

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Utah Red Hills Renewable Park, LLC )  
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DOCKET NO. 13-035-197

ORDER APPROVING APPLICATION

ISSUED: March 20, 2014

SYNOPSIS

The Commission approves the Power Purchase Agreement between PacifiCorp and Utah Red Hills Renewable Park, LLC.

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PROCEDURAL HISTORY

On December 9, 2013, PacifiCorp, doing business in Utah as Rocky Mountain Power (“PacifiCorp”), filed with the Commission an application for approval of a power purchase agreement (“PPA”) between PacifiCorp and Utah Red Hills Renewable Park, LLC (“Red Hills”), dated December 5, 2013 (“Application”). The PPA provides for the sale of electric energy and capacity to PacifiCorp to be generated by Red Hills, from a solar-powered generation facility (“Facility”) located in Iron County, Utah for a period of 20 years. The Facility is represented as a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

On December 18, 2013, the Commission held a scheduling conference and thereafter issued a scheduling order on December 19, 2013, outlining a schedule for this docket. Pursuant to the scheduling order, the Division of Public Utilities (“Division”) filed comments on the Application on February 5, 2014, and the Office of Consumer Services (“Office”), Red Hills

and Utah Clean Energy (“UCE”) filed comments on the Application on February 7, 2014. On February 21, 2014, Red Hills, UCE and First Wind Energy, LLC (“First Wind”) filed reply comments.

On March 5, 2014, the Commission’s designated Presiding Officer held a hearing to consider the Application. At the hearing, PacifiCorp and the Division provided testimony supporting Commission approval of the PPA. The Office provided testimony indicating it did not oppose approval of the PPA. No party provided testimony in opposition to approval of the Application.

At hearing and in its comments of February 7, 2014, the Office recommended the Commission require PacifiCorp to file an updated version of the PPA that includes the missing scalar factors from Exhibit 5.1.1 of the PPA. At hearing, PacifiCorp indicated the missing scalars was an error and agreed to file an updated version of the PPA. On March 7, 2014, PacifiCorp and Red Hills jointly filed a corrected version of Exhibit 5.1.1 that included the previously omitted scaling factors (“Joint Filing”). On March 10, 2014, the Commission issued a notice of filing and comment period regarding the Joint Filing, requesting interested parties to provide comments no later than March 17, 2014.

On March 17, 2014, the Division filed comments on the Joint Filing. Based on its review of the Joint Filing and a conference call with PacifiCorp and the Office, the Division concludes the revised Exhibit 5.1.1 provided in the Joint Filing is complete and is appropriately part of the PPA.

**DISCUSSION, FINDINGS AND CONCLUSIONS**

**I. Parties' Positions**

**A. Applicant**

In the Application, PacifiCorp represents it is a “purchasing utility” pursuant to Utah Code Ann. (“UCA”) § 54-12-2, and as such is obligated to purchase power from QFs under PURPA, UCA § 54-12-1, *et seq.*, and Commission orders. According to PacifiCorp, Red Hills represents it is a QF in the PPA. PacifiCorp’s Application further indicates the purchase prices set forth in the PPA were calculated using the methodology approved by the Commission in Docket No. 12-035-100<sup>1</sup> and that all interconnection requirements will be met and the Facility will be fully integrated with PacifiCorp’s system.

Finally, PacifiCorp states the PPA constitutes a “New QF Contract” under the PacifiCorp Interjurisdictional Cost Allocation Protocol (“Protocol”), previously filed with the Commission pursuant to the stipulation approved in Docket No. 02-035-04.<sup>2</sup> PacifiCorp states that according to the terms of the Protocol, the costs of the QF would be allocated as a system resource, unless any portion of those costs exceed the cost PacifiCorp would have otherwise incurred acquiring comparable resources.

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<sup>1</sup> See *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects Larger than Three Megawatts*, Docket No. 12-035-100 (Order on Phase II Issues; August 16, 2013).

<sup>2</sup> See *In the Matter of the Application of PacifiCorp for an Investigation of Inter-Jurisdictional Issues*, Docket No. 02-035-04.

**B. The Division**

The Division recommends the Commission approve the PPA. Based on its review of the PPA, the Division indicates the pricing set forth in Exhibit 5.1 of the PPA appears to be consistent with the Commission's previous orders. Specifically, the Division states PacifiCorp appears to have correctly applied the Proxy/PDDRR method approved by the Commission along with the 84 percent capacity contribution the Commission approved in Docket No. 12-035-100 on an interim basis.<sup>3</sup>

Although the Division believes the Commission can approve the PPA as just and reasonable and in the public interest, the Division's comments express concerns and recommend the Commission provide the following guidance for future contracts under Schedule 38:

The Commission expects that a developer has its project in a position to quickly complete any financing, procurement, and construction arrangements after the approval of an agreement by the Commission.

If not previously completed and signed, the Commission expects that the final transmission interconnection agreement will be completed and signed within a reasonably short time period after the purchase power agreement is signed. Generally, the transmission interconnection agreement should be signed within 90 days after the purchased power agreement is signed.

The online date for a project generally should be no more than two years (24 months) from the date of the power purchase agreement. If more than two years is required the Commission may want to

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<sup>3</sup> See *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects Larger than Three Megawatts*, Docket No. 12-035-100 (Order on Phase II Issues; August 16, 2013).

consider requiring a price re-opener in the contract in order to protect ratepayers.<sup>4</sup>

**C. The Office**

The Office indicates the PPA is in compliance with the applicable schedules and Commission orders and, as such, does not oppose the Commission's approval of the PPA. Like the Division, however, the Office's comments express concerns and recommend the following issues be considered in a future proceeding to address Schedules 37 and 38:

Requiring that a QF have a signed interconnection agreement prior to executing a PPA with the Company.

Requiring that the Scheduled Commercial Operation Date be no more than 2 years from the date the Company signs the PPA and/or the date the Company provided indicative avoided cost pricing for the PPA.<sup>5</sup>

**D. Red Hills**

Red Hills' comments support approval of the Application and indicate the PPA, and the prices contained therein, are consistent with applicable schedules and Commission orders. Red Hills' reply comments respond to the recommendations of the Division and the Office regarding Schedules 37 and 38. In general, Red Hills asserts this docket is not the appropriate forum for issuing guidance on future power purchase agreements.

**E. UCE**

UCE's comments urge the Commission to approve the PPA as just and reasonable and in the public interest. UCE supports the PPA and asserts the PPA will mitigate risk to

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<sup>4</sup> Division Comments at pp. 1-2.

<sup>5</sup> Comments of Office at p. 5.

ratepayers by allowing for a diversified resource mix and locking in reasonable prices for 20 years in the face of volatile and rising fuel prices and environmental compliance costs. UCE also filed reply comments to the recommendations of the Division and the Office regarding Schedules 37 and 38. Like Red Hills, UCE recommends the Commission refrain from addressing the Division's and the Office's recommendations in this docket as other parties' rights may be affected without proper due process.

**F. First Wind**

First Wind's reply comments also address the Division's and the Office's recommendations and suggest the Commission should refrain from adopting any general rules or recommendations in the current docket that would affect other developers.

**II. Findings and Conclusions**

As an initial matter, we acknowledge that parties in this docket express concerns regarding matters not currently spelled-out in Schedules 37 and 38. For example, the timing of certain milestones in relation to the execution of power purchase agreements is not addressed. As noted by the Presiding Officer at the hearing, however, this docket is not the appropriate forum to address suggested changes to Schedules 37 and 38. Rather, because such changes could potentially affect the rights of parties not present in this docket, due process requires that interested parties file a separate request with the Commission outlining suggested changes to PacifiCorp's tariff, thereby allowing all interested parties the opportunity to participate.

We next address the subject of this docket—the power purchase agreement between PacifiCorp and Red Hills. Based on the current regulatory framework in place as established by PURPA, the Commission's orders and PacifiCorp's tariff, the Commission

reviews the PPA to assure PacifiCorp has properly administered its tariff in its dealings with Red Hills and, in particular, that PacifiCorp has properly determined avoided cost pricing for the PPA based on the appropriate Commission-approved methodology.

Based on our review of the Application, the PPA, the comments filed in this docket, the testimony provided at the hearing, and hearing no opposition to the Application, we find the prices, terms and conditions of the PPA are consistent with applicable state laws, relevant Commission orders, and Schedule 38. Therefore, we conclude the PPA is just and reasonable and in the public interest.

**ORDER**

Pursuant to the foregoing discussion, findings and conclusions, we order:

1. The Power Purchase Agreement between PacifiCorp and Red Hills is approved.

DATED at Salt Lake City, Utah, this 20<sup>th</sup> day of March, 2014.

/s/ Jordan A. White  
Presiding Officer

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Approved and confirmed this 20<sup>th</sup> day of March, 2014, as the Order of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#251910

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 this written 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 CERTIFY that on the 20<sup>th</sup> day of March, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Data Request Response Center ([datarequest@pacificorp.com](mailto:datarequest@pacificorp.com))  
PacifiCorp

Dave Taylor ([dave.taylor@pacificorp.com](mailto:dave.taylor@pacificorp.com))  
Daniel E. Solander ([daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com))  
Rocky Mountain Power

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Ballard Spahr LLP

By Hand-Delivery:

Division of Public Utilities  
160 East 300 South, 4<sup>th</sup> Floor  
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Office of Consumer Services  
160 East 300 South, 2<sup>nd</sup> Floor  
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Administrative Assistant