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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>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</p>	<p>Docket No. 07-035-94</p> <p>REPLY OF ROCKY MOUNTAIN POWER TO RESPONSES TO NOTICE OF INTENT TO RESUME 2008 ALL SOURCE RFP</p>
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), hereby replies to the responses to its Notice of Intent to Resume All Source RFP and Request for Approval (“Notice”) filed by Merrimack Energy Group, Inc., as Independent Evaluator (“IE”), the Division of Public Utilities (“Division”) and Office of Consumer Services (“Office”) on October 19, 2009. In this Reply, Rocky Mountain Power proposes a revised proposed schedule based on the responses of the IE and Division.

I. INTRODUCTION

On October 6, 2009, Rocky Mountain Power filed its Notice, requesting that the Commission approve resumption of the 2008 All Source Request for Proposals (“2008 RFP”) by October 22, 2009. The Notice proposed a schedule for the RFP that included allowing the Company until May 28, 2010 to update its benchmark and bidders until June 11, 2010 to submit firm bids. The Company cited the experience in the 2012 Request for Proposals Base Load Resources (“2012 RFP”) in support of its proposed schedule. The Notice also proposed two nonmaterial modifications to the RFP: (1) updating the resource need from June 2012 through June 2016 to June 2014 through June 2016 consistent with the delay associated with suspension of the RFP and the Company’s 2008 Integrated Resource Plan (“IRP”) and (2) limiting the Company’s benchmark to a single combined cycle natural gas fired plant located at the Lake Side site in Vineyard, Utah consistent with the 2008 IRP and the Company’s acquisition of development assets at the Lake Side site.

In their responses, the IE and Division recommended that the Commission approve resumption of the RFP, but suggested a modification of the proposed schedule to accelerate the benchmark and initial bid submissions by approximately three to three and one-half months. They expressed concern that the schedule proposed by the Company might not allow sufficient time following bid submission for evaluation, negotiation, approval and development of resources by June 2014. The IE also suggested four additional items for consideration in the RFP process. Neither of these parties claimed that the modifications to the RFP proposed by the Company were material or that the RFP needed to be reapproved by the Commission.

The Office claimed in its response that the modification to limit the benchmark to Lake Side was a material change and complained that parties did not have sufficient time between the filing of the Notice and requested approval on October 22, 2009 to respond. Accordingly, the

Office recommended an evidentiary review of the proposal to change the benchmark options. The Office also recommended that the Commission consider whether the overall schedule provides sufficient time within which to evaluate the bids, select a short list and negotiate for the selected resource. While disclaiming intent to rehear all of the issues involved in the initial design of the RFP, the Office argued that the Act requires the Commission to issue findings and conclusions that the resumed RFP complies with the Energy Resource Procurement Act (“Act”).

All three respondents referenced the 2012 RFP in support of their positions on the proposed schedule.

II. ARGUMENT

A. The 2012 RFP Process Supports Rocky Mountain Power’s Proposed Schedule.

All parties have the same goal of having the Company acquire resources to meet its customers’ needs in accordance with the Act. The Company acknowledges that its proposal for submission of the benchmark resource 201 days after reissuance of the 2008 RFP and submission of bids from the market 215 days after reissuance proposes longer periods than those utilized in the 2012 RFP and typical in other RFPs. The Company proposed this time upfront to allow bidders and the benchmark to submit firm proposals and not indicative pricing based on the Company’s experience in the 2012 RFP.

The 2012 RFP sought proposals for resources to meet an anticipated need by June of 2012. Under the 2012 RFP, bidders submitted their proposals 75 days after the release of the RFP; however, the original pricing that bidders for new construction provided in their RFP proposals were solely indicative estimates. Once the initial shortlist and the final shortlist were determined, the final remaining bidder was not prepared to execute an agreement using the pricing it submitted. The bidders required an additional five months to “firm up” their pricing by going to the market to obtain firm bids from equipment suppliers. The bidder’s resulting firm

price for the resource was materially different from the indicative bid. During this process, the Company concluded that submission of bids within 75 days of issuance of the 2012 RFP was not particularly helpful as it is merely results in a rigorous evaluation using potentially inaccurate indicative price estimates to screen bidders; however, bidders were unwilling to commit to the pricing they submitted. Furthermore, the Company believes that the quick submission of indicative bids followed by time to wait for submission of more firm bids and complete negotiations caused the process to take longer than would have been the case had more time been given at the front end to allow bidders to develop firm bids consistent with the 2012 RFP requirements.¹ That is the reason the Company recommended that more time be given upfront in the resumed RFP to incorporate lessons learned from the 2012 and to allow for the market and the benchmark resource to submit firm pricing upfront.

To achieve the benefits of suspension of the 2008 RFP, the Company and bidders must negotiate with a variety of third party equipment providers in order to receive firm proposals from the market based on current economic conditions. Therefore, although bidders may have previously developed initial proposals, in a 75 day bid submission period it is reasonable to expect that bidders will only be able to submit updated initial proposals for new construction resources based on indicative price estimates, which as proven in the 2012 RFP may not be accurate and result in, at best, limited, and, at worst, inappropriate relative resource pricing assessments among bidders. The Company's proposal addresses this issue and makes the rigorous price evaluation process useful by allowing the Company and Bidders adequate time to submit firm proposals based on current market quotes, which will take approximately four to five months.

¹ The Company is not suggesting that the provisions allowing 40 percent of the bid price to change based on specified indexes following an award of contract be eliminated.

Nonetheless, based on the objections of the IE and Division to the Company's proposed schedule, the Company proposes a revised compromise schedule below that requires bidders to provide their proposals within 75 days and the benchmark in 60 days; however, recognizing that the proposals for the most part will only be indicative in nature, the revised proposed schedule also requires bidders on the initial shortlist to provide firm prices at a later specified date. The Company will complete the initial shortlist and then request firm pricing from only those on the initial shortlist which will also include a request for a firm price from the benchmark.

B. Rocky Mountain Power Has No Objection to the IE's Other Recommendations.

The IE has recommended that Rocky Mountain Power (1) add a notice of intent to bid to the proposed 2008 RFP schedule; (2) suggest to bidders that they review the 2008 IRP when providing notice to bidders of resumption of the 2008 RFP; (3) update the presentation on transmission or include information about transmission project status in the proposed stakeholder and bidder RFP meeting; and (4) include a technical conference in the schedule to review the method for comparison of alternative portfolios and the criteria for selection of resources in the top-performing portfolios for inclusion in the final short list. The Company has no objection to the four recommendations and will accommodate them in a revised proposed schedule prior to the issuance of the RFP to the market in the event there are any required clarifications within the RFP.

C. Modification of the Benchmark Is Not a Material Change.

The Office argues that by limiting the Company benchmark to a single resource in the resumed 2008 RFP, the Company is making a material change to the RFP. The basis for this argument is a claim that benchmark options play an essential role in RFPs. The Company agrees with the Office that benchmarks are helpful. However, the Company does not believe it is a material change to allow the market to submit build-own transfers for simple cycle resources

which will provide the Company with the ownership option it would otherwise have if it submitted a simple cycle benchmark. The Act and the Commission's rules adopted pursuant to the Act do not require the Company to submit a benchmark proposal in an RFP.

D. Re-approval of the 2008 RFP Will Delay the Process.

The Office also recommends that the Commission must make findings and conclusions, based on an evidentiary hearing, that the resumed 2008 RFP complies with the Act. Although the Office states that it does not recommend a lengthy rehearing of all issues in the original process, it is apparent that even a limited re-approval process will delay reissuance of the 2008 RFP. This is made clear by the fact that the Office complains that parties have not had sufficient time to respond to the Notice.²

The Notice was filed on October 6, 2008. The IE, Division and Office were able to respond to it within 13 days. In support of its argument that 13 days is inadequate, the Office notes that parties typically have 30 days to respond to requests for agency action. It is not clear how the Office's response would be changed had the Office had additional time to respond nor is any claim made that any other party would have responded had additional time been available. However, it appears that if the Commission entertains the Office's recommendation, the Office will insist on having normal time intervals to submit testimony and comments on resumption of the RFP with only one benchmark. If the Office needs more than 13 days to respond to a simple pleading, it is likely it will request longer intervals to file testimony and prepare for a hearing.

In any event, the Commission is not required to allow 30 days to respond to every request. In fact, even 30 days, the time typically allowed to respond to initiatory pleadings, may

² It is ironic that the Office expresses concern about the Commission and the parties having sufficient time to go through the process to get a resource on line by 2014, but complains that 13 days is not enough time to respond to a notice to resume the 2008 RFP and recommends that the Commission add further process to determine if it will require the Company to submit additional benchmarks.

be shortened in the Commission's discretion. Responses to motions, once a case is initiated, are typically required within 15 days unless the time is shortened or extended by the Commission. Utah Admin. Code. R746-100-4.D. Moreover, 30-day response times are not contemplated under the Act. For example, the Commission is required to approve a request for approval of an RFP within 60 days unless it determines additional time is needed. Utah Code Ann. § 54-17-201(2)(f). Because the Commission may hold a hearing on such a request and needs time to issue an order following a hearing, it is unlikely that a respondent can expect to take one-half of the available time to respond to the request. When an electrical utility seeks a waiver of the solicitation process, only from seven to 15 days are anticipated for respondents to file comments. *Id.* § 54-17-501.

III. REVISED PROPOSED SCHEDULE

Based on the responses of the IE and Division, the Company proposes a revised schedule for the RFP as follows:³

1. October 26, 2009 – Commission approve resumption of RFP
2. October 27, 2009 – Issue notice to bidders of resumption of RFP and suggest that they consider the 2008 IRP
3. October 28, 2009 – Technical conference on modeling and schedule
4. November 3, 2009 – Stakeholders file comments and conclusions on modeling
5. November 20, 2010 – Stakeholder and bidder RFP meeting including information about transmission project status
6. December 2, 2009 – Reissue RFP to market

³ All dates are deadlines for the action or event. If actions or events are completed earlier than the proposed date, the deadlines for subsequent actions or events may be moved up or additional time will be available for completion of subsequent actions or events.

7. December 17, 2009 – Bidders submit a notice of intent to bid
8. February 15, 2010 – Benchmark submits proposals
9. March 1, 2010 - Bidders submit proposals
10. May 28, 2010 – Evaluation of Initial Shortlist completed
11. July 1, 2010 – Benchmark submits firm proposals
12. July 15, 2010 – Initial Shortlist provides firm proposals
13. September 10, 2010 – Final evaluation of bids completed
14. September 12, 2010 – Final shortlist acknowledgement
15. January 10, 2011– Negotiation of bids on final shortlist completed
16. January 17, 2011 – File request for approval of significant energy resource decision
17. May 17, 2011 – Commission approval of significant energy resource decision

IV. CONCLUSION

Based on the foregoing, Rocky Mountain Power respectfully requests that, by October 26, 2009, the Commission approve resumption of the 2008 RFP on the revised proposed schedule in this Reply.

DATED: October 21, 2009.

Respectfully submitted,

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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 RESPONSES TO NOTICE OF INTENT TO RESUME ALL SOURCE RFP** to be served upon the following by electronic mail to the addresses shown below on October 21, 2009:

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