

DECISION MEMORANDUM

**TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL**

DATE: FEBRUARY 14, 2011

SUBJECT: ROCKY MOUNTAIN POWER'S FIVE APPLICATIONS FOR A DETERMINATION REGARDING POWER PURCHASE AGREEMENTS WITH RATTLESNAKE CANYON, COYOTE HILL, NORTH POINT, STEEP RIDGE AND FIVE PINE, CASE NOS. PAC-E-11-01, PAC-E-11-02, PAC-E-11-03, PAC-E-11-04 AND PAC-E-11-05, RESPECTIVELY.

On January 10, 2011, PacifiCorp dba Rocky Mountain Power filed Applications requesting acceptance or rejection of five 20-year Firm Energy Sales Agreements (Agreements) between Rocky Mountain Power and Cedar Creek Wind, LLC for its Rattlesnake Canyon, Coyote Hill, North Point, Steep Ridge and Five Pine wind projects. All five projects (Facilities) are located near Bingham County, Idaho. The projects will all be "qualifying facilities" (QFs) under the applicable provisions of the federal PURPA.

THE AGREEMENTS

On December 22, 2010, Rocky Mountain Power and each of the five wind projects entered into their respective Agreements. Under the terms of the Agreements, the wind projects each agree to sell electric energy to Idaho Power for a 20-year term using the current non-levelized published avoided cost rates as currently established by the Commission in Order No. 31025 for energy deliveries of less than 10 aMW. Applications at 8-9. The nameplate rating of Rattlesnake Canyon, Coyote Hill and North Point is 27.6 MW each. The nameplate rating of Steep Ridge and Five Pine is 25.2 MW each. Under normal and/or average conditions, each Facility will not exceed 10 aMW on a monthly basis. Rocky Mountain Power warrants that the Agreements comport with the terms and conditions of the various Commission Orders applicable to PURPA agreements for wind resources. Order Nos. 30415, 30488, 30738 and 31025.

Each Facility has selected October 1, 2012, as its Scheduled Commercial Operation Date. Applications at 9. Rocky Mountain Power asserts that various requirements have been placed upon the Facilities in order for Rocky Mountain Power to accept the Facilities' energy deliveries. Rocky Mountain Power states that it will monitor the Facilities' compliance with initial and ongoing requirements through the term of the Agreements. Rocky Mountain Power asserts that it has advised each Facility of the Facility's responsibility to work with Rocky Mountain Power's transmission unit to ensure that sufficient time and resources will be available for delivery to construct the interconnection facilities, and transmission upgrades if required, in time to allow each Facility to achieve its October 1, 2012, Scheduled Commercial Operation Date.

Rocky Mountain Power asserts that each Facility has been advised that delays in the interconnection or transmission process do not constitute excusable delays and if a Facility fails to achieve its Scheduled Commercial Operation Date delay damages will be assessed. *Id.* at 11. The Applications further maintain that each Facility has acknowledged and accepted the risk inherent in proceeding with its Agreement without knowledge of the requirements of interconnection and possible transmission upgrades. *Id.* The parties have each agreed to delay liquidated damages and security provisions. Agreement ¶¶ 2.5.1, 11.1.2. Rocky Mountain Power states that each Facility has also been made aware of and accepted the provisions in each Agreement regarding curtailment or disconnection of its Facility should certain operating conditions develop on Rocky Mountain Power's system. Agreement ¶ 6.3.

By their own terms, the Agreements will not become effective until the Commission has approved all of the terms and conditions and declares that all payments made by Rocky Mountain Power to the Facilities for purchases of energy "are just and reasonable, in the public interest, and that the costs incurred by [Rocky Mountain Power] for purchases of capacity and energy from [Cedar Creek] are legitimate expenses, all of which the Commission will allow [Rocky Mountain Power] to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses." Agreement ¶ 2.1.

Rocky Mountain Power's Applications specifically note the Joint Petition it filed with the Commission on November 5, 2010, requesting an immediate reduction in the published avoided cost rate eligibility cap from 10 aMW to 100 kW. Applications at 3. Rocky Mountain Power states that it is aware of and in compliance with its ongoing obligation under federal law,

FERC regulations, and Commission Orders to enter into power purchase agreements with PURPA QFs. *Id.* at 4. However, Rocky Mountain Power “is concerned with the increase in power supply costs, and the resulting increase in rates to its customers, that the current published SAR-methodology avoided cost prices causes as compared to applying the IRP-methodology or the results from a competitive request for proposal solicitation.” *Id.* at 5. Rocky Mountain Power points out that published rate purchases “result in an inherent overpayment to the extent that the project does not offer the same delivery attributes as the proxy resource on which the avoided costs are calculated. . . . Because a contract under the published QF rate has minimal flexibility to adjust pricing or the terms and conditions in the contract based on the project’s characteristics, wind resources have found the QF path more conducive to gaining a long term power purchase agreement without the project specific adjustments they would encounter through the IRP-methodology or a competitive request for proposal solicitation.” *Id.* at 6.

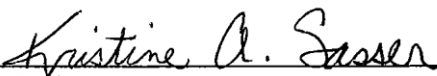
Rocky Mountain Power requests that its Applications be processed by Modified Procedure pursuant to Commission Rules of Procedure 201-204. IDAPA 31.01.01.201-.204.

STAFF RECOMMENDATION

Staff recommends that each Application be processed by Modified Procedure with a comment deadline of March 24, 2011.

COMMISSION DECISION

Does the Commission agree with the recommendation that each of these five Power Purchase Agreements be processed under Modified Procedure with a comment deadline of March 24?



Kristine A. Sasser
Deputy Attorney General

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