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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Request of ROCKY MOUNTAIN POWER for Waiver of Solicitation Process and for Approval of Significant Energy Resource Decision	Docket No. 08-035-35 REPLY OF ROCKY MOUNTAIN POWER TO COMMENTS ON REQUEST FOR WAIVER OF SOLICITATION PROCESS
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”) submits this reply to the comments submitted by various parties on the Company’s request for waiver of the solicitation process (“Solicitation Waiver Request”) with respect to the proposed acquisition of a generation plant (“Project Blue”).¹ Given that this is the first Solicitation Wavier Request under the Energy Resource Procurement Act, Utah Code Ann.

¹ A reply to comments on a Solicitation Wavier Request is not contemplated by the applicable statute or rules presumably because of the expedited statutory timeframe for the Commission to issue a written decision on a Solicitation Waiver Request. Utah Code Ann. § 54-17-501(4), (6) and (7). The applicable statute and rules also do not prohibit a reply.

§§ 54-17-101, *et seq.* (“Act”), and the apparent confusion of the Committee of Consumer Services (“Committee”) regarding the issues in the Solicitation Waiver Request in comments submitted, Rocky Mountain Power submits this reply to clarify the issue before the Commission and to respond to conditions to the granting of the Solicitation Waiver Request proposed by various parties.

INTRODUCTION

Rocky Mountain Power filed its “Verified Request for Waiver of Solicitation Process and for Approval of Significant Energy Resource Decision” (“Request”) on April 1, 2008. Rocky Mountain Power attempted in the Request to make clear that it was comprised of two requests: (1) a Solicitation Waiver Request under Utah Code Ann. §§ 54-17-201(3) and 54-17-501 and (2) a request for approval of a significant energy resource decision to acquire Project Blue under Utah Code Ann. § 54-17-302 (“Acquisition Approval Request”). These two requests could have been filed separately. However, given that both requests were dealing with Project Blue and that information and evidence regarding them substantially overlapped, the Company determined that it was more efficient to consolidate the requests in one docket and to file a single set of testimony in support of both requests.

Rocky Mountain Power thereafter filed its “Motion of Rocky Mountain Power for an Accounting Order to Establish a Regulatory Asset and Acquisition Premium” (“Motion”) in the same docket. The Motion seeks an accounting order authorizing the Company to record a payment associated with the exclusive right to acquire Project Blue for a period of time in Account 182.3, a regulatory asset account, until the transaction closes. The Motion also notes that there may be an acquisition premium in connection with acquisition of Project Blue and requests that if the Acquisition Approval Request is approved the Company be allowed to include the acquisition premium in Account 114. Again, the Motion could have been filed as a

request in a separate docket. However, Rocky Mountain Power believed it more efficient to file the Motion in the same docket as the Request.

Pursuant to a schedule established by the Commission, comments on the Solicitation Waiver Request were submitted by Merrimack Energy Group, Inc. as Independent Evaluator (“IE”), the Division of Public Utilities (“Division”), the Committee of Consumer Services (“Committee”), and the Utah Association of Energy Users (“UAE”) on April 23, 2008. The IE, Division and UAE support the Solicitation Waiver Request. The Committee does not oppose it.

REPLY TO COMMENTS

Most parties support and no party opposes the Solicitation Waiver Request. Therefore, based upon the verified Solicitation Waiver Request, the testimony filed in support of the Request, the information provided at the technical conference and in discovery and the comments, the Solicitation Waiver Request should be granted in the public interest.

The IE, UAE and the Committee have proposed conditions to approval of the Solicitation Waiver Request. As Rocky Mountain Power noted at the technical conference, approval of the Solicitation Waiver Request does not address the Acquisition Approval Request. Essentially all of the conditions proposed by the parties are subsumed in the Acquisition Approval Request process that is ongoing and, therefore, need not be conditions to approval of the Solicitation Waiver Request.

The IE proposes that approval of the Solicitation Waiver Request be conditioned on the “Company conduct[ing] the same or essentially [the] same analysis of [Project Blue] (including the same input assumptions) that was undertaken for the resources bid into the 2012 RFP (and envisioned for the All-Source RFP).” Rocky Mountain Power has no objection to conducting this analysis, but it goes to the Acquisition Approval Request and, therefore, need not be a condition to approval of the Solicitation Waiver Request.

UAE proposes eight conditions to approval of the Solicitation Waiver Request. Conditions 1, 2, 3, 5 and 8 are essentially that neither Rocky Mountain Power nor the seller of Project Blue has attempted to evade the requirements of the Act by failing to bid Project Blue in an RFP process or otherwise or has materially misrepresented or failed to disclose relevant information. These conditions are already covered in section 54-17-403(3) and a “fraud upon the court” exception to the finality of an order and, therefore, need not be separately included in an order approving the Solicitation Waiver Request. Condition 4 is that granting of the Solicitation Waiver Request will not affect the credibility of current or future requests for proposals (“RFP”). Rocky Mountain Power believes it has already satisfied this condition. *See Confidential Testimony of Stefan A. Bird and Gregory N. Duvall, Comments of IE and Division and Utah Admin. Code R746-430-4(f).* Condition 6 is that the parties “have had a reasonably adequate opportunity, within statutory time restrictions, to evaluate and comment on the [Solicitation] Waiver Request.” The Commission has exercised its discretion under section 54-17-501 (9)(b) to lengthen the statutory timeframes for review of the Solicitation Waiver Request and no party has objected to the timeframes allowed. Rocky Mountain Power appreciates the cooperation of the Commission and the parties in this expedited process. Condition 7 is that reasonable conditions proposed by the parties be included in the order approving the Solicitation Waiver Request. As previously noted, all conditions proposed that have not already been satisfied or that are not inherent in any order of approval will be addressed in the ongoing Acquisition Approval Request process.

The Committee filed two documents. One is a pleading titled “Utah Committee of Consumer Services’ Response to Rocky Mountain Power’s Request for Approval of Significant

Energy Resource Decision” (“Pleading”). Comments on the Acquisition Approval Request are not yet due, so the title of the Pleading is confusing. However, the Pleading

requests that the Commission find that the proposed acquisition for which a waiver is granted, is subject to Utah Code §54-17-501(10); that the cost recovery mechanism provided by Utah Code 54-17-303 is inapplicable to the proposed acquisition; and, that the character or classification, and amount of costs incurred in acquiring the energy resource are subject to a future prudence review and rate determination in accordance with Utah Code §54-4-4.

To the extent this is a request for a condition in the order approving the Solicitation Waiver Request, Rocky Mountain Power objects to it for two reasons. First, Rocky Mountain Power respectfully disagrees with the statutory interpretation in the Pleading that section 54-17-501(10) applies to a request for waiver of the solicitation process. Under the principles of statutory construction cited in the Pleading, Rocky Mountain Power believes it is apparent that section 54-17-501(10) applies only to a request for waiver of approval of a significant energy resource decision. Otherwise, why are the two types of requests for waiver separately available and what is the point of proceeding with a request for approval if a request for waiver of the solicitation process has been granted? Second, it is not necessary for the Commission to decide this issue at this time. It may be addressed in connection with the Acquisition Approval Request.

The Committee also filed comments on the Solicitation Waiver Request in the form of a memorandum (“Memo”). The Memo states that the Committee does not oppose the Solicitation Waiver Request, but proceeds to discuss the Acquisition Approval Request and Motion. In that regard, the Memo states its understanding that a request for waiver of the solicitation process eliminates the benefit of prior approval of rate recovery in the approval process and that prudence of the acquisition of Project Blue must be determined in a rate case. The Memo also states that the Motion is premature and must be addressed in a rate case. Rocky Mountain Power does not agree with these positions, but believes they may be addressed at subsequent stages of

this docket in connection with the Acquisition Approval Request and the Motion; they do not need to be addressed in connection with the Solicitation Waiver Request.

CONCLUSION

Rocky Mountain Power respectfully submits that the Commission should grant the Solicitation Waiver Request in the public interest based on the evidence submitted and the fact that no party has opposed it. The acquisition of Project Blue is a time-limited commercial opportunity that provides value to the customers of Rocky Mountain Power.

Perhaps because this is the first time a request has been made for waiver of the solicitation process and for approval of a significant energy resource decision under the Act, all interested parties are attempting to understand how the process works. It is apparent from the comments of the Committee that some misunderstandings exist with respect to the process. These misunderstandings generally relate to the effect of granting a waiver of the solicitation process on the Acquisition Approval Request and Motion and need not be addressed in connection with the Solicitation Waiver Request. Therefore, Rocky Mountain Power urges the Commission not to impose conditions on its approval of the Solicitation Waiver Request that deal with subsequent phases of this process.

RESPECTFULLY SUBMITTED: April 25, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **REPLY OF ROCKY MOUNTAIN POWER TO COMMENTS ON REQUEST FOR WAIVER OF SOLICITATION PROCESS** to be served upon the following by electronic mail to the addresses shown below on April 25, 2008:

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