

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Rocky Mountain Power for an Order Approving an Amendment to its Power Purchase Agreement with Sunnyside Cogeneration Associates	)	<u>DOCKET NO. 07-035-99</u>
	)	<u>REPORT AND ORDER ON</u>
	)	<u>APPLICATION</u>
	)	
	)	
In the Matter of the Application of PacifiCorp for an Order Approving an Amendment to its Power Purchase Agreement with Sunnyside Cogeneration Associates	)	<u>DOCKET NO. 05-035-46</u>
	)	<u>ORDER DISMISSING APPLICATION</u>
	)	
	)	
In the Matter of the Petition of Sunnyside Cogeneration Associates for Enforcement of Contract Provisions	)	<u>DOCKET NO. 96-2018-01</u>
	)	<u>ORDER DISMISSING PETITION</u>

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ISSUED: April 3, 2008

SYNOPSIS

The Commission approves the Fourth Amendment to the Power Purchase Agreement between Sunnyside Cogeneration Associates (“SCA”) and PacifiCorp, but not for rate-making purposes. As requested by PacifiCorp and SCA, the Commission also dismisses two related actions pending before the Commission.

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By the Commission:

**I. PROCEDURAL HISTORY**

By Application filed December 14, 2007, Pacificorp, d/b/a Rocky Mountain Power, requests the Commission approve the December 12, 2007, Fourth Amendment to the Power Purchase Agreement (“Fourth Amendment”) between PacifiCorp and Sunnyside Cogeneration Associates (“SCA”) (hereinafter referred to jointly with PacifiCorp as the “Parties”). The Fourth Amendment provides a new method by which the Parties will determine

the avoided energy costs to be paid to SCA by PacifiCorp. This new method is intended to replace the measured realized system marginal energy cost method (hereinafter referred to as the Realized Marginal Energy Cost or “RMEC”) used by the Parties since 1987 pursuant to a Power Purchase Agreement and three amendments thereto (hereinafter referred to jointly as the “PPA”).

The Application notes the Fourth Amendment is intended to replace and supersede an amendment, also entitled the Fourth Amendment, filed by PacifiCorp in June 2005 in Docket No. 05-035-46. Pursuant to multiple stipulations entered into between the Parties, proceedings in that docket were stayed pending resolution of certain civil litigation. The Application states said litigation is now concluded such that PacifiCorp, in recognition that a new Fourth Amendment has now been filed for approval in the instant docket, seeks to withdraw its 2005 Application giving rise to Docket No. 05-035-46.

Finally, the Application notes that, due to disagreement regarding PacifiCorp’s calculation of payments due to SCA under the current RMEC method, in 1996 SCA filed a Petition for Enforcement of Contract Provisions (“Petition”). This filing was assigned Docket No. 96-2018-01. Said docket remains open. PacifiCorp states the Parties’ intend the Fourth Amendment to resolve this outstanding dispute and requests dismissal with prejudice of said Petition after the Effective Date of the Fourth Amendment.

On December 24, 2007, the Commission requested the Division of Public Utilities (“Division”) provide the Commission the Division’s recommendations relating to the Application and Fourth Amendment.

On February 22, 2008, the Division filed a memorandum detailing its analysis of the Application and Fourth Amendment and recommending approval of the Fourth Amendment conditioned upon PacifiCorp providing the Division an analysis of the effect approval of the Fourth Amendment will have on the revenue requirement in PacifiCorp's current rate case, Docket No. 07-035-93. The Division also recommended Section 2.1 of the Fourth Amendment be changed or other clarification provided to ensure that any contract extensions subsequently entered into be approved by the Commission. Finally, the Division recommended closing Docket No. 96-2018-01.

On March 11, 2008, the Commission issued a Notice of Hearing setting hearing on this matter to convene before the Administrative Law Judge ("ALJ") on March 18, 2008.

Hearing on the Application was held before the Administrative Law Judge on March 18, 2008. Daniel Solander appeared on behalf of PacifiCorp and Paul Clements testified for PacifiCorp. Brian W. Burnett appeared on behalf of SCA. Kevin Higgins testified for SCA. Michael Ginsberg, Assistant Attorney General, State of Utah, appeared on behalf of the Division with Charles Peterson testifying for the Division. Paul Proctor, Assistant Attorney General, State of Utah, appeared on behalf of the Committee of Consumer Services ("Committee"). Those testifying presented evidence in support of the Application and the Fourth Amendment. No one appeared in opposition to Commission approval of the Fourth Amendment.

At hearing, the Committee objected that its attorney had not personally received a copy of the Commission's March 11, 2008, Notice of Hearing. The Committee admitted that various Committee staff members had received said Notice. The Committee requested

additional time to confer with counsel and agreed to provide any Committee position or analysis regarding the Fourth Amendment to the Commission not later than close of business on March 21, 2008. However, following adjournment of hearing on this matter, counsel for the Committee informed the ALJ that he had conferred with his client and that the Committee would not be filing any additional materials in this matter.

## **II. DISCUSSION, FINDINGS, AND CONCLUSIONS**

The SCA project is a waste-coal fired electric generating power plant which is a qualifying facility under Federal Energy Regulatory Commission rules. On January 30, 1987, SCA entered into a power purchase agreement with PacifiCorp whereby SCA agreed to generate and PacifiCorp is required to purchase up to 53 megawatts of capacity and energy from SCA's generating facility. The current 30-year term of the PPA began in 1993.

Under Section 3 of the PPA, the RMEC method calculates the price SCA is paid for energy sold to PacifiCorp by measuring the hourly value of the energy that PacifiCorp avoids having to generate itself or purchase from others because of the energy the SCA project provides. PacifiCorp calculates its avoided energy costs using a computer program that sorts dispatch data to select the highest variable energy cost on PacifiCorp's system for each hour of a six month period. The average of those hourly energy costs becomes the energy price for SCA during the next six months. The RMEC method and calculation has proven to be a continuing source of controversy between SCA and PacifiCorp; it is this controversy which forms the basis of the dispute currently pending before the Commission in Docket No. 96-2018-01.

Under the Fourth Amendment, the RMEC method would be replaced with a method based on a percentage of the Dow Jones Palo Verde Firm Index (“Palo Verde Index”) for the time period in which the energy is delivered, subject to certain floor and ceiling prices for each year as contained in newly added Appendices L and M, respectively, to the PPA.

Specifically, for all Base Energy and Additional Energy produced in the On-Peak period in each month, PacifiCorp will pay SCA an amount equal to the monthly volume of Base and Additional Energy produced during the On-Peak period multiplied by 85 percent of the simple average for that month of the Palo Verde Index for Firm Daily On-Peak power. This calculation is repeated for the Base and Additional Energy produced in the Off-Peak and Sunday periods. The price paid for each period is constrained by the floor and ceiling prices for the year in which the month occurs, as contained in Appendices L and M. The transmission loss provisions of the PPA are not affected by the Fourth Amendment; Base Energy will continue to be increased by 5% to reflect transmission losses.

PacifiCorp argues approval of the Fourth Amendment is in the public interest because the Fourth Amendment utilizes easily-verifiable, published information to calculate PacifiCorp’s marginal energy costs rather than depending on the RMEC, a complex modeling exercise that has resulted in disputes between the Parties. Approval of the Fourth Amendment will also resolve a long-standing controversy between the Parties that has been the subject of Docket No. 96-2018-01 which has remained open for the past ten years. According to PacifiCorp, the Fourth Amendment will be easier to administer and will avoid the volatile swings in the energy price associated with the RMEC method by providing a price floor and

ceiling. Finally, PacifiCorp notes the Fourth Amendment pricing method would have provided benefits to customers over the period in which the RMEC has been used and that preliminary analysis indicates the Fourth Amendment will decrease Utah's allocated share of the total cost of the PPA by \$1.57 million for the test period ending December 2008.

SCA testified it entered into and supports the Fourth Amendment because the new energy pricing mechanism is more understandable, transparent and verifiable than the current RMEC method. SCA echoes concerns raised by PacifiCorp that the Commission not order any changes to the text of the Fourth Amendment in response to the Division's recommendation regarding a requirement that any extension of the PPA be submitted to the Commission for approval. PacifiCorp and SCA agree any future extension will be submitted to the Commission for approval and request that any such requirement be included in the Commission order approving the Fourth Amendment.

The Division believes the price ceiling is a positive feature of the Fourth Amendment that protects ratepayers from increasing prices. A comparison of the ceiling prices with PacifiCorp's forward price curves indicates the ceiling prices are lower than PacifiCorp's forecast prices for the Palo Verde Index. Thus, by this measure the Fourth Amendment ceiling prices benefit ratepayers. The potential downside of the Fourth Amendment is the price floor since if the Palo Verde Index prices were to consistently fall below the price floor then ratepayers would be worse off than if there were no floor. However, in mitigation of this concern, the Division notes that if electricity prices remained below the price floor they would nonetheless be much lower than they are today.

Given PacifiCorp's response to a specific data request, as well as its testimony at hearing, the Division now recommends approval of the Fourth Amendment without condition. The Division continues to recommend the Commission ensure any future extensions of the PPA be submitted to the Commission for approval, but agrees the Commission may include such a requirement in its order approving the Fourth Amendment instead of requiring changes to the text of the Fourth Amendment. Finally, the Division continues to recommend closure of Docket No. 96-2018-01.

At hearing, the Parties agreed the pricing method contained in the Fourth Amendment is unique to the contract formed by the PPA and the Fourth Amendment and is proposed for use by the Parties only in relation to the calculation of avoided cost for the SCA project. The Parties do not advocate adoption of the Fourth Amendment method as the Commission-approved method of calculating avoided cost in all cases. The Division similarly views the Fourth Amendment's pricing method as unique to the circumstances confronting the Parties in this docket.

Having reviewed the evidence and testimony presented in this matter, the Administrative Law Judge concurs with the Division's recommendation and concludes the Fourth Amendment is a reasonable commercial agreement relative to the terms and conditions by which SCA provides energy to Pacificorp. The Administrative Law Judge concludes the Fourth Amendment may be approved relative to its use between Pacificorp and SCA, but recommends that it have no affect, use or precedent for ratemaking purposes. In addition, the Fourth Amendment and the order issued in this docket should not be viewed as a Commission resolution

of the contentious issues of how potential avoided line losses are to be calculated, how they may be reflected in contract terms between PacifiCorp and a qualifying facility, nor whether line-loss adjustments are appropriate for non-firm qualifying facilities.

The ALJ therefore recommends the Commission approve the Fourth Amendment. Furthermore, the ALJ recommends the Commission by this Order require the Parties to file for approval by the Commission any future extension of the PPA. Finally, based upon the Commission's approval of the Fourth Amendment and the request of the Parties, the ALJ recommends dismissal of Docket Nos. 05-035-46 and 96-2018-01.

Wherefore, based on the foregoing information, and for good cause appearing, the Administrative Law Judge, having been fully advised in the matter, now enters the following proposed:

### **III. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- The Fourth Amendment to the Power Purchase Agreement between Sunnyside Cogeneration Associates and PacifiCorp is approved.
- PacifiCorp will file for approval by the Commission any future extension of the Purchase Power Agreement between Sunnyside Cogeneration Associates and PacifiCorp.
- The Application filed in Docket No. 05-035-46 is dismissed.
- The Petition filed in Docket No. 96-2018-01 is dismissed.

This Order constitutes a final order of the Commission with respect to those issues decided herein. Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency



review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

Dated at Salt Lake City, Utah, this 3<sup>rd</sup> day of April, 2008.

/s/ Steven F. Goodwill  
Administrative Law Judge

Approved and Confirmed this 3<sup>rd</sup> day of April, 2008, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#56648 Docket No. 07-035-99  
G#56649 Docket No. 05-035-46  
G#56650 Docket No. 96-2018-01