies the remaining allegations of Paragraph 17 of the Request.

16. The Company cannot admit or deny the allegations of Paragraph 18 of the Request because the allegations are too vague.

17. The Company admits that its indicative avoided cost pricing provided to Champlin dated May 21, 2012 was based on the avoided cost method for wind QFs to be used when the next deferrable IRP resource is not a wind resource and that the indicative avoided cost pricing is lower than the pricing that would be determined under the avoided cost method if the next deferrable IRP resource were a wind resource.

18. Paragraph 20 of the Request is a legal conclusion. Therefore, the Company is not required to respond to the same. However, to the extent any allegation in Paragraph 20 is deemed to be an allegation of fact, the Company denies the allegation.

19. Paragraph 21 of the Request is a legal conclusion. Therefore, the Company is not required to respond to the same. However, to the extent any allegation in Paragraph 21 is deemed to be an allegation of fact, the Company denies the allegation.

20. The Company denies that Champlain is entitled to the relief sought in the Request. To the extent the Company has not specifically admitted any allegation in the Request, the Company denies the allegation.

IV. RELIEF SOUGHT

Based on the foregoing, the Company respectfully requests that the Request be denied and dismissed with prejudice. Champlin is not entitled to the relief sought in the Request because:

1. The indicative avoided cost pricing the Company provided to Champlin for power generated by the Project is in accordance with the requirements of the Order.

2. Champlin should not be awarded indicative avoided cost pricing that was provided to a completely different entity at a different time and under different circumstances. Doing so would set bad precedent.

3. Requiring the Company to provide the incorrect indicative avoided cost pricing requested by Champlin would unduly burden the Company and its customers because such pricing is clearly in excess of the avoided costs to the Company of additional wind resources *at this time*.

4. In the alternative, if the Request is not denied and dismissed with prejudice, the Company requests that the Commission (1) clarify its Order in this case or (2) open a separate

docket to ensure that the Company uses the correct avoided cost pricing methodology for QFs in the future.

DATED: August 30, 2012.

Respectfully submitted,

ROCKY MOUNTAIN POWER

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2012, a true and correct copy of the foregoing **RESPONSE OF ROCKY MOUNTAIN POWER TO BLUE MOUNTAIN POWER PARTNERS, LLC'S REQUEST FOR AGENCY ACTION** was served by e-mail on the following persons:

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