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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of a 2009 Request for Proposals for Flexible Resource	DOCKET NO. 05-035-47
In the Matter of the Application of Rocky Mountain Power for Approval of Significant Energy Resource Decision Resulting from 2012 Request for Proposals	DOCKET NO. 08-035-95
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

UTAH COMMITTEE OF CONSUMER SERVICES' RESPONSE TO ROCKY MOUNTAIN POWER'S REBUTTAL COMMENTS AND NOTICE OF TERMINATION OF AGREEMENT (February 12, 2009) AND NOTICE OF WITHDRAWAL OF APPLICATION (February 19, 2009), DOCKET NO. 08-035-95; REQUEST TO CLOSE DOCKET AND TERMINATE 2012 RFP, DOCKET NO. 05-035-47 (February 25, 2009); MOTION TO SUSPEND REQUEST FOR PROPOSALS, DOCKET No. 07-035-94 (February 26, 2009).

The Utah Committee of Consumer Services responds to Rocky Mountain Power's requests for agency action as allowed by the Commission's administrative rule R746-100-11 F. Each of these requests for agency action affects an integral part of the procurement process demanded by the Energy Resource Procurement Act. Indeed, Docket No. 08-035-95 requests the penultimate Commission decision approving the expenditure of ratepayer funds. However, Rocky Mountain Power abruptly ended the 2012 RFP and the resource decision that came from it. In addition, Rocky Mountain asks permission to suspend and modify the 2008 RFP. But, other than inexact generalizations and a cliché ("the Company remains committed to securing viable, cost-effective resources to meet its forecasted needs for summer 2012") the utility has offered no probative, meaningful explanation for either its decisions or alternate plans.¹

I. IN DOCKETS NO. 05-035-47 AND NO. 08-035-95, THE COMMISSION SHOULD FORMALLY ADJUDICATE ROCKY MOUNTAIN POWER'S REQUESTS FOR AGENCY ACTION.

Rocky Mountain's after the fact announcement that the utility had terminated the contract to acquire the resource contained no empirical or numerical support. For the purpose of this response under the circumstances, the Committee accepts the proposition that Rocky Mountain may in its discretion choose to take no further action upon the 2012

¹ At the Commission's February 19, 2009 hearing that was intended to consider the request for agency approval of the Lakeside 2 resource, Rocky Mountain's presentation markedly omitted any informative or helpful data, analysis or even a narrative of the consideration given to the consequences from the decision. A "bridging strategy" to acquire resources was mentioned but the utility's representatives unapologetically declined requests for an explanation and detail. Even in an informal hearing, refusals to provide answers to reasonable and relevant questions should not be acceptable.

RFP and may choose to terminate the Lakeside 2 project. No doubt, Rocky Mountain accepts the proposition that all of its public duties remain unchanged.

The Committee acknowledges that Rocky Mountain has agreed that the 2012 RFP docket should remain open for the IE's final report, presuming that 30 days is sufficient.² Concluding either docket in this abrupt manner limits the timing, nature and scope of evaluating the RFP with the objective of correcting deficiencies in the solicitation process that may have contributed to the failure of the 2012 RFP to accomplish the Act's stated purpose. Furthermore, the utility's proposal makes no provision for the Commission's evaluation, with the Committee, Division and IE's assistance, of the utility's decision to terminate the Lakeside 2 project and withdraw the 2012 RFP. Closing either docket under the circumstances deprives regulatory authorities of the right to scrutinize the whole of the 2012 RFP process and the decision to end it. In the Committee's view, an independent, thorough review of Rocky Mountain's decision to terminate the Lakeside 2 project and abandon the 2012 RFP is made necessary by the very circumstances Rocky Mountain asserts as justification for its actions.³

In Docket No. 05-035-47 and Docket No. 08-035-95, the Committee requests that the Commission allow the Division, Committee and interested parties the time necessary to investigate, make recommendations, and hold hearings if necessary, upon the following issues: (1) Was the IE's role in the 2012 RFP and participation in the Lakeside

² Rocky Mountain's proposed 30-day schedule does not consider that it conflicts with the hearings on its general rate case that will occur at the end of March.

³ Rocky Mountain does not address on the record the need to conduct discovery in the 2012 RFP docket or the Lakeside 2 docket, nor does the utility's proposal leave room for the Division, Committee or Commission's examination of the IE's reports or the requests for agency action in the dockets.

2 contract negotiations, consistent with the Act and administrative rules?⁴ (2) Was the Commission provided with sufficient notice of the progress, major issues and disputes, and involved in developing proposed resolutions, to allow it to properly oversee the RFP? (3) Was the structure and timing of the Lakeside 2 project agreement pertaining to liability milestones, penalty and price adjustments, and permitting, consistent with the Act? (4) In addition, the Committee asks that the Commission consider whether these dockets are appropriate for considering rate recovery for internal or external costs incurred by the company in connection the terminated Lakeside 2 project, including permitting, site preparation and construction, or payments to Summit Vineyard, LLC, CH2M Hill E&C, Inc., or any affiliated entity?

II. IN DOCKET NO. 07-035-94, THE COMMISSION SHOULD AUTHORIZE NOTIFICATION TO BIDDERS BUT SHOULD FORMALLY ADJUDICATE THE SUSPENSION OF AND MODIFICATIONS TO THE 2008 RFP.

With respect to Docket No. 07-035-94, the need for an independent, thorough prudence review of Rocky Mountain's decision to suspend the RFP, and the timing, terms and conditions for resuming the RFP, is critical to compliance with the Act and to the public interest. However, the Commission's examination of the 2008 RFP suspension and Rocky Mountain's plans to resume the RFP should not delay the notification to bidders as Rocky Mountain proposes.

⁴ As the Commission has noted, this is the first time the Commission will be reviewing the full process of the Energy Resource Procurement Act and the Committee believes that future RFPs will benefit from such an inquiry.

Again, for the purpose of this response under the circumstances, the Committee accepts the proposition that Rocky Mountain may in its discretion choose to suspend the current 2008 RFP. At some point, the utility may request approval for material modifications to the terms and schedule of the 2008 RFP.⁵ However, Rocky Mountain's request to suspend Docket No. 07-035-94 does not appear to acknowledge that the Act and administrative rules adopted by the Commission require a de-novo review of the RFP. For example, the general requirements for the solicitation process require that it "[b]e commenced sufficiently in advance of the time of the projected resource need to permit and facilitate compliance with the Act and the Commission rules and a reasonable evaluation of resource options that can be available to fill the projected need and that will satisfy the criteria contained within Section 54-17-302(3)(c)." R746-420-3 (1)(b)(v). The Commission must require that Rocky Mountain strictly comply with such rules if it is to avoid another resource decision that is not adequately prepared for vetting as required by statute and that is indifferent to the public process for review and recommendations regarding the decision.⁶

The Committee asks also that the Commission bear in mind that Rocky Mountain's claim that reduced customer loads in part justify its actions in all three dockets appears to be inconsistent with representations made on the eve of terminating the Lakeside 2 project and suspending the 2008 RFP. On February 9, 2009, two days before canceling the Lakeside 2 project, PacifiCorp represented to the Washington

⁵ R746-420-1 (4)(c). The Committee contends that the modifications Rocky Mountain anticipates, refreshing benchmarks for example, are all material and require Commission approval.

⁶ See December 24, 2008 Scheduling Order, Docket No. 08-035-95. Demanding strict compliance with statute is particularly called for in this case where Rocky Mountain expects to suspend the RFP for six to eight months.

Utilities and Transportation Commission that even adjusting for the economic downturn referred to in these dockets, a significant system-wide resource deficit forecast for 2012 remained. Gregory Duvall up-dates the resource deficiency to November 21, 2008 in his February 9, 2009 testimony in WUTC Docket No. UE 090205.

Q. Has the Company recently reassessed the need for resources?

A. Yes. As part of its 2008 integrated resource planning process, the Company has recently reassessed the need for resources using a load forecast prepared on November 21, 2008. This forecast reflects the Company's most recent view of load growth as well as **potential recessionary impacts on its loads.** [Emphasis added.]

Q. Based on this new load forecast, what is the Company's current assessment of its resource need in 2012?

The Company's current load and resource balance that includes the Plant in the existing portfolio is provided as Exhibit No.__(GND-5) and shows a system need for 1,936 MW in 2012, which is nearly identical to the resource need identified in the 2007 IRP after the addition of the Plant. For the west control area, the deficit in 2012 even after the addition of the Plant is 415 MW.

Well within the period when recession adjusted, changed economic and market conditions and reduced customer loads are claimed to justify Rocky Mountain's decisions, the utility acknowledges that resource needs upon which the utility has based its expedited requests for approvals, remain unfilled by either the 2012 or 2008 RFP.⁷ Furthermore, Rocky Mountain is now delaying to the end of March, the integrated

⁷ As of March 9, 2009, the 2012 resource deficit is believed to be 1665 MW, a difference of 271MW.

resource plan filing that at the February 19, 2009 hearing, was represented to evidence the changed conditions and customer loads.⁸

Rocky Mountain addresses such issues only by stating a determination to “further explore resource alternatives.” The Committee contends that such a casual approach to compliance with the Act is not acceptable and that the needs of consumers and the public interest require exacting not lax oversight.⁹ Accordingly, the Committee requests that the Commission schedule regular reports by the utility upon the status of its market assessments, its customer load forecasts, forecasts or information pertaining to construction costs, the response of bidders to the suspension notice, the development of new or refreshed benchmark resource proposals, and other reports as the Commission may deem necessary to monitor the 2008 RFP while it is suspended. In addition, the Committee requests that Rocky Mountain be directed to file these reports with the Commission, Division and Committee, and that discovery upon these reports or other matters deemed appropriate be allowed.

Finally, the Committee requests that the fourth paragraph to the proposed notice to bidders be stricken. The Committee believes that by this statement, which has not been approved by the Commission, Rocky Mountain intends the IE to participate in updating the 2008 RFP process and modifying the 2008 RFP. This presupposes the Commission’s approval of the utility’s actions during the suspension period. That

⁸ At the February 19, 2009 hearing, Rocky Mountain’s representative based in part the refusal to answer questions upon the promise that the 2008 IRP contained comprehensive answers. In a March 6, 2009 e-mail, PacifiCorp-IRP stated “[d]ue to recent resource procurement decisions, PacifiCorp has revised the 2008 IRP schedule to account for impacts to the preferred portfolio and action plan. “ The utility wishes to delay providing answers to March 31, 2009, when, under its proposal, all of the dockets here at issue would be suspended or dismissed.

⁹ The Committee first voiced such concerns in its November 9, 2007 Response to Motion to Amend 2012 Request for Proposals, Docket No. 05-035-47.

approval can only come after the Commission's consideration of Rocky Mountain's request to resume the RFP.¹⁰

DATED this 9th day of March 2009.

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¹⁰ The Committee is concerned that Rocky Mountain has already circulated this or a similar letter before receiving this Commission's approval. In the Matter of Pacificorp Request for Approval of Draft 2008 Request for Proposals, Oregon Public Utility Commission, Docket No. UM 1360.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was served upon the following by electronic mail sent March 9, 2009:

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