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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF PACIFICORP'S APPLICATION FOR APPROVAL OR REJECTION OF ITS POWER PURCHASE AGREEMENT WITH COMMERCIAL ENERGY MANAGEMENT, INC.	**CASE NO. PAC-E-20-09** **COMMENTS OF THE COMMISSION STAFF**

STAFF OF the Idaho Public Utilities Commission, by and through its Attorney of record, Edward Jewell, Deputy Attorney General, submits the following comments.

BACKGROUND

On June 8, 2020, Rocky Mountain Power a division of PacifiCorp ("Rocky Mountain Power" or "Company") filed an Application requesting the Commission approve or reject an amendment to a Power Purchase Agreement ("PPA") between the Company and Commercial Energy Management, Inc. ("CEM") ("Amended PPA"). CEM owns and operates a 900 kW hydro-electric qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 (PURPA).

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 long-term replacement contract for the sale of energy and capacity and a separate standalone long-term contract that will address interconnection requirements. The Amended PPA extends the term of the 1991 contract until March 1, 2021, or until a new long-term PPA between the parties is approved, whichever is sooner, and updates pricing for energy sales during the extended term. The total nameplate capacity of the QF remains unchanged at 900 kW.

STAFF ANALYSIS

Staff recommends approval of the Amended PPA between Rocky Mountain Power and CEM. Staff notes that the Amended PPA was signed by both parties as of March 20, 2020, yet the Application was not submitted until June 8, 2020. The Application states, "Due to no fault of the Seller the Company was late filing this Application and respectfully requests if the Commission approves the Amendment the updated pricing for energy sales be applicable retroactively to June 1, 2020 as specified in the terms of the extension." Application at ¶ 10.

Staff would like to ensure sufficient time to review the long-term replacement contract currently being negotiated. Therefore, Staff recommends that the Commission direct the Company to file the long-term replacement PPA three months before the expiration date of the Amended PPA, which is the earlier of (i) the effective date of a new power purchase agreement between PacifiCorp and Seller pertaining to the Facility; or (ii) March 1, 2021. Staff believes the long-term replacement PPA will need to include 90/110 rule contract provisions. Staff also recommends that the Company initiate a case to propose an as-available schedule to QFs who wish to choose as-available avoided cost rates in Idaho.

90/110 Rule and Retroactive Rates

The original 1991 PPA and the Amended PPA do not include 90/110 provisions. The original PPA did not include it because it was signed before the Commission adopted the rule in Order No. 29632.[1] Due to the late filing of the Amended PPA and its limited duration, Staff believes omission of the 90/110 provisions is acceptable in this instance but should not be seen as a departure from the Commission's longstanding 90/110 requirements for published contracts. Staff believes the parties need to include 90/110 provisions in the replacement contract when it is filed with the Commission.

Had the Company submitted the Amended PPA in a timely manner, Staff would have communicated its concern with the parties about the lack of 90/110 provisions in the Amended PPA. The Company states, "Due to a miscommunication within the Company, the regulatory

[1] Order No. 29632 required QFs to provide monthly estimates to be entitled to a published rate contract.

team was not notified promptly of the amendment resulting in a lag in the Application filing date. The communication breakdown has been identified and steps taken to ensure proper filing timelines in the future." Response to Production Request No. 3. Staff understands that communication breakdowns happen, particularly given the current circumstances and disruption posed by the coronavirus. In the interests of reasonableness, fairness, and efficiency, Staff recommends approving the Amended PPA as submitted.

Capacity Payment

QFs only receive compensation for capacity when the utility is capacity deficient, unless they are renewal/extension projects that have been paid for capacity at the end of the original contracts (*see* Order No. 32697), or have contributed to meeting the utility's capacity needs during the original contract terms (*see e.g.,* Case Nos. IPC-E-19-04, IPC-E-19-30, and IPC-E-19-35).

The avoided cost rates contained in the original 1991 contract were determined in Order No. 23155, 23358, and 23429, which were based on the first *energy* deficit year of 1992. A first *capacity* deficiency date was not reflected in these orders, and therefore, Staff does not believe that the project was being paid for capacity at the end of the original contract. However, during the contract term, the Company added significant resources to meet its capacity deficiencies. For example, Lake Side 2 was brought online in 2014 to meet the Company's capacity deficiency identified in its Integrated Resource Plan ("IRP"). *See* Page 9 of Volume I of PacifiCorp's 2011 IRP in Case No. PAC-E-11-10. Therefore, Staff is confident that the project has contributed to meeting the Company's need for capacity during the term of the original 1991 contract and should receive full capacity payment for the entire term of the Amended PPA.

Staff believes it is acceptable that the QF receives capacity payments for the period of time in which the QF did not have an effective contract with the Company (May 31, 2020 through Commission approval of the Amended PPA) because the late filing was due to no fault of the QF.

Non-seasonal Hydro Avoided Cost Rates

Staff reviewed the non-seasonal hydro avoided cost rates contained in the Amended PPA and believes the rates are correct. The Amended PPA was signed on March 20, 2020, and the parties used the rates authorized at that time.

Staff also believes it would be prudent for the Company to initiate a case to determine an as-available rate for QFs in the Company's Idaho service territory.

STAFF RECOMMENDATIONS

Staff recommends the Commission approve the Amended PPA between Rocky Mountain Power and CEM and declare the prices paid for energy and capacity to be just and reasonable, in the public interest, and that costs incurred by the Company for purchasing energy and capacity are legitimate expenses and can be recovered in Rocky Mountain Power rates.

In addition, Staff recommends that the Commission direct the parties to file the long-term replacement PPA at least three months before the Amended PPA expires and to include contract provisions related to the 90/110 rule. Lastly, Staff recommends the Commission direct the Company to initiate a case to propose an as-available avoided cost schedule to QFs who choose as-available avoided cost rates in Idaho.

Respectfully submitted this 21st day of August 2020.

Ed Jewell

Edward Jewell
Deputy Attorney General

Technical Staff: Yao Yin
Rachelle Farnsworth

i:umisc/comments/pace20.9ejrfyy comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 21ST DAY OF AUGUST 2020, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF,** IN CASE NO. PAC-E-20-09, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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