



RECEIVED

2021 MAR 29 PM 1:58

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

March 29, 2021

IDAHO PUBLIC
UTILITIES COMMISSION

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-21-08
IN THE MATTER OF THE JOINT APPLICATION BETWEEN ROCKY
MOUNTAIN POWER AND P4 PRODUCTION, L.L.C. REQUESTING
APPROVAL OF AN AGREEMENT TO RETIRE RECS**

Dear Ms. Noriyuki:

Please find for electronic filing Rocky Mountain Power's Application and Attachment A 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

cc: Randy Budge

Adam Lowney (ISB#10456)
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
Telephone: (503) 595-3926
Fax: (503) 595-3928
Email: adam@mrg-law.com

Emily Wegener (*Idaho Bar application pending*)
1407 West North Temple, Suite 320
Salt Lake City, Utah 84116
Telephone No. (801) 220-4526
Mobile No. (385) 227-2476
Email: Emily.wegener@pacificorp.com

Attorneys for Rocky Mountain Power

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)	
APPLICATION BETWEEN ROCKY)	CASE NO. PAC-E-21-08
MOUNTAIN POWER AND P4 PRODUCTION,)	
L.L.C. REQUESTING APPROVAL OF AN)	APPLICATION
AGREEMENT TO RETIRE RECS)	

PacifiCorp, doing business as Rocky Mountain Power (the “Company”) and P4 Production, L.L.C., (“P4”), an Idaho customer of the Company, pursuant to Idaho Code § 61-328, hereby jointly request approval from the Idaho Public Utilities Commission (“Commission”) of the P4 System REC Retirement Agreement dated March 24, 2021 (“Agreement”) between PacifiCorp and P4 (together the “Parties”). The Agreement states that the Company will retire, rather than sell, P4’s allocated share of renewable energy certificates (“RECs”) generated from the Company’s system resources. In support of this Application, the Parties states as follows:

I. BACKGROUND

1. The Company is a public utility in Idaho pursuant to Idaho Code § 61-129 and is subject to the jurisdiction of the Commission. The Company provides retail electric service

to approximately 84,000 customers in portions of Fremont, Madison, Teton, Clark, Jefferson, Lemhi, Oneida, Bannock, Franklin, Caribou, Butte, Bingham, Bear Lake and Bonneville counties.

2. P4 and its predecessor in interest Monsanto have operated the Soda Springs phosphate plant continuously since 1951 to produce elemental phosphorus, the primary building block for the active ingredient *glyphosate* in Roundup herbicide, the foremost weed-control agent in the world.

3. P4's Soda Springs plant is the largest single user of electricity on PacifiCorp's six-state system, with a load of approximately 200 megawatts ("MW") and 1.5 million megawatt-hours ("MWH") of electricity per year—about 40 percent of PacifiCorp's energy use in Idaho. P4 has been an interruptible special contract customer of PacifiCorp and its predecessor (Utah Power & Light Company) since plant operations began in 1951.

4. P4 owns the Soda Springs plant and mines as a wholly owned subsidiary of Monsanto. In October 2018 Bayer acquired all assets of Monsanto. Monsanto is still doing business as a member of the Bayer group of companies.

5. In December 2019 Bayer announced a corporate goal to achieve 100 percent of its global electricity purchase with renewable electricity by 2030. Converting the Soda Springs plant to renewable electricity is a high priority. To achieve this goal, Bayer's initial strategy beginning in 2021 includes retirement of its share of PacifiCorp's system RECs allocated to Idaho together with possible purchase of additional RECs on the market.

6. Additionally, Bayer is seeking to implement renewable energy supply agreements with PacifiCorp to acquire renewable energy from PacifiCorp and third-party renewable energy developers. While no specific interim goals or timetables have been

established, it is Bayer's desire and intent to make significant progress each year starting in 2021.

7. To facilitate this goal and negotiate a renewable energy service agreement and interruptible energy service agreement, the Parties have engaged in ongoing discussions for last two years. During these discussion RECs have been considered an option to help Bayer achieve its renewable goals.

8. A large portion of Bayer's renewable energy goal can be achieved from the Company's own fleet. Based on the 2020 Fuel Mix report, when hydro production is included over 22 percent of the energy from the Company's fleet is generated by renewable resources. That percentage will continue to increase and is expected to approach 50 percent by 2030.

9. On March 24, 2021, the Parties entered into the Agreement, a copy of which is attached as Attachment A to this Application, under which the Company agreed to retire, rather than sell, P4's allocated share of RECs generated from system resources. Subject to Commission approval, the Agreement will be effective starting calendar year 2021.

10. To retire system RECs, the Company will discontinue sale of Idaho-allocated system RECs associated with P4's calendar-year load ("P4's System RECs"). The REC revenue that P4 would otherwise have been allocated from the sale of system RECs generated after 2020 will be discontinued. P4 will continue to receive REC revenue from the sale of any RECs generated prior to 2021.

11. If approved by the Commission, the Agreement will automatically renew from year to year. However, either Party may elect to terminate the Agreement with written notice of termination delivered no later than December 1st in order to effect a termination on December 31st of that year, before REC sales are made for the following year.

12. RECs from the Company's system resources of owned generation facilities and purchase power agreements are allocated to states under the Commission-approved 2020 Protocol cost allocation method. System RECs are allocated to Idaho based on the System Generation ("SG") factor.

13. P4's share of Idaho allocated RECs will be proportional to P4's SG factor compared to Idaho's SG factor. P4 represented approximately 30 percent of Idaho's SG factor in 2019. This percentage will be updated annually to align P4's proportion of RECs with Idaho's allocation.

14. Treatment of Idaho's remaining share of RECs will be unchanged. The Company will continue best efforts to monetize the RECs and pass any REC revenue onto customers. This Agreement will not impact other customers because revenue from the sale of P4's share of system RECs was previously passed back to P4 and not to other customers.

15. In the Company's next general rate case, planned to be filed in May 2021, the Company will remove P4's allocation of REC revenues from the results of operation. This will establish zero REC revenues as P4's base in rates and for the energy cost adjustment mechanism ("ECAM").

16. Based on the terms of this Agreement, subject to Commission approval, the Company has withheld Bayer's share of 2021 RECs from any auctions or sales. Beginning on January 1, 2021, Bayer will no longer receive a REC revenue credit for RECs generated after December 31, 2020. If the Company was able to sell RECs generated prior to 2021 P4 will receive credit for its share of those REC revenues through the ECAM.

17. P4 will pay the Company \$15,000 annually to cover the Company's additional administrative burden for administering this program, including the Company's support of any

external audit. P4 will make this payment 30 days after receiving an invoice from the Company, which will be billed in advance of each calendar year. The payment shall be deemed a prepayment for administration of the program for the following year. The Company may revise the annual administrative charge by providing written notice to P4 by November 1st prior to the year in which the change will take effect.

18. Idaho Code § 61-328 governs a utility's sale of electric utility property, and states that a utility cannot "merge, sell, lease, assign or transfer, directly or indirectly, in any manner whatsoever, any such property or interest therein, or the operation, management or control thereof, or any certificate of convenience and necessity or franchise covering the same, except when authorized to do so by order of the [Commission]."

19. The statute further states that prior to any sale the utility must file an application with the Commission. Before approving the application the Commission shall find: "(a) That the transaction is consistent with the public interest; (b) That the cost of and rates for supplying service will not be increased by reason of such transaction; and (c) That the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service."

20. The Parties represent that this Agreement meets the applicable requirements of Idaho Code § 61-328. The transaction is consistent with the public interest by helping P4 achieve its renewable goals while not increasing costs or rates of other customers. The Agreement does not impact the Company's operations or ability to continue to provide safe, reliable, and affordable electric service to its customers.

II. REQUEST FOR APPROVAL

21. The Parties hereby jointly petition the Commission to approve the Agreement

which will help P4 achieve its renewable energy goals without detrimental impact to other customers.

III. COMMUNICATION

22. Communications regarding this Application should be addressed to:

If to Rocky Mountain Power:

Ted Weston
Emily Wegener
1407 W. North Temple, Suite 330
Salt Lake City, Utah 84116
Telephone: (801) 220-2963
Email: ted.weston@pacificorp.com
emily.wegener@pacificorp.com

If to Bayer:

Randy Budge
Racine Olson, PLLC
201 East Center
Pocatello, ID 83204
Email: rcb@racinelaw.net

In addition, the Company respectfully requests that all data requests regarding this matter be addressed to one or more of the following:

By e-mail (preferred)	datarequest@pacificorp.com
By regular mail	Data Request Response Center PacifiCorp 825 NE Multnomah, Suite 2000 Portland, OR 97232

IV. MODIFIED PROCEDURE

23. The Parties believe that a hearing is not necessary to consider the issues presented herein, and respectfully request that this Application be processed under Modified Procedure pursuant to rules 201-210 of the Rules of Procedure of the Idaho Public Utilities Commission. If, however, the Commission determines that a technical hearing is required, the

Parties stand ready to prepare and present testimony in such hearing.

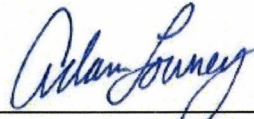
V. CONCLUSION

WHEREFORE, the Parties respectfully request that the Commission issue a final order authorizing that this matter be processed under Modified Procedure and approving the Agreement as filed.

DATED this 29th day of March, 2021.

Respectfully submitted,

By



Adam Lowney (ISB#10456)
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
Telephone: (503) 595-3926
Fax: (503) 595-3928
Email: adam@mrg-law.com

Emily L. Wegener
(Idaho Bar admission pending)
1407 West North Temple, Suite 320
Salt Lake City, Utah 84116
Telephone No. (801) 220-4526
Mobile No. (385) 227-2476
Email: Emily.wegener@pacificorp.com

Attorneys for Rocky Mountain Power

Attachment A

**P4 System REC Retirement
Agreement**

- A. WHEREAS, P4 Production L.L.C, a Delaware corporation ("P4"), is an Idaho customer of PacifiCorp. P4 is a Bayer Corporation subsidiary.
- B. WHEREAS, this P4 System REC Retirement Agreement (Agreement) shall reflect the intent of the parties to support P4's goal to account for and retire certain PacifiCorp system Renewable Energy Credits (RECs).
- C. WHEREAS, this Agreement is particular to PacifiCorp's multi-state system RECs allocated to Idaho and associated with P4 load.
- D. WHEREAS, P4 will be provided provisional and final reports to aid the tracking of REC generation and retirement.
- E. WHEREAS, P4 will not be able to select particular resource types for allocated system REC retirement purposes associated with this Agreement.

1. P4 System REC Sales and Revenue Discontinuance

- a. Subject to subsection 1.e. below, this Agreement shall be effective starting calendar year 2021.
- b. In order to retire system RECs for P4, PacifiCorp will discontinue sale of Idaho-allocated system RECs associated with P4's calendar year load ("P4 System RECs").

The REC revenue that P4 would otherwise have been allocated from the sale of System RECs generated after 2020 will be discontinued.

- c. P4 will continue to receive REC revenue from the sale of RECs generated prior to 2021.
- d. This Agreement will automatically renew from year to year. However, if either P4 or PacifiCorp elect to terminate then written notice of termination shall be

delivered no later than December 1 in order to effect a termination on December 31.

- e. All of the provisions herein are subject to regulatory changes, orders or approvals. It is PacifiCorp's intent to seek Idaho Public Utilities Commission approval of this Agreement and all of the terms of this instrument are subject to and conditioned upon approval by that body.

2. REC Allocation Methodology

- a. PacifiCorp System RECs: RECs from PacifiCorp's system of resources (owned generation facilities and purchase power agreements) are allocated to states under state regulatory cost allocation protocols. (PacifiCorp resources that are situs assigned or fully captured in the rate base of certain states or that are specifically assigned to particular customers by agreement are excluded from PacifiCorp's System REC allocation.)
- b. PacifiCorp System RECs are allocated to Idaho based on the System Generation (SG) factor. The SG factor will be updated by PacifiCorp annually.
- c. P4's share of RECs allocated to Idaho will be proportional to P4's Idaho load for the Reporting Year (e.g., approximately 30% of the ID load for 2020)

3. Annual REC Position Report ("Position Report")

- a. Generation Year: The calendar year in which qualifying energy is generated with which RECs are associated. (In other contexts this is the REC vintage year)
- b. Retirement Year: The Retirement Year is the year following the Generation Year and the period within which actual load and RECs for the Generation Year are taken into account, RECs are retired and the Retirement Report is issued.
- c. See Exhibit A for an example of the of Generation and Retirement Years and associated tasks.

- d. **Position Report:** In October, PacifiCorp will provide a report to P4 of P4's REC position for the Generation Year.
 - i. The Position Report will provide a sum of P4 System RECs by technology type (fuel mix) (i.e. wind, solar, hydro).
 - ii. The Position Report will not include details like generation month or identification of the specific resources that generated the RECs.
 - iii. The Position Report will reflect actual generation through May and forecast generation for the period of June-December.
 - iv. The Position Report will reflect an estimation of P4 RECs associated with load for the Generation Year.
 - v. The estimation of P4's RECs in the Position Report will be based on P4's load and the SG factor from the previous year.
 - vi. PacifiCorp will undertake commercially reasonable efforts to ensure that the forecast and the report are reasonable and that actual information is accurate; however, the REC Position Report is provisional, and P4's reliance thereupon is at P4's sole risk and PacifiCorp makes no representation or warranty as to its content.

4. Generation Year REC Retirement Report ("Retirement Report")

- a. By mid-October of the Retirement Year, PacifiCorp will retire and report P4's final share of system RECs from the prior Generation Year in accordance with the REC Allocation Methodology under Section 2 above updated to reflect actual load and corresponding SG factor for the Generation Year.
- b. PacifiCorp will provide as part of the Retirement Report a WREGIS Report to support the REC retirement on P4's behalf for audit and verification purposes. The WREGIS report includes specific generating resources, volumes, REC vintage (year and month it was generated) and retirement date.
- c. REC retirements cannot be effected before all REC's are generated and transferred and total system allocation occurs.
- d. The actual quantity of Generation Year RECs retired in the subsequent Retirement Year will vary from the estimation in the Position Report. Actual REC volumes retired in the Retirement Year will be based on actual generation and final SG factor calculated for the Generation Year.

- e. PacifiCorp will make commercially reasonable efforts to ensure that the REC retirement report is accurate; however, P4's reliance on the REC Retirement Report is at P4's sole risk and PacifiCorp makes no representation or warranty as to its content.

5. REC RFP

- a. If P4 chooses to participate in PacifiCorp's Reverse Request for Proposal (RFP) for sale of system RECs and completes a REC purchase transaction thereunder, the REC retirement terms associated with the RFP transaction shall be negotiated independent of the P4 system share of REC retirements under this Agreement.
- b. P4 shall not be provided information in either the Position Report or the Retirement Report that, in PacifiCorp's reasonable judgment, would provide P4 a competitive advantage in the REC RFP.

6. Audit Support

If P4 chooses to pay for and conduct an independent audit of the Retirement Report then PacifiCorp will, upon request, supply or, at PacifiCorp's election, make available additional historical generation and historical allocation information to the auditor to aid validation. If, in PacifiCorp's judgement, material provided to an auditor may provide P4 a competitive advantage in any REC RFP or otherwise compromise the confidentiality or sensitivity of other customer information then PacifiCorp may require that the auditor execute a confidentiality agreement before PacifiCorp will supply or provide access to materials in support of an audit. Such a confidentiality agreement may require that the auditor hold detailed supporting material confidential from P4 but shall allow for the auditor to otherwise verify the validity of PacifiCorp reports delivered to P4 hereunder.

7. Administrative

- a. PacifiCorp will continue to report P4 System RECs retired to regulatory authorities and shall account for those RECs as may otherwise be required by law.
- b. To cover PacifiCorp's administrative burden for administering this program and supporting any external audit, P4 shall pay PacifiCorp \$15,000 within 30 days of

execution of this Agreement and receiving the invoice from PacifiCorp. Thereafter, P4 shall pay in advance to any calendar year to PacifiCorp the annual amount of \$15,000 within 30 days after receiving the invoice. This payment shall be deemed a prepayment for administration of the program for the following year. PacifiCorp may revise the annual administrative charge and shall inform P4 of any change for future years in the October Position Report.

P4 shall also pay to PacifiCorp any WREGIS fee associated with retirement of RECs in accordance with the most recently published schedule of fees. (e.g., <https://www.wecc.org/Administrative/WREGIS%20Fee%20Matrix.pdf>)

- c. In the event that this Agreement is not approved by the Commission, is approved with conditions or otherwise in a form that either party finds unacceptable, or is otherwise terminated then P4's System RECs that were not retired shall be returned to the pool of system RECs managed by PacifiCorp and PacifiCorp will resume allocation of associated REC revenue to P4.

8. Legal

- a. Waiver of Jury Trial. To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.
- b. Governing Law: Jurisdiction: Venue. All provisions of this Agreement and the rights and obligations of the Parties shall in all cases be governed by and construed in accordance with the laws of the state of Idaho applicable to contracts executed in and to be wholly performed in Idaho by Persons domiciled in the state of Idaho. Any dispute relating to this Agreement shall be brought before the Federal courts located within the state of Idaho, or state courts of the state of Idaho, and each Party consents to the exclusive jurisdiction of such forum (and of the appellate courts therefrom) in any such suit, action or proceeding. Furthermore, each Party waives, to the extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such forum or that any such suit, action or proceeding which is brought in any such forum has been brought in any inconvenient forum. If for any reason service of process cannot be found in the state of Idaho, process in any such suit, action or proceeding may be served on a Party anywhere in the world, whether within or without the jurisdiction of any such forum.

- c. Limitation on Damages. Under no circumstances, shall either party be liable for any special, indirect, incidental, consequential, punitive, or exemplary damages.

- d. Execution. This instrument may be executed in counterparts exchanged by digital transmission.

For PacifiCorp _____ <i>Jay M. Hoag</i> Its: <u>President & CEO</u> Date: <u>3/24/2021</u>	For P4 _____ Roger W. Gibson Its: President, P4 Production, L.L.C., A subsidiary of Bayer Corporation Date: _____
---------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------

- c. Limitation on Damages. Under no circumstances, shall either party be liable for any special, indirect, incidental, consequential, punitive, or exemplary damages.

- d. Execution. This instrument may be executed in counterparts exchanged by digital transmission.

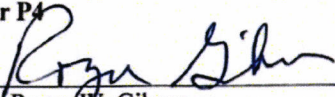
For PacifiCorp _____ Its: _____ Date: _____	For P4  _____ Roger W. Gibson Its: President, P4 Production, L.L.C., A subsidiary of Bayer Corporation Date: <u>3/16/2021</u>
-------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

EXHIBIT A
TO
P4 REC AGREEMENT

REC Generation and Reporting Events Example

Action Year	2021 (Generation Year for 2021)	2022 (Retirement Year for 2021) (Generation Year for 2022)	2023 (Retirement Year for 2022) (Generation Year for 2023)
Actions	<ul style="list-style-type: none"> • Oct 2021 Annual REC Position Report provided by RMP • 2021 RECs generated and preliminarily recorded 	<ul style="list-style-type: none"> • 2021 RECs true up to actual and SG factor • Retire 2021 RECs • Retirement Report October 2022 • Oct 2022 Annual REC Position Report provided by RMP • 2022 RECs generated and preliminarily recorded 	<ul style="list-style-type: none"> • 2022 RECs true up to actual and SG factor • Retire 2022 RECs • Retirement Report October 2022 • Oct 2023 Annual REC Position Report provided by RMP • 2023 RECs generated and preliminarily recorded