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IDAHO PUBLIC
UTILITIES COMMISSION

1407 W. North Temple, Suite 330
Salt Lake City, Utah 84116

February 16, 2022

VIA ELECTRONIC FILING

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 attached Rocky Mountain Power's answer to Commercial Energy Management's petition for reconsideration in the above-referenced matter.

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

Very truly yours,

A handwritten signature in blue ink that reads "Joelle Steward".

Joelle R. Steward
Vice-President of Regulation

Enclosures

Emily Wegener (ISB #11614)
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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) ANSWER TO PETITION
AGREEMENT WITH COMMERCIAL) FOR RECONSIDERATION
ENERGY MANAGEMENT, INC.)**

Pursuant to Rule 331.05 of the Rules of Procedure of the Idaho Public Utilities Commission (“Commission”), Rocky Mountain Power a division of PacifiCorp (the “Company”) hereby submits its Answer to the Petition for Reconsideration filed by Commercial Energy Management, Inc. (“CEM”) in the above-referenced matter.

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 (“QF”), to provide power to the Company.

On January 25, 2022, the Commission conditionally approved the Agreement so long as the Company and CEM agreed to two minor modifications.¹ As indicated in its comments, the

¹ *In the Matter of Rocky Mountain Power’s Application for Approval or Rejection of the Power Purchase Agreement with Commercial Energy Management, Inc.*, Case No. PAC-E-21-05, Order No. 35303 (January 25, 2022) (“Order 35303”).

Company is willing to make the recommended modifications. However, it has not been able to obtain agreement for the modifications from CEM. The Company is currently purchasing electricity from CEM under the terms of the Agreement, pending signature for the modifications and final Commission approval.

CEM filed a Petition for Reconsideration of Order 35303 (“Petition”) on February 9, 2022, relating to the inclusion of the “90/110” provision. Specifically, CEM claims that the Commission should reconsider its conditional approval because the 90/110 provision was not included in CEM’s original PPA with the Company and because the Commission did not “provide any independent analysis of the 90/110 Provision” in Order 35303. The Company recommends that the Commission deny this Petition for reconsideration. Order 35303 complies with longstanding Commission precedent.

The Commission should not grant CEM’s request to reconsider Order 35303 because the Commission is not required to provide an independent analysis of the 90/110 provision in Order 35303. “The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations for the purchase of energy from qualified facilities and to implement FERC rules.”² The now well-established 90/110 provision was first upheld by the Commission in 2004 in an Order dismissing a complaint against Idaho Power³ and has become a standard provision in Idaho QF contracts, including a number of hydro contracts recently approved

² *Id.*; see also *Rosebud Enterprises, Inc. v. Idaho Public Utilities Comm’n*, 917 P.2d 766, 772 (Idaho 1996).

³ *U.S. Geothermal, Inc. v. Idaho Power Co.*, Case No. IPC-E-03-8, Order 29632 at 20 (November 22, 2004).

by the Commission,⁴ without regard to the type of generation facility used by the QF or its applicable operating constraints.

CEM argues that the 90/110 provision shouldn't be applicable because it first entered into a PPA with the Company in 1991, before the 90/110 provision was put in place, which somehow justifies not including the provision in the new Agreement. However, this Agreement was not entered into until February 26, 2021, and the fact that the parties had a previous PPA does not entitle CEM to the same terms as the earlier agreement. Therefore, the Commission rightly concluded that the 90/110 provision should be included in the Agreement.

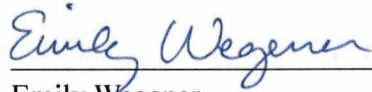
Finally, CEM has no grounds for reconsideration because it agreed to the 90/110 provision when it signed the Agreement, and it has not yet signed the amended Agreement. It was not appropriate for CEM to challenge the Agreement that it signed, particularly when it sold power to the Company under that Agreement pending approval. Now that the Agreement has been conditionally approved, there is no operative contract for the Commission to consider unless CEM signs the amended Agreement. The Commission approved the Agreement subject to the Company and CEM executing and submitting an amendment to the Commission that modifies the definition of Expected Net Output and to correct an inconsistency. CEM has not challenged these requirements. Without a signed amendment, the Agreement has not been approved and, there is nothing for the Commission to reconsider.

For these reasons, the Company respectfully requests that the Commission reject the Petition.

⁴ See, e.g., *In the Matter of the Application of Idaho Power Company for Approval or Rejection of an Energy Sales Agreement with Big Wood Canal Company*, Order No. 34956 (March 17, 2021) (including the 90/110 provision in a QF between Idaho Power and a 575 kW hydroelectric facility).

Dated this 16th day of February 2022.

Respectfully submitted by,
ROCKY MOUNTAIN POWER

A handwritten signature in blue ink that reads "Emily Wegener". The signature is written in a cursive style and is positioned above a horizontal line.

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