EXHIBIT B

ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

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March 25, 2012

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Secretary

RE: In the Matter of the Formal Complaint of RosVrba for Energy of Utah against Rocky Mountain Power – Docket No. 13-035-22

Dear Mr. Widerburg:

Rocky Mountain Power ("Company") hereby submits for filing its Response to RosVrbaFor Energy of Utah Complaint in the above referenced matter. An original and ten (10) copies of this filing will be provided via hand delivery. The Company will also provide electronic versions of this filing to psc@utah.gov.

The Company respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): datarequest@pacificorp.com
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Informal inquiries may be directed to Dave Taylor at (801) 220-2923.

Sincerely,

Yvonne R. Hogle
Senior Counsel

Enclosures
Cc: Service List (w/ enclosures)

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Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Ros Vrba for Energy of Utah, Complainant, vs. ROCKY MOUNTAIN POWER, d/b/a Rocky Mountain Power, Respondent.	Docket No. 13-035-22 **RESPONSE OF ROCKY MOUNTAIN POWER TO ROS VRBA FOR ENERGY OF UTAH COMPLAINT**

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 the complaint filed by Ros Vrba for Energy of Utah ("Complaint"). Energy of Utah raised three primary claims in the Complaint: (1) the requirements of Rocky Mountain Power Utah Electric Service Schedule 38 ("Schedule 38") that a generator interconnection agreementbe executed prior to execution of a power purchase agreement ("PPA"); (2) the repurchase of renewable energy credits ("RECs") by Energy of Utah; and (3) the ability of Energy of Utah to terminate a PPA without recourse (including a full refund of its development security) if the federal production tax credit ("PTC") is not renewed beyond January 1, 2014. Energy of Utah is not entitled to

relief and, therefore, its Complaint should be deniedbased on procedural and substantive grounds, as follows:

1. The Complaint is improper because the informal complaint process is still underway and has not yet concluded, as required under Utah Admin. Code R746-100-3(H)(1) in order for the Commission to entertain a formal complaint. Before filing the Complaint, Energy of Utah filed an informal complaint alleging one of the claims it alleges in the Complaint. As described in more detail below, the Company timely responded to the informal complaint. However, the next step in the informal complaint process never occurred; the Company was never approached about mediation by the Division of Public Utilities.

2. If the Commission were nevertheless to consider the Complaint, Energy of Utah is still not entitled to relief because the primary issues that Energy of Utah is requesting agency action on are non-issues and its requests for relief are not in the public interest.

a. First, as to the claim relating to the Company's requirement that Energy of Utah execute a generationinterconnection agreement prior to executing a PPA, Schedule 38provides the Company with the right to condition execution of a PPA upon simultaneous execution of an interconnection agreement with the Company's power delivery function.Schedule 38 further provides that "the Company's obligation to make purchases from a QF is conditioned upon all necessary interconnection arrangements being consummated."

b. Second, while Energy of Utah may have the right to repurchase renewable energy credits ("RECs"), Energy of Utah did not express an interest in

repurchasing the RECs that would be generated by its proposed project until nowand this issue has not been any part of the on-going negotiations. Further, the Company has identified an issue with the method that establishes the price at which a qualifying facility ("QF") can repurchase the RECs.The Integrated Resource Plan ("IRP") no longer contains a specific price for RECs. Thus, there is currently no basis for pricing REC repurchases in Utah for QFs that receive pricing under the market proxy method. Therefore, the Company recommends the Commission suspend the right of a wind QF to repurchase the RECs if the market proxy method is used for pricing. As the Commission is aware, the issue of REC ownership is already part of Phase II of the Avoided Cost Docket (defined below) and valuation of RECs will likely be considered in that Docket.

c. Third, Energy of Utah's request that it be allowed to terminate a fully executed PPA unilaterally and to obtain a full refund of its development security and pay no damages for non-performance if the production tax credit ("PTC") is not extended beyond January 1, 2014 is inappropriate and unfounded. The development risk associated with a QF project should be borne solely by the QF developer and not by customers. The Company, following the guidelines established in Schedule 38, considers a QF contract to be a binding obligation of both parties at the time of execution. A QF should complete due diligence to ensure it can perform under the contract *before*it executes the contract. If the Commission were to allow Energy of Utah to execute a contract now and then walk away months later with no

obligation to perform, customers may be harmed. The Company will face the predicament of having to replace the capacity and energy it expected from Energy of Utah with other resources, and those other resources may come at a higher cost.

BACKGROUND

1. On October 9, 2012, Rocky Mountain Power filed an Application ("Application") for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects in Docket No. 12-035-100("Avoided Cost Docket") with the Commission.

2. Rocky Mountain Power requested authority to make certain changes to the currently effective avoided cost pricing for large renewable QFs, approved by the Commission October 31, 2005 in Docket No. 03-035-14 ("2005 Order"), and reaffirmed by the Commission September 20, 2012 in Docket No. 12-2557-01 ("2012 Order").

3. In addition, the Company requested an immediate stay of the application of the 2005 Order to requests for indicative pricing with regard to wind QFs in excess of three (3) megawatts ("Stay") pending conclusion of that docket.

4. Energy of Utah filed an objection to the Stay October 12, 2012 indicating, in part, that it was a small developer and that granting the Stay would be harmful to small developers. It also requested expeditious processing of the matter.

5. Energy of Utah was an active participant during the two-and-a-half month process for Phase I of the Avoided Cost Docket.

6. The Commission issued its decision in Phase I on December 20, 2012, denying the Company's Stay. Soon thereafter,on January 4, 2013, Rocky Mountain

Power provided Energy of Utah, among others, with indicative pricing based on the market proxy method as ordered by the Commission.

7. On February 8, 2013, Energy of Utah filed an informal complaint alleging one of the same claims it makes here. On February 14, 2013 the Company filed a response to Energy of Utah's informal complaint. Throughout the informal complaint process, which has yet to conclude, Rocky Mountain Power continued tonegotiate a PPA with Energy of Utahin good faith.

ARGUMENT

I. Requiring anInterconnection Agreement Prior to Executing a PPA is Consistent With Schedule 38.

Rocky Mountain Power indeed informed Energy of Utah that it will require an executed interconnection agreement prior to entering into a PPA, in accordance with Schedule 38[1]. This requirement is grounded in Schedule 38 and is further supported by good policy. Schedule 38 (which is applicable to the proposed Energy of Utah wind generation facility) states:

> In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are ***also required to enter into an interconnection agreement*** that governs the physical interconnection of the project to the Company's transmission or distribution system. ***The Company's obligation to make purchases from a QF is conditioned upon all necessary interconnection arrangements being consummated.*** (emphasis added)

Schedule 38 clearly grants Rocky Mountain Power the authority to condition purchases from a QF on the prior execution of the necessary interconnection arrangement(s). This provision was included in Schedule 38 because a QF project cannot

[1] *See* Exhibit A (Copy of Schedule 38).

know with certainty of its ability to meet a contractual online date until it has an executed interconnection agreement. The interconnection agreement sets forth the schedule for construction of the facilities necessary for the project to connect to the transmission grid and further establishes the date certain by which a project will be synchronized to the grid and able to make deliveries under a PPA. In an effort to put QFs on notice of the length of time it potentially takes to obtain an interconnection agreement, Schedule 38 encourages QFs to "initiate its request for interconnection as early in the planning process as possible, to ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement." If a QF fails to act on the directives offered in Schedule 38, the QF, and not the utility, should be responsible for any associated delay in obtaining a PPA. Further, based on information publically available from PacifiCorpTransmission the process to get to an interconnection agreement can take more than one year.[2]

Energy of Utah notes a limited number of instances where Rocky Mountain Power has previously allowed a QF to enter into a PPA prior to consummating all necessary interconnection arrangements. While such occurrences have occurred in the past, due to circumstances specifically experienced in connection with some of these prior PPAs and other recent PPAs in other states, Rocky Mountain Powerhas determined it is good policy and in the public interest to fully implement the processes contained in Schedule 38 regarding execution of interconnection agreements. Recently, there have been occasions where a QF has represented to Rocky Mountain Power, in its merchant capacity, that the QF could achieve a certain commercial operation date for purposes of

[2]*See*http://www.pacificorp.com/tran/ts/gip.html (last accessed 2/12/2013). Click on the link labeled "Standard Study Process and Timelines" for information relating to the GIA timeline.

the PPA. Because of the separation of Rocky Mountain Power's merchant and transmission functions as required by the Federal Energy Regulatory Commission ("FERC"), the merchant function is not able to ascertain the interconnection agreement status and schedule proposed by QF developers. Notably, pursuant to FERC requirements, the two functions do not coordinate various operational dates or other contractual terms contained in a PPA or interconnection agreement for a QF during the negotiations of the PPA unless a specific waiver is sought and agreed to by all parties. In the cases where Rocky Mountain Power did not require an executed interconnection agreement before executing the QF PPA, Rocky Mountain Power proceeded with negotiating and executing a PPA based on the milestone dates leading up to and including the commercial operation date provided by the QF with no verification from PacifiCorp Transmission that the online date and other milestones could be achieved. After signing the PPA, Rocky Mountain Power learned that the QF could not, in fact, achieve the commercial operation date and other milestone dates contained in the PPA because the QF's representation of its interconnection schedule and milestone dates in the PPA did not match the schedule set forth in the interconnection agreement. Therefore, it is critical that prior to executing a PPA the QF complete the interconnection process to the point of executing an interconnection agreement that sets forth a definitive schedule for the project to come online and meet its PPA obligations. Without this due diligence completed, the Company cannot enter into a PPA that protects its customers from the risk of non-performance.An executed interconnection agreement provided by the QF during the due diligence process before execution of a PPA is necessary in order for customers to remain indifferent and to be protected from non-performance by the QF.

Based on the experiences described above, Rocky Mountain Power is concerned about the risks that could arise if QFs are allowed to enter into a PPA without first executing an interconnection agreement (a risk acknowledged and mitigated by Schedule 38), such as a potential reduction in realized benefits for customers if the PPA is terminated as a result of the QF's inability to timely perform and the need for Rocky Mountain Power to make market purchases to replace the energy and capacity anticipated from the QF. These potential risks can all be mitigated in large measure by simply requiring the QF to obtain an executed interconnection agreement, consistent with Schedule 38, prior to executing a PPA.

A QF is not required to receive indicative pricing or a draft PPA prior to beginning the interconnection process. In fact, the Company's experience is that most QFs follow the direction of Schedule 38 and initiate the interconnection process very early in their project development, often before even approaching the Company to discuss pricing. While some costs are incurred in the early stages of the interconnection process (primarily costs associated with transmission studies), the costs associated with obtaining an interconnection agreement are not material when compared to the approximate capital cost of $200 million for an 80 megawatt wind project.

II. Rocky Mountain PowerAgrees that Energy of Utah has the Right to Repurchase Renewable Energy Credits.

Energy of Utah in its Complaint states that it wants to be able to repurchase the RECs from Rocky Mountain Power. This claim comes as a surprise to Rocky Mountain Power. Despite numerous negotiation meetings between Rocky Mountain Power and Energy of Utah, Energy of Utah did not express an interest in repurchasing the RECs that

would be generated by its proposed project until it did so in its Complaint. In Docket No. 03-05-14 the Commission established that a QF, under specified circumstances, has the right to repurchase RECs from Rocky Mountain Power "at the IRP value."[3] If Energy of Utah had expressed any interest in repurchasing the RECs,Rocky Mountain Power would have discussed with Energy of Utah how it could fulfill the request, consistent with prior Commission direction.

The Company has identified a significant issue related to its ability to fulfill the requirement in the 2005 Order that a QF be able to repurchase the RECs if the market proxy is used for pricing. The 2005 Order states the QF can repurchase the RECs at "the IRP value". At the time of the 2005 Order, the IRP included an easily identifiable value for RECs. This was due to the fact that renewable portfolio standards ("RPS") had not yet been implemented but were forthcoming in three states in which PacifiCorp operates. A value for RECs was included in the IRP in anticipation of future compliance obligations. A value of $5 per REC for 5 years was used and was considered reasonable in light of the energy policies at the time.

Once the Company determined that RPS would be implemented, the IRP no longer applied a specific value for RECs but instead implemented an avoided cost of compliance concept that selects the lowest cost, least risk resources that are required to meet customer load and RPS compliance obligations. Therefore, the IRP assumes the RECs are included with the resources that are selected since the RECs may be required for compliance. Since the IRP no longer specifies the value of RECsin a dollar per REC manner, it is not possible for the Company to point to the IRP value of RECs to

[3]Utah Public Service Commission Order, Docket No. 03-035-14, 13 (October 31, 2005), *clarified* Utah Public Service Commission Order, Docket No. 03-035-14, 7-8 (February 2, 2006).

determine a price at which the QF can repurchase the RECs and leave customers indifferent.

Further, the Company does not believe a method currently exists that would allow the Company to reasonably and accurately establish now the value of RECs over the 20 year term of the proposed Energy of UtahPPA. While a liquid market exists for RECs in the very near term, a long term market has not developed,is highly speculative, and is primarily legislatively driven. Therefore, price discovery beyond the prompt year or two is very limited.

Since the IRP no longer specifies a REC value and no other method exists to reasonably and accurately establish now the value of RECs for the next 20 years, the Company recommends the Commission suspend the portion of the 2005 Order allowing wind QFs to repurchase the RECs if the market proxy method is used for pricing. The Company notes that it filed direct testimony regarding REC ownership in the Avoided Cost Docket, and the issue of REC valuation will likely be addressed by one or more parties in that Docket.

III. Rocky Mountain PowerCustomers Should Not Carry the Business Risk of the PTC Being Extended.

Energy of Utah claims it wants its development security to be fully refundable and no damages assessed if PTCs are not extended beyond January 1, 2014. There is no way to interpret this claim other than as a request for the Commission to grant Energy of Utah the right to "walk away" from its obligation under the QF PPA should the federal government not extend the PTC beyond January 1, 2014. Energy of Utah is asking that Rocky Mountain Powerexecute a PPA, wherein Rocky Mountain Power would be

obligated to perform, with any obligation from Energy of Utah to perform be excused should it face the loss of the PTC prior to January 1, 2014. This is essentially shifting the risk of the PTC being available from Energy of Utah (the only party that will benefit from this federal tax incentive) to Rocky Mountain Power and, most importantly, its customers.

Rocky Mountain Power considers QF PPAs to be binding contractual obligations for both parties at the time of execution and Commission approval. A QF PPA is not a free option that locks in a price now and then allows the QF to determine later if it can fulfill its contractual obligations. Schedule 38 includes a process that requires the Company to perform rigorous due diligence before and during the PPA negotiation process, and the QF is obligated to demonstrate that it can meet its contractual obligations. It appears Energy of Utah desires to lock in a certain PPA price but does not yet have certainty that it can perform its obligations and deliver the capacity and energy under the terms and conditions included in the PPA. Energy of Utah should wait until it has certainty that the project can meet its contractual obligations before entering into a PPA instead of entering into a PPA now and including provisions that allow it to back out of its contractual obligations without recourse. Energy of Utah is requesting a free option which is not consistent with Schedule 38, not consistent with the proper implementation of the Public Utility Regulatory Policies Act, and not in the public interest. Therefore, the Commission should reject such request.

Moreover, Rocky Mountain Power collects a development deposit to help protect customers against losses that can be experienced when a QF fails to perform as it contracts in the PPA. When a QF developer signs a PPA,Rocky Mountain Powerincludes

the energy and capacity anticipated from the PPA in its resource planning. When the QF fails to perform, Rocky Mountain Power is forced to replace the energy and capacity expected under the QF PPA with energy and capacity from other resources. These alternative resources may come at an increased cost to Rocky Mountain Power and ultimately, its customers. Rocky Mountain Power uses the development security to cover the potential increased cost of these alternative resources. The development security helps ensure that customers are in fact indifferent to obtaining energy and capacity from a QF versus other resources available to the utility. To allow a QF to have the *freeoption* to terminate a PPA because certain tax benefits may not be available (that neither Rocky Mountain Power nor the customers control or benefit from) is not in the best interest of the Company's customers. To allow Energy of Utah to have a full refund of its development security and be excused from paying damages allows it to exit a signed contract with no obligation and thereby leavesRocky Mountain Power to replace the energy and capacity at a potentially higher cost to its customers.

IV. Rocky Mountain Power has Acted in Good Faith in Negotiating With Energy of Utah

While not explicitly stated, Energy of Utah seems to infer that there has been some delay on the part of Rocky Mountain Power. Rocky Mountain Power denies that it has taken any action to delay Energy of Utah from moving forward with its proposed QF project. Rocky Mountain Power refutes Energy of Utah's claim that it received initial indicative pricing more than four months after its request. While its initial request did occur on April 20, 2012, Energy of Utah did not provide a 12 month by 24 hour matrix of its output as required by Schedule 38 until July 13, 2012. A 12 month by 24 hour matrix

establishes the expected output of the project in a manner that allows the Company to accurately calculate the project-specific avoided costs. Without this required information under Schedule 38, the Company cannot calculate indicative pricing. Once complete information was received from Energy of Utah, the Company provided indicative pricing on August 31, 2012, which was 19 days past the Schedule 38 timeline and not three months past as Energy of Utah claims.

Further, Energy of Utah fails to acknowledge that there was a legal dispute over the correct avoided costs methodology to apply to its (and a number of other) indicative pricing requests. To resolve that dispute a contested hearing, in which Energy of Utah fully participated, was held before the Commission. Contested matters always take time. After the Commission ruled on the contested proceeding, Rocky Mountain Power timely provided corrected indicative pricing. Rocky Mountain Power also timely provided a draft PPA to Energy of Utah that contained the material terms and conditions upon which Rocky Mountain Power would contract (in the same form it provides a draft PPA to similarly situated qualifying facilities).[4] In fact, the draft PPA was delivered 10 days after it was requested even though Schedule 38 allows 30 days. Rocky Mountain Power refutes Energy of Utah's claims that it received a "nearly blank" PPA form that did not include a "comprehensive set of proposed terms and conditions". The PPA provided to Energy of Utah included comprehensive terms and conditions but had blanks for information that is project-specific and must be filled in by Energy of Utah (for example, the turbine type to be used in the project). This is standard practice in QF and other

[4] *See* Exhibit B (form PPA provided to Energy of Utah). PacifiCorp acknowledges that one exhibit did contain some land information relative to a different project. Inclusion of this information did not change any of the terms or conditions of the PPA or in any way effect Energy of Utah's ability to assess the commercial terms of the PPA.

contract negotiations. The draft PPA document provided to Energy of Utah was 168 pages in length and was similar to what has been provided in the past to other potential wind QFs.

Moreover, in the last few weeks representatives of Rocky Mountain Power have met on multiple occasions with representatives from Energy of Utah to continue active negotiations with Energy of Utah (even after Energy of Utah filed the Complaint stating that no further negotiations could occur). Energy of Utah tries to place its project delay squarely on Rocky Mountain Power. This is simply inaccurate. Energy of Utah chose not to commence the interconnection process with PacifiCorp Transmission in a timely manner to obtain an interconnection agreement (despite the direction contained in Schedule 38 to commence such negotiations early in order to not delay execution of a PPA). Rocky Mountain Power has acted and will continue to act in good faith and consistent with Commission directives and Schedule 38 in attempting to reach a mutually acceptable PPA with Energy of Utah.

CONCLUSION

Based on the foregoing, Rocky Mountain Power respectfully requests that the Commission deny and dismiss the complaint filed by Energy of Utah. Rocky Mountain Power further requests that the Commissionsuspend the portion of the 2005 Order allowing wind QFs to repurchase the RECs if the market proxy method is used for pricing until the valuation and ownership of RECs issue is addressed and resolved in the Avoided Cost Docket.

Dated this 25thday of March2013,

RESPECTFULLY SUBMITTED,

ROCKY MOUNTAIN POWER

_____

Mark C. Moench
Yvonne R. Hogle

Attorneys for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **RESPONSE OF ROCKY MOUNTAIN POWER TO ROS VRBA FOR ENERGY OF UTAH COMPLAINT**to be served upon the following by electronic mail or U.S. postage to the addresses shown below on March 25, 2013:

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