

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Rocky Mountain Power’s) Docket No. 14-035-T02
Proposed Electric Service Schedule No. 32,)
Service from Renewable Energy Facilities)

COMMENTS OF ORMAT TECHNOLOGIES, INC.

The Public Service Commission of Utah (the “Commission”) ruled during the hearing on December 9, 2014 that it would permit parties to file post-hearing briefs raising legal issues in the instant docket. Accordingly, Ormat Technologies, Inc. (“Ormat”) respectfully submits this Post-Hearing Brief.

I. Background

Ormat is a leading provider of renewable energy technology, specializing in geothermal and recovered energy generation facilities. Ormat has developed—and continues to develop—geothermal and recovered energy facilities across the United States, including dozens of projects across Utah, Idaho, Nevada, and several other states. Given the proximity of many of Ormat’s projects to Rocky Mountain Power’s service territory in Utah, Ormat is in a unique position to be able to efficiently import electricity into Rocky Mountain Power’s system for individual customers who seek such agreements under the new direct service Renewable Energy Contracts envisioned in SB 12. *See* Utah Code §§ 54-17-801 to 54-17-805.

II. Legal Issues

A. Rocky Mountain Power's Proposed Schedule No. 32 improperly prohibits out-of-state geothermal facilities from participating in a Renewable Energy Contract under Utah Code § 54-17-801 to 54-17-805.

Rocky Mountain Power ("the Company") has submitted for the Commission's review its proposed tariff sheets associated with Tariff P.S.C.U No. 49 of PacifiCorp, d/b/a Rocky Mountain Power Electric, Service Schedule No. 32, Service From Renewable Energy Facilities ("PacifiCorp Tariff," "Schedule 32 Tariff" or "Tariff"), which would govern "Renewable Energy Contract" contract guidelines. These Renewable Energy Contracts address the situation envisioned by the 2012 Utah Legislature in which the Company will supply electric service from one or more "Renewable Energy Facilities" to a Customer, allowing the Customer to purchase all or part of its electricity from renewable resources.

Ormat is concerned that some of the Schedule 32 proposed language operates as an inappropriate limitation that is in conflict with SB 12. Specifically, Ormat submits that Schedule 32, as currently written, excludes all out-of-state geothermal facilities from serving as the Renewable Energy Facility eligible for a Renewable Energy Contract, in direct contradiction to the language contained in SB 12 which explicitly provides that "geothermal facilities located outside of the state" may serve as the Renewable Energy Facility. *See* Utah Code § 54-17-801(4), 54-17-601(10)(a)(v).

In 2012, the Legislature unanimously passed SB 12 into law. *See* <http://le.utah.gov/~2012/bills/sbillint/sb0012.htm>. This bill, codified at Utah Code § 54-17-801 through 54-17-805, provides the mechanism that will allow a Customer within the state to enter into a Renewable Energy Contract to receive its electricity entirely from one or more Renewable Energy Facilities. The Legislature defined what types of renewable

facilities may participate in a Renewable Energy Contract by incorporating the previously existing definition of a “renewable energy source” under Utah Code § 54-17-601. Utah Code § 54-17-801(4). Thus, if a facility falls within the definition of a “renewable energy source” under subsection 601(10), then it can serve as a Renewable Energy Facility in a Renewable Energy Contract.¹ Subsection 601 lists a variety of different renewable energy sources, including electric generation facilities that derive energy from “geothermal energy located outside the state.”² Utah Code § 54-17-601(10)(a)(v).

¹ Section 54-17-801(4)(b) also imposes a requirement that the facility’s costs cannot have been included in a qualified utility’s rates as a facility providing electric service to the utility’s system, but this requirement does not apply to the issues raised by Ormat herein since none of Ormat’s out-of-state geothermal facilities have been included in Rocky Mountain Power rates.

² A “renewable energy source” is defined, in part, as:

- (a) an electric generation facility or generation capability or upgrade that becomes operational on or after January 1, 1995 that derives its energy from one or more of the following:
 - (i) wind energy;
 - (ii) solar photovoltaic and solar thermal energy;
 - (iii) wave, tidal, and ocean thermal energy;
 - (iv) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts . . .
 - (v) *geothermal energy located outside the state*;
 - (vi) waste gas and waste heat capture or recovery whether or not it is renewable, including methane gas from (A) and abandoned coal mine, or (B) a coal degassing operation associated with a state-approved mine permit;
 - (vii) efficiency upgrades to a hydroelectric facility, without regard to the date upon which the facility became operational, if the upgrades become operational on or after January 1, 1995;
 - (viii) compressed air, if: (A) the compressed air is taken from compressed air energy storage; and (B) the energy used to compress the air is a renewable energy source;
 - or
 - (ix) municipal solid waste.

...

Utah Code § 54-17-601(10) (Emphasis added).

B, Schedule 32 should be amended to encompass “geothermal energy located outside the state” pursuant to Utah Code § 54-17-601(10)(a)(v).

The cardinal rule of statutory interpretation requires that courts and administrative agencies apply the plain language of a statute, and read it “in harmony with other statutes under the same and related chapters.” Arndt v. First Interstate Bank of Utah, N.A., 991 P.2d 584, 586 (Utah 1999). Here, the plain language of Utah Code § 54-17-801(4)—and by reference, Utah Code § 54-17-601(10)(a)(v)—provide that electric generation facilities that derive energy from “geothermal energy located outside the state” qualify as Renewable Energy Facilities that may enter into Renewable Energy Contracts under SB 12.³ As a result, any requirement that a Renewable Energy Facility be physically located in Utah is in contravention of the statute and should be stricken or modified from the proposed language in Schedule 32.

When reviewing the Company’s proposed Schedule 32, the tariff is drafted in such a way that it is only applicable to in-state renewable resources. This is evident in two separate provisions. First, in the “Application” section on page 32.1, the first sentence states: “This Schedule is for Customers who would otherwise qualify for Schedules 6, 8 or 9 that desire to receive all or part of their electricity from a Renewable Energy Facility *located in the state of Utah.*” (Emphasis added).

Ormat respectfully submits that this provision should be amended to remove the requirement that the Renewable Energy Facility be located in Utah because it would prohibit out-of-state geothermal projects. Specifically, Ormat submits that the first

³ This issue was referenced by Kevin Higgins at the December 9, 2014 hearing when he noted the difficulty in establishing a proper rate design for Schedule 32 because, among other things, it allows Customers to acquire renewable energy from the outside. In fact, Mr. Higgins noted that the Legislature included “geothermal energy source[s] located outside the state” as a potential renewable resource under SB 12.

sentence should be amended to state: “This Schedule is for Customers who would otherwise qualify for Schedules 6, 8 or 9 that desire to receive all or part of their electricity from a Renewable Energy Facility, as defined in Utah Code §§ 54-17-801(4) and 54-17-601(10).” Alternatively, the Company could list the allowable renewable energy sources; however, in the interest of brevity given the long definition of renewable energy source in section 54-17-601(10), a direct reference to Subsections 801(4) and 601(10) should be sufficient.

Similarly, on page 32.4, the Company defines Renewable Energy Facility as “[a] generation facility that delivers its energy from a renewable energy source defined in Utah Code Section 54-17-601(1)(b) *and located in the state of Utah . . .*” (Emphasis added). As a preliminary matter, Ormat submits that the statutory reference in this section should reference Utah Code § 54-17-601(10), not Utah Code § 54-17-601(1)(b). Subsection 601(1)(b) relates to the proper calculation of adjusted retail electric sales—not the definition of a “renewable energy source” or “renewable energy facility.” Second, this definition again contains a requirement that the facility be located in Utah in spite of Section 54-17-601(10)’s explicitly incorporation of out-of-state geothermal facilities.

Therefore, Ormat submits that the first sentence of this definition should be amended as follows: “**Renewable Energy Facility:** A generation facility that delivers its energy from a renewable energy source, as defined in Utah Code §§ 54-17-801(4) and 54-17-601(10).” Again, a more extensive listing of all allowable renewable energy sources under 54-17-601(10) is also a viable alternative.⁴

⁴ Ormat also notes that Schedule 32 contains several interconnection requirements, including requirements that a Renewable Energy Facility be designated a Network Resource pursuant to PacifiCorp’s Open Access Transmission Tariff, and that it enter into an interconnection

agreement with the Company that governs the physical interconnection of the Renewable Energy Facility to the Company's transmission or distribution system.

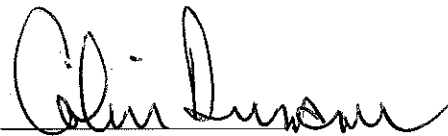
Ormat does not read these provisions to require a "direct" connection to Rocky Mountain Power's system, but rather to encompass the necessary state-level transmission and distribution agreements that will address transmission interconnection and integration costs, and ensure that there is available transmission capacity to deliver the necessary power and energy across the desired path. Ormat acknowledges that if it were to enter into a Renewable Energy Contract using an out-of-state geothermal facility located outside Rocky Mountain Power's service territory, it would be required to obtain the necessary transmission capacity to deliver the geothermal energy to Rocky Mountain Power's system.

III. Conclusion

WHEREFORE, for the reasons set forth above, Ormat respectfully requests that the Commission order that Schedule 32 be amended to incorporate the modest changes in language proposed above by Ormat to ensure that the Renewable Energy Contracts are open to all renewable generation facilities, consistent with the legislative intent of SB 12 to allow geothermal electric generation facilities located outside the state of Utah to qualify as Renewable Energy Facilities and therefore participate in Renewable Energy Contracts.

DATED this sixteenth day of January, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Colin Duncan". The signature is written in a cursive style with a horizontal line underneath the name.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2015, I placed a true and correct copy of the above and foregoing **POST HEARING BRIEF OF ORMAT TECHNOLOGIES, INC.** was served upon the following as indicated below:

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