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IDAHO PUBLIC UTILITIES COMMISSION

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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
PACIFICORP DBA ROCKY MOUNTAIN )  
POWER FOR AN ACCOUNTING ORDER TO )  
ESTABLISH A REGULATORY ASSET. )  
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**CASE NO. PAC-E-08-2  
  
COMMENTS OF THE  
COMMISSION STAFF**

**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Weldon B. Stutzman, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 30547 on May 1, 2008, submits the following comments.

**BACKGROUND**

On April 11, 2008, PacifiCorp dba Rocky Mountain Power filed an Application for an accounting order authorizing the Company to establish a regulatory asset for costs associated with a payment made to the owner of a generation facility. The payment gives PacifiCorp an exclusive opportunity to negotiate for the purchase of all tangible and intangible assets, contracts, permits and other rights associated with the generation facility. The details of the payment and potential purchase were provided by the Company in confidential proprietary documents filed with the Application. The Application states that PacifiCorp made a payment in the amount of \$8.7 million

for the exclusive right to negotiate with the seller during a specific period. During the exclusivity period, the seller is prohibited from negotiating with other potential buyers or lessors of the property. The \$8.7 million payment also is a deposit toward the total purchase price.

PacifiCorp requests by its Application an accounting order authorizing the Company to establish a regulatory asset for the payment made by the Company. PacifiCorp acknowledges that an accounting order will establish the recordkeeping. The prudence and rate treatment of the payment will be reviewed and decided in a future rate proceeding.

## **STAFF REVIEW**

Staff has reviewed Rocky Mountain Power Company's Application for an Order authorizing the Company to establish a regulatory asset for costs associated with an exclusivity payment made to a third party (Seller). The purpose of the exclusivity payment is for the Company to secure the exclusive right to negotiate with the Seller for the purchase of a generating facility currently owned by the Seller. The Company's payment of \$8.7 million will be treated as a deposit and credited toward the purchase price at closing or will be forfeited if closing does not occur.

The Company's request in this filing is limited to the exclusivity payment. The Company has not asked for any approvals of any terms or conditions relating to the transaction, or for approval that the acquisition of the plant is reasonable and prudent. Staff has reviewed the transaction from the viewpoint of whether or not the exclusivity payment should be appropriately accounted for as a deferred asset pending the completion of the exclusivity term and the closing or non-closing of the transaction.

The Company will record the exclusivity payment in Account 182.3 (Other Regulatory Assets). Provided the transaction for the generating facility is closed, the exclusivity payment (as a deposit) would be included in the total purchase price. The total purchase price will ultimately be credited to "Electric Plant in Service" and included in rates after all approvals are completed and the proper rate treatment has been determined. Until the amount is included in the "Electric Plant in Service" account it will remain on the Company's books as a regulatory asset. Staff recommends that this regulatory asset not accrue any interest or receive any carrying charges. The Commission has previously determined that an account similar to this should not accrue any interest. (See Case no. AVU-E-07-10, Order No. 30492). Additionally, this account should not be included in rate base for determining any rates until such time as the Commission reviews the prudence of the final purchase transaction.

Under Generally Accepted Accounting Principles (GAAP), the payment would be treated as an expense in the current period. If this payment was treated currently for accounting as an expense, it would not be recoverable in any future rate. However, to appropriately match the cost of the exclusivity payment with the future revenues and expenses of the generating facility, the payment should be deferred until it can be included and reviewed with the total cost of the facility. FASB No. 71 allows for the appropriate accounting treatment for this type of payment. The Summary of Statement No. 71 states:

In general, the type of regulation covered by this Statement permits rates (prices) to be set at levels intended to recover the estimated costs of providing regulated services or products... For a number of reasons, revenues intended to cover some costs are provided either before or after the costs are incurred. If regulation provided assurance that incurred costs will be recovered in the future, this Statement requires companies to capitalize those costs.

Regulatory assets can be established for expenses that are currently not included in rates, yet are significant enough to warrant deferring until the next rate case for possible inclusion in rates at that time. If a company proposed in a general rate case that certain expenses from past years be included in the current rates, that proposal would generally be denied as retroactive ratemaking. In order to be considered in the general rate case, the utility usually must have an accounting order allowing it to defer the costs for possible future recovery. If a utility defers costs for future recovery in a general rate case without Commission approval, it risks denial as a violation of the proscription on retroactive ratemaking.

The Company maintains that acquiring the facility is consistent with its current generating portfolio, its IRP and the industry's general direction of new generation. The Company has shown in its previous IRPs that it will need to increase its generation fleet and this transaction can be utilized to meet some of that future need. The Company adds that the transaction may also increase the flexibility of PacifiCorp's system. Staff does not necessarily disagree with these statements. However, the prudence and accuracy of these statements will be part of a more extensive review of the generating facility acquisition prior to the investment being included in rate base in a future rate case. Allowing the Company to defer the exclusivity payment permits the total cost of the facility and the prudence of all the costs to be reviewed by the Staff in a future rate proceeding.

Staff's recommendation to issue an accounting order allowing the establishment of a regulatory asset on the Company's books should not be interpreted as approval of all other aspects of the transaction or of the reasonableness or prudence of the purchase of the facility. Staff's

recommendation acknowledges the payment and allows the total transaction to be reviewed at the same time in a future proceeding. Staff will make recommendations on the prudence of the purchase and/or reasonableness at that time. As part of that review, Staff also will make recommendations regarding the purchase price of the facility.

### STAFF RECOMMENDATION

Staff recommends approval of Rocky Mountain Power Company's Application for an Accounting Order authorizing the Company to establish a regulatory asset for costs associated with an exclusivity payment made for the right to have an exclusive period to negotiate with a third party for the purchase of a generating facility subject to the following conditions and reservations:

1. That the cost of the exclusivity payment be booked to a regulatory asset account on the books and remain separate from the Electric Plant in Service account until the facility is owned by the Company.
2. That the regulatory asset not accrue any interest or carrying charges.
3. That the cost of the exclusivity payment would not be considered in any ratemaking proceeding until such time as the total cost of the facility is considered in a future ratemaking proceeding.
4. The Commission reserves the right to review the prudence and proper ratemaking treatment for the total cost of the facility in a future proceeding when the Company proposes these costs be included in rates.

Respectfully submitted this 5<sup>th</sup> day of June 2008.

  
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Weldon B. Stutzman  
Deputy Attorney General

Technical Staff: Joe Leckie  
Terri Carlock

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 5<sup>TH</sup> DAY OF JUNE 2008, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. PAC-E-08-2, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY