



Commission's orders. Under the Agreement, Thayn Hydro represents itself to be a qualifying facility, and has provided to the Company its certificate showing its qualifying facility status.

2. Communications regarding this Application should be addressed to:

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3. In Docket No. 15-035-53, *In the Matter of the Application of Rocky Mountain Power for Modification of Contract Term of PURPA Power Purchase Agreements with Qualifying Facilities*, the Commission issued an order January 7, 2016, reducing the contract term for all QF PPAs, including small QFs, from 20 years to not to exceed fifteen years ("PPA Term Order").<sup>1</sup> The Commission found that the PPA Term Order generally applied to a QF that had not executed a PPA with PacifiCorp as of

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<sup>1</sup> Order; Docket No. 15-035-53, p. 21.

January 7, 2016 (the date the PPA Term Order was issued).<sup>2</sup> The Commission further found that if a PPA had not been executed as of the date the PPA Term Order was issued, but the counterparty nevertheless believed that it possessed a legally enforceable obligation as of the date of the PPA Term Order that entitled it to a 20-year contract term, the party could submit the circumstances for Commission review.

4. The TH PPA has been finalized, with the exception of the term and the pricing. With respect to the pricing, Thayn Hydro claims that it is entitled to the pricing in effect prior to the Commission's order approving new Schedule 37 pricing, issued and effective September 18, 2015 ("SCH 37 Order"). However, because the TH PPA had not been executed by September 18, 2015, Schedule 37 requires Rocky Mountain Power to price the TH PPA based on the pricing in Schedule 37 that became effective September 18, 2015 instead of the Schedule 37 pricing in effect immediately preceding the September 18, 2015 change, which results in lower payments to Thayn Hydro.

5. Thayn Hydro had previously entered into a 20 year PPA that was set to expire December 31, 2015. Thayn Hydro initiated its pricing request to execute a new PPA to replace the expiring PPA two months prior to the date the Commission issued its SCH 37 Order. Shortly thereafter, on July 21, 2015, Thayn Hydro requested the Company review the insurance requirements in the draft PPA to determine if they could be lowered. Prior to the issuance of the SCH 37 Order, the parties had agreed to all terms of the new PPA with the exception of insurance requirements, and the parties were working to resolve the insurance issue when the Commission issued its SCH 37 Order. Thayn Hydro signed its first 20 year PPA in 1993 for the sale of energy to the Company

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<sup>2</sup>*Id.*

starting in 1996. The Company's standard minimum insurance requirements have increased since that time, and the new amounts resulted in additional negotiations between the parties.

6. The parties eventually resolved the insurance issue on October 1, 2015. The parties agree that a resolution to the insurance issue could have been reached prior to the issuance of the SCH 37 Order had the parties been aware of the date on which the SCH 37 Order was to be issued. Thayn Hydro asserts that it is entitled to the pricing that was in place prior to the date the SCH 37 Order was issued because (1) the PPA was materially complete and negotiated with the exception of the insurance issue and (2) Thayn Hydro sent an email to the Company on July 22, 2015 committing to sell its output at the Schedule 37 rates in effect at that time. However, the Company notes that both the draft PPA that was delivered to Thayn Hydro as well as the language in Schedule 37 clearly state that PPAs and the pricing contained therein are not final until they are executed.

7. Typically, the Company would not seek approval for small QF PPAs executed under Schedule 37, such as this one. However, the facts of this case warrant the Commission to determine the pricing, particularly since the Commission requested that parties bring these types of issues before the Commission with respect to the contract term and the timing of its PPA Term Order. Thayn Hydro believes the facts support a finding that pricing of the TH PPA should be calculated based on the Schedule 37 pricing in place immediately prior to the date of the SCH 37 Order because all material terms with the exception of the insurance provisions had been negotiated prior to the change,

and the parties would have worked to resolve the insurance provision prior to the SCH 37 Order had they known the date the order was to be issued.

8. The Company's position regarding the pricing is that it must follow the requirements of Schedule 37 unless otherwise ordered by the Commission. Schedule 37 states: "The prices applicable to a Utah Qualifying Facility shall be those in effect at the time a written contract is executed by the parties."<sup>3</sup> Based on this plain language in the tariff, the Company is obligated to execute a contract with only the then-current Schedule 37 rates unless the Commission determines a different avoided cost price is justified under the circumstances. This notwithstanding, because the parties agreed to a final version of the TH PPA just two weeks after the date of the SCH 37 Order, and because the parties had agreed to all of the material terms with the exception of the insurance provisions prior to the date of the SCH 37 Order, the Company would support a finding that it is just and reasonable for Thayn Hydro to receive the Schedule 37 pricing that was in effect immediately prior to the date of the SCH 37 Order.

The Company's position regarding the contract term is that by the time the Commission issued its PPA Term Order earlier this year, the TH PPA was all but complete except for the ongoing dispute of the pricing issue. Therefore, it is just and reasonable for Thayn Hydro to obtain a 20 year contract term.

9. The Agreement provides for the sale to the Company of energy to be generated by Thayn Hydro up to 575 KW, from a hydro-electric facility and located in Green River, Utah (the "Facility"). A copy of the Agreement is attached to this Application as Exhibit A.

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<sup>3</sup> Rocky Mountain Power Electric Service Schedule No. 37, Third Revision of Sheet No. 37.3

10. The prices that would apply for the two different versions of Schedule 37 and for the two different terms are as follows<sup>4</sup>:

	\$/MWh	
	20-Year	15-Year
Pre-September 2015 Pricing	\$54.58	\$51.73
September 2015 Pricing	\$39.46	\$36.01
Difference	\$15.12	\$15.71

11. The Facility is located in Green River, Utah in an area served by Rocky Mountain Power. All interconnection requirements have been met and the Facility is fully integrated with the Rocky Mountain Power system.

12. The Agreement constitutes a “New QF Contract” under the PacifiCorp Interjurisdictional Cost Allocation 2010 Protocol (“Protocol”), previously filed with the Commission pursuant to a stipulation in Docket No. 02-035-04. According to the terms of the Protocol, the costs of the QF provisions would be allocated as a system resource, unless any portion of those costs exceed the cost the Company would have otherwise incurred acquiring comparable resources.

13. The existing QF Power Purchase Agreement that was signed in 1993 (the “Original Agreement”) between PacifiCorp and Thayn Hydro expired on December 31, 2015. Thayn Hydro represents that its facilities will be ready to sell energy to the Company on or about March 15, 2016.<sup>5</sup> Therefore, the parties desire that the Commission consider this application on an expedited basis.

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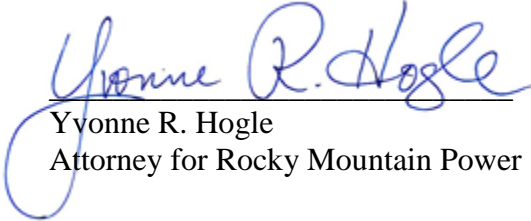
<sup>4</sup> Note the prices are shown as estimated levelized prices. The actual prices to be included in the TH PPA would be the price streams found in the applicable Schedule 37.

<sup>5</sup> The facility is currently not operating while it undergoes maintenance.

WHEREFORE, Rocky Mountain Power respectfully requests that the Commission consider this Application on an expedited basis and issue an order determining the price and contract terms and find the terms and conditions of the Agreement to be just and reasonable and in the public interest.

DATED this 4<sup>th</sup> day of February, 2016.

Respectfully submitted,



Yvonne R. Hogle  
Attorney for Rocky Mountain Power

## CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2016, I caused to be served via electronic mail, a true and correct copy of the foregoing Application of Rocky Mountain

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