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Attorneys for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF PACIFICORP DBA ROCKY MOUNTAIN )** **CASE NO. PAC-E-11-08**  
**POWER FOR APPROVAL OF A FIRM )**  
**ENERGY SALES AGREEMENT BETWEEN )**  
**ROCKY MOUNTAIN POWER AND )** **COMMENTS OF THE**  
**CARGILL, INC. )** **COMMISSION STAFF**  
**)**

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**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Kristine A. Sasser, Deputy Attorney General, submits the following comments in response to the Notice of Application and Notice of Modified Procedure issued on March 10, 2011, Order No. 32202 and its errata issued on March 15, 2011.

**BACKGROUND**

On February 16, 2011, PacifiCorp dba Rocky Mountain Power filed an Application requesting approval of a 10-year Firm Energy Sales Agreement (Agreement) between Rocky Mountain Power and Cargill, Inc. The project (Facility) is located in Jefferson County, Idaho. The project will be a "Qualifying Facility" (QF) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA).

On February 8, 2011, Rocky Mountain Power and Cargill entered into the Agreement. Cargill intends to own, operate and maintain a biogas-fueled digester generating facility for the generation of electric power. Under the terms of the Agreement, the Facility agrees to sell electric

energy to Rocky Mountain Power for a 10-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. Application at 2. The nameplate rating of the Facility is 1.696 MW. Under normal and/or average conditions, the Facility will not exceed 10 aMW on a monthly basis. Should the Facility exceed 10 aMW on a monthly basis, Rocky Mountain Power will accept the energy, but will not purchase or pay for the inadvertent energy. Agreement ¶ 6.6.

The Facility has selected seven days from the service date of the Commission's Order approving the Agreement as its Scheduled Commercial Operation Date. Application at 3. Rocky Mountain Power asserts that various requirements have been placed upon the Facility in order for Rocky Mountain Power to accept the Facility's energy deliveries. Rocky Mountain Power states that it will monitor the Facility's compliance with initial and ongoing requirements through the term of the Agreement. The parties have agreed to delay liquidated damages and security provisions. Agreement ¶¶ 2.4.1, 10.1. Rocky Mountain Power states that the Facility has also been made aware of and accepted the provisions in the Agreement regarding curtailment or disconnection of the Facility should certain operating conditions develop on Rocky Mountain Power's system. Agreement ¶ 6.3.

By its own terms, the Agreement 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 Facility 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 [Cargill] 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.

## **STAFF ANALYSIS**

The Facility is expected to generate 9,450 MWhs in the first year of operation and 12,600 MWhs annually thereafter. Under the non-levelized rates in the Agreement, the annual energy payments by PacifiCorp for the expected generation will be approximately \$0.48 million in 2011 increasing to approximately \$1.04 million in 2020, or a cumulative total of \$8.80 million over the 10-year term of the Agreement. The net present value of the energy payments over the life of the Agreement will be approximately \$5.72 million.

## 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. 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 Agreement contains rates from Order No. 31025, the published rates currently in effect. Because the Agreement is for a biogas facility at a dairy, and not a wind or solar facility, the temporary reduction in the eligibility cap for published rates does not apply. Consequently, the

rates in the Agreement are fully in conformance with Commission Orders. In addition, all other terms and conditions in the Agreement are consistent with recent Commission Orders.

### STAFF RECOMMENDATION

Staff recommends approval of the Agreement as submitted. Staff further recommends that the costs incurred by PacifiCorp for purchasing capacity and energy from Cargill be accepted as legitimate expenses. Staff recommends PacifiCorp be allowed to recover in rates in Idaho the appropriate allocated costs under the Revised Protocol.

Respectfully submitted this 7<sup>TH</sup> day of April 2011.

  
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Kristine A. Sasser  
Deputy Attorney General

Technical Staff: Rick Sterling

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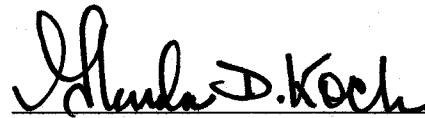
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 7<sup>TH</sup> DAY OF APRIL 2011, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. PAC-E-11-08, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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