BEFORE THE WYOMING PUBLIC SERVICE COMMISSION

| IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR A MODIFICATION OF AVOIDED COST METHODOLOGY AND REDUCED CONTRACT TERM OF PURPA POWER PURCHASE AGREEMENTS | Docket No. 20000-545-ET-18<br>Record No. 15133 |
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# NORTHERN LARAMIE RANGE ALLIANCE POST-HEARING BRIEF

COMES NOW Northern Laramie Range Alliance ("NLRA") filing this post-hearing brief for the Commission to consider pursuant to the Wyoming Public Service Commission's (the "Commission") order issued from the bench on July 11, 2019.

This matter continues the effort by PacifiCorp, doing business in Wyoming as Rocky Mountain Power ("RMP", "PacifiCorp" or "the Company"), to ensure that the terms on which it is required to purchase electricity from independent power producers pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA) are consistent with PURPA's "ratepayer indifference" requirement.

The Company began this effort in 2015 when it sought relief from the Commission's requirement in Schedule 38 that it enter 20-year, fixed-rate contracts to purchase electricity generated by PURPA "qualifying facilities" (QFs) larger than [10] megawatts in nameplate generating capacity. The Commission declined its request at that time, instead instructing the Company, QFs and other parties to undertake a "collaborative" in an effort to resolve their

differences. This failed, and the Company now seeks once again to shorten the contract term, on this occasion to seven years rather than the three years it sought in 2015.

The Northern Laramie Range Alliance ("NLRA") participated as an intervenor in the 2015 proceeding, representing the interests of its more than 900 members, most of whom are residential customers of RMP. It participated in the "collaborative" thereafter, and has intervened in the present matter, in the same capacity.

Notwithstanding the contentiousness of aspects of these proceedings, the law and the facts are clear:

1. **The only constraint in PURPA or in any other federal statute or regulation, or in Wyoming statute, on the Commission's authority to regulate the Company's implementation of PURPA's must-take provision is the requirement that the Company may not purchase QF-generated electricity for more than its avoided cost** – i.e., the price at which it could obtain the energy from another source. The Company's obligation – and that of the Commission – is to further the interest of ratepayers in reliable electric service at the lowest practicable cost. Nothing in PURPA is inconsistent with this basic obligation. While PURPA requires the use of particular technologies at a smaller scale, the ratepayer indifference provision makes it clear that this is to be done without impairing the basic obligation of utilities and their regulators. For the reasons summarized in the following paragraph, **the existing terms of Schedule 38 virtually ensure that the Company has been, and will continue, paying prices for QF-generated electricity that violate federal law**.

2. As in the 2015 proceeding, **the evidence is overwhelming, and largely uncontested, that long-term, fixed-price contracts as currently required by Schedule 38 have resulted in the Company and its ratepayers paying more for QF-generated electricity than required by PURPA's ratepayer indifference standard.** Prices for wind and solar energy have continued falling, as evidenced in successive EIA reports and most recently in the outcome of the Company's recent competitive tender pursuant to its 2017 Integrated Resource Plan. At the same time, with the Company participating in the Western Energy Imbalance Market (EIM), opportunities for efficient short-term acquisition of capacity as needed have created substantial additional savings.[1] Long-term, fixed-price contracts for QF-generated energy, without the capacity on the part of the Company to curtail purchases to optimize management of the grid, are fundamentally inconsistent with the Company's obligation to provide reliable service at lowest cost, and inconsistent with PURPA's ratepayer indifference standard.

**In this proceeding, as in the 2015 proceeding and the "collaborative" that followed (and in comparable proceedings in other states), the Company has sought to fulfill its responsibility (and that of the Commission) to ratepayers by bringing the practices mandated under Schedule 38 more closely into compliance with the ratepayer indifference requirements of federal law:**

[1] In effect, the Company's "avoided cost" now is determined in the market in real time, with significant savings for ratepayers as documented in the Western EIM's periodic reporting. *See, e.g.,* https://www.westerneim.com/Documents/WesternEIMBenefitsReachNearly740MillionSinceItsLaunchIn2014.pdf

1. Shortening the contract term specified in Schedule 38 is an essential element, for the reasons extensively described and documented in the evidence adduced in the present proceeding, in the 2015 proceeding and in those in other jurisdictions.
2. A second essential element – to the extent that the Company continues to implement PURPA's "must-take" provision through PPAs or other contracts rather than through real-time purchases[2] – is ensuring that the terms of QF contracts are competitive with those of other potential suppliers. In this proceeding, the Company is seeking to do so by adjusting the PDDRR avoided-cost pricing methodology under Schedule 38 to benchmark against specific deferrable resource (per the testimony of Daniel MacNeil). This would help ensure that the results of the most recent competitive tenders determine avoided-cost pricing under Schedule 38.

**QF developers, once again, have piled in to oppose PacifiCorp's proposals**, as they did in the 2015 proceeding in Wyoming, in the "collaborative" that followed, and as they have done in other jurisdictions. This is, of course, no surprise. The details vary, of course, but many (if not most) developers that have built their businesses in reliance on PURPA's "must-take" provision pursuing a business model that seeks to piggyback on utilities' strong credit ratings by obtaining from them long-term, fixed-price contracts (akin to a bond) that they can use to attract construction and takeout financing for their projects.

The problem, of course, is that QF developers also want to make a great deal more return on equity than utilities are permitted – typically well into double digits *per annum*. In a typical

[2] As noted in testimony in this proceeding, there is no requirement in PURPA that utilities subject to its provisions enter term contracts for QF purchases – the only requirement is that they purchase QF output at whatever is then the lowest cost alternative cost available. The Texas Public Service Commission has recognized this and barred Texas utilities subject to PURPA from entering legally enforceable obligations for purchase of non-firm energy such as wind and solar.

case the development stage of their projects is funded by private parties expecting to "exit" their investment after leases are obtained, permitting completed and a PPA in place, with double-digit annualized returns. At that point, the developer can obtain short-term construction loans on the strength of commitments from "tax equity" investors to take out the developer and repay the construction finance. After tax credits have expired, these investors likely will transfer the project to long-term, tax exempt investors such as pension funds, seeking bond-like returns but at a higher rate than the liquid, investment-grade securities issued by the Company.

A simple example illustrates the point based an 80 mw QF wind project obtained under PURPA's must-take requirement for a PPA from the Company at $40 per megawatt-hour. The project would qualify for the federal production tax credit worth – under the new, lower corporate tax rates – approximately $29 per megawatt -hour pre-tax, for total pretax revenues of approximately $69 per megawatt-hour for the first ten years of the project and $40 thereafter. Had the Company built the project, it would have required approximately $47 per megawatt-hour to cover the capital cost and operations and maintenance, but it would have retained the production tax credit, reducing its effective cost – and the effective charge to ratepayers - to about $19 per megawatt hour for the first ten years. The dramatic savings to ratepayers if the Company had simply built the project itself – not to mention its ability to curtail the facility as needed to most efficiently manage the grid (impossible with the QF-built facility) – makes the point clearly that the existing approach is entirely inconsistent with federal law.

**The QF intervenors in this proceeding, claim that a long-term, fixed-price PPA is essential to their obtaining financing. This is simply not the case**, as Mark Tourangeau has described, and as documented extensively in the literature. The financial sector has developed

tools to hedge volatile prices in the wholesale energy markets, tools that QFs can use to manage the risks of generating power for sale into an efficient, dynamic market.

**But even if it were true, it is not the responsibility of the Company or the Commission to promote or facilitate a particular business model**, unless it is essential to delivering reliable service at the lowest cost. It is worth noting in this connection that there is nothing preventing QF developers from participating in competitive tenders such as that which the Company just completed.

**Against this background, NLRA believes that the Commission's focus should be on ensuring that QF development occurs on terms that represent a true avoided cost**, and that impair as little as possible the Company's ability to manage its system.

**Given the constraints of the must-take provision – notably that QFs cannot be curtailed – NLRA believes that QF contract terms should be as short as possible**, and that rates should be determined as competitively as possible.

**Accordingly, as a starting point, NLRA supports the Company's proposal to shorten the contract term to seven years**. And, we support its proposal that the PDDRR avoided-cost pricing methodology under Schedule 38 be adjusted to benchmark against specific deferrable resource, per the testimony of Daniel MacNeil.

However, as indicated in Kenneth Lay's testimony in this proceeding, **NLRA also believes that the Commission should consider even shorter terms, along the lines recently adopted in Alabama**, which provide contract certainty for developers while ensuring an annual adjustment to the avoided-cost price to ensure it remains competitive with alternatives then available.

WHEREFORE, NLRA respectfully requests that the Commission issue an order approving the Company's application.

Dated this 8th day of August, 2019.

Respectfully submitted,
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**CERTIFICATE OF SERVICE**

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