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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreement Between PacifiCorp and Latigo Wind Park, LLC	**Docket No. 13-035-116** COMMENTS OF LATIGO WIND PARK, LLC

Pursuant to the procedural schedule issued by the Commission on August 6, 2013, Latigo Wind Park, LLC ("Latigo") submits its Comments in this proceeding seeking timely Commission approval of a purchase power agreement ("PPA") between Rocky Mountain Power and Latigo.

BACKGROUND

Latigo has been in the process of developing a wind-powered electricgeneration project in San Juan County, Utah ("Latigo Project") since 2006, when it began negotiating for certain leasehold interests and data-generating capabilities in San Juan County, Utah.

Rocky Mountain Power is a "purchasing utility" under Utah Code Ann. § 54-12-2, and the Latigo Project is a qualifying facility under the terms of the Public Utility Regulatory Policies Act of 1978, Utah Code Ann. § 54-12-1 *et seq.* and related Commission orders.As a key element to the development of the Latigo Project, Latigo and Rocky Mountain Powerhave negotiated a PPA for the purchase and sale of electric power from the Latigo Project.

Latigo has also negotiated and executed an interconnection agreement with Rocky Mountain Power for delivering power to Rocky Mountain Power's transmission system.

On July 13, 2013, Rocky Mountain Power submitted an application for Commission approval ofthe PPA between Rocky Mountain Power and Latigoin connection with the Latigo Project.

THE APPROVAL PROCESS

PPA approval before the Commission is a relatively straightforwardprocedure under the terms of the Commission's prior orders and Rocky Mountain Power's applicable tariff provisions.

Pursuant to the detailed procedures set forth in Electric Service Schedule No. 38 of Rocky Mountain Power Company's P.S.C.U. Tariff No. 47, Latigo negotiated and executed a PPA, dated July 3, 2013, with Rocky Mountain Power under Part I of that Schedule. The purchase prices set forth in the PPA were calculated using the methodology approved by the Commission in Docket No. 03-035-14.Rocky Mountain Power has represented that the PPA conforms to the requirements established by the Commission in Docket No. 03-035-14 for avoided-cost PPAs with a qualifying-facility project.[1]

[1]Dkt. No. 13-035-116, Rocky Mountain Power App. ¶¶ 5-6.

Also, pursuant to the terms of Part II of Schedule No. 38, Latigo has negotiated and executed an interconnection agreement with Rocky Mountain Power to govern the physical interconnection to its transmission system. This interconnection agreement with Rocky Mountain Power is governed by the open-access transmission requirements established by the Federal Energy Regulatory Commission. In that regard, Rocky Mountain Power has affirmed that the Latigo project will be "fully integrated with the Rocky Mountain Power system."[2]

As the parties have satisfied all the relevant requirements of Schedule No. 38, it only remains for the Commission to approve the PPA under § I.B.7 of Schedule No. 38.

TIMING OF COMMISSION APPROVAL

Under § 45 of the Internal Revenue Code,[3] certain renewable electricity production from "qualified energy resources" is subject to a substantial tax credit. Electricity generated from wind is one such resource, and the Latigo Project will qualify for the § 45 tax credit if it has progressed sufficiently by the end of calendar 2013. If it has not satisfied the IRS criteriafor sufficient advancement of the project by year end, the credits will not be available to Latigo. More importantly, the availability of the § 45 tax credit makes the Latigo Project financially viable, while the inability of Latigo to obtain the tax credit will seriously compromise its ability to go forward with the project.

Therefore, it is essential to the financial viability of the Latigo Project that Commission approval of the PPA be issued promptly in order for Latigo to secure the benefits of the§ 45 tax credits that will expire for the project on December 31, 2013.

[2] *Id.* ¶ 7.

[3] 26 U.S.C. § 45 (2013).

In response to an inquiry from Presiding Officer Jordan White at a scheduling hearing held on August 2, 2013, Andrew Fales, speaking on behalf of Latigo, explained the importance of the timing in obtaining Commission approval of the PPA:

> [U]nder the Section 45 of the Internal Revenue Code, the production tax credit expires at the end of this year, unless the project has begun construction or met a safe harbor requirement, and in order to begin construction or meet a safe harbor requirement, and in order to begin construction, it has to be of a significant nature, the IRS said in one of its notices. And significant nature includes building—or clearing the roads, digging foundations, pouring foundation, those kinds of things. And so [if] those kinds of activities haven't begun, which costs millions of dollars, the project does not qualify for the production tax credit.
>
> On the other hand, if the project spends five percent of the project costs by the end of the year on turbines, or road, or foundations, or collection lines, or whatever the case may be, then the project is "safe-harbored" for the purpose of the production tax credit and will be considered to be under construction by the end of the year. . . . Now in order to finance [five percent of the cost], the financing community requires an approved PPA because that is the security behind all the financing.[4]

Mr. Fales went on to point out that, "Typically, after the PPA gets approved, it takes, roughly, 60 days to close the financing."[5]

The United States Congress and the Utah State Legislature have articulated and codified public policies that encourage the development of renewable energy resources such as the Latigo Project. Indeed, the § 45 tax credit is an important manifestation of such policies. It would, therefore, advance the national and state interests to approve a project which, but for the availability of the § 45 tax credit, may not be financially viable. Accordingly, the Commission's timely approval of the PPA in this proceeding is directly in the public interest and should be issued as soon as practicable.

[4]Dkt. Nos. 13-035-115 and 13-035-116, "Rescheduling of Continued Scheduling Conference."Tr. 24-25.

[5]*Id.* 26.

WHEREFORE, Latigo Wind Park, LLC, respectfully urges the Commission to issue its order approving the Latigo-Rocky Mountain Power PPA on a timely basis to permit Latigo to obtain the benefits of IRC § 45 tax credits due to expire on December 31, 2013.

JONES WALDO HOLBROOK & MCDONOUGH, P.C.

/s/ *Gary G. Sackett*
Gary G. Sackett
Attorney for Latigo Wind Park, LLC

Dated: August 26, 2013

CERTIFICATE OF SERVICE

I certify that a true and correct copy of COMMENTS OF LATIGO WIND PARK, LLC,in PSCU Docket No. 13-035-116 was served by e-mail this 20thday of August 2013 on the following:

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