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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

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Director

To: The Public Service Commission of Utah

From: The Office of Consumer Services

Michele Beck, Director

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Date: March 3, 2016

Subject: Office of Consumer Services Comments. Docket No. 16-035-04, Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Thayn Hydro LLC

Introduction

On February 4, 2016 Rocky Mountain Power (Company) filed an application with the Utah Public Service Commission (Commission) requesting a determination of the pricing and terms to be used in a Power Purchase Agreement (PPA) which has not yet been executed between PacifiCorp and Thayn Hydro LLC (Thayn). On February 17, 2016, the Commission issued a scheduling order setting a deadline of March 3, 2016 by which parties may submit initial comments in this docket.

The Office of Consumer Services (Office) offers the following comments regarding pricing for a new PPA between the Company and Thayn Hydro.

Background

Thayn operates a 575 kW hydroelectric generating facility located in Green River, Utah as a Qualifying Facility (QF) under the federal Public Utility Regulatory Policies Act of 1978 (PURPA). PURPA requires the Company to sign PPAs with QFs for the purchase of the power they generate at avoided-cost-based prices that are set by the Commission. Thayn is a small QF and the terms in its PPAs are governed by Commission-approved Electric Service Schedule No. 37 (Schedule 37). Thayn began selling power to the Company in 1996 under a 20-year PPA.¹ This PPA expired on December 31, 2015.

Thayn initiated discussions with the Company on a PPA renewal on July 7, 2015.² On July 22, 2015, Thayn emailed the Company committing to a 20-year PPA based on the Schedule

¹ From 1992 to 1995, Thayn sold power to the Company under 1-year contracts. See Informal Complaint Number 5838, Thayn Hydro LLC against Rocky Mountain Power, submitted to the Utah Division of Public Utilities on November 27, 2015.

² Ibid – Informal Complaint Number 5838.

37 rates in effect at the time.³ On August 4, 2015, Thayn emailed the Company questioning whether the increase of the umbrella insurance coverage to \$5 million from \$2 million in the existing PPA was necessary.⁴ On September 18, 2015, the Commission approved new Schedule 37 rates in Docket No. 15-035-T06. Thayn filed an Informal Complaint with the Division of Public Utilities against the Company on November 27, 2015 concerning the PPA renewal. Due to disagreement on the terms, Thayn and the Company have not yet executed a new PPA and the Company has not purchased power from the Thayn QF since December 31, 2015⁵ when the old PPA expired.

The question before the Commission in this proceeding is which Schedule 37 prices should Thayn's renewal PPA be based on - the prices in effect before the September 18, 2015 Order or the prices in effect after the Order?

Comments on Thayn PPA Pricing

The Schedule 37 Tariff on Sheet 37.3 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." This pricing requirement is very clear. Furthermore, no party has submitted a specific request to the Commission asking that this requirement be waived nor identifying specific language from a tariff, rule or statute allowing for the waiver of this requirement.

In addition, the facts of this case indicate that all material terms of the PPA were not settled at the time of Thayn's "commitment" to pre-September 18 pricing. Thayn requested in its July 22, 2015 email to lock in then-current Schedule 37 prices but then later on August 4, 2015 wanted to negotiate more favorable insurance terms for the PPA. According to the August 4, 2015 email from Thayn to the Company, these insurance terms were very material, thus the need for further negotiation.⁶ The Office questions whether it is just and reasonable for a QF to lock down terms that are favorable to it while at the same time continue to negotiate terms that are not favorable. A waiver of the executed contract requirement found on Tariff Sheet 37.3 would be inappropriate in this circumstance.

In the event that the Commission allows a renewal PPA for Thayn to use pre-September 18, 2015 prices, then the Office submits that the PPA should include the original \$5 million insurance coverage requested by the Company. It appears that Thayn may agree to this condition since the Company has stated: "Thayn Hydro represents that had it known the SCH 37 Order was imminent, it would have executed the PPA prior to the SCH 37 Order with the insurance provisions requested by the Company."⁷

³ Ibid.

⁴ Ibid. See DPU 1.2 & DPU 1.4 including Attachments DPU 1.2 & DPU 1.4 from the Company's responses to DPU discovery requests in Informal Complaint 5838.

⁵ Company's response to discovery request OCS 1.2 in Docket No. 16-035-04, February 19, 2016. In its response to OCS 1.2, the Company also indicated that the Thayn facility is currently not in operation due to scheduled maintenance on the dam behind the facility.

⁶ See Informal Complaint 5838, Company response DPU 1.4 and Attachment DPU 1.4.

⁷ Company's response to OCS DR 1.4.

Recommendation

The Office asserts that PPAs under Schedule 37 must follow the requirements of the tariff; and therefore, PPAs must include those prices in effect at the time a written contract is executed.

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