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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND CEDAR CREEK WIND, LLC (RATTLESNAKE CANYON PROJECT)	**CASE NO. PAC-E-11-01**
IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND CEDAR CREEK WIND, LLC (COYOTE HILL PROJECT)	**CASE NO. PAC-E-11-02**
IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND CEDAR CREEK WIND, LLC (NORTH POINT PROJECT)	**CASE NO. PAC-E-11-03**

IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND CEDAR CREEK WIND, LLC (STEEP RIDGE PROJECT)	)	**CASE NO. PAC-E-11-04**
IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND CEDAR CREEK WIND, LLC (FIVE PINE PROJECT)	)	**CASE NO. PAC-E-11-05**
	)	**COMMENTS OF THE COMMISSION STAFF**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Kristine A. Sasser, Deputy Attorney General, and in response to the Notice of Applications and Notice of Modified Procedure issued in Order No. 32192 on February 24, 2011, in Case Nos. PAC-E-11-01, -02, -03, -04, and -05, submits the following comments.

BACKGROUND

On January 10, 2011, PacifiCorp dba Rocky Mountain Power (Company) 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 Public Utility Regulatory Policies Act of 1978 (PURPA).

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 Rocky Mountain 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. The Company 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, the Company goes on to express its concern that approval of the Agreements will cause a significant increase in power supply costs and higher rates for customers because published rates are higher than IRP-based rates and higher than prices that could be obtained in competitive RFP processes for comparable resources. The Company contends that the avoided cost price difference between the SAR-methodology (published rates) compared to the IRP-methodology will result in the Company collectively paying an additional $10 million per year for the power from the five projects. *Id.* at 6.

PacifiCorp points out that under the Revised Protocol agreement[1], "Costs associated with any New QF Contract, which exceeds the costs PacifiCorp would have otherwise incurred acquiring Comparable Resources, will be assigned on a situs basis to the State approving such contract." Therefore, if the Commission approves the Agreements, the Company states that it intends to request that the $10 million annual incremental expense associated with these five contracts be situs assigned to Idaho ratepayers. This would be in addition to Idaho's allocation of the cost that would have otherwise been paid under the IRP methodology. *Id.* at 7. To put a $10 million annual incremental expense in perspective, PacifiCorp's annual Idaho jurisdictional revenue requirement approved in Case No. PAC-E-10-07 is $216 million.

STAFF ANALYSIS

All five of the Agreements submitted for approval are nearly identical except for the names of the facilities and the LLCs under which each is being developed. All five of the projects are also proposed to be built in the same general vicinity as shown on the map included as Attachment A.

The five facilities collectively are expected to generate 375,503 MWhs annually. Under the non-levelized rates in the Agreements, Staff estimates the annual energy payments by PacifiCorp for the expected generation will be approximately $23.6 million in 2013 increasing to approximately $45.2 million in 2031, or a cumulative total of $685.4 million over the 20-year term of the Agreements. The collective net present value of the energy payments over the life of the Agreements will be approximately $265.2 million.

[1] The Revised Protocol is an agreement between each of the state jurisdictions in which PacifiCorp serves regarding allocation of costs between jurisdictions.

With the exception of rates, all of the other terms and conditions included in the Agreements are consistent with recent Commission Orders. There are no disputes between the parties over any terms and conditions.

Temporary Lowering of the Eligibility Cap for Published Rates

On November 5, 2010, Idaho Power Company, Avista Corporation, and PacifiCorp dba Rocky Mountain Power (Utilities) filed a Joint Petition requesting that the Commission initiate an investigation to address various avoided cost issues related to PURPA. While the investigation is underway, the Petitioners also requested that the Commission "lower the published avoided cost rate eligibility cap from 10 aMW to 100 kW (to) be effective immediately. . . ." Petition at 7. On December 3, 2010, the Commission issued Order No. 32131, Notice of Joint Petition, Notice of Intervention Deadline, and Notice of Oral Argument. In the Order, the Commission declined to immediately reduce the published avoided cost rate eligibility cap, but did establish a schedule for processing the Utilities' request to reduce the eligibility cap via Modified Procedure and to schedule an oral argument. In particular, the Commission stated its desire to receive comments regarding the following:

(1) the advisability of reducing the published avoided cost eligibility cap;

(2) if the eligibility cap is reduced, the appropriateness of exempting non-wind QF projects from the reduced eligibility cap; and

(3) the consequences of dividing larger wind projects into 10 aMW projects to utilize the published rate.

In its Order, the Commission went on to state "**Finally, it is our intent that our decision regarding the 'Joint Motion' to reduce the published avoided cost eligibility cap shall become effective on December 14, 2010.**" Reference Order No. 32131 at 5-6, emphasis added. By stating its intent, parties were given clear, unambiguous, advance notice that the eligibility cap may be reduced.

Written comments were submitted by the parties on December 22, 2010, written reply comments were submitted on January 19, 2011, and Oral Argument was heard on January 27, 2011. On February 7, 2011, the Commission issued Order No. 32176 which temporarily reduced the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar QFs only. In accordance with its stated intent in Order No. 32131, Order No. 32176 confirmed

that the reduction in the eligibility cap would be effective December 14, 2010. Reference Order No. 32176 at 11-12.

The Applications state that the Agreements were signed by Cedar Creek on December 13, 2011 and that they were subsequently signed by Rocky Mountain Power on December 22, 2010. Each of the five Agreements presented for Commission approval is clearly dated December 22, 2010. The Agreements were filed with the Commission on January 10, 2011. The Agreements contain rates from Order No. 31025, the published rates currently in effect.

As a result of Order No. 32176, wind and solar QF contracts executed on or after December 14, 2010 must be for facilities 100 kW or smaller in order to be eligible for published rates. Because the effective date of each of the Agreements is not prior to December 14, 2010, the date on which the lowered eligibility cap became effective, and because the size of each proposed wind project clearly exceeds 100 kW, the current eligibility cap for wind and solar facilities to obtain a published rate contract, Staff considers the rates contained in the Agreements to be in violation of Commission Order No. 32176. Consequently, Staff recommends denial of each of the five Agreements.

Staff acknowledges the comments submitted by Cedar Creek Wind, LLC in support of the Agreements, as well as the affidavit of Dana Zentz, an officer in an affiliate company to Cedar Creek Wind, LLC. The comments and affidavit allege that Cedar Creek and PacifiCorp had reached full agreement as to the "final" rates, terms and conditions of a PPA for the Project on November 29, 2010, and that Cedar Creek signed and delivered copies of the Agreements to PacifiCorp on December 13, 2010. Nevertheless, the effective date of each Agreement is shown as December 22, 2010 on page one of each Agreement, clearly after the December 14, 2010 effective date of Order No. 32176. Staff views the December 14, 2010 effective date of Order No. 32176 as absolute, and believes that any contract submitted with an effective date on or after that date should be rejected.

In order for the rates in the Agreements to comply with Commission Orders, Staff believes that they would have to be determined using the IRP methodology. Staff suggests that the Commission deny approval of the Agreements without prejudice and permit revised Agreements to be submitted containing rates computed under the prescribed IRP methodology. Alternatively, the Agreements could be voluntarily withdrawn, then held pending the outcome of the initial phase of Case No. GNR-E-11-01 in which the Commission is considering alternative solutions to the

problems posed by disaggregation aside from simply lowering the eligibility cap from 10 aMW to 100 kW.

STAFF RECOMMENDATION

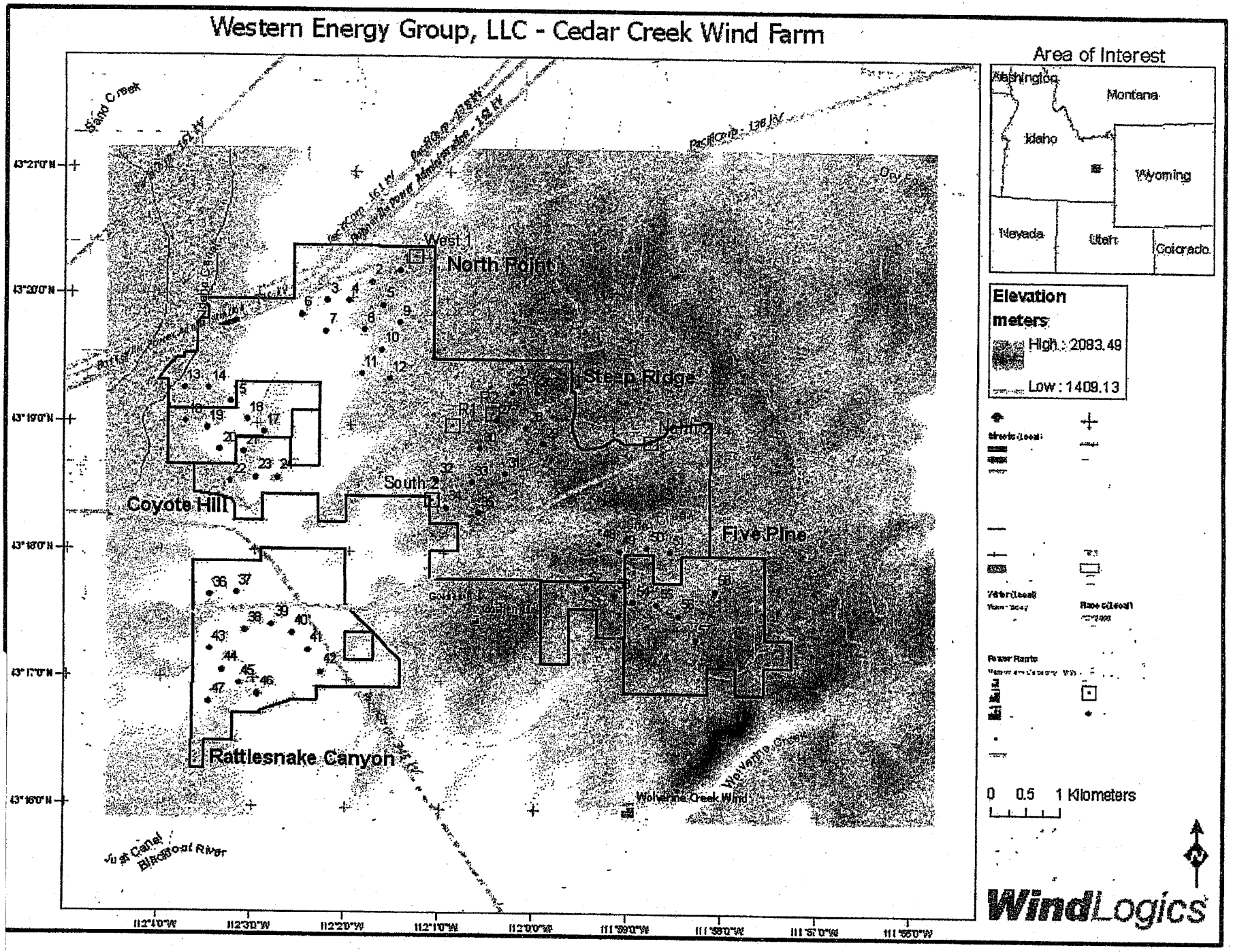
Staff recommends that the Commission not approve any of the five Agreements.

Respectfully submitted this 24TH day of March 2011.

Kristine A. Sasser
Deputy Attorney General

Technical Staff: Rick Sterling

i:umisc:comments/pace11.01_02_03_04_05ksrps comments



Attachment A
Case Nos. PAC-E-11-1 2 3 4 5
R. Sterling, Staff
3/24/11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS **24TH** DAY OF MARCH 2011, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF,** IN CASE NO. PAC-E-11-01_02_03_04_05, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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