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Department of Commerce
Division of Public Utilities

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ACTION REQUEST RESPONSE

FORMAL COMPLAINT (ENERGY OF UTAH)

To: Utah Public Service Commission

From: Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Energy Section Manager

Marialie Martinez, Customer Service Manager

Connie Hendricks, Office Specialist

Date: March 25, 2013

Re: Recommendation—Deny Request for Relief or Move Issues to Docket No. 12-035-100

Docket No. 13-035-22, In the Matter of the Formal Complaint of Ros Vrba for Energy of Utah

RECOMMENDATION

The Division recommends that the Commission deny Mr. Vrba's specific requests for relief. Specifically, the Division recommends that the Commission,

1. Deny Mr. Vrba's request that the Commission "direct the Company to allow the PPA execution prior to an interconnection agreement execution."
2. Move and decide the disposition of RECs to the avoided cost docket, Docket No. 12-035-100. As an alternative, the Commission should direct that the RECs can be repurchased at the value assumed under the Market Proxy pricing methodology.
3. Deny Mr. Vrba's request that the development deposit be refundable in the case where the production tax credit is not extended.

ISSUE

On or about February 22, 2013, Mr. Ros Vrba, on behalf of Energy of Utah, filed a formal complaint (Complaint) against Rocky Mountain Power (Company) with the Public Service Commission (Commission) requesting specific relief related to contract terms or conditions. Mr. Vrba is in the process of developing a 160 MW wind qualifying facility (QF), Long Ridge Wind farm, near Delta, Utah. Specifically, Mr. Vrba's complaint requests that the Commission:

1. "[D]irect the Company to allow the PPA [power purchase agreement] execution prior to an interconnection agreement execution."
2. "[R]equire the Company to allow Energy of Utah the option to repurchase the RECs created by the Long Ridge Wind projects, either at the most recent PacifiCorp IRP valuation, or at an appropriate rate as determined by the Commission." And
3. "[A]sk the Company to allow for the refund of the development deposit in the event that the Federal Production Tax Credit is not extended beyond January 1, 2014." (Complaint, p.3)

On February 22, 2013, the Commission issued an Action Request to the Division of Public Utilities (DPU). This memo constitutes the Division's response to Mr. Vrba's complaint and the Commission's Action Request.

BACKGROUND

According to its website, "Energy of Utah is [a] renewable energy developer primarily focused on renewable energy consulting and development of clean renewable energy resources in [the] Intermountain West region." (http://www.energyofutah.com) While not specified on the website, Mr. Vrba is presumably an officer of Energy of Utah, which the website indicates is a Limited Liability Company, or LLC.[1]

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[1] The Utah Division of Corporations and Commercial Code's website indicates that Energy of Utah is currently registered as a LLC in the state with Mr. Vrba as its sole officer.

Based on previous conversations with Mr. Vrba and on documents supplied to the Division, the Division understands that Mr. Vrba has requested from the Company Schedule 38 indicative pricing and a draft PPA for the Long Ridge project. The Company has supplied these items to Mr. Vrba. The basis of Mr. Vrba's complaint appears to be the type (or content) and timing of these documents.

Mr. Vrba first filed an informal complaint with the Division on February 7, 2013, and a formal complaint with the Commission on February 22, 2013. The Company responded to the informal complaint on February 14, 2013. A timeline of these and other relevant events is presented in Table 1.

Table 1: Time Line

Date	Event
April 20, 2012	Vrba requests indicative pricing
August 31, 2012	Company supplies indicative pricing (PDDRR Pricing)
October 12, 2012	Company Files Motion for Stay of Sch. 38 (Docket No. 12-035-100)
December 20, 2012	Commission Denies Motion to Stay Sch. 38
January 4, 2013	Company supplies revised indicative pricing (Market Proxy Pricing)
January 15, 2013	Vrba requests a draft PPA
January 25, 2013	Company supplies draft PPA
January 28, 2013	Vrba sends letter on interconnection requirement to Company
February 4, 2013	Company replies to interconnection letter
February 7, 2013	Vrba files informal complaint with the Division
February 14, 2013	Company responds to informal complaint

Mr. Vrba's complaints raise several issues. In his informal complaint, Mr. Vrba raises two issues:

1. The Company is requiring the execution of an interconnection agreement prior to the execution of a PPA; and
2. A nine month delay between his request for indicative pricing and the Company's response.

In addition to these two issues, Mr. Vrba raises several issues in his formal complaint:

3. The Company initially offered PDDRR instead of Market Proxy indicative pricing to Long Ridge;
4. The initial pricing did not appear to "conform to GRID or to Palo Verde HLH/LLH pricing distributions";
5. The Company provided a draft PPA devoid of specific details for the Long Ridge project;
6. The repurchase of renewable energy certificates or RECs; and
7. The refunding of the project development deposit in the case where the federal wind production credit is not extended beyond 2013.

The Division will respond in turn to each of these issues.

Discussion

In responding to the issues raised in Mr. Vrba's complaints, the Division is relying on the information provided in the complaints, the Company's response to the informal complaint, as well as the Division's understanding of Schedule 38, Commission rules and orders, and the purpose of avoided costs.

Issue 1: The Company is requiring the execution of an interconnection agreement prior to the execution of a PPA

In both complaints, Mr. Vrba indicates that the Company is requiring the execution of a transmission interconnection agreement prior to the signing of the PPA. Mr. Vrba requests that

the Commission direct the Company to allow for the signing of the PPA prior to the execution of the interconnection agreement. In support of this point, Mr. Vrba identifies three recent projects where the PPA was signed before the interconnection agreement.

According to Mr. Vrba's informal complaint, the Company has executed other recent PPAs with wind developers without this requirement. While Mr. Vrba acknowledges that Schedule 38 allows such a requirement, he argues that the Company is unfairly administering Schedule38. (See informal complaint) Mr. Vrba also argues that the "unequal treatment" is inconsistent with PURPA guidelines; and provides no benefits to ratepayers or protection for the Company. (See formal complaint, p. 2)

In its response to the informal complaint the Company acknowledges that some PPAs in the past were signed in the absence of an interconnection agreement. However, the Company argues that,

> due to experience in connection with some of the prior PPAs and other recent PPAs in other states, PacifiCorp is making efforts to fully implement the processes contained in Schedule 38. (See Company's response, p. 2)

In its response to the informal complaint, the Company indicates that in the past it proceeded with the PPAs assuming the interconnection agreement would be executed and the project would meet the commercial operation date indicated in the PPA. However, several projects, including two of those cited by Mr. Vrba, failed to meet the commercial online dates. This puts ratepayers at considerable risk and violates the basic principle of ratepayer neutrality or indifference that is fundamental to PURPA.

If, for example, the Company were to sign a PPA in advance of the interconnection agreement being signed, the Company may have to purchase replacement power in the event the QF fails to meet its commercial operation deadlines. If that replacement power is at a higher price than the avoided costs specified in the PPA, rate payers (or the Company) are at risk for the higher prices.

In support of his argument that the Company is somehow administering Schedule 38 unfairly, Mr. Vrba reports three cases where the Company signed a PPA before the interconnection agreement. Of these three cases, two illustrate the problem the Company is addressing in requiring the interconnection agreement and the third appears to be irrelevant since the QF interconnected through a municipal system and, therefore, was not required to have an interconnection agreement with the Company.

Both Blue Mountain Wind and Pioneer Ridge failed to meet the commercial operation dates in their respective PPAs. Spanish Fork Wind interconnected with Spanish Fork's municipal system. According to Company representatives, the Company is in the process of renegotiating a contract with Blue Mountain and is requiring that Blue Mountain provide a signed interconnection agreement.

Contrary to Mr. Vrba's assertion, the Division believes that having a signed interconnection agreement prior to signing a PPA provides benefits to ratepayers and protection to the Company. Therefore, the Division recommends the Commission deny Mr. Vrba's requested relief on this matter.

Issue 2: A nine month delay between Mr. Vrba's request for indicative pricing and the Company's response.

In his complaints, Mr. Vrba claims a nine month delay between submitting a request for indicative pricing and the Company's response. It appears that Mr. Vrba is calculating the time from the date the request was submitted to the Company, April 20, 2012, to January 4, 2013, when the Company provided revised indicative pricing based on the Market Proxy methodology.

However, according to Mr. Vrba's formal complaint, the Company actually provided indicative pricing to Mr. Vrba on August 31, 2012, four months from the request. This initial set of indicative pricing was based on the PDDRR methodology. The Company's response to the informal complaint provides no explanation for this initial delay.

A letter directed to Mr. Vrba from the Company dated July 26, 2012, indicates that the Company is in receipt of the request and necessary information and that the Company anticipates providing

indicative pricing in two to three weeks.[2] This fits with the Company providing the initial pricing on August 31, 2012. However, even though Schedule 38 requires a 30 day turn around for providing indicative pricing there is no explanation of why the Company took longer, approximately 97 days, to acknowledge Mr. Vrba's request.

The Division notes that the Company filed a motion to stay Schedule 38 in Docket No. 12-035-100 on October 9, 2012. The Commission's order denying the stay was issued on December 20, 2012. The Company provided Mr. Vrba Market Proxy indicative pricing on January 4, 2013, approximately 15 days after the Commission's order.

While the initial delay between Mr. Vrba's request and the Company's acknowledgement is as yet unexplained, Mr. Vrba has not requested specific relief on this issue. Therefore, the Division has no recommendations at this time.

Issue 3: The Company initially offered PDDRR instead of Market Proxy indicative pricing to Long Ridge

The Company initially provided PDDRR pricing to Mr. Vrba on August 31, 2012, under the assumption that Market Proxy pricing was no longer applicable and did not represent its avoided costs. (See Company testimony in Docket No. 12-035-100) On October 12, 2012, the Company filed a request to stay Schedule 38. The Commission denied the Company's stay request in its December 20, 2012 order. In compliance with the Commission's stay order, the Company provided Market Proxy indicative prices to Mr. Vrba on January 4, 2013.

Mr. Vrba does not specify any specific relief on this issue. Therefore, given that the Company provided Market Proxy pricing to Mr. Vrba, the Division believes this issue as it applies to Energy of Utah at this time is resolved.

Issue 4: The initial pricing did not appear to conform to GRID or to Palo Verde HLH/LLH pricing distributions

Again, Mr. Vrba does not ask for specific relief for this issue. The Division recommends that Mr. Vrba present his concerns on this matter in Docket No. 12-035-100.

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[2] See correspondence from Mr. Vrba dated October 25, 2012, Docket No. 12-035-100.

Issue 5: The Company provided a draft PPA devoid of specific details for the Long Ridge project

Based on informal conversations with the Company, the Company followed its standard procedure in this matter. The Company provides a template PPA to the QF and the QF fills in the appropriate information. Since Mr. Vrba does not seek specific relief on this issue, the Division has no recommendation at this time.

Issue 6: The repurchase of renewable energy certificates or RECs

Mr. Vrba states that the Company is unwilling to negotiate the repurchase of the RECs. In its order, dated October 31, 2005, in Docket 03-035-14, the Commission reasoned that the QF should be offered the opportunity to repurchase the RECs at the IRP value. However, as the Company correctly points out in its testimony in Docket No. 12-035-100, the most recent IRP does not specify a value for RECs. Therefore, the Division recommends that this issue be resolved along with other avoided cost issues raised in the avoided cost docket. The Commission's decision on the REC repurchase issue can then be applied to Mr. Vrba's project.

Alternatively, if the Commission determines to provide guidance under Mr. Vrba's complaint, the Division recommends that the Commission direct the Company to allow the repurchase of the RECs at the price assumed or paid under the Market Proxy value.

In its 2005 avoided cost order the Commission stated,

> We reason that ratepayers should be indifferent whether PacifiCorp never pays for the RECs or if it buys and then sells them. Therefore, we approve Wasatch Wind and Pioneer's proposal allowing QFs to buy back the RECs at the IRP value if PacifiCorp owns the RECs in the last executed wind market-based RFP contract.

The Division agrees with the Commission's point that the PURPA standard is rate payer indifference. However, the Division disagrees that the IRP value necessarily achieves that goal. The IRP value is an estimate or projection of the potential value of the RECs based on a set of particular assumptions; whereas, the value under the Market Proxy is the value paid to the last

wind QF and is in part the basis of the indicative prices offered to the current QF.[3] In other words, the REC value under the Market Proxy is part of the cost of the current QF purchase to the rate payer.

Therefore, if the Market Proxy value is deemed an appropriate avoided cost methodology, the value or price of the REC from the Market Proxy is the only price that achieves rate payer indifference. If the IRP value is less than the Market Proxy, rate payers pay out more for the RECs than they receive and are harmed; if the IRP value is greater than the Market Proxy rate payers pay less than they receive and reap a windfall.

Issue 7: The refunding of the project development deposit in the case where the federal wind production credit is not extended beyond 2013

In his formal complaint Mr. Vrba requests that the Commission "[direct] the Company to allow for the refund of the development deposit in the event that the Federal Production Tax Credit is not extended." In the Division's view these two events—the extension (or not) of the credit and the payment of the project development deposit—are not related and the Commission should deny Mr. Vrba's request.

The project development is designed to hold rate payers indifferent if the QF fails to meet the commercial online date. This is appropriate and consistent with PURPA but unrelated to the purpose of the tax credit. If the Company signs a PPA and the QF fails to come on line, the Company may need to purchase replacement power at a higher price than that paid to the QF under the PPA. This would expose rate payers to unnecessary risk and is inconsistent with PURPA.

Additionally, the Division understands that if the QF meets the online date, this deposit is refunded or applied against other security deposits required at the time the QF comes online.

[3] Assuming the Company purchased the RECS as part of the last wind QF contract.

CONCLUSION

Mr. Vrba raises seven issues in his complaints. However, Mr. Vrba only seeks relief on three of the seven issues. Of these three issues the Division recommends that the Commission,

1. Deny Mr. Vrba's request that the Commission "direct the Company to allow the PPA execution prior to an interconnection agreement execution." (Issue 1)
2. Decide the disposition of RECs in the avoided cost docket, Docket No. 12-035-100. As an alternative, the Commission should direct that the RECs can be repurchased at the value assumed under the Market Proxy pricing methodology. (Issue 6)
3. Deny Mr. Vrba's request that the development deposit be refundable in the case where the production tax credit is not extended. (Issue 7)

Of the remaining issues, the Division has no recommendations at this time.

CC Ros Vrba, Energy of Utah
Dave Taylor, Rocky Mountain Power