

RMP filed its response to Blue Mountain's Request on August 30, 2012 ("Response"). RMP disagrees with Blue Mountain's interpretation of the 2005 Order as applied to RMP's current Integrated Resource Plan ("IRP"). RMP asserts as a matter of law the indicative avoided cost price it provided to Blue Mountain is the currently approved avoided cost price for qualifying facility ("QF") wind projects in the state of Utah. RMP states it is willing to accept all material facts Blue Mountain alleges in the Request for purposes of the Commission's consideration of RMP's response.³

BACKGROUND

As discussed in the 2005 Order, Section 210 of the Public Utility Regulatory Policies Act of 1978⁴ ("PURPA") is the foundation of RMP's obligation to purchase capacity and energy made available from a QF, and to make such purchases at no more than avoided cost. Avoided costs are RMP's incremental costs of electric energy and/or capacity that RMP would produce through its own generating units or purchase from another source, but for the purchase from the QF. Section 210 also specifies a utility's obligation to make necessary interconnections with a QF, the costs of which, as approved by the Commission, are to be paid by the QF.⁵

A QF is defined as a qualifying cogeneration facility or a qualifying small power production facility within the meaning of sections 201 and 210 of PURPA.⁶ "Qualifying small power facility" includes a wind facility that has a power production capacity which (together with any other facilities located at the same site) is not greater than 80 megawatts ("MW") and

³ See Response of Rocky Mountain Power to Blue Mountain Power Partners, LLC's Request for Agency Action, August 30, 2012, p.2.

⁴ 16 U.S.C. Chapter 46.

⁵ See Supra n.1, pp. 5-7.

⁶ See id.

meets certain FERC-prescribed standards. RMP's Schedule No. 38 establishes the process for negotiating power purchase and interconnection agreements between RMP and QFs of a certain size, including wind QFs the size of the Project.⁷

The Differential Revenue Requirement ("DRR") method has been widely used by utilities since the passage of PURPA to calculate the avoided costs associated with a purchase from a QF. This method is based on two forecast scenarios over the utility's planning horizon and involves a comparison of the net present value of future revenue requirements for two resource portfolios. The first portfolio reflects the future resource decisions the utility would make in the absence of purchases from the QF. The second portfolio reflects the future resource decisions the utility would make if power from the QF were available to the utility at no cost. The resources selected in each portfolio are based upon a consideration of cost, risk, and other characteristics. The avoided cost of a QF purchase is the difference in the net present value of revenue requirements for the two optimal resource portfolios, with and without the QF.⁸

Based on supporting evidence from RMP and the Division, among others, the 2005 Order adopts a variation of the DRR method designed to accommodate RMP's manual portfolio building process in place at that time. This method has two components: one for avoided capacity cost and another for avoided energy cost. The first component is the capital cost per kilowatt of the next deferrable generating unit in RMP's most recent IRP, referred to in the 2005 Order as the "Proxy method." The second component, used to determine the avoided energy cost, is the Partial Displacement Differential Revenue Requirement method, referred to in

⁷ See id.

⁸ See id.

the 2005 Order as the “PDDRR method.” Together, these two components (referred to hereafter as the “Proxy/PDDRR method”) constitute the method used for determining indicative avoided cost pricing for non-wind resources and, under certain conditions, wind resources.⁹

The intermittent characteristic of energy produced from wind facilities introduces considerations into the avoided cost analysis that are unique to this type of QF. Accordingly, in the 2005 Order, the Commission addresses these considerations, identifies an alternative method for determining avoided cost pricing for wind resources, and defines the circumstances under which the alternative method should be used. In the 2005 Order this method is referred to as the “market price proxy” method. Under this method the proxy is not the next deferrable generating unit in RMP’s most recent IRP. It is instead RMP’s most recently executed wind contract. The central question presented in the Request is whether RMP used the correct method in calculating the indicative avoided cost pricing it provided to Blue Mountain on May 21, 2012.

PARTIES’ POSITIONS

I. Blue Mountain

As asserted in the Request, Blue Mountain owns the Project, an 80 MW wind power QF located near Monticello, Utah. Referencing PURPA and Utah Code Ann. § 54-12-2, Blue Mountain contends it is entitled to indicative QF avoided cost pricing calculated under the market price proxy method and argues RMP violated the 2005 Order in refusing to provide this pricing. RMP provided instead the lower thermal price determined through the Proxy/PDDRR method. Blue Mountain contends it is entitled to the market price proxy because RMP’s 2011 IRP includes 800 MW of wind by year 2020 and 2,100 MW by year 2029. Further, Blue

⁹ See id.

Mountain cites RMP's most recent IRP Update as maintaining about 2,100 MW of wind resource by 2030. Consequently, Blue Mountain believes its 80 MW Project is within the IRP target level for wind resources.

In support of its position, Blue Mountain quotes findings from the 2005 Order that conclude a subsection entitled "1. Avoided Cost Method for Wind QF Resources up to the IRP Target," as follows:

We are persuaded for the reasons stated by parties above 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.¹⁰

(Emphasis added.)

Ordering Paragraph 6 of the 2005 Order implements these findings as follows:

6. We approve a market price proxy for determination of avoided costs for wind QFs up to the Company's IRP target megawatt level of wind resources. The Company's most recent executed wind contract from its Renewable RFP will serve as the proxy against which project specific adjustments are made to produce an indicative price for wind QFs in Utah.¹¹

¹⁰ Supra n. 1, pp. 20-21.

¹¹ Id. p. 33.

Because the cumulative target for wind resources in the most recent IRP far exceeds the 80 MW capacity of the Project, Blue Mountain contends it should receive the market price proxy based on Dunlap I Wind, RMP's most recently executed wind contract.¹²

In further support of its position, Blue Mountain asserts RMP in 2011 offered QF pricing to a predecessor 80 MW wind project, Blue Mountain I, LLC, based on the market price proxy method. Moreover, according to Blue Mountain, RMP used the Dunlap I Wind contract as the proxy. Blue Mountain states the 2011 project planned by Blue Mountain I, LLC was not constructed due to the bankruptcy of its parent company. Blue Mountain purchased the parent's bankruptcy estate, including its wind project and subsequently requested from RMP indicative QF pricing for the Project. Blue Mountain contends because RMP offered "only the lower thermal prices for wind QF resources exceeding the IRP target," RMP's response violated the 2005 Order.¹³

II. RMP

RMP agrees with Blue Mountain that the Commission has established two different avoided cost methods for determining indicative avoided cost pricing for large wind QFs. RMP, however, disagrees with Blue Mountain as to the factors that determine which method should be applied. RMP argues it is not only the IRP wind resource target level, but also whether the next deferrable generating resource in RMP's most recent IRP is a wind resource, that determines which avoided cost method applies. Because RMP's next deferrable resource

¹² See Blue Mountain Power Partners, LLC Request for Agency Action, July 31, 2012, pp. 2-5. (Blue Mountain notes Dunlap I Wind is listed as the proxy wind resource in RMP's Quarterly Compliance Filing – 2012.Q1 Avoided Cost Input Changes in Docket No. 03-035-14, filed March 8, 2012.)

¹³ Id.

currently is a thermal resource, RMP believes Blue Mountain is only entitled to QF pricing calculated based on the Proxy/PDDRR method, i.e., the method used for non-wind resources.

At the center of RMP's argument is language in the 2005 Order that addresses the avoided cost method applicable for wind QF resources exceeding the IRP target level:

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.¹⁴

(Emphasis added.)

This quotation from the 2005 Order immediately follows the language from pages 20 and 21 relied upon by Blue Mountain (quoted above), except for an intervening subheading that reads: "2. Avoided Cost Method for Wind QF Resources Exceeding the IRP Target." RMP asserts the emphasized phrase in this quotation makes clear the Commission only intends the market price proxy to apply for wind QF avoided cost pricing when the next deferrable IRP resource is a wind resource. RMP argues: "Use of this language [the emphasized language in the foregoing quotation] 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."¹⁵ RMP also argues its interpretation is supported by rules of statutory construction. RMP contends the Commission should interpret the 2005 Order by examining its

¹⁴ Supra n.1, p. 21-22.

¹⁵ Supra n. 3, p.9.

plain language, construing all of the provisions together in an attempt to harmonize them, and allowing specific provisions to govern those with more general language.

In RMP's view, the Commission's use of the phrase "up to the IRP target level of wind resources" must be read in the context of the overall purpose of the 2005 Order and PURPA.¹⁶ RMP quotes the 2005 Order which states PURPA "specifies the obligation of the Company to purchase capacity and energy made available from a QF, and to make such purchases at no more than avoided cost."¹⁷ As calculated by RMP, if the market price proxy method is used, indicative avoided cost pricing is \$59.68 per megawatt hour ("MWh").¹⁸ The Proxy/PDDRR method, which in this instance applies the cost characteristics of a combined cycle combustion turbine, produces an avoided cost of \$52.25 per MWh.¹⁹ RMP argues: "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."²⁰ Consequently, according to RMP, "[w]hen the Commission referred to the IRP target level of wind supply [in the 2005 Order], it was referring to the next deferrable target level of wind supply."²¹ Based on this reasoning RMP interprets the 2005 Order to provide: "[I]f the next deferrable IRP resource is a wind resource ... the market-based cost of the most recently acquired RFP wind resource [is] a reasonable estimate of avoided cost. If the

¹⁶ See id.

¹⁷ Supra n.1, p.4.

¹⁸ See Supra n.3, p. 5. (This pricing accepts the Dunlap I Wind contract as the proxy and assumes a 33.9% capacity factor levelized over 20 years at a 7.17% discount rate.)

¹⁹ Id.

²⁰ Id., p. 9.

²¹ Id.

next deferrable IRP resource is not a wind resource ... the modeled cost of the next deferrable resource [is] a reasonable estimate of the avoided cost.”²²

RMP also defends its use of the Proxy/PDDRR method stating it has met its IRP target for wind resources for Utah. RMP asserts as of 2010 it fulfilled its commitment to acquire 1400 MW of new renewable resources by 2012, made in connection with Mid-American Energy Holdings Company’s acquisition of RMP. Additionally, RMP maintains the only renewable resources in its IRP are wind resources added to comply with renewable portfolio requirements in other states. RMP expects these resources to be “situs-assigned” to these other jurisdictions.²³ RMP implies these factors led it to use the Proxy/PDDRR method in providing to Blue Mountain on May 21, 2012, the indicative avoided cost pricing Blue Mountain requested.²⁴

DISCUSSION, FINDINGS, AND CONCLUSIONS

Our response to Blue Mountain’s Request turns on the meaning and intent of the language in the 2005 Order analyzed by Blue Mountain and RMP in the pleadings summarized above. While we understand the reasons RMP offers in support of its interpretation, the relevant findings are clearly expressed in the final two paragraphs of the subsection that addresses the avoided cost method for wind QF resources up to the IRP target. These paragraphs state the market price proxy method best reflects the avoided cost of a wind QF up to the IRP target level

²² Id.

²³ But see the 2010 Protocol Inter-jurisdictional Cost Allocation Method approved *In the Matter of the Application of PacifiCorp for an Investigation of Inter-Jurisdictional Issues*, Docket No. 02-035-04, Report and Order, February 3, 2012, Exhibit RMP_ALK-1, p.7. “[C]osts associated with Resources acquired pursuant to a State Portfolio Standard, which exceed the costs PacifiCorp would have otherwise incurred, will be assigned on a situs basis to the State adopting the standard.” Thus, “resources” are not situs assigned; rather, the incremental costs associated with the acquisition of such resources are situs assigned. To date, there is no finding regarding whether state portfolio standards have imposed incremental costs on RMP’s system.

²⁴ See *supra* n.3, p.6.

of wind resources, and the target level is a cumulative target that takes into account the entire IRP. Moreover, the 2005 Order is also clear in declaring the market proxy is RMP's most recently executed wind contract. In other words, under the 2005 Order, as long as wind resources are present in the IRP, RMP should use the market price proxy method to determine indicative avoided cost pricing for wind QFs. This is the plain meaning of Ordering Paragraph 6, quoted above. It appears RMP also shared this interpretation at the time it executed the Power Purchase Agreement (Renewable Energy) with Blue Mountain I, LLC on November 1, 2011.²⁵

We acknowledge the ambiguity created by the phrase "Thus, once the next deferrable IRP resource is no longer a wind resource..." used in the first paragraph of the subsection addressing the avoided cost method for wind QF resources exceeding the IRP target. This phrase, however, was intended to reference, not modify, the conditions under which the market price proxy would or would not apply, as detailed in the preceding subsection. Ordering Paragraph 7 confirms this meaning and intent. It states: "7. For wind resources exceeding the IRP target, wind QF indicative pricing will be based, as it is for non-wind QFs, on the Proxy and PDDRR methods." There is no reference to "the next deferrable resource." Rather, our intent is clear that the Proxy/PDDRR method is not applicable until the wind resource seeking indicative avoided cost pricing exceeds the IRP wind resource target level.

As noted at the beginning of this order, the Division believes "it can be questioned whether the current procedure for determining wind QF energy pricing continues to be in the public interest."²⁶ We recognize circumstances can change over time. We therefore

²⁵ See supra n.12, p. 4.

²⁶ Supra n.2, p. 2.

invite any party believing a re-examination of the 2005 Order (as re-affirmed herein) is warranted, to pursue the changes it desires through a request for agency action.

Finally, in our review of the 2005 Order, we noted RMP has not filed revisions to Schedule 38, describing the bidding process requirements for QFs 100 MW or greater and seeking terms of ten years or more. These revisions are called for in Ordering Paragraph 13 of the 2005 Order. We direct RMP to file revised Schedule 38 tariff sheets conforming to Ordering Paragraph 13 for our approval, within 30 days of the date of this order.

ORDER

RMP shall provide Blue Mountain indicative avoided cost pricing for the Project based on the market price proxy method for wind resources up to the IRP target level using the Dunlap I contract.

DATED at Salt Lake City, Utah this 20th day of September, 2012.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#234212

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, 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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of September, 2012, a true and correct copy of the foregoing Order on Request for Agency Action, was served upon the following as indicated below:

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