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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp, by and through its Rocky Mountain Power Division, for Approval of a Solicitation Process for a Flexible Resource for the 2012-2017 Time Period, and for Approval of a Significant Energy Resource Decision	Docket No. 07-035-94 **ROCKY MOUNTAIN POWER'S PETITION FOR RECONSIDERATION, REVIEW OR REHEARING**

Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or "Company"), pursuant to Utah Code Annotated §§ 54-7-15 and 63-46b-13 and Utah Administrative Code R746-100-11.F, respectfully requests the Commission to reconsider, review or rehear the Suggested Modifications and Order ("Order") issued May 23, 2008. Rocky Mountain Power seeks reconsideration, review or rehearing of the Commission's directive to delete the language in the Revised Final Draft All Source Request for Proposal ("All Source RFP") that places potential bidders on notice that the Company is seeking a system resource that complies with state laws ("Notice Provision"). Order at 12, 19.

Rocky Mountain Power has no objection to modifying the Notice Provision in a manner that addresses the concerns of the Commission regarding potential ambiguity, singling out coal resources and referring solely to the other states. However, the Commission's directive to delete the Notice Provision entirely is inconsistent with system-wide resource planning and operation

which the Utah Commission has consistently found to be in the public interest of Rocky Mountain Power's Utah customers. Retention of system-wide planning and operation necessarily requires compliance with the laws and regulations of each of the states within the system.

The Commission's directive is also inconsistent with the spirit of Senate Bill 202 ("SB 202") passed in the 2008 General Session of the Utah Legislature, which encourages utilities to select generation resources that have zero or reduced carbon dioxide emissions. Finally, deletion of the Notice Provision could mislead potential bidders into believing that generation resources (primarily coal) that have emissions exceeding legal requirements could be accepted by the Company as system-wide resources when such resources cannot under the existing inter-jurisdictional cost allocation methodology.

INTRODUCTION

Procedural History

On December 21, 2007, Rocky Mountain Power filed an application, pursuant to the Act and Commission Rules R746-420, *et seq*., requesting that the Commission open a docket for approval of a request for proposals ("RFP") for a flexible resource for the 2012 – 2017 time period. On February 15, 2008, the Company filed its Draft 2008 All Source RFP and requested approval of it. Various parties filed comments on the Draft 2008 All Source RFP. In response to these comments, the Company filed a revised version of the RFP and responsive comments on March 28, 2008. On April 11, 2008, the Independent Evaluator ("IE") filed its report. On April 25, 2008, the Company and various other parties filed reply comments, and the Company filed a further revision of the RFP, the All Source RFP. On April 30, 2008, the Division of Public Utilities ("Division") filed an issues matrix. On May 1, 2008, additional parties filed comments, the parties met to discuss the matrix and identify issues that were unresolved, and the

Commission held a hearing at which the parties presented their positions on unresolved issues and responded to questions from the Commission.

On May 23, 2008, the Commission issued the Order discussing the positions of the parties and making findings and conclusions on the unresolved issues. Among other things, the Commission suggested that Section 2.D of the All Source RFP be modified to delete the Notice Provision which reads: "The Company will not accept bids from new or existing coal resources unless such proposals are consistent with multi-state legal and regulatory requirements regarding new and existing coal resources." Order at 11-12, 19, referring to All Source RFP at 24.

IRP Policy

Following a series of proceedings in the late 1980s and early 1990s, the Commission adopted guidelines for a process to develop and review Company IRPs.[1] The IRP Guidelines endorsed a process based on integrated, system-wide planning. The Company submitted IRPs over the years, and the Commission reviewed the IRPs and provided additional guidance. None of this guidance has departed from the basic policy of integrated, system-wide planning. To the contrary, these orders have confirmed that plans must be based on "integrated, single-system" operation.[2]

MSP Order

In December 2000, the Company filed applications in each of the six states in which it provides retail electric service seeking approval of a Structural Realignment Proposal ("SRP"). Under the SRP, the Company proposed to structurally realign its operations into six separate distribution companies (one for each state), a generation company and a service company. In

[1] Report and Order on Standards and Guidelines, *In the Matter of Analysis of an Integrated Resource Plan for PacifiCorp*, Docket No. 90-2035-01 (Utah PSC Jun. 18, 1992) ("IRP Guidelines").

[2] *See, e.g.* Report and Order, *In the Matter of the Acknowledgement of PacifiCorp Integrated Resource Plan (RAMPP 6)*, Docket No. 98-2035-05 (Utah PSC Feb. 28, 2002) ("2002 IRP Order") at 13.

Utah, the SRP was filed in Docket No. 00-035-15. The SRP was controversial largely because of concerns that it would result in transfer of jurisdiction from the states to the Federal Energy Regulatory Commission ("FERC") and the Securities and Exchange Commission. A number of parties and some state commissioners encouraged the Company to seek other means of resolving the problems addressed by the SRP.

In March 2002, the Company made filings in each of its six states requesting the commissions to initiate investigations and endorse a multi-state collaborative process to address inter-jurisdictional issues. The application in Utah was filed in Docket No. 02-035-04. The multi-state process ("MSP") resulting from these filings involved the appointment of an independent facilitator by the state commissions, extensive discovery, numerous meetings at which regulators and other interested parties from all six states studied and debated the issues with the assistance of the facilitator. After objections to an initial protocol, the parties stipulated to a revised protocol ("MSP Protocol"). The Company and other parties provided evidence supporting approval of the stipulation, and Washington was the only state that rejected the MSP Protocol.[3] Following a hearing, the MSP Protocol was approved by the Commission in the MSP Order issued December 14, 2004.

As noted by the Commission in the MSP Order, the MSP Protocol provides a method that permits the Company to plan and operate as a single integrated company doing business in six states. The stipulation, evidence submitted in support of the stipulation and the MSP Order all recognize the value of resource planning, acquisition and operation on a system-wide basis.

The Company has no objection to proposals before the MSP Standing Committee that would allow flexibility to move away from system-wide planning on a limited basis to

[3] Idaho, Oregon, Utah and Wyoming expressly approved or acknowledged the MSP Protocol. California has followed the MSP Protocol, but has not issued an order expressly approving or acknowledging it.

accommodate state-specific policy requirements so long as such proposals are implemented in a fair manner. However, absent an amendment to the MSP Protocol, the Company does not currently have the option to unilaterally move away from system-wide planning.

SB 202

SB 202 was passed in the 2008 General Session of the Utah Legislature. It recognizes the need for development of energy resources that emit reduced or zero levels of carbon dioxide. Legislation with a similar objective has been passed in Oregon, California and Washington. The limitations on generation emissions in the legislation adopted in California and Washington prompted the need for the Notice Provision in the All Source RFP.[4]

ARGUMENT

The Commission's suggested modification of the All Source RFP to remove the Notice Provision is effectively an order that the Notice Provision be removed from the All Source RFP. Thus, it is appropriate to seek reconsideration, review or rehearing of that decision.

The Commission based its decision to reject the Notice Provision on its concurrence with arguments of the Utah Association of Energy Users ("UAE") that the language is ambiguous and places an unreasonable burden on bidders. The Commission also concurred with arguments of UAE, the Division and the IE that (1) no resource should be excluded from bidding if the resource can comply with the terms and conditions and the need identified in the All Source RFP and (2) that coal bids should be subjected to the full evaluation process in order to determine optimal least-cost and least-risk resources. The Commission concluded that state regulatory considerations should only be addressed after a full analysis of cost, risk and uncertainty and that the Company bears the burden of demonstrating that its resource decisions are prudent.

[4] California passed Senate Bill No. 1368 in September of 2006. It is codified at Cal. Pub. Util. Code § 8340 (2006). Washington passed Substitute Senate Bill 6001 in the 2007 Regular Session. It is codified at Wash. Rev. Code Ann. §§ 80.80.005, 80.80.010, 80.80.030 and 80.80.080 (2007).

The Commission's concerns may be divided into two groups. First, the Order stated concerns regarding the potential ambiguity of the Notice Provision, the potential burden the Notice Provision places on bidders and the singling out of coal-fueled resources. These potential ambiguity concerns can readily be addressed through modification of the language in the Notice Provision to provide further clarity about its intent. The Notice Provision in no way places a burden on bidders; to the contrary, it advises bidders of statutory emissions limitations of which they might otherwise not be aware. Second, the Order stated concerns regarding consideration of legal requirements of other jurisdictions in determining if bids will be acceptable and consideration of bids that may be lower cost. The Order also implied that exclusion of resources barred by other states may be found imprudent. These concerns are inappropriate in light of section 54-17-202(2)(a) of the Act, the IRP policy, and the MSP Protocol and the spirit of SB 202. If planning is to be done on a system-wide basis, then compliance with the laws of all states in the system is necessary.

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I. THE SUGGESTION THAT THE NOTICE PROVISION BE REMOVED IS EFFECTIVELY AN ORDER AND IS THUS SUBJECT TO RECONSIDERATION, REVIEW OR REHEARING

The Order characterizes the Commission's rejection of the Notice Provision as a suggested modification. This characterization is consistent with section 54-17-201(2)(f)(ii) of the Act. However, the Company may not proceed to conduct the All Source RFP without accepting the suggested modification. Section 54-17-201(2)(a) provides that "[e]xcept as provided in Subsection (3) [allowing a waiver of solicitation], to acquire or construct a significant energy resource, an affected electrical utility *shall conduct a solicitation process that is approved by the commission*." Utah Code Ann. § 54-17-201(2)(a) (emphasis added). Section 54-17-302(3) provides that "[i]n ruling on a request for approval of a significant energy resource

decision, the commission shall determine whether the significant energy resource decision: … (b)(i) is reached in compliance with *the solicitation process approved by the commission* in accordance with Part 2, Solicitation Process; or (ii) is reached after the waiver of the solicitation process as provided in Subsection 54-17-201(3) ….” *Id.* § 54-17-302(3) (emphasis added). These statutes make it clear that an RFP that is not approved by the Commission cannot result in approval of the acquisition of a significant energy resource consistent with the Act. *See also* Utah Admin. Code R746-430-2(1)(c)(iv).

Based on the foregoing, any suggested modification of an RFP by the Commission amounts to an order that must be complied with if the All Source RFP is to be deemed approved by the Commission and to comply with the Act. Accordingly, it is appropriate to seek reconsideration, review or rehearing of this aspect of the Order. *See* Utah Code Ann. § 63-46b-13 and Utah Administrative Code R746-100-11.F.

II. THE NOTICE PROVISION MAY BE CLARIFIED TO ADDRESS LEGITIMATE CONCERNS.

The Commission rejected the Notice Provision in part because it is potentially ambiguous, Rocky Mountain Power does not object to addressing any potential ambiguity by modifying the language of the Notice Provision while still preserving the legitimate purposes of the Notice Provision.

The point of the Notice Provision is to avoid the expenditure of time and resources by bidders, the Company and the IE in submitting and evaluating bids for resources that the Company cannot legally acquire as system-wide resources. The Notice Provision was drafted in recognition of the carbon dioxide emission requirements of California and Washington, but was kept sufficiently general to (1) allow each bidder to determine how to comply with those laws (which apply to all new generation and new long-term power purchase contracts, not just coal

generation) and (2) to recognize and incorporate any laws that might be enacted during the Commission's consideration of the solicitation.

In light of the Order, the Company has no objection to clarifying the Notice Provision to address the Commission's concerns. The Company proposes the following language in lieu of the Notice Provision the Commission directed be removed from the All Source RFP:

> The Company will not accept bids for new or existing resources unless such proposals are consistent with Cal. Pub. Util. Code § 8340 (2006); 2008 L. Utah, ch. 374, codified at Utah Code Ann. §§ 10-19-101, *et seq.* and 54-17-502, *et seq.* and amending Utah Code Ann. §§ 54-2-1, 54-12-1, 54-12-2, 54-12-3, 54-17-201, 54-17-302 and 54-17-303; Wash. Rev. Code Ann. §§ 80.80.005, 80.80.010, 80.80.030 and 80.80.080 (2007); and any additional state or federal requirements regarding new and existing resources that may be identified by the Company during the solicitation process.

III. OTHER ASPECTS OF THE ORDER REJECTING THE NOTICE PROVISION ARE INAPPROPRIATE.

Citing UAE's objections with approval, the Order stated that:

> the Company is required to pursue lowest-cost, risk-adjusted, system-wide planning and resource acquisition policies, regardless of any conflicting resource policies or requirements imposed on the Company by other states. Moreover, UAE argues, this approach is required even if the policies of other states might impose additional costs on the Company or other states. Utah ratepayers can only be assured of lowest-cost, risk-adjusted resource planning and acquisition as required by Utah law if and to the extent that all resources eligible to provide service to Utah ratepayers are fairly, reasonably and properly solicited, evaluated and selected through a meaningful RFP process, notwithstanding conflicting policies or requirements that other states may impose.

Order at 11. The Order continues to approvingly cite UAE's position that "the Company should be required, as a condition to any possible resource pre-approval in this docket, to invite and evaluate all base load resource categories and bids, regardless of the fuel source." *Id.*

The Order concludes that:

> the RFP must subject any coal bid to the full evaluation process in order to determine optimal least cost and least risk resources. Any state regulatory consideration should be addressed after the full analysis of cost, risk and

> uncertainty. The Company always bears the burden of demonstrating its resource decisions are prudent ….

Id. at 12.

The comments of UAE and other parties suggest that while the Company may ultimately be required to reject a system-wide resource because it is barred by the laws of other states, the Company may be found imprudent in doing so and may only be allowed recovery in Utah rates of the cost of a lower cost resource that the Company could not acquire based on the laws of other states, but which would not be barred by Utah laws. If that is the intent of the Order, the Company objects to it and believes it is inappropriate and inconsistent with the Commission's requirement that the Company plan and operate resources on a system-wide basis. Under existing Commission policies, resources that do not meet the statutory requirements of all states in the system are not "eligible to provide service to Utah ratepayers" because these resources, by definition and operation of law, cannot be system resources.

A. The Act Permits the Commission to Consider Requirements Imposed by Other States.

Section 54-17-202(2) of the Act provides in part that:

> If an affected electrical utility is subject to regulation in more than one state regarding the acquisition, construction, or cost recovery of a significant energy resource, in making the rules required by Subsection (1), the commission may consider the impact of the multi-state regulation including requirements imposed by other states as to: (a) the solicitation process ….

Utah Code Ann. § 54-17-202(2).

Although this section does not require that the Commission consider the multi-state regulation of the Company in determining the appropriate language to include in the RFP or in the rules on the RFP process, it constitutes the Legislature's acknowledgement that multi-state regulation may be considered. This acknowledgement is manifestly reasonable in light of the fact that Rocky Mountain Power is regulated by six states and the FERC and that the

Commission has determined, as discussed in more detail below, that Rocky Mountain Power should plan for, acquire and operate its generation resources on a system-wide basis. In that context, it makes no sense to ignore the requirements of other states in the multi-state system in acquiring resources.

The Order requires the Company to accept and evaluate bids for resources that it could not ultimately acquire if it is required to operate resources on a system-wide basis. This would result in a substantial waste of resources on the part of bidders, the Company and the IE.

UAE argued that the Notice Provision was an effort by the Company to shift to ratepayers the costs the Company faces as a result of conflicting state resource policies. Reply Comments of UAE at 2. UAE argued that the Company agreed to accept these risks at the time PacifiCorp merged with Utah Power & Light Company. *Id.* In so arguing, UAE misunderstands both the Company's commitment and the Notice Provision. The issue addressed by the Notice Provision is not revenue shortfalls arising as a result of inconsistent inter-jurisdictional allocations among states. That is the risk the Company agreed to bear when it merged with Utah Power & Light Company in 1989 and that ScottishPower agreed to continue to bear when it acquired PacifiCorp in 1999.[5] That is not the same issue addressed by the Notice Provision. The Notice Provision simply says that a bid will not be accepted if it is for a resource that the Company cannot acquire as a system resource. The Notice Provision is eminently reasonable and should not be rejected based on an incorrect argument that it is an attempt to shift risks.

The Legislature has acknowledged that multi-state regulation may impact the resource acquisition process and has permitted the Commission to consider those impacts in the process. The Commission should reconsider, review or rehear the Order to do so.

[5] This commitment or condition is not part of the commitments and conditions in the Report and Order issued June 5, 2006 in Docket No. 05-035-54 approving the acquisition of PacifiCorp by MidAmerican Energy Holdings Company.

B. The IRP Policy Is That the Company Plan Resources on a System-wide Basis.

The IRP Guidelines arose out of a requirement that the Company file a 1989 least-cost planning report, entitled Resource and Marketing Planning Program (RAMPP I). IRP Guidelines at 1. RAMPP I was based on integrated, single-system planning and operation. The IRP Guidelines addressed issues identified by a task force led by the Division as requiring explicit Commission decision. *Id.* at 2. System-wide planning and operation was not an issue identified by the task force. Thus it is apparent that the Commission's policy on IRPs includes system-wide resource planning. This policy has been confirmed in subsequent orders on review of IRPs. For example, in the 2002 IRP Order, the Commission explicitly required the Company to submit an updated Action Plan "based on integrated, single-system, least-cost operation." 2002 IRP Order at 13.

It is inconsistent for the Commission to require the Company to engage in system-wide resource planning and at the same time require the Company to accept and evaluate bids for resources that cannot be used system-wide. If the laws of any of the Company's states prohibit the acquisition or operation of a resource, that resource by definition cannot be a system-wide resource. In effect, such a resource is not "eligible" (Order at 11) and, therefore, must be excluded from the bid and evaluation process.

C. The MSP Order Establishes a Clear Policy for System-wide Resource Operation in the Interests of the Company's Customers.

As noted above, the MSP Protocol resulted from extensive filings, discovery, numerous meetings at which regulatory staff and other interested parties from five states studied and debated the issues with the assistance of an independent facilitator appointed by the state commissions and the ultimate development of the stipulated MSP Protocol. Following hearings, the MSP Protocol was approved by the Commission in the MSP Order.

Of significant import to Utah parties throughout the MSP was that the MSP Protocol be premised on the Company planning and operating as a single integrated company doing business in six states. The stipulation, the evidence submitted in support of the stipulation, and the MSP Order all recognize the value that the Commission has placed on resource planning, acquisition and operation on a system-wide basis. For example, the Commission observed:

> PacifiCorp operates as a single integrated electric utility with transmission (high voltage) lines that interconnect these six states. PacifiCorp has generating plants located throughout the states that are used as a group of resources to provide electricity to retail customers in all six states. Integrated system costs are shown in the Load Growth Issues paper and the Dynamic Alternative paper to be substantially lower and more stable over time than separately operated systems due to greater flexibility afforded from diverse demand, supply and geographic characteristics, confirming that single system planning and operation provides lower costs to customers. Indeed, this expected outcome was the basis for the 1989 Utah/Pacific merger.
>
> Since transmission lines and generating plants regardless of location are used to provide electricity to customers in all the states, the costs incurred and the wholesale revenues received from the use of those facilities must be divided among the six state jurisdictions. The dividing or apportionment of costs and revenues among the states is called interjurisdictional allocations. When different allocation methods are used in the six states (as is the current situation), PacifiCorp might recover more or less than its total costs through customer rates.

MSP Order at 29-30 (footnotes omitted).

The Commission thus based its approval of the MSP Protocol on its finding that "single system planning and operation provides lower costs to customers." *Id.* at 30. The Commission also noted the concerns of both the Company and other parties that "the cost recovery problem and the impact on Utah ratepayers could potentially expand because of *divergent state policies* regarding cost responsibility for existing and future generation resources." *Id.* at 31 (emphasis added). Thus, the Commission agreed that "agreement among states on an interjurisdictional allocation method, consistent with least cost integrated system planning and operation and

adequate and reliable service to customers, is a reasonable regulatory objective." *Id.* Finally, the Commission, in approving the MSP Protocol, noted that:

> The problem today has the potential to expand beyond the previous cost recovery gap, that was expected to decline, *and threatens the continued least-cost single system planning and operation that has in the past provided significant benefits*. The Load Growth Issues paper offers evidence of continued benefits of single system planning and operation. We recognize the problem articulated by the parties and find it important to work with the Company's other states to find an equitable *resolution that will provide the Company the confidence to make needed investments in infrastructure and continue least-cost single system planning and operation*.

Id. at 40 (emphasis added).

Thus, in the MSP Order the Commission acknowledged the critical importance of providing the Company with the confidence to make necessary investments in the context of an integrated system-wide planning approach, a conclusion that recognized the need to bear in mind the juggling act the Company must continually play in planning on an integrated basis while at the same time conforming to existing policies in the six states in which the Company operates. As already noted, and as discussed in the next section, the policy underlying SB 202 in Utah, not to mention clearly stated policies in California and Washington, make it clear that the Commission's rejection of the Notice Provision is inconsistent with the policies underlying approval of the MSP Protocol.

In recognition of the fact that policies of states or the federal government on acceptable resources may differ, there are proposals before the MSP Standing Committee that would allow flexibility to move away from system-wide planning on a limited basis to accommodate state-specific policy requirements. Heretofore, Utah parties have not supported consideration of proposals that would depart from system-wide planning and acquisition of resources. Clearly such modifications would require that states requiring the acquisition of resources, that are barred by other states, provide recovery of the full cost of those resources and in return, receive

any benefits of the resources such as revenues from wholesale sales. Absent an amendment to or re-interpretation of the MSP Protocol, the Company does not currently have the option to unilaterally move away from system-wide planning. It is not appropriate for the Commission to require the Company to engage in planning, acquisition and operation of resources on a system-wide basis on the one hand, but then to require the Company to accept and evaluate bids for resources that are not acceptable to all of its states on the other hand. The Commission should reconsider, review or rehear the Order to correct this inherent inconsistency.

D. SB 202 Encourages the Selection of Resources That Have Reduced or Zero Carbon Dioxide Emissions.

SB 202 was enacted by the Utah Legislature in the 2008 General Session. It expresses a clear policy in favor of electric utilities, including the Company, acquiring greater and greater portions of their overall supply of electricity from renewable resources that have reduced or zero carbon dioxide emissions. While admittedly there is no specific language in SB 202 that prohibits the acquisition of new electric capacity from traditional coal-fueled resources, the intent and incentives of the law are unmistakably to encourage the Company toward generation with reduced or zero carbon dioxide emissions. This is the same objective of the Washington and California laws, although those laws are more "command and control" than "incentive". The Notice Provision , as revised above, recognizes this shared objective.

CONCLUSION

Based on the foregoing, Rocky Mountain Power respectfully requests the Commission to reconsider, review or rehear that portion of the Order rejecting the Notice Provision. Rocky Mountain Power has no objection to clarifying the Notice Provision in the manner proposed above to address legitimate concerns raised by the Commission. The other concerns cited by the Commission in support of rejection of the Notice Provision are inappropriate because they are inconsistent with section 54-17-202(2)(a), the Commission's requirement for system-wide

resource planning and operation and the spirit of SB 202. If the Commission's policies continue to mandate system-wide planning, acquisition and operation for the benefit of Utah customers, the Commission must also accept the limitations of system-wide planning, acquisition and operation.

DATED: February 20, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **ROCKY MOUNTAIN POWER'S PETITION FOR RECONSIDERATION, REVIEW OR REHEARING** to be served upon the following by electronic mail to the addresses shown below on February 20, 2018:

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