State of Utah
Department of Commerce
Division of Public Utilities

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REPORT MEMORANDUM

PUBLIC VERSION

To: Utah Public Service Commission

From: Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Energy Section Manager

Charles Peterson, Technical Consultant

Date: August 26, 2013

Re: **Docket No. 13-035-116**, Power Purchase Agreement—PacifiCorp/Latigo Wind Park, LLC.

ISSUE

In Applications dated July 9, 2013, PacifiCorp (Company) filed a power purchase agreement (PPA) with Latigo Wind Park, LLC (Latigo). The terms of the contracts [redacted]. Latigo is a proposed wind qualifying facility (QF) development located in San Juan County, Utah. The project's expected nameplate generation capacity is [redacted].

On July 10, 2013 the Commission issued an Action Request to the Division of Public Utilities (Division) requesting a response regarding the PPA by August 8, 2013. The Division responded to the Action Request on July 11, 2013 requesting a formal scheduling process, in part to facilitate potentially extensive discovery. On July 23, 2013 the Commission held a scheduling conference for this docket, which was continued to August 2, 2013. The Commission issued a Scheduling Order on August 6, 2013 which set August 26, 2013 as the due date for comments from the Division or any other interested party.

DISCUSSION

Terms and Conditions of the Contracts

The power purchase agreement is dated July 3, 2013 between PacifiCorp and Latigo. The PPA provides that the project will have a nameplate capacity of [redacted] with the expected annual delivery of [redacted][1]

The PPA [redacted][2] The expected commercial on-line date [redacted].[3] There are several milestones or other conditions that are included in the contract that appear designed to protect PacifiCorp and its customers in the event that Latigo is unable to perform. One milestone in the near future is the requirement [redacted].[4] Sections 2.3-2.6 of the PPA provide for rights of termination and damages if Latigo is unable to meet various deadlines and the right of PacifiCorp to monitor the progress of the project.

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[1] PPA Section 4.8.
[2] PPA Section 2.1
[3] See PPA "Definitions Section" page 13. Latigo has a [redacted]
[4] PPA Section 2.2(b).

The contract prices are set forth in Exhibit 5.1. The monthly contract prices[5] [redacted]

Generally, the contract appears to be comprehensive and generic in its other terms and conditions.

Compliance with Commission Orders

The contract appears to comply with Commission orders related to this matter. Of specific interest are the pricing terms of the contract. The Division investigation included obtaining the Company's response to Division data request 1.4. The Company's response to this data request is reproduced as DPU Exhibit 1.The Company confirmed that the pricing complies with Commission Orders in Docket Nos. 03-035-14 and 12-035-100. This pricing is commonly referred to as the Dunlap I pricing. The Division obtained and reviewed additional information from the Company that allowed it to replicate the Dunlap I pricing as it was applicable to Latigo. The Division believes that the Company has accurately applied the Dunlap I methodology to Latigo. The Division believes that the Latigo PPA is compliant in all material respects to past Commission decisions.

Additional Comments

1. Customer Indifference under PURPA

In August 2012 in response to an Action Request, the Division raised concern that "it can be questioned whether the current procedure for determining wind QF energy pricing continues to

[5] The Contract Prices are levelized prices.

be in the public interest."[6] However, at that time the Commission chose to continue with the Dunlap I pricing. The Division expressed concerns again in Phase I of Docket No. 12-035-100[7] that the Dunlap I methodology was no longer in the public interest.

The Company, the Division, and the Office of Consumer Services (Office) argued in Docket No. 12-035-100, Phases I and II, that the Dunlap I pricing clearly went further than PURPA's customer indifference provision; that is, that customers be indifferent between paying the QF pricing for power, or paying for power from the Company system generally.[8] The Company, the Division, and the Office advocated that the pricing methodology to be applied to wind QFs should be same methodology that the Commission has approved, as set forth in PacifiCorp's Electric Service Schedule 38, for all other QF generation sources except wind, which is known as the Proxy/PDDRR (PDDRR) method.[9]

In connection with these dockets, the Division requested that the Company estimate what the PDDRR pricing would have been for Latigo had that methodology been in place at the time PPAs were signed. Confidential DPU Exhibit 2 sets forth the Company's response to the Division's data request. Since there had been dispute about the amount of capacity contribution that should be applied in developing PDDRR pricing in Phase II of Docket No. 12-035-100, the Division requested that the Company provide PDDRR values that were approximately the end points bracketing proposals in that docket.[10] In addition to the two PDDRR estimates requested

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[6] Docket No. 12-2557-01, Division's "Action Request Response" August 17, 2012.
[7] Direct Testimony Regarding RMP's Motion to Stay of Charles E. Peterson, November 30, 2012, lines 93-99.
[8] Examples of this testimony before the Commission include the following.
<u>PacifiCorp witnesses</u>: Direct Testimony of Paul H. Clements, November 16, 2012, lines 56-67;
Rebuttal Testimony of Paul H. Clements, December 7, 2012, lines 35-49;
Direct Testimony of Gregory N. Duvall, February 2013, lines 110-139;
Rebuttal Testimony of Gregory N. Duvall, May 16, 2013, lines 41-51.
<u>Office witnesses</u>: Direct Testimony of Bela Vastag, November 30, 2012, lines 71-79;
Rebuttal Testimony of Bela Vastag, December 7, 2012, lines 28-140;
Direct Testimony of Bela Vastag (Phase II), March 29, 2013, lines 63-66;
Direct Testimony of Randall J. Falkenberg, March 29, 2013, lines 24 to 36.
<u>Division witness</u>: Direct Testimony of Abdinasir M. Abdulle, Ph.D., March 29, 2012, lines 56-91.
[9] PDDRR stands for Partial Displacement Differential Revenue Requirement.
[10] The Company proposed that the capacity contribution be set at 4.1 percent (see Docket No. 12-035-100, Direct Testimony of Gregory N. Duvall, lines 348 to 367). Randall J. Falkenberg, representing the Office, suggested a capacity contribution of 13.8 percent, which in its data request in the current docket the Division rounded up to an "even" 15 percent (see Direct Testimony of Randall J. Falkenberg, March 29, 2013, lines 50 to 54).

by the Division, the Company added an estimate based upon the estimated capacity factor of Latigo. The capacity factor would be the highest possible value for capacity contribution. Based on these results, on a levelized basis, the difference between the Dunlap I pricing and the PDDRR pricing [redacted]

The Division notes that Dunlap I pricing includes an amount for renewable energy credits (RECs, or Green Tags). While the market for RECs is relatively opaque to outside parties, the Division believes that at the present time the addition of RECs to PDDRR pricing would likely reduce the difference [redacted]

2. Interstate Allocation (MSP) Issue

[redacted]

3. The Lead Time of the On-Line Dates

The PPA contemplates on-line date [redacted]. In Phase I of Docket No. 12-035-100, the Division suggested that it was amenable to "grandfathering" QFs with the Dunlap I pricing that were able to sign PPAs by September 1, 2013, among other conditions.[11] The other conditions included the understanding that the Company would no longer present a QF PPA to the Commission for approval unless the QF also had a signed interconnection agreement.[12] The Division's concept was that any QF that was "getting close" to beginning actual construction of the project could reasonably expect to receive the Dunlap I pricing that it had been expecting through the arduous task of developing a site to the point that it was ready, or nearly ready, to begin "putting steel in the ground." At the time the Division expected that with a signed PPA in hand on or before September 1, 2013, a wind QF developer would be expecting to begin construction by early 2014, if not sooner, with the project coming on-line perhaps as early as mid-summer 2014. Now we have a project that will not come on-line [redacted]. Thus pricing was set in 2009 for projects that will not [redacted] While the Division does not pretend to know what the Company's avoided costs [redacted] the Division is concerned about prices going into effect that might [redacted] or more out of date, without any provision for a true-up.

Concluding Comments

The Division has reviewed the Latigo PPA and has concluded that it satisfies prior Commission orders related to wind QFs. While the Division has raised concerns with the pricing and other issues, the Division believes that the Commission can approve this PPA based upon the following factors.

1. The PPA appears to comply with Commission orders.

2. The parties to the PPA appear to have negotiated in good faith relying on the prior Commission orders.

3. While the Division believes that the Commission can and should change its directives (e.g. its approved methodologies) as circumstances change, the Division also believes

[11] Peterson, Op. Cit. lines 113-131, clarified in Rebuttal Testimony of Charles E. Peterson, December 7, 2013, lines 24-32.
[12] Clements, November 16, 2012, pages 10-11, and discussions with Mr. Clements during Phase I of Docket 12-035-100.

that deviation from the relevant past orders in this case would undermine the stability, predictability, and reliability of Commission orders.

This concludes the Division's comments.

CC David Taylor, Rocky Mountain Power
Michele Beck, Office of Consumer Services
Bela Vastag, Office of Consumer Services
Gary G. Sackett, JONES WALDO HOLBROOK & MCDONOUGH, P.C., Attorney for Latigo
Service List