

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF PACIFICORP’S ) CASE NO. PAC-E-20-09**  
**APPLICATION FOR APPROVAL OF ITS )**  
**POWER PURCHASE AGREEMENT WITH )**  
**COMMERCIAL ENERGY MANAGEMENT, ) ORDER NO. 34792**  
**INC. )**

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On June 8, 2020, Rocky Mountain Power a division of PacifiCorp (“Rocky Mountain Power” or “Company”) filed an Application requesting the Commission approve an amendment to a Power Purchase Agreement (“PPA”) between the Company and Commercial Energy Management, Inc. (“CEM”) (collectively, “Amended PPA”).

On July 9, 2020, the Commission issued a Notice of Application and Notice of Modified Procedure. Order No. 34720. Commission Staff filed comments. No other party or person submitted comments on the case. Having reviewed the record, we approve the Amended PPA.

**BACKGROUND**

CEM owns and operates a 900-kW hydro-electric qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). PURPA requires electric utilities to purchase the energy provided by a QF at the utility’s avoided cost rates, which are the rates the utility would pay for the energy but for the purchase from the QF. 16 U.S.C. § 824a-3. In Idaho, hydro QFs up to 10 aMW are entitled to twenty-year contracts and published avoided cost rates. *See* Order No. 32697. Published avoided cost rates are determined using the surrogate avoided resource (“SAR”) method, which calculates the costs to build and operate a hypothetical combined cycle combustion turbine natural gas plant. *See id.* at 7-8.

QFs are compensated for the capacity they provide to the utility if the utility has a need for capacity. *Id.* at 21. In Idaho, each electric utility’s need for capacity is determined biennially following Commission acknowledgment of the utility’s Integrated Resource Plan (“IRP”). Order No. 33917. The utility’s first capacity deficit date is established using the utility’s load and resource balance and load growth forecasts. *Id.* For individual QFs, the first capacity deficit date applicable to their facility is the first capacity deficit date in effect at the time the QF establishes a

legally enforceable obligation with the utility or when a contract between the QF and utility is executed. Order No. 33357 at 25.

CEM and Rocky Mountain Power entered a PPA on November 21, 1991, which expired May 31, 2020. CEM and the Company are in the process of negotiating a replacement contract for the sale of energy and capacity and a separate standalone contract that addresses interconnection requirements. The Amended PPA contains updated pricing for energy sales during the extended term, which will expire March 1, 2021, or upon the effective date of a replacement PPA, whichever is sooner. The total nameplate capacity of the QF remains unchanged at 900 kW. The Amended PPA was signed by both parties as of March 20, 2020. The Application was submitted by the Company on June 8, 2020. The Application requests the updated pricing be retroactively applied to June 1, 2020.

#### **STAFF COMMENTS**

Staff recommends approval of the Amended PPA. Staff notes that the Application states the delay in submitting the Amended PPA was no fault of the QF. Staff further recommends the Commission require the Company to file the replacement contract three months before the expiration of the Amended PPA in order to allow Staff sufficient time to review the replacement contract before its effective date. Staff states the replacement PPA needs to include 90/110 contract provisions. Lastly, Staff recommends the Company initiate a case to establish an as-available rate for QFs.

The Amended PPA includes capacity payments for its limited duration, which Staff thinks is appropriate even though the QF wasn't receiving capacity payments at the end of its original PPA because the Company has added significant resources since the original PPA was signed in 1991. Staff believes the retroactive payment of capacity is appropriate, even though the QF has been operating without an effective contract, because of the Company's delay in filing the Amended PPA.

The Amended PPA does not include 90/110 provisions because the original PPA was entered into before the 90/110 rule was implemented. Because of the unique circumstances of the delay and the limited duration, Staff believes it is appropriate for the QF to operate without a 90/110 provision under the Amended PPA, but Staff recommends inclusion of 90/110 provisions in the replacement PPA.

Staff confirmed that the parties used the correct non-seasonal hydro avoided cost rates in the Amended PPA, which were the rates in effect when the Amended PPA was signed by both parties.

### **COMMISSION FINDINGS AND DECISION**

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-501, -502 and -503. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503. In addition, the Commission has authority under PURPA and FERC regulations to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules. The Commission may enter any final order consistent with its authority under Title 61 and PURPA.

Having reviewed the record, we find that it is fair, just, and reasonable to approve the Amended PPA with rates effective June 1, 2020. Approving PPAs between QFs and utilities with retroactive rates is not our preference and we encourage QFs and utilities to take all reasonable measures required to submit proposed PPAs with adequate time for Staff and interested parties to conduct their due diligence on the application and for us to deliberate on the matter and issue an order before the proposed effective date. Because the delay in submitting the Application was due to no fault of the QF, it would be unfair to penalize the QF for allowing the PPA to lapse. If the PPA were to have lapsed without a replacement PPA in place, the QF's eligibility for capacity payments may be affected. *See* Order No. 33357 at 25-26 (stating, "As long as the QF renews its contract and continuously sells power to the utility, the QF is entitled to capacity based on the capacity deficiency date established at the time of its initial contract." *Id.* at 25-26.) We direct the Company to file the replacement PPA, when final, with sufficient time to allow the Commission to process the PPA in the normal course before the proposed effective date.


We also acknowledge that the Amended PPA is for a limited duration and that the need to execute a limited duration contract stems from the legitimate need for the Company to establish updated PURPA contracts that reflect the modern energy market. We anticipate that the replacement contract will contain terms substantially the same as approved terms in similar PPAs.

**ORDER**

IT IS HEREBY ORDERED that the Amended PPA is approved.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 1<sup>st</sup> day of October 2020.

  
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PAUL KJELLANDER, PRESIDENT

  
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KRISTINE RAPER, COMMISSIONER

  
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ERIC ANDERSON, COMMISSIONER

ATTEST:

  
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Jan Noriyuki  
Commission Secretary

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