Sophie Hayes (12546)
Utah Clean Energy
1014 2nd Ave.
Salt Lake City, UT 84103
801-363-4046
Attorney for Utah Clean Energy

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Request of Rocky Mountain Power for a Limited Stay of Schedule 38 Qualifying Facility Procedures	**DOCKET NO. 14-035-T04** **Utah Clean Energy Comments Regarding Interim Application of 25,000 kW Cumulative Cap**

Pursuant to the scheduling order in Docket No. 14-035-T-04 (issued June 5, 2014), Utah Clean Energy submits the following comments regarding the application of the 25 MW cap for QF projects under Rocky Mountain Power's ("the Company") Electric Service Schedule No. 37 on an interim basis during the pendency of the aforementioned docket. Utah Clean Energy recommends that if the current 25 MW cap is reached during this docket, the Commission should authorize an additional 25 MWs such that small QFs still have an opportunity to contract with the Company for purchases pursuant to the requirements of PURPA.

BACKGROUND

The Public Utilities Regulatory Policy Act of 1978 ("PURPA") and the regulations implementing PURPA require utilities to purchase electricity from qualifying facilities ("QF") at avoided cost rates.[1] On May 7, the Company filed an advice letter with the Commission

[1] 16 U.S.C. § 824a-3 (1978); 18 C.F.R. §§ 292.303-304.

proposing revisions to its Electric Service Schedule No. 37—Avoided Cost Purchases from Qualifying Facilities.

This filing, like others before it (Docket Nos. 09-035-T14, 10-035-T07, 11-035-T06, 12-035-T10 and 13-035-T09), was made in response to the Commission's February 12, 2009 Report and Order Directing Tariff Modification in Docket No. 08-035-78, which requires the Company to update annually its rates for purchases from Utah-based QFs with a design capacity of up to 1 MW (cogeneration facilities) or 3 MW (small power production facilities). Schedule 37 rates are "standard prices" for small QFs (as opposed to negotiated contract terms under Schedule 38 for larger QFs), based on the Company's avoided costs, consistent with the Company's integrated resource plan.

In response to this filing, the Commission hosted a scheduling conference to establish a process for interested parties to comment on the Company's proposed changes to Schedule 37, as well as to address whether "Schedule 37 pricing would be available to Qualifying Facilities after the time the 25,000 kW cap is met but prior to the Commission's decision regarding PacifiCorp's proposed revisions to Schedule 37."[2] These comments address whether Schedule 37 pricing should be available to QFs after the cap is reached but before the Commission's decision this docket. Utah Clean Energy concludes that Schedule 37 prices should be available in that interim period.

COMMENTS

1. ***PURPA and Utah Code Ann. § 54-12-1 ("Utah-PURPA") clearly require that the Commission promote and encourage the development of small, independent power production.***

[2] 14-035-T04,Order Setting Schedule and Suspending Tariff and Notices of Technical Conference and Hearing (issued June 5, 2014), page 2.

Federal and state instruction clearly require that states promote and encourage the development of small, independent power production not otherwise available to those served by Utah's monopoly utility. PURPA and U.C.A. § 54-12-1 ("Utah-PURPA") highlight the importance of diversifying electricity resources, the reluctance of traditional utilities to purchase electricity from small power producers and the resulting need to encourage small power production through laws and regulations. Section 210 of Title II of PURPA was enacted specifically to encourage the development of electricity generation from cogeneration and small power production facilities, and to reduce the use of and conserve fossil fuel resources.[3]

PURPA recognizes that monopoly utilities generally have an incentive not to contract with independent power producers. Therefore, PURPA regulations and FERC rules implementing PURPA take care to protect the interests of small power producers against more powerful monopoly utilities and their near unilateral control over power purchase agreements. Additionally, Utah law dictates that "It is the policy of this state to encourage the development of independent and small power production and cogeneration facilities…"[4] Thus,

> The Legislature declares that in order to promote the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy, it is desirable and necessary to encourage independent energy not otherwise available to Utah businesses, residences, and industries served by electrical corporations, and to remove unnecessary barriers to energy transactions involving independent energy producers and electrical corporations.[5]

Because of these policy imperatives, the Commission must be mindful of the extent to which the currently effective cap on contracts under Schedule 37 impedes or prevents

[3] Small power production facilities are defined as having a production capacity of no more than 80 megawatts and use biomass, waste, or renewable resources (wind, solar, or waste energy, for example) to produce electric power. 16 U.S.C. § 796(17)(A).
[4] Utah Code Ann. § 54-12-1(2) ("Utah-PURPA").
[5] Utah Code Ann. § 54-12-1(1).

independent energy development in its determination of whether and how to apply a cap to Schedule 37 contracts throughout this docket.

2. The Commission should take a very limited approach to applying any MW caps on the Company's QF purchase obligation in order to comply with PURPA and encourage ongoing QF development in Utah.

State utility Commissions have the responsibility of implementing PURPA.[6] This Commission must consider the currently effective cap in light of the requirements of PURPA and Utah-PURPA, which require purchases from QFs at avoided cost rates. Rates must be just and reasonable to electric consumers and not discriminate against QFs.[7]

The Commission has been careful over the years not to completely foreclose contracting opportunities under PURPA and Utah-PURPA. In past Commission orders, the Commission has authorized limits on the Company's purchase obligation when doing so would not prejudice QFs hoping to contract with the Company. For example, in Docket No. 94-2035-03 the Commission found that PacifiCorp had no pending requests for QF contracts and therefore a suspension of QF contracting would not prejudice existing QFs.[8] In Docket No. 03-035-14 the Commission approved a MW limit on the Company's purchase obligation because it accounted for QFs likely to come online before the duration of the cap was complete and because it did not undermine the removal of unnecessary barriers to QF development.[9] Later in Docket No. 03-035-14 the Commission lifted a suspension of the Company's purchase obligation because it concluded there was sufficient process available to protect the interests of QFs before the Commission.[10]

[6] Pursuant to its statutory obligation, the Federal Energy Regulatory Commission ("FERC") adopted regulations relating to purchases and sales of electricity to and from QFs. These regulations afford state regulatory authorities latitude in implementing PURPA. FERC v. Mississippi, 456 U.S. 741, 750-51 (1980).
[7] 16 U.S.C. § 824a-3.
[8] Docket No. 94-2035-03, Order (issued June 13, 1994), page 2.
[9] Docket No. 03-035-14, Order (issued June 28, 2004).
[10] Docket No. 03-035-14, Order (issued April 1, 2005).

The current 25 MW cap appears to have been approved upon the recommendation of the Division of Public Utilities, though support in terms of PURPA is lacking. Initially, the Commission found, "We accept the notion of a cap."[11] Further, the Commission stated, "Current rates are based on a 10 megawatt decrement during the period of sufficiency and therefore 10 megawatts serves as a reasonable cap. When the cap is reached, a new cap will be considered and new rates calculated."[12] On rehearing, the Commission increased the cap to 25 megawatts "before the schedule 37 avoided costs payments must be updated."[13] Based on this language, it appears that the 25 MW cap was not considered an absolute cap on contracts under Schedule 37, but rather merely a trigger for new pricing, in order to keep avoided costs prices up to date.

The Company also has an obligation to purchase electricity from QFs at approved avoided costs prices. The Company has no authority to deny QFs the opportunity to sell electricity to the utility at approved avoided cost rates if the Company fails to update its pricing. FERC has concluded that QFs must have an opportunity to provide electricity to a utility under PURPA:

> Each qualifying facility *shall have* the option either (1) To provide energy as the qualifying facility determines such energy to be available for such purchases . . . or (2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term…[14]

Completely foreclosing small QF's opportunities to contract with the Company at approved avoided costs rates will prevent QFs from accessing their rights under PURPA, and would be inconsistent with PURPA and FERC's interpretations of PURPA regulations. The Commission cannot authorize a period in which avoided cost pricing is not available to QFs.

[11] Docket No. 03-035-T10 (June 1, 2004), page 14.
[12] *Id.*
[13] Docket No. 03-035-T10 (July 20, 2004), page 4.
[14] 18 C.F.R. § 292.304(d) (emphasis added).

RECOMMENDATION

Utah Clean Energy recommends the following: if the current 25 MW cap is reached during this docket, the Commission should authorize an additional 25 MWs such that small QFs still have an opportunity to contract with the Company for purchases pursuant to the requirements of PURPA.

DATED: June 12, 2014.

RESPECTFULLY SUBMITTED,

Utah Clean Energy

_____

Sophie Hayes
Attorney for Utah Clean Energy

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 12th day of June, 2014 on the following:

ROCKY MOUNTAIN POWER:

Yvonne Hogle	yvonne.hogle@pacificorp.com
Daniel. E. Solander	daniel.solander@pacificom.com
David L. Taylor	dave.taylor@pacificorp.com

DIVISION OF PUBLIC UTILITIES:

Patricia Schmid	pschmid@utah.gov
Justin Jetter	jjetter@utah.gov
Chris Parker	chrisparker@utah.gov
William Powell	wpowell@utah.gov
Dennis Miller	dennismiller@utah.gov

OFFICE OF CONSUMER SERVICES:

Brent Coleman	brentcoleman@utah.gov
Michele Beck	mbeck@utah.gov
Cheryl Murray	cmurray@utah.gov
Bela Vastag	bvastag@utah.gov

SUNEDISON

Gary Dodge	gdodge@hjdlaw.com

FIRST WIND

Brian Harris	bharris@firstwind.com
Peter Sullivan	psullivan@firstwnid.com

__/s/ Sophie Hayes_____