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## ACTION REQUEST RESPONSE

To: Public Service Commission of Utah

From: Utah Division of Public Utilities  
Chris Parker, Director  
Artie Powell, Manager  
Charles Peterson, Technical Consultant

Date: October 23, 2017

Re: Docket No. 17-035-52. Formal Complaint of Jason Ellsworth/Clenera, LLC against Rocky Mountain Power. The Complaint is Related to Schedule 38, Sections I.B.9 and I.B.10.e.

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### RECOMMENDATION (Approve Suspension of Schedule 38 Timelines)

The Division of Public Utilities (“Division”) recommends that the Public Service Commission of Utah (“Commission”) approve a suspension of the Schedule 38 timelines until such time as PacifiCorp Transmission (PacTran) provides Clenera, LLC (Clenera) with the interconnection studies Clenera has applied for. During the suspension period, the Division recommends that the indicative prices provided to Clenera remain in effect and provide the basis for any power purchase agreement negotiations once the Schedule 38 timeline “clock” resumes.

### ISSUE

In a letter dated September 22, 2017, Jason Ellsworth, president of Clenera, LLC (Clenera) filed a complaint with the Commission in behalf of Clenera, which is managing the development of up to fourteen Qualifying Facility (QF) projects located in Tooele and Utah counties in behalf of another entity known as 1.21 GW, LLC. The complaint alleges that the projects Clenera is

managing are threatened with removal from the pricing queue for failure to meet the timelines set forth in Rocky Mountain Power's (Company)<sup>1</sup> Schedule 38. Clenera claims that the cause of this failure is solely due to the actions of PacTran and the Company, and that therefore Clenera should be held harmless in this situation. On September 25, 2017, the Commission issued an Action Request to the Division with a response date set for October 23, 2017. On September 29, 2017, the Commission issued an Amended Action Request with the clarification that the Division is to make a recommendation to the Commission regarding this matter. The response date remained October 23, 2017. This memorandum represents the Division's response to the Commission's Amended Action Request.

## **DISCUSSION**

In investigating this matter the Division has asked two rounds of data requests to both the Company and Clenera and had telephone conversations with both parties to clarify some of the information. The data requests asked both Clenera and the Company to provide timelines of the relevant events in this matter and to supply supporting documents. While there appears to be some difference in the timelines and other details, there appears to be basic agreement on the key dates and general agreement on the essential outline of the events.

On February 15, 2017, Interconnection Feasibility Study agreements were executed between PacTran and Clenera. Clenera apparently paid the upfront fees to have these studies performed. PacifiCorp's Open Access Transmission Tariff (OATT) specifies that "Transmission Provider [i.e. PacTran] shall use Reasonable Efforts to complete the Interconnection Feasibility Study no later than forty-five (45) Calendar Days after Transmission Provider receives the fully executed Interconnection Feasibility Study Agreement."<sup>2</sup> Based upon e-mails with subsequent dates there appears to have been additional information that PacTran needed from Clenera, but this issue appears to have been cleared up by around March 1, 2017. The Division believes that if the 45 day study period had been adhered to, then these interconnection studies would have been completed by approximately April 15, 2017. Clenera claims that at the time it entered into these

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<sup>1</sup> The Division will refer to Rocky Mountain Power and PacifiCorp energy supply management (ESM) collectively as the "Company" for purposes of this memorandum.

<sup>2</sup> PacifiCorp OATT, page 153, paragraph 41.3.

interconnection agreements, it understood that PacTran would perform the studies within the 45 day period set forth in its OATT.

Clenera says that it sent a request for indicative pricing on November 16, 2016 but that it did not receive indicative pricing until January 17, 2017, claiming that the Company was more than a month late pursuant to the Schedule 38 timeline.<sup>3</sup> The Company confirms that it provided indicative pricing for Clenera's "Faraday" projects on January 17, 2017, but claims that it received the indicative pricing request from Clenera on December 14, 2016. The Company indicates it received an indicative pricing request for Clenera's "Goshen Valley" projects on November 15, 2016, but on February 1, 2017, Clenera changed the interconnection point for these projects. The Company says it provided indicative pricing on the Goshen Valley projects on March 16, 2017.

Pursuant to Schedule 38 I.B.5, after a developer receives indicative pricing, the developer has 60 days to request a Proposed Purchase Power Agreement from the Company. Clenera indicates that it requested a proposed purchase power agreement on March 13, 2017. The Company agrees that Clenera requested a proposed purchase power agreement on March 13, 2017 for its "Faraday" projects, but it says that a power purchase agreement for the "Goshen Valley" projects was not requested until May 12, 2017. Beginning about mid-April for the "Faraday" projects and mid-May for the "Goshen Valley" projects, both Clenera and the Company agree that the Company began to request completed interconnection studies from Clenera so that the Company could confirm that the proposed online dates for the projects were feasible. The Company refused to send proposed purchase power agreements to Clenera when Clenera could not provide the interconnection studies, apparently citing Section 38, I.B.5, which provides that "In connection with its request for a purchase power agreement, the Developer must provide the Company with the following additional project information...f) evidence that the necessary interconnection studies are underway and that the necessary interconnection arrangements can timely be completed in accordance with Part II sufficient for the project to reach energization by the

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<sup>3</sup> See Schedule 38, Section I.B.4.

proposed on-line date....” That is, the Company had concerns that the on-line date could not be met and wanted assurance from the PacTran studies that the on-line date was feasible.

According to the Division’s understanding, the Company has not typically requested complete interconnection studies before providing a proposed purchase power agreement, or even before signing such an agreement. However, the Division cannot say that the Company violates Schedule 38 by asking for the interconnection study up front, if it has reasonable grounds for doing so. That there might be a genuine concern that the projects could not make their proposed on-line dates due to delays in interconnection studies and, perhaps, the subsequent construction of the interconnection facilities themselves, could be reasonable.

In the latter part of March 2017, PacTran contacted Clenera saying that it had determined that Clenera’s projects would impact a larger area and that this would push back the date for completion of the interconnection studies. On March 27, 2017, PacTran confirmed that it would be early 2018 before the interconnection studies would be done. Later PacTran cited the large number of interconnection study requests that it had as an additional reason for the delay in performing Clenera’s interconnection studies.<sup>4</sup>

Subsequent to the request for purchase power agreements, Clenera and the Company had various meetings and communications. Initially the Company offered to agree to a day-for-day extension to the Schedule 38 timelines while Clenera waited for PacTran to perform on its interconnection studies. However, in early June at an informal discussion with representatives of the Division and Office of Consumer Services, the Company claims it understood that the Division and Office wanted it to move developers out of the pricing queue for lack of meeting the Schedule 38 timelines even when the delays were caused solely by PacTran. This conclusion by the Company is the result of a misunderstanding.<sup>5</sup> In any event, the Company informed Clenera that it would lose its position in the pricing queue for failing to meet the Schedule 38 timelines. After some

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<sup>4</sup> It’s an open question whether PacifiCorp is using “Reasonable Efforts” in managing its interconnection study queue when it has become a year behind schedule.

<sup>5</sup> The discussion between the Company, the Division, and the Office was so informal that the participants from the Division and Office have no recollection of the event.

further communications between the Company and Clenera over the next three months, Clenera filed its complaint with the Commission.

Based upon the foregoing, the Division believes that negotiations and breakdown of the Schedule 38 timelines occurred at the point where Clenera requested a proposed purchase power agreement from the Company. Further, the Division believes the evidence shows that Clenera was attempting to move its projects along within the framework of Schedule 38 in a reasonable fashion relying on PacTran to perform its studies within a reasonable timeframe that would at least approximate the study time endorsed in the OATT, i.e. 45 days. The Division believes that the situation described here where the interconnections studies may be delayed a year, and perhaps more, constitutes an extenuating circumstance contemplated in paragraph four of the Schedule 38 Preface.

As an additional note, Clenera has expressed doubt that it will be able to meet the on-line dates originally proposed for its projects when it asked for indicative pricing, if PacTran is not able to complete its interconnection studies any sooner than it has currently indicated (i.e. about February 2018). Continued support from the Division for the indicative pricing that Clenera has received from the Company may become problematic if the on-line date much exceeds what was assumed when indicative pricing was provided, regardless of the cause. The Division is tasked with looking out for the broader public interest, which may come into play if the indicative prices become too out of date and detached from actual on-line dates of the Clenera projects. Schedule 38 section I.B.10.d specifies that repricing is required if the on-line dates become more than three months outside the original dates. The parties may want to discuss this question with the Division at such time as negotiations for power purchase agreements commence if this might become an issue.<sup>6</sup>

## **CONCLUSION and RECOMMENDATION**

The Division concludes that the delays in meeting the Schedule 38 timelines are due to PacTran, which, of course, is part of PacifiCorp. The Division recommends that the Commission approve that the Schedule 38 timelines be put on hold for the Clenera projects until PacTran provides the

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<sup>6</sup> The Office of Consumer Services may also want to be involved in any such discussions.

interconnection studies that it contracted in February 2017 to perform at which time the Schedule 38 “clock” will resume at the point where Clenera requests a proposed purchase power agreement from the Company. At that point Clenera and the Company will have 150 days to execute an agreement pursuant to I.B.10.e. of Schedule 38. Consequently, the Division recommends that the indicative prices that Clenera has received for its projects remain valid through the time that Clenera has the opportunity to negotiate and execute a purchase power agreement pursuant to Schedule 38 as modified by the Division’s recommendations in this matter.

CC: Jana Saba, RMP  
Michele Beck, OCS