

R. Jeff Richards (7294)  
Daniel E. Solander (11467)  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, Utah 84111  
Tel. 801.220.4014  
Fax 801.220.3299  
[daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com)

*Attorney for Rocky Mountain Power*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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|-------------------------------------------|---|-----------------------|
| In the Matter of Advice Filing 14-035-T04 | ) | DOCKET NO. 14-035-T04 |
| Schedule 37, Avoided Cost Purchases from  | ) |                       |
| Qualifying Facilities                     | ) | <b>Reply Comments</b> |
|                                           | ) |                       |

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In accordance with the Scheduling Order issued by the Public Service Commission of Utah (the “Commission”) in Docket No. 14-035-T04, Rocky Mountain Power (“RMP”) hereby submits its reply comments regarding the interim application of the 25 MW cumulative cap under Schedule 37 during the time period between when the cap is met, but prior to the Commission’s decision regarding the Company’s May 7, 2014 proposed Schedule 37 revisions.

1. In short, and as discussed in more detail below, resetting the Schedule 37 cap prior to a Commission Order in this proceeding would be inconsistent with the Commission’s Orders implementing the Schedule 37 cap, and is not required by the Public Utility Regulatory Policies Act of 1978 (“PURPA”). Instead, the Commission should: (1) wait to remove the cap until the Commission has issued an order on the Company’s proposed Schedule 37 changes; and, in the meantime, (2) allow QFs 100 kw or smaller to continue to receive pricing under Schedule 37, and (3) allow QFs greater than 100 kw the option to request pricing and obtain power purchase agreements (“PPA”) under Schedule 38.

## **Resetting the Schedule 37 Cap Prior to Commission Action Would be Inconsistent with the Commission Orders Establishing the Schedule 37 Cap**

2. As RMP explained in its May 7 filing, since the July 29, 2013, effective date of the currently-effective Schedule 37 rates, the Company has signed PPAs with qualifying facilities (“QF”) under Schedule 37 totaling approximately 24 megawatts (“MW”), which almost meets the Schedule 37 cap of 25 MW. This cap is set forth in the “Applicable” section of RMP’s currently-effective Schedule 37, which states:

**APPLICABLE:** For power purchased from Qualifying Facilities located in the state of Utah with a design capacity of 1,000 kW for a Cogeneration Facility or 3,000 kW for a Small Power Production facility. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company. A cumulative cap of 25,000 kW shall apply to new resources contracted under this schedule. (emphasis added)

3. As also noted in RMP’s May 7 filing, the Commission’s Orders establishing this cap found that, upon Commission approval of the Company’s proposed rates, the amount of QF MWs contributing to the 25 MW cap would be reset to zero and the Company would continue to work with interested developers requesting PPAs under Schedule 37 taking into consideration the new rates and the new cap. For example, the Commission stated in that proceeding that:

- (1) “[w]hen the cap is reached, a new cap will be considered and new rates calculated;”<sup>1</sup>
- (2) the “cap is the cumulative capacity of actual QF projects allowed before an update of the avoided cost payment tariff would be required;”<sup>2</sup> and
- (3) “[t]he cumulative cap for Schedule 37 QF projects is increased from 10 to 25 megawatts before avoided cost payments must be updated.”<sup>3</sup>

4. Resetting the cap prior to Commission action in this proceeding would be inconsistent with the orders noted above and result in serious financial harm to customers. As

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<sup>1</sup> Order, Issued June 1, 2004, Docket No. 03-035-T10, at page 14 (emphasis added).

<sup>2</sup> Order on Reconsideration, Issued July 20, 2004, Docket No. 03-035-T10, at page 2 (emphasis added).

<sup>3</sup> *Id.* at Ordering Paragraph 2, page 4 (emphasis added).

noted by RMP in its June 12, 2014, Initial Comments in this proceeding, removing the cap before the Schedule 37 prices are updated could result in customers overpaying an estimated \$85 to \$91 million<sup>4</sup> because the currently-effective Schedule 37 prices do not reflect the Company's actual avoided costs.<sup>5</sup> To that end, if the Commission were to raise the cap before approving RMP's updated avoided cost pricing, the Company expects an incremental flood of requests from QF developers seeking to quickly execute PPAs before implementation of the new proposed prices, pushing the overpayment by customers far beyond the \$85 to \$91 million. In addition to the resulting serious financial harm to customers, permitting this influx of requests at the current pricing would be in conflict with the Commission's Orders implementing the Schedule 37 cap, which specifically noted that one of the benefits of a Schedule 37 cap is that it would help guard against over-subscription.<sup>6</sup>

5. The Company believes the better course is for RMP to: (1) wait to remove the cap until the Commission has issued an order on the Company's proposed Schedule 37 changes; and, in the meantime, (2) continue to offer QFs 100 kw or smaller the option to request pricing under Schedule 37, and (3) allow QFs larger than 100 kw the option to request pricing under Schedule 38 (which it has done for all the requests currently in the queue) in the interim. This would allow the QFs the option to move forward with their projects prior to the issuance of an order if they so desire. As discussed in more detail in the next section, offering such pricing options would allow RMP to comply with its PURPA mandatory purchase obligation during the pendency of this

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<sup>4</sup> Comments of Rocky Mountain Power, dated June 12, 2014, Docket No. 03-035-T10, at page 2.

<sup>5</sup> Along those same lines, the Office of Consumer Services asserts that resetting the cumulative cap without finalizing new avoided cost rates would contravene state and federal law. Comments of Office of Consumer Services, dated June 12, 2014, Docket No. 03-035-T10, at pages 4-5.

<sup>6</sup> In the Commission's June 1, 2004 Order in that proceeding, the Commission approved an increase from one to three MWs in the Schedule 37 design limit for small power production facility QFs, specifically noting that over-subscription resulting from such an increase was "checked" by implementation of the cap. Order, Issued June 1, 2004, Docket No. 03-035-T10, at page 14. (At the time of that order, the cap was 10 MW, but it was later increased to 25 MW in the Commission's Order on Reconsideration in that same proceeding. Order on Reconsideration, Issued July 20, 2004, Docket No. 03-035-T10, at page 4.

proceeding on Schedule 37 pricing modifications, as well as protect its customers from avoided costs that are far in excess of the Company's actual avoided costs.

### **Resetting the Schedule 37 Cap Prior to Commission Action is Not Required by PURPA**

6. SunEdison, LLC ("SunEdison") and First Wind have submitted comments arguing that PURPA requires that published standard rates for small QFs be available at all times, and that a cap cannot be used to withhold QF contracts or to deny access to published standard rates for QFs.<sup>7</sup> Likewise, Utah Clean Energy claims that maintaining the cap would be inconsistent with PURPA because it would prevent small QFs from having the opportunity to contract with the Company at approved avoided cost rates.<sup>8</sup>

7. These arguments are misplaced. Maintaining the Schedule 37 cap until the Commission issues an order in this proceeding does not deprive small QF developers of their PURPA rights. Rather, as noted above, RMP is fulfilling its PURPA mandatory purchase obligation and moving forward with all QF projects. In particular, QFs desiring to move forward with their PPAs before the Commission acts in this proceeding have the option of requesting Schedule 38 pricing on the same basis as larger projects. In the alternative, QFs desiring published avoided cost prices can receive such prices as soon as the Commission establishes new Schedule 37 prices in this proceeding. To be clear, at no point during this interim period will RMP refuse to purchase QF power or refuse to move forward with any QF PPA negotiation.

8. It is well within the Commission's authority to approve such an interim approach for all QFs above 100 kW. As SunEdison and First Wind highlighted in their comments, the Federal Energy Regulatory Commission's ("FERC") PURPA regulations require "standard rates

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<sup>7</sup> Comments of SunEdison, LLC and First Wind, dated June 12, 2014, Docket No. 03-035-T10.

<sup>8</sup> Comments of Utah Clean Energy, dated June 12, 2014, Docket No. 03-035-T10.

for purchases from [QFs] with a design capacity of 100 kilowatts or *less*.”<sup>9</sup> However, it is within the Commission’s discretion to offer standard rates to QFs with a design capacity of *more* than 100 kilowatts.<sup>10</sup> Thus, just as it was within the Commission’s authority to approve a 3 MW threshold for standard rates, it would likewise be within the Commission’s authority, and reasonable under the instant – and temporary – circumstances, to approve an interim approach under which QFs of more than 100 kilowatts have the option to request Schedule 38 pricing on the same basis as larger projects until the Commission issues an order on RMP’s new Schedule 37 pricing. Importantly, at all times during this interim period, QFs that are greater than 100 kilowatts but 3 MW or less will have access to the option of either “as available” pricing or forecasted avoided cost pricing consistent with FERC’s PURPA regulations and on the same basis as larger projects, *i.e.*, through Schedule 38.<sup>11</sup> And, as soon as the Commission approves new Schedule 37 prices, the QFs within that size range will again have a published price option.

9. Indeed, the Idaho Public Utilities Commission (“Idaho PUC”) proceeded in this manner under similar circumstances. In November 2010, several utilities, including RMP, filed a joint petition requesting that the Idaho PUC initiate an investigation to address various avoided cost rate issues.<sup>12</sup> The petition further requested that the Idaho PUC lower the published avoided cost rate eligibility cap from 10 MW to 100 kw while the investigation was in progress. The Idaho PUC issued an order temporarily reducing the eligibility cap for published avoided cost rates while it continued its avoided cost rate investigation, although the reduction was only

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<sup>9</sup> 18 C.F.R. § 292.304(c)(1) (emphasis added).

<sup>10</sup> 18 C.F.R. § 292.304(c)(2).

<sup>11</sup> 18 C.F.R. § 292.304. As of the date of these comments, RMP has received no requests from QFs with a design capacity of 100 kilowatts or less.

<sup>12</sup> *In the Matter of the Joint Petition of Idaho Power Company, Avista Corporation, and PacifiCorp dba Rocky Mountain Power to Address Avoided Cost Issues and to Adjust the Published Avoided Cost Rate Eligibility Cap*, Case No. GNR-E-10-4, dated November 5, 2010.

applicable to wind and solar QFs.<sup>13</sup> The Idaho PUC noted that lowering the cap to 100 kW did not change the published avoided cost rates, which were still available for wind and solar QFs of 100 kW or smaller, and which the Idaho PUC stated should still be used as the starting point for negotiating an avoided cost rate for larger wind and solar QF projects.<sup>14</sup> Finally, the Idaho PUC concluded that this temporary reduction was within its authority to implement because, among other reasons, it was not changing the published avoided cost rates, but rather only the availability of the published rates to wind and solar QFs on a temporary basis.<sup>15</sup> To that end, the Idaho PUC stated that “[w]ind and solar projects larger than 100 kW are still entitled to PURPA contracts and avoided cost rates that reflect the unique characteristics of their resource.”<sup>16</sup>

10. Finally, it is also worth noting that, at the core of the SunEdison, First Wind and Utah Clean Energy comments appears to be an argument that a cap – in and of itself – violates PURPA. The Commission has already considered claims to this effect in the original orders approving the Schedule 37 cap. Indeed, parties argued on rehearing of the original order approving a 10 MW cap that a cap creates an unnecessary barrier to small-sale QF projects and should be eliminated.<sup>17</sup> In its order on reconsideration, the Commission agreed to raise, but not completely eliminate, the cap in response to these concerns.<sup>18</sup> Thus, this issue has been resolved by the Commission on the merits and should not be revisited here.

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<sup>13</sup> *In the Matter of the Joint Petition of Idaho Power Company, Avista Corporation, and PacifiCorp dba Rocky Mountain Power to Address Avoided Cost Issues and to Adjust the Published Avoided Cost Rate Eligibility Cap*, Case No. GNR-E-10-4, Order No. 32176, issued February 7, 2011.

<sup>14</sup> *Id.* at page 9.

<sup>15</sup> *Id.* at page 11.

<sup>16</sup> *Id.*

<sup>17</sup> Order on Reconsideration, Issued July 20, 2004, Docket No. 03-035-T10, at page 2.

<sup>18</sup> *Id.* at pages 3-4.

Dated this 19<sup>th</sup> day of June 2014.

Respectfully submitted,

ROCKY MOUNTAIN POWER

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R. Jeff Richards  
Daniel E. Solander

Attorneys for Rocky Mountain Power