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October 30, 2015

***VIA ELECTRONIC FILING
AND HAND DELIVERY***

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Secretary

RE: In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement Between PacifiCorp and Three Peaks Power, LLC
Docket No. 15-035-70

In accordance with the Scheduling Order issued by the Public Service Commission of Utah (the "Commission") on September 10, 2015, Rocky Mountain Power ("Company" or "RMP") submits the following reply comments in response to the comments filed by the Utah Division of Public Utilities ("DPU"), the Utah Office of Consumer Services ("OCS"), and Three Peaks Power, LLC ("TPP").

GENERAL REPLY COMMENTS TO ALL PARTIES

The DPU recommends approval of the power purchase agreement ("PPA") but states the PPA is not compliant with Schedule 38. The OCS questions whether the PPA is compliant with Schedule 38 and states it is therefore unable to provide a recommendation on the PPA. TPP recommends the Commission approve the PPA.

The primary issues in this proceeding are whether the TPP PPA is compliant with Schedule 38, or alternatively whether the facts and equities of the approval of this PPA dictate that TPP should be subject to the version of Schedule 38 in effect at the time an agreement for all essential terms of the PPA was reached. The Company will provide evidence showing how the PPA is compliant with the version of Schedule 38 that was in place at the time negotiations commenced and that remained in place at the time agreement on material terms was reached. The Company will also show that extenuating circumstances occurred during the negotiating period related to this PPA that were outside of the Company's control and will explain how these circumstances provide the basis for approval of the PPA consistent with the new version of Schedule 38 put in place on June 9, 2015, a date by which material negotiation of the TPP PPA had been completed. Therefore, the Company respectfully requests that the TPP PPA be approved by the Commission.

The DPU and OCS suggest the PPA is not compliant because the new version of Schedule 38 requires that pricing be no more than six months old. The PPA was executed beyond the six month time frame. However, even under the revised version of Schedule 38, the Commission contemplated and allowed for extensions of timelines in the event of extenuating circumstances. Paragraph 4 of the Preface states the following:

The Company must use its reasonable commercial efforts to meet all Company deadlines specified herein, and shall attempt to make up any Company delays in meeting subsequent Company deadlines. QF Developer deadlines will be extended to reflect Company delays beyond Company deadlines specified herein. *Under extenuating circumstances, the Company or a QF Developer may request an extension of any deadlines from the Commission.* (emphasis added)

Extenuating circumstances existed during the negotiation and execution of the TPP PPA. These circumstances, which are described in detail below, justify an extension of certain deadlines. Pursuant to Schedule 38, the Company is requesting from the Commission an extension of the deadline requiring that indicative pricing be no older than six months. The Company is requesting this extension as part of this approval docket. In future circumstances, the Company anticipates requesting these types of extensions proactively as extenuating circumstances are identified during the negotiation process.

In the case of the TPP PPA, the parties reasonably expected to execute the PPA in early June 2015 and did not expect to require an extension. Furthermore, the new version of Schedule 38 was approved by the Commission around this same time, and the parties did not expect the new tariff to apply since the stipulation associated with the new tariff contemplated a transition period.¹ The final completion and execution of the PPA took longer than both parties expected.

Extenuating circumstances occurred during the TPP PPA negotiations. Pricing was provided January 16, 2015, and the contract was signed approximately seven months later on August 12, 2015. The material events that occurred during the negotiation process are indexed and summarized in Attachment 1 and contained in detail in Attachment 2.

The extenuating circumstances include the following:

1. A new Schedule 38 tariff was implemented at the approximate time that negotiations were finished and the parties were preparing the PPA for execution.

¹ Settlement Agreement, Docket No. 14-035-140, paragraph 25:

Upon Commission approval of this Stipulation, the Company will promptly notify each QF project currently in the QF pricing queue for which a power purchase agreement has not yet been executed of the requirements of this Stipulation and the new tariff provisions, of such project's status under the new tariff provisions, and of the amount of time remaining for such project to complete the next step to remain in the QF pricing queue under the new tariff requirements, which time shall be a minimum of thirty (30) additional days from the date of notice.

2. The Company, during the negotiation period, was managing 107 QF pricing requests and negotiations, an amount that is five to ten times the normal workload.
3. The parties had reached agreement on the material terms of the PPA within six months of the date indicative pricing was provided.

Timing of the New Version of Schedule 38

The parties initiated negotiations in February 2015 under the terms and conditions contained in the then-current version of Schedule 38. On June 9, 2015, the Commission approved a new Schedule 38 that included new negotiation timelines and new timelines related to how long an indicative price is valid. These timelines and requirements were not in the Schedule 38 relied upon by the parties when they commenced PPA negotiations in February 2015 and when they reached agreement on the material terms and conditions of the PPA at the end of May 2015 (and expected to execute the agreement shortly thereafter). The parties did not expect the new Schedule 38 to be applicable to the TPP PPA because they fully expected to execute the PPA by early June 2015, or at the latest within the transition period contemplated by the settlement stipulation associated with the new tariff.

The seven month time period between the delivery of indicative pricing and the execution of the PPA is consistent with the timelines that occurred for other QF PPAs executed under the Schedule 38 in place at the time negotiations began in February 2015. That version of Schedule 38 did not have a specific timeline related to how long an indicative price can remain valid. Thus, the seven month timeline in the case of the TPP PPA is consistent with Company practice and prior QF PPAs executed and approved by the Commission under that version of the tariff.

Section I.B.9 of the June 9, 2015 version of Schedule 38 (the new Schedule 38) requires pricing that is no older than six months:

Required Pricing Update: The prices in the proposed power purchase agreement provided by the Company under Section I.B.6 shall be recalculated by the Company using the most recent available pricing inputs and methods approved by the Commission, but without a change in the QF project's pricing queue priority, if the QF Developer and the Company have not executed a power purchase agreement within six months after indicative pricing was provided by the Company under Section I.B.4, except to the extent delays are caused by Company actions or inactions, which may include delays in obtaining legal, credit or upper management approval by the Company.

The TPP PPA was executed seven months after indicative pricing was provided, instead of the six months required under the new Schedule 38. The Company believes the extenuating circumstance of a new Schedule 38 with new timelines being implemented near the end of a multi-month negotiation, when the parties were very close to executing the PPA and had already agreed to all material terms, and when the parties had commenced negotiations under the terms of a different Schedule 38, all support a just and reasonable outcome in which the Commission may approve the TPP PPA.

The Company Was Managing an Extraordinarily Large Number of QF Negotiations in 2015

The Company routinely manages between 10 and 20 QF negotiations at any given time. In early and mid-2015, the Company was managing 107 different QF pricing requests and negotiations. The large increase is primarily attributable to solar projects attempting to execute a contract in time to allow them to build a project by the end of 2016 in order to take advantage of the expiring federal investment tax credit. Each pricing request and PPA negotiation requires considerable time and Company resources, including commercial negotiation of material PPA terms, credit department review of all credit calculations and credit terms, legal review of the PPA terms and conditions, and management review and approval of final deal terms. The large increase in the number of QF pricing requests and PPA negotiations increased the negotiation time for all QF PPAs as the Company sought to treat each QF fairly and to progress negotiations equitably for all potential QFs. The Company utilized additional resources from within the Company to assist with the dramatically increased workload, but the increase was so severe that all of the QF PPA negotiations during 2015 took longer than what is typical under normal or even historically “busier” circumstances.

REPLY COMMENTS TO DPU COMMENTS

In its conclusion, the DPU states that the PPA is not in compliance with Schedule 38 but suggests there appear to be mitigating circumstances that warrant approval of the contract. The Company does not agree that the PPA is not compliant with Schedule 38 for the reasons stated in these reply comments, namely certain extenuating circumstances which are contemplated in Schedule 38 and which form a reasonable basis for extension of deadlines under Schedule 38. The Company does, however, agree that mitigating circumstances existed that warrant approval of the contract as explained above.

The DPU states that delays at the Company ultimately resulted in a signed PPA not being completed prior to July 15, 2015. The Company acknowledges the extenuating circumstances that have already been addressed in these comments, but further notes that the delays that occurred after early June 2015 were primarily a result of certain minor contract changes requested by TPP, not Company delays.

The DPU further states that the Company did not provide formal notice to TPP as required under Paragraph 25 of the Settlement Stipulation. The Company agrees that formal written notice was not provided. At the time of the June 9, 2015 order, the parties had reached agreement on the material terms of the PPA and were expecting to execute the PPA within days. PacifiCorp verbally advised TPP around that time that the new Schedule 38 had been approved and the transition period had begun, but both parties expected the PPA to be executed within days and therefore the Company did not provide a formal notice to TPP. In fact, on June 12, 2015, PacifiCorp sent to TPP what it thought was a final version of the PPA, and subsequently followed up with TPP on June 23, 2015 requesting that TPP confirm agreement of the final version. TPP replied on that same day stating that it believed the version was final, but wanted to confirm with its legal team. PacifiCorp did not provide formal notice because it reasonably anticipated executing the PPA in early June 2015.

The DPU raises the issue of a “legally enforceable obligation” or “LEO”. The Company acknowledges the existence of Federal Energy Regulatory Commission (“FERC”) orders on the LEO issue but does not believe a review of that issue by the Commission is necessary at this time in order to approve the TPP PPA; however, the Company agrees with the DPU that the concept of a LEO established under federal law is consistent with the PPA approval the Company is seeking herein.

The DPU also states that the Company did not follow its pricing queue management as set forth in Schedule 38 and that the alleged Company’s delays are not justifiable. The Company disagrees with this characterization of the Company’s work during this time period. Any delays that did occur were a result of the extenuating circumstances that have been explained in these comments and were not the result of any Company inaction or intent to prolong the process. The Company worked diligently to negotiate with the 107 QF counterparties during this time period and made reasonable commercial efforts to meet all required timelines in Schedule 38. The Company further notes that many of the timelines were put in place in June 2015 when negotiations with TPP were largely complete. Moreover, the delays between June 2015 and August 2015 (when the TPP was executed) were largely attributable to contract changes requested by TPP and were not caused by the Company.

The Company strongly disagrees with the DPU’s statement that the Commission may consider whether to reduce the Company’s recovery of the expenses of the TPP PPA by the difference in price between the PPA and what an updated price would have been. The Company executes QF PPAs under the terms and conditions set forth in Schedule 38 and in other relevant avoided cost orders. The Company negotiates in good faith and actively seeks to balance the interests and rights of QF developers with the interests and rights of customers. The Company actively seeks to implement the ratepayer indifference standard. The Company should not be rewarded or penalized based on its implementation of Commission avoided cost orders. The Company did not act imprudently or negligently in its implementation of the old and the new Schedule 38 requirements.

The extenuating circumstances such as those surrounding the negotiation of the TPP PPA are reasonably contemplated by the new Schedule 38 tariff, and should be considered by the Commission as it evaluates whether the TPP PPA is compliant with Schedule 38. Schedule 38 PPAs are required to be brought before the Commission for approval and for a determination that the PPAs are compliant with Schedule 38 and relevant Commission orders. If the Commission determines the TPP PPA is not compliant with Schedule 38, the Commission should reject the TPP PPA without prejudice. If the Commission determines the TPP PPA is compliant with the applicable tariffs and orders, the PPA should be approved with no further conditions or adjustments relative to the Company’s recovery of any incurred expenses.

The DPU notes that the new Schedule 38 provides some allowance for extending deadlines for extenuating circumstances. The Company agrees with this assessment and believes it applies in the case of the TPP PPA. The Company further agrees with the DPU’s suggestion that the instance of the TPP PPA is an anomaly and that extensions should not be freely granted.

Lastly, the DPU notes that the renewable energy credits (“RECs”) are passed from TPP to the Company. This is incorrect – TPP retains ownership of the RECs under the TPP PPA.

REPLY COMMENTS TO OCS COMMENTS

The OCS raises many of the same issues raised by the DPU. The OCS concludes that it is unable to provide a recommendation given the uncertainty surrounding the Schedule 38 compliance issues and recommends the parties provide supporting information and ask the Commission to issue a ruling. The Company is providing supporting information by way of these reply comments and hereby requests approval of the TPP PPA.

REPLY COMMENTS TO TPP COMMENTS

The Company agrees with this portion of TPP’s characterization of negotiations:

RMP and Three Peaks negotiated and exchanged comments on the draft PPA on a consistent basis from the date of indicative pricing until the parties reached agreement on all material terms and conditions during the last week of May 2015. At no time during the negotiation period did the Project become stale, and neither RMP nor Three Peaks ever abandoned the negotiations or the intent to reach final agreement on the PPA. The parties intended for the PPA to be executed prior to June 9, 2015.

The Company disagrees with TPP’s statement that the Company delayed executing the PPA until August 13, 2015. As shown in the emails in Attachment 2, the Company received the completed exhibits to the PPA from TPP on June 8, 2015. The exhibits are a critical part of the PPA as they contain much of the project-specific information, and the PPA cannot be executed without them. The Company promptly reviewed and provided another draft of the PPA to TPP on June 12, 2015, just four days later. The Company sent a second email to TPP on June 23, 2015 inquiring as to whether TPP considered the June 12, 2015 version final. Between that time in late June and the execution date in early August, the parties worked to resolve certain issues that were raised by TPP or resulted from TPP actions or inactions, namely:

1. A recalculation of the degradation rate so that the rate used in the pricing matched the rate desired by TPP in the PPA. (see June 26, 2015 email from Paul Clements to Luigi Resta – labeled as #9 in Attachment 2)
2. A review by TPP as to whether TPP would select a levelized or a non-levelized price. (see July 17, 2015 email from Luigi Resta to Paul Clements – labeled as #11 in Attachment 2)
3. A request by TPP to change the default security amount. (see July 30, 2015 email from Luigi Resta to Paul Clements – labeled as #12 in Attachment 2)
4. TPP’s lack of a valid FERC Form 556 (QF Self-Certification). (see August 3, 2015 email from Luigi Resta to Paul Clements – labeled as #13 in Attachment 2)

As demonstrated by these communications between the parties, while the parties had agreed to the material terms of the PPA by late May 2015, TPP was requesting certain changes between early June and the time the PPA was executed in early August. The Company responded to these requested changes quickly and was not responsible for any delays that occurred during this time period. TPP's suggestion that negotiation delays were solely a result of Company actions is inaccurate.

TPP suggests that RMP did not provide notice to TPP of the new Schedule 38 tariff. The Company acknowledges that it did not provide written notice. It did not provide written notice because the parties reasonably expected to execute the PPA within days of receiving the new Schedule 38 order on June 9, 2015 as evidenced by the delivery of a draft PPA to TPP on June 12, 2015 which the Company considered as final draft for execution purposes. While the Company did not provide written notice, the Company verbally notified TPP during the course of negotiations at that time that a new Schedule 38 has been approved and that a transition period had begun. The parties agreed that execution was imminent and therefore were not concerned with the notice provisions.

SUMMARY

The Company and TPP negotiated in good faith from the time pricing was delivered in January 2015 to the time the PPA was executed in August 2015. Extenuating circumstances occurred during the negotiations, namely: 1) a new Schedule 38 tariff was implemented at the approximate time the parties were preparing the PPA for execution, 2) the Company was managing 107 QF pricing requests and negotiations during the negotiation time period (five to ten times the usual amount), and 3) the parties had reached agreement on the material terms of the PPA within six months of the date indicative pricing was provided.

The TPP PPA is compliant with the version of Schedule 38 that was in place at the time negotiations began and up until the PPA was near execution. The new Schedule 38 contemplates extensions of deadlines in the event of extenuating circumstances beyond the Company's control. The Company took actions during this time period to address the extenuating circumstances, including utilizing and training additional personnel. These Company actions mitigated the impact of the extenuating circumstances on the TPP negotiations and result in the Company being well-positioned to manage similar extenuating circumstances should they arise in future QF negotiations. The Company considers the TPP PPA negotiation timeline to be an anomaly due to the timing of the new Schedule 38 and the other extenuating circumstances outlined above. The Company expects current and future QF PPA negotiations to be compliant with timelines in the new Schedule 38. The Company plans to identify extenuating circumstances as early as possible in future negotiations and to timely request extensions of deadlines from the Commission where appropriate.

Given the extenuating circumstances surrounding the TPP PPA negotiations and the plain tariff language that allows extensions of deadlines due to those circumstances, the Company believes a just and reasonable outcome is to approve the TPP PPA as filed in this docket. Had the extenuating circumstances not occurred, the TPP PPA would have been executed sooner and all

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parties would be in the exact same position they will be in if the Commission approves the PPA as filed.

Very Truly Yours,

Jeffrey K. Larsen
Vice President, Regulation
Rocky Mountain Power

Enclosures

Cc: Service List