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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF: PACIFICORP D/B/A ROCKY MOUNTAIN POWER'S REQUEST FOR A DECLARATORY RULING REGARDING ALLOCATION OF INTERCONNECTION COSTS UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT	DOCKET NO. 17-035-25 **COMMMENTS OF THE UTAH DIVISION OF PUBLIC UTILITIES**

Pursuant to Utah Admin. Code r.746-100 the Utah Division of Public Utilities ("Division") files these Comments on Rocky Mountain Power's Request for a Declaratory Ruling.

INTRODUCTION

Rocky Mountain Power seeks declaratory ruling under Utah Code Ann. § 63G-4-503 and Utah Admin Code R746-101. Utah Code Ann. §63G-4-503 states in relevant part that "[a]ny person may file a request… that the agency issue a declaratory order determining the applicability of a statute, rule or order within the primary jurisdiction of the agency…" The Company is seeking an order that clarifies that a Qualifying Small Power Production Facility

(QF) must pay for all costs associated with firm or Network Resource Interconnection Service (NR Service) level interconnection because the Company is bound by the Public Utility Regulatory Procedures Act (PURPA) and Federal Energy Regulatory Commission's (FERC's) interpretation thereof to require purchase on a firm basis.

The Division recommends that the Commission issue guidance, whether as a declaratory order in this docket, or through an alternative procedure such as an adjudicative proceeding, rulemaking, or tariff docket confirming its longstanding requirement that QF Power Purchase Agreements (PPAs) retain the rate payer neutrality standard. It would be administratively efficient to provide guidance as to the application of the interconnection costs so that prospective QFs have clarity in planning projects. The costs of all transmission upgrades required to interconnect a QF should be borne by the QF as part of the interconnection costs assigned to it. The utility's customers should not have to pay for large capital investments to facilitate a QF's meaningful access to the utility's system. Moreover, the Commission should provide further guidance that the pricing given to QFs must be calculated in light of the type of interconnection chosen by the QF, if such a choice is permitted under PURPA.

While a declaratory order may be appropriate in this matter, it may be prudent to expand the scope. The Commission has a variety of options regarding treatment of the underlying subject of this request, including "declaring the applicability of the statute, rule, or order in question to the specified circumstances" and "setting the matter for adjudicative proceedings."[1] Likewise, a rulemaking proceeding could also be appropriate, offering the Commission procedural flexibility that may be beneficial. The issue at hand is a complex issue of interplay

[1] Utah Code Ann. §63G-4-503

between state and federal jurisdiction and it may be reasonable to set the matter for an adjudicative proceeding such as a tariff revision to Schedule No. 38 or rulemaking to more clearly address the matter and provide clear guidance in Schedule No. 38 for future QFs.

DISCUSSION

To better explain the potential scenarios leading to the Company's request in this docket it is important to first recognize the set of constraints that are intended to ensure that purchasing utilities do not discriminate against QFs. FERC has interpreted PURPA in the following ways. The QF's obligation is to deliver the energy to the point of interconnection or point of delivery. After the point of interconnection the energy becomes the responsibility of the purchasing utility. Additionally the purchasing utility is required to purchase all energy delivered to the point of interconnection. The purchasing utility is then obligated to obtain transmission service to deliver the QF energy from the interconnection point to load. Moreover the purchasing utility may not limit the purchases from the QF based on transmission constraints between the point of interconnection and the load. The purchasing utility is a merchant on the transmission system for purposes of transporting the energy.

Therefore if there is a transmission constraint that cannot be resolved by the purchasing utility reducing its own use of the transmission system and/or all capacity is already contracted for NR Service the only option for the purchasing utility is to construct new transmission facilities. And those new facilities may offer no benefit to customers because existing facilities already serve the load. Yet the purchasing utility is bound to both purchase all energy and provide transmission service for it.

FERC requires the owner of transmission facilities to offer the capacity on a nondiscriminatory basis. The transmission capacity is contracted for in one of two ways; NR Service that is first priority and may not be curtailed, with the exception of system emergencies, or Energy Resource Interconnection Service (ER Service) that is secondary in priority and available only to the extent that the capacity is not fully contracted for or the NR Service contracts are not fully utilizing their contracted capacity.

In the context where the incumbent purchasing utility is utilizing the transmission facility to transport its own energy to a load, the combination of rules works for its intended purpose to enforce the must buy requirement. A simple hypothetical is useful to help explain. If an incumbent utility has 500MW of generation, 500MW of transmission, and 500MW of load, the transmission may be fully subscribed. When an 80MW QF seeks interconnection on the same transmission line, the utility would calculate the value of reducing generation and that offset would factor into the avoided cost paid to the QF. The QF would utilize the 80MW of transmission being offset and customers would remain neutral to the transaction.

The Division understands that, in a very simplified sense, the Company seems to be requesting clarification of the above example with a slight change in facts. In the same hypothetical, if the Company owns 500MW of transmission, but a 3rd party generator or group of generators have purchased the rights to 450MW of NR Service rights, the result is that only 50MW of NR Service capacity is available on the transmission system. Because the Company is required to purchase all energy on a firm basis as delivered and it cannot purchase NR transmission to load because insufficient NR Service capacity is available, the Company would then be required to construct new transmission facilities to interconnect the QF for NR Service. Under current FERC precedent the Company may not require the QF to curtail generation, nor may the Company force other NR Service contract holders to curtail use. In essence, there does not exist sufficient transmission facilities to which the QF may interconnect.

The result of such an outcome where the Company is forced to construct new transmission at very high costs is not the public interest. If those costs are not borne by the QF, the rate payer indifference standard would not be met. The result is effectively no different from a QF siting in an area entirely without transmission access. While it would seem unreasonable on its face for a QF to construct a generation facility in an area without transmission access, without proper allocation of upgrade costs the same scenario may occur as a result of the application of the constraints.

The Division agrees in principle with the Company that to the extent a QF is entitled to and in fact does assert its right to sell on a firm basis to the Company the QF must pay for all costs associated with the level of interconnection necessary. This is consistent with federal law and within the jurisdiction of the Commission to assign such costs to the QF.[2] The Division does not agree that the only option available for QFs under PURPA is to sell on a firm basis. While this may be misreading the intent of the Company's Request, it must be recognized that QFs retain the option to sell on an as available basis.[3]

What may no longer be available for a QF is the option to sell energy under a long-term contract on a non-firm or Energy Resource Interconnection Service (ER Service) basis. FERC

[2] 18 C.F.R. § 292.306 ("Each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics.")

[3] 18 C.F.R. § 292.304(4)(d)

seemingly has foreclosed such a possibility with its extreme stance on the meaning of the purchase obligation.

> It is undisputed here that Pioneer Wind and PacifiCorp intend to enter into a long-term, fixed rate PPA based on avoided costs calculated *at the time the obligation is incurred*; Pioneer Wind's sale here is not intended to be on an "as available basis." Under these circumstances, the Commission's PURPA regulations only permit PacifiCorp to curtail Pioneer Wind's QF output during system emergencies, pursuant to section 292.307(b) of the Commission's regulations.[4]

The result of this interpretation by FERC severely restricts the ability of the purchasing utility to offer alternative options for QFs where transmission is either constrained or fully subscribed on an NR basis.

PURPA's function of creating a market for QFs has required certain rules to prevent the incumbent utilities from discriminating. While generally the requirements have been effective at doing so, there are certain instances where the requirements intended to provide protection to QFs may in practice work against them. The Company explains one situation in its Request. The administrative and case law interpreting federal laws that developed in part independently have the potential to cause significant harm to customers and/or prevent the development of cost competitive energy resources. A more flexible approach from FERC could alleviate this constraint, however the precedent currently suggests that it may be difficult to fully satisfy both goals.

The Commission may lack jurisdiction over the transmission functions as well as the primary interpretation of PURPA regarding the purchase obligation. The Commission does retain broad authority in making the determination of avoided costs. The Commission may structure

[4] *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61215, 62168, at P10 (underlining emphasis added, italics emphasis in original).

pricing requirements in such a way as to resolve the potential for harm to customers as a result of unnecessary transmission costs being shifted to rate payers. To do so the Commission should clarify that transmission upgrades that would not be required but for the purchase of energy from QFs on a firm basis are necessary to interconnect such QFs and are interconnection costs that must be borne by the QF seeking interconnection. Irrespective of FERC protocols for allocating transmission costs, PURPA ought not to result in ratepayers paying for new, otherwise unnecessary transmission projects. The Commission should further clarify that if the QF voluntarily chooses an alternative pricing to avoid transmission upgrade costs or other constraints and seeks interconnection on an ER basis, the pricing must reflect difference in value as compared to a firm service QF.

PacifiCorp was granted an amendment by FERC to its Network Operating Agreement between PacifiCorp's merchant function and PacifiCorp Energy that may be useful in alleviating at least some of these constraints. In its Order approving the amendment FERC described largely the same issue presented in its Request.[5]

> Specifically, PacifiCorp explains that, because PURPA requires a utility to purchase QF power and make firm transmission arrangements to deliver it even if the QF has chosen to site in a constrained area, but Commission precedent does not allow the designation of a new network resource until sufficient ATC is available, a utility is in the position of having to construct network upgrades to accommodate the PURPA-required QF firm transmission service, even if the utility would not have otherwise constructed those upgrades for economic or reliability reasons.

FERC granted the amendment allowing PacifiCorp to deliver QF power on a firm basis and designate new QFs as network resources even though there may not be available

[5] *PacifiCorp*, 151 FERC ¶ 61170, 62057–58 at P1.

transmission capacity to do so otherwise. The amendment applies to only PacifiCorp's own network rights and requires PacifiCorp to curtail its own NR resources prior to curtailing QF resources. While the Division has not had a full opportunity to review the full workings of the Network Operating Agreement, it would ultimately be a decision on a case by case basis as to whether a QF might be interconnected on an NR basis despite the lack of available transmission capacity. To the extent that a QF may be interconnected on an NR basis as a result of the Network Operator Agreement amendment or other method that will avoid transmission upgrades through a constrained network, only the actual costs to the Company of interconnecting should be assigned QF.

The Division supports the Company's position that transmission upgrades that would otherwise not be necessary but for the obligation to purchase all QF energy and are not avoidable by the Company must be included in the interconnection costs allocated to the QF. Similarly, the costs to the Company to curtail its own generation when possible to alleviate the transmission constraints must be accounted for in the pricing for the QF energy. It is the Division's understanding that the proper calculation of the PDDRR method adopted in Docket No. 12-035-100 accounts for the latter condition.

Timing of the QF pricing is not always aligned with timing of the transmission impact study. This adds further difficulty in accurately assigning costs. Schedule No. 38 involves the negotiation between a QF and Rocky Mountain Power for the purchase of the QF's energy. The interconnection process proceeds on a different track. Part I(11)(b) requires a QF developer to sign a System Impact Study Agreement with PacifiCorp Transmission within 120 of the date of the Commission order on the PPA becoming final.

The timing disparity here may result in identification of transmission constraints and costs that would not have been obvious or identified earlier in the PPA pricing phase. The result may be costs that are not accounted for in the PPA pricing. The Commission should recognize this and require that all additional costs identified be borne by the QF in its interconnection costs so that these costs are not born by customers simply because of the timing of identification. In the alternative, the Commission could require a re-pricing of the PPA if costs significantly vary from those used to calculate the PPA.

The Oregon Public Utility Commission recently addressed the same issues in 2014 as part of its qualifying facility contracting and pricing investigation. [6]

> [W]e first conclude that our adopted method of determining avoided cost prices based on avoided proxy resources reflects full avoided costs. Second, we conclude that any third-party transmission costs incurred by a utility to move QF output from the point of delivery to load would be costs that are not included in the calculation of avoided cost rates in standard contracts, and therefore are costs that are additional to avoided costs. Third, we conclude that any costs imposed on a utility that are above the utility's avoided costs must be assigned to the QF in order to comport with PURPA avoided cost principles.

The Oregon PUC's order is persuasive in reasoning and should be similarly applied in Utah in whatever proceeding the Commission chooses to address this issue.

CONCLUSION

The recent FERC orders regarding the purchase obligation requiring NR Service have significantly limited the options for purchasing utilities to avoid transmission upgrades that are

[6] *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM1610, Order No. 14050, (Or.P.U.C. 2014).

not otherwise necessary. To protect rate payers from uneconomic outcomes and to ensure that the rate payer neutrality standard is maintained the Commission should clarify in this or another appropriate proceeding that all costs imposed on the purchasing utility that would not be incurred otherwise must be assigned to the QF that causes them. Those should include transmission upgrade costs if necessary to meet FERC requirements. And to the extent that transmission or other facility upgrade costs are not included in initial pricing, but are later discovered in the transmission studies, the PPA pricing must be recalculated to include those costs.

Submitted this 1st day of June, 2017.

/s/ Justin C. Jetter

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