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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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** **COMMENTS OF THE COMMISSION STAFF**

The Staff of the Idaho Public Utilities Commission ("Staff") submits the following comments.

BACKGROUND

On March 3, 2021, Rocky Mountain Power, a division of PacifiCorp ("Company") requested the Commission approve or reject a replacement Power Purchase Agreement ("PPA") with Commercial Energy Management, Inc. ("Seller") for the purchase of energy and capacity.

The Seller owns and operates a 900-kilowatt hydroelectric qualifying facility ("Facility") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The Facility is on the Portneuf River east of Lava Hot Springs in Bannock County, Idaho.

The Seller and the Company's first contract for the sale of energy from the Facility was dated November 12, 1991. In June 2020, the parties extended that contract through March 1, 2021. The replacement PPA contains published avoided cost rates for a non-seasonal hydro qualifying facility ("QF") with capacity payments for the entire term of the agreement, with no sufficiency period.

STAFF ANALYSIS

Staff's review focused on the 90/110 rule; long-range, day-ahead, and real-time forecasting; eligibility for capacity payments; avoided cost rates; and a lapsed contract period.

<u>90/110 Rule</u>

Staff confirmed the PPA contains the 90/110 Rule as required by Commission Order 29632. The 90/110 Rule requires a QF to provide utilities with a monthly estimate of the amount of energy the QF expects to produce. If the QF delivers more than 110 percent of the estimated amount, then the utility must buy the excess energy for the lesser of 85 percent of the market price or the contract price. If the QF delivers less than 90 percent of the estimated amount, then the utility must buy total energy delivered for the lesser of 85 percent of the market price or the contract price. *See* Order No. 29632 at 20.

1. Monthly Estimates

The Application states that the Facility's estimated annual net output over the term is 2,187 megawatt-hours ("MWh")/year. However, page 3 of the PPA states Expected Net Output is 2,300 MWh. Page 15 of the proposed PPA shows the monthly estimates, which results in an estimated amount of 2,310 MWh/year. In Response to Staff's Production Request No. 3, the Company explained that 2,187 MWh/year stated in the Company's Application was incorrect. The 2,310 MWh/year is derived from summing the figures in Section 4.9 on page 15 of the PPA (Energy Delivery Schedule) and is the correct forecast of annual MWh as represented by the Facility. The 2,300 MWh/year on page 3 was inadvertently rounded down to 2,300 MWh/year from 2,310 MWh/year.

Staff believes that for the purpose of the 90/110 Rule, only the monthly estimates in Section 4.9 are used, instead of any of the annual estimates. However, Staff is concerned about the definition of the Expected Net Output stated on page 3 of the PPA:

> "Expected Net Output" means 2300 MWh (depends on run-of-river flow) of Net Output in the first Contract Year, as applicable, by an annual degradation factor of 1% (depends on run-of-river flow) per Contract Year, measured at the Point of Delivery. Seller estimates that the Net Output will be delivered during each Contract Year, measured at the Point of Delivery. Seller estimates that the Net Output will be delivered during each Contract Year according to the Expected Monthly Net Output provided in Exhibit A-1, as reduced each Contract Year, as applicable, by the annual degradation factor.

Contrary to this definition, in response to Staff's Production Request No. 4, the Company stated that the Expected Net Output definition is the initial forecast of generation, meant to inform expectations of generation at the time of contracting, and this forecast is not updated after contracting.

Staff believes that if the definition of Expected Net Output is necessary in the PPA, it should be modified to reflect that the forecast is not updated after contracting and should use the correct amount of 2,310 MWh/year.

2. Advanced Notice

The PPA uses a 10-day advanced notice to revise future monthly estimates. If the Company develops a web-based or other electronic noticing or scheduling system for the Seller to provide estimates, the timeframe will be revised to a 5-day advanced notice. Staff believes any timeframe between a month in advance and 5 days in advance is reasonable. The Commission allowed a month-ahead timeframe in Order No. 33103, which states:

> The intent of a QF providing generation estimates has always been to assist the utility in forecasting and operational planning so that the utility can provide the most reliable service possible to its customers. We find that a provision allowing for monthly generation estimate updates is consistent with that purpose.

Later, the Commission also allowed a 5-day timeframe in several cases, recognizing that monthly estimates provided closer to the time of delivery can improve the accuracy of input used for short-term operational planning. *See* Order Nos. 34263 and 34870, for example.

In addition to the 10-day advanced notice, the PPA requires that beginning the end of the ninth full calendar month after the Effective Date, and at the end of every third month thereafter, Seller shall supplement the Energy Delivery Schedule with three additional months of forward estimates, such that the Energy Delivery Schedule will provide at least *three* months of scheduled energy estimates at all times. *See* Section 4.9.2. of the PPA. Staff believes the statement should be changed to "at least <u>*six*</u>[1] months of scheduled energy estimates at all times" to resolve the inconsistency. For example, at the end of the ninth full month after the Effective Date, the Seller may provide three additional months of estimates for January, February, and March of the following year. This effectively provides six months of estimates, including October, November, and December of the first year and January, February, and March of the second year. Staff recommends this inconsistency be corrected in the PPA.

3. *Market Prices*

The Company uses the Palo Verde Hub to establish market prices for the purpose of the 90/110 Rule. Staff believes the Company's determination of market prices is fair and reasonable.

<u>Long-Range, Day-Ahead, and Real-Time Forecasting</u>

The Seller agrees to provide an annual update to the 12X24 generation profile in Section 6.7.1. Although the Commission does not require 12X24 generation profiles for contracts that use published rates, Staff does not oppose this provision agreed upon by the parties.

The Seller also agrees to pay for the day-ahead and real-time forecasting services in Section 5.7.2. Although the Commission does not require day-ahead and real-time forecasting services, Staff does not oppose to this provision agreed upon by the parties.

<u>Capacity Payment</u>

A QF only receives compensation for capacity when the utility is capacity deficient, unless it is a renewal/extension project that was paid for capacity at the end of the original contract (*see* Order No. 32697) or has contributed to meeting the utility's capacity needs during the original contract term (*see e.g.,* Case Nos. IPC-E-19-04, IPC-E-19-30, and IPC-E-19-35).

The Seller was paid for capacity at the end of the original contract, and during the original contract term, the Company has added significant resources to meet its capacity

[1] Order No. 29632 states that QFs shall initially provide Idaho Power with one year of monthly generation estimates and beginning at the end of month nine and every three months thereafter provide the Company with an additional three months of forward estimates. QF opportunities for estimate revisions begin at the end of month three and every three months thereafter for the forward period beginning the fourth month out through the end of the estimate period. For planning purposes, following the first year the Company on a rolling basis will always have <u>six</u> months of QF production estimates.

deficiencies. 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 payments in the proposed PPA.

Avoided Cost Rates

Staff reviewed the non-seasonal hydro avoided cost rates contained in the PPA and verified that the rates are correct.

Lapsed Contract Period

The original contract expired on March 1, 2021, and the initial delivery date in the PPA is on the same date. However, the proposed effective date of the PPA would be after any Commission approval of the PPA. *See* Section 2.1 of the PPA. Therefore, there is a lapsed contract period between March 1, 2021 and the effective date.

In a recent case AVU-E-19-16, the Commission approved both energy and capacity payments during a lapsed contract period for Stimson Lumber, which never stopped operating. Staff verified with the Company that the Facility in this case has continued to be operational; thus, Staff recommends energy and capacity payments during the lapsed contract period using published rates in the PPA.

STAFF RECOMMENDATION

Staff recommends the parties file an amended PPA that includes the following updates:

1. The definition of Expected Net Output should be modified to reflect that the forecast is not updated after contracting and should use the correct amount of 2,310 MWh/year.
2. The inconsistency of "three months" in Section 4.9.2. of the PPA should be corrected to "six months".

Staff recommends approval of an amended PPA with these updates and also recommends that, if the updates described above are made by the Company, the Commission declare that the avoided cost prices set forth in the Agreement are just and reasonable, in the public interest, and that the Company's incurrence of such costs are legitimate expenses. Staff also recommends both energy payment and capacity payment for the lapsed contract period between March 1, 2021 and the effective date of the PPA, using the published rates in the PPA.

Respectfully submitted this 28th day of April 2021.

John R. Hammond, Jr.
Deputy Attorney General

Technical Staff: Yao Yin
Rachelle Farnsworth

i:umisc/comments/pace21.5jhyyrf comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 28TH DAY OF APRIL 2021, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF,** IN CASE NO. PAC-E-21-05, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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