



May 12, 2021

VIA ELECTRONIC DELIVERY

Jan Noriyuki
Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd
Building 8 Suite 201A
Boise, ID 83714

**Re: CASE NO. PAC-E-21-05
IN THE MATTER OF THE APPLICATION OF PACIFICORP FOR APPROVAL
OR REJECTION OF THE PURCHASE POWER AGREEMENT WITH
COMMERCIAL ENERGY MANAGEMENT, INC.**

Dear Ms. Noriyuki:

Please find enclosed for filing Rocky Mountain Power's Reply Comments in the above-referenced matter.

Informal inquiries may be directed to Ted Weston, Idaho Regulatory Manager at (801) 220-2963.

Very truly yours,

Joelle R. Steward
Vice-President of Regulation

Enclosures

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IDAHO PUBLIC
UTILITIES COMMISSION

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Attorney for Rocky Mountain Power

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION
IN THE MATTER OF THE APPLICATION OF) CASE NO. PAC-E-21-05
PACIFICORP FOR APPROVAL OR)
REJECTION OF THE PURCHASE POWER) REPLY COMMENTS OF
AGREEMENT WITH COMMERCIAL) ROCKY MOUNTAIN POWER
ENERGY MANAGEMENT, INC.**

Pursuant to Rule 202.01(d) of the Rules of Procedure of the Idaho Public Utilities Commission (“Commission”), Rocky Mountain Power a division of PacifiCorp (the “Company”) hereby submits reply comments in the above-referenced case.

On March 3, 2021, the Company submitted its Application for Approval or Rejection of the Purchase Power Agreement with Commercial Energy Management, Inc. (“CEM”). The Agreement at issue is a Power Purchase Agreement (“PPA”) executed February 26, 2021 (“Agreement”), under which CEM agrees to use its existing facility, a qualifying facility under the Public Utility Regulatory Policies Act of 1978, to provide power to the Company.

Commission Staff filed comments on April 28, 2021 (“Staff Comments”) and made recommendations for two modifications to the Agreement. First, the definition of Expected Net Output, if needed in the Agreement, should be modified to reflect that the forecast is not updated after contracting and should use the correct amount of 2,310 MWh/year. Second, Commission Staff recommended that the Agreement be modified to state that the Energy Delivery Schedule specified in the Agreement would provide “six months of scheduled energy estimates at all times”

instead of the three months stated in the Agreement. The Company is willing to make these modifications and has already reached out to CEM with a draft amendment to the Agreement.

CEM filed public comments on April 27, 2021, recommending that the Commission reject the Agreement because it contains a provision referred to as the “90/110” provision and because of allegations that negotiations were delayed by the Company to “game the system.” CEM recommends that the Commission reject the Agreement and “send the parties back for true negotiations that can arrive at a power production agreement that is fair to both PacifiCorp/RMP and CEM.” This recommendation is unprecedented and without merit. The longstanding 90/110 rule has been approved by the Commission and is consistent with law and past practice, as further detailed in Staff Comments. There is no evidence that the Company engaged in any gamesmanship to delay the execution of the Agreement.

The Commission should uphold the 90/110 provision. Under the 90/110 rule, energy delivered by a qualifying facility in excess of 110 percent of the amount estimated is priced at 85 percent of the market or contract price, whichever is less. Similarly, if less than 90 percent of the energy estimated is delivered, the price is also reduced to 85 percent of the market or contract price, whichever is less. The 90/110 was first upheld by the Commission in 2004 in an Order dismissing a complaint against Idaho Power.¹ This provision has been approved in many contracts since that time and should be approved here.

There is no merit to CEM’s argument that the Company gamed the system. The original PPA between the Company and CEM was set to expire on May 31, 2020. The Company first requested a Voluntary Consent from CEM to determine transmission interconnection progress of the facility in September 2019. The Company provided CEM with a draft PPA before the expiration of the initial PPA on February 3, 2020. At the request of CEM, the Company extended the original

¹ *U.S. Geothermal, Inc. v. Idaho Power Co.*, Case No. IPC-E-03-8, Order 29632 at 20 (November 22, 2004).

PPA so that CEM would have time to resolve necessary interconnection issues. The extension was signed on March 20, 2020. Four days after the extension was signed, on March 24, 2020, the Company executed the small generator interconnection agreement (“SGIA”), which resolved the interconnection issues. After the SGIA was signed, nothing prevented CEM from working with the Company to finalize the February 3, 2020 PPA. After a period of silence, the Company made a concerted effort to reengage CEM in negotiations in November 2020 by providing CEM with a draft PPA. Contrary to CEM’s statement that PacifiCorp “ignored” CEM’s objections, PacifiCorp made every effort to negotiate the Agreement in a timely fashion.

Throughout its comments, CEM makes allegations that the Company delayed negotiations for its own “advantage,” but provides no proof of Company-caused delay or of Company benefit from the delay. The cost of PPAs are passed directly to customers, there is no benefit to the Company for delaying the negotiation of a PPA.

For these reasons, and with the modifications noted above, the Company respectfully requests that the Commission approve or reject the Agreement as requested in the Company’s Application, subject to the execution of an amendment consistent with Staff’s Comments.

Dated this 12th day of May, 2021.

Respectfully submitted by,
ROCKY MOUNTAIN POWER



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