State of Utah

Department of Commerce
Division of Public Utilities

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Recommendation

To: Public Service Commission of Utah

From: Utah Division of Public Utilities
Chris Parker, Director
Doug Wheelwright, Utility Technical Consultant Supervisor
David Williams, Utility Analyst

Date: December 5, 2019

Re: **Docket No. 19-035-39, In the Matter of the Application of Rocky Mountain Power for Approval of Renewable Energy Service Contracts**

Recommendation (Approval With Conditions)

On October 16, 2019 Rocky Mountain Power (Company) filed an application with the Public Service Commission of Utah (Commission) seeking approval of proposed contracts with six customers pursuant to the Company's Electric Service Schedule No. 34 (Schedule 34).[1] The Division recommends that the Commission approve the contract template and subsequent executed contracts, conditioned on: (1) a minor contract modification/clarification by the Company; and (2) clarification on the timeline of the approval the Company is seeking from the Commission.

[1] See *Application of Rocky Mountain Power*, October 16, 2019, Docket No. 19-035-39 (Application).

Issue

Schedule 34 allows qualifying customers to contract with the Company to have renewable energy obtained on their behalf. The Company filed with its Application a proposed template for Renewable Energy Service Contracts (Contracts). The Contracts are for Salt Lake City, Park City, Summit County, Utah Valley University, Vail Resorts, and Deer Valley Resorts (Customers). The Company seeks Commission approval for the contract format and the subsequently executed contracts under Utah Code section 54-17-807 and Schedule 34.

Background

Schedule 34 "governs contract guidelines for the Company to acquire renewable energy on behalf of qualified Customers, pursuant to Utah Code Annotated § 54-17-806."[2] Schedule 34 was approved by the Commission in 2016.[3] Schedule 34 states that "[a] contract is required for each Customer taking service under this Schedule. The Customer contract is subject to approval by the Commission."

The Customers wish to use Schedule 34 and have the Company procure renewable energy on their behalf. The Customers have varying renewable energy goals; these goals involve using renewable energy on a net basis. In late 2018, the Company filed an application with the Commission seeking approval for the Company's solicitation process for acquiring solar resources for the Customers.[4] The application was filed pursuant to Utah Code section 54-17-807 and Utah Admin. Code R746-450. In an order dated March 11, 2019 the Commission approved the proposed request for proposals and the solicitation process.[5]

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[2] *Rocky Mountain Power Electric Service Schedule No. 34, Renewable Energy Purchases for Qualified Customers – 5,000 kW and Over*, available at: https://www.rockymountainpower.net/content/dam/pcorp/documents/en/rockymountainpower/rates-regulation/utah/rates/034_Renewable_Energy_Purchases_for_Qualified_Customers_5000kW_and_Over.pdf

[3] See *Order Memorializing Bench Ruling Approving Settlement Stipulation*, August 18, 2016, Docket No. 16-035-T09. The tariff was subsequently modified in the same docket in 2018.

[4] See *Application for Approval of Solicitation Process*, December 28, 2018, Docket No. 18-035-47.

[5] See *Order Approving RFP*, Docket No. 18-035-47.

The Company issued a solicitation for the Customers in March of 2019, and received final bids on June 14, 2019. The winning bid was for a power purchase agreement (PPA), with no option for the Company to purchase the resource.[6] The Company is currently in negotiations with the winning bidder. The Customers will pay the applicable charges under Schedule 34, in addition to the rates from their normal tariff, which in most cases is Schedule 9.

The Application has as an attachment the master contract form, which will be separately executed by each Customer. The only difference between the contracts will be "language regarding compliance with public records law for those Customers that are public entities, and a few required provisions related to anticorruption requirements."[7] The Company states that a delay until after execution could imperil the claiming of federal tax credits, and so it is seeking Commission approval of the contracts before they are executed (this issue is discussed further below).

Discussion

In general, Schedule 34 is designed so that qualified customers can have the Company obtain renewable energy on their behalf. The Division's main goals in evaluating the contracts are: (1) ensuring that the contracts are in accordance with Schedule 34 and the applicable statutes and rules, and (2) ensuring that the costs of the PPA and Schedule 34 are borne solely by the Customers, and not subsidized by other customers.

Utah Code section R746-450-1(1) provides that:

[6] *Application* ¶ 4. The Application does not directly state that the PPA does not have a purchase option; it does state that:

> Utah Code Ann. § 54-17-807 and R746-450 contemplate an acquisition approval process at the Commission if the solicitation process will result in the Company's acquisition of the winning bidder, or if the winning bidder is a Company-owned resource. However, the winning bid in the 2019R Utah RFP was for a power purchase agreement rather than for a Company acquisition, so Commission approval of the selection is not required by R746-450.

Id. The Company in an informal meeting indicated that the PPA does not contain a purchase option.

[7] *Application* ¶ 6.

> "Acquire," "Acquiring," or "Acquisition" means to purchase, construct, or purchase the output from a photovoltaic or thermal solar energy resource under an agreement that includes a purchase option.

Since the Company is obtaining the energy via a PPA that does not include a purchase option, it is not "acquiring" the resource for purposes of the rule. Therefore, rule R746-450-4 (Solar Resource Acquisition Approval Process) does not apply. However, under Schedule 34, the Commission still needs to approve the Contracts.

Schedule 34 lists seven Conditions of Service ((1)(a) through (1)(g)). The Division has read the contract and believes that it contains the provisions required by the tariff. The locations of the relevant tariff requirements in the contract are generally described in the testimony accompanying the Application.[8] We discuss the fourth Condition of Service ((1)(d)) in more detail below.

From the Division's perspective, the Contracts should ensure that other customers (i.e. customers not on Schedule 34) are shielded from costs that arise from the acquisition of renewables for specific contract Customers. The Contracts meet this requirement by having the actual costs of the renewable resource pass through to the Customers. The two main features of the Contracts that protect non-participating customers are: (1) The Contract clause that holds Customers responsible for costs associated with the renewable resources in the event of Customer termination, and (2) the payment by the Customers of their normal tariff rates.

The Division's understanding of Section 10.3 of the Contract is that it (along with Exhibit F of the Contract) allows the Company to recover the total cost of the renewable supply assigned to the particular Customer for the applicable years in the event of a Customer termination.[9] The Division believes these provisions adequately protect other non-participating customers.

[8] See *Application* appendix *Direct Testimony of Kyle T. Moore*, October 2019, Docket No. 19-035-39, lines 98-159.

[9] See *Application*, Exhibit F. The described liability is from case (1), where the Facility Contract (the contract between the Company and the resource owner) does not allow an early termination by the Company when the Customer terminates early.

The Division notes that some language in Exhibit F seems unnecessary:

> "Contract Value" means… (3) If the Company is the Facility Owner, then the amount paid by Company to acquire ownership of a renewable energy facility that was the subject of a Renewable Energy Procurement.

The Division's understanding is that the PPA contains no option for the Company to become the owner of the resource. The Division requests that the Company delete this language or explain its purpose in reply comments.

The fact that the Customers also pay their normal tariff rate as a base (pursuant to Schedule 34 condition of service (1)(c)(i)) also protects other non-participating customers. The normal rate schedule will go towards "use of system facilities and contributions to fixed costs" as mentioned in Condition of Service (2) of Schedule 34. The Customers will pay their normal tariff rates, and in addition pay an adder that covers the cost of acquiring the renewable resources. Also included in the rate are administrative fees, and EBA rate adjustment, REC charges if applicable, and Schedule 80 rate adjustments.

If the Customers somehow changed from their current tariff (which is in most cases Schedule 9) to some other tariff that did not properly account for use of system facilities and contributions to fixed costs, the Division would revisit its conclusions in this docket.

The Contracts contain a monthly true-up rate procedure, which aims to address variability in the monthly production of renewable energy by the procured resources, and distribute costs based on the resources procured, the renewable energy produced, and Customer usage. The Division has reviewed the true-up procedure and believes it to be a reasonable billing method for dealing with the costs of procuring a variable resource on the Customers' behalves, while accounting for the Customers' monthly usage (and the renewables' percentage of that usage).

The Division does note one issue that may arise as more customers are enrolled on Schedule 34, Community Renewable Energy Act rates under Utah Code sec. 54-17-901 *et seq*., and other similar rates (collectively, Renewable Rates). The initial participants in these programs (e.g. the Customers in the present case) might not cause the Company any extra costs in the category of

renewable integration costs—e.g., costs associated with shaping, balancing, ancillary services, and other costs associated with integrating renewables. As more customers go on Renewable Rates, however, there may be costs associated with these renewable customers that should not be borne equally by other customers on "normal" rates. The Division recommends that the Company consider how these costs will be assigned appropriately to customers on Renewable Rates, and not to other customers, as more customers go on those rates.[10]

Procedural Questions

The Division does not fully understand the timeline of the approval process that the Company is requesting. The Application states that "[t]he Company seeks approval of the Contracts in order to facilitate its ongoing efforts to help the Customers meet their renewable energy goals."[11] Later it states that:

> The Company is filing the unsigned master version of the Contracts to accommodate a 30-45 day contract approval process of some of the Customers. The Company anticipates supplementing this filing with the fully executed agreements after the Customers have full authority to execute.[12]

It is not clear if the Company intends the Commission's approval of the master version of the Contract to constitute approval of the final executed Contracts, or if further action will be required by the Commission after the executed Contracts are filed. The Division requests that the Company clarify the following issues:

- Are the executed Contracts expected to be filed before the Reply Comments are due, or before the Hearing (December 27, 2019 and January 13, 2020, respectively)?
- Will the executed Contracts all be filed at once?
- Is the Company expecting the Commission to issue an Order before all executed Contracts are filed? If so, is the Company expecting further action by the Commission after the last executed Contract is filed?

[10] The Division recognizes that as more renewables are integrated into the preferred portfolio, it will be appropriate to assign more costs of renewable integration to the "normal" customers.

[11] *Application* ¶3.

[12] *Id.* ¶ 6.

The Division also requests that when the executed Contracts are filed, that the Company highlight all language differences among the Contracts.

Conclusion

The Division has reviewed the proposed Contracts and believes they comply with the requirements of Schedule 34. The Division believes there are appropriate safeguards to ensure that costs for the Schedule 34 acquisitions are borne by the Customers, and not by non-participating customers. The Division seeks clarification on a section of Exhibit F that appears to contemplate Company ownership of the renewable resource. The Division requests confirmation that there is no option to purchase the resource in the PPA, and suggests either: (1) deletion of the clause in the Exhibit that mentions Company ownership, or (2) an explanation of why the clause is appropriate. The Division also requests that the Company address the procedural and Contract execution timing questions discussed above. Assuming the Company addresses these issues, the Division believes the Contracts are in the public interest, and recommends that the Commission approve them.

The Division also recommends that the Company contemplate how costs associated with higher renewable penetration will be assigned to Renewable Rate customers and regular customers going forward.

Cc: Michele Beck, Office of Consumer Services