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*Attorneys for Rocky Mountain Power*

**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  <b>VERIFIED REQUEST FOR WAIVER OF SOLICITATION PROCESS AND FOR APPROVAL OF SIGNIFICANT ENERGY RESOURCE DECISION</b>
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), pursuant to Utah Code Ann. §§ 54-17-201(3) and 54-17-501 and Utah Admin. Code R746-430-4, hereby requests that the Commission grant it a waiver of the solicitation process required by Utah Code Ann. § 54-17-201, *et seq.*, with respect to acquisition of the generation plant (“Plant”) identified in the Confidential Testimony of Stefan A. Bird filed with this request. The basis for this requested waiver of the solicitation process is that acquisition of the Plant is a time-limited commercial opportunity that provides value to the customers of Rocky

Mountain Power. Moreover, the Company is just completing the request for proposals (“RFP”) for the 2012 – 2014 time period approved in Docket No. 05-035-47 (“2012 RFP”) and has commenced a new all-source solicitation for the 2012 – 2016 time period in Docket No. 07-035-94 (“2008 All-Source RFP”). Conducting an additional solicitation related to this Plant would not materially contribute to the public interest.

Additionally, Rocky Mountain Power, pursuant to Utah Code Ann. § 54-17-302 and Utah Admin. Code R746-430-2 and R746-440-1, requests that the Commission approve the significant energy resource decision to acquire the Plant. The basis for this request for approval is that the Company has the exclusive opportunity for a limited time to acquire the Plant on terms and conditions that, over the Plant’s life, will maximize benefit to the Company and its customers in the public interest as demonstrated in the Confidential Testimony of Stefan A. Bird, the Confidential Testimony of Gregory N. Duvall and the Testimony of Bruce N. Williams (“Testimony”) filed with this Request.<sup>1</sup>

Rocky Mountain Power does *not* request waiver of the requirement for approval of the acquisition of the Plant at this time. While this time-limited commercial opportunity does not allow sufficient time to conduct and complete an additional solicitation process, there is sufficient time for the Commission to review and approve the transaction using nearly the full statutory timeframe of 180 days permitted by Utah Code Ann. § 54-17-302(5).

To the extent possible, the Company respectfully requests that the Commission issue its order on the request for approval of the transaction by September 14, 2008, which is two weeks prior to the expiration of the 180-day statutory timeframe. This is the closing date negotiated

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<sup>1</sup> The request for waiver and request for approval will be referred to collectively as the “Request.” This Request will also serve as the notice required under Utah Admin. Code R746-401-3, to the extent such notice is required.

with the seller, and Commission approval represents the last expected regulatory action needed to complete the transaction. The Company will promptly provide information requested by the Commission or interested parties and will further participate in technical conferences and hearings as required by the Commission or requested by interested parties to facilitate issuance of an order prior to September 14, 2008.

### **COMMUNICATIONS AND DISCOVERY**

1. Communications, including pleadings and other filings, regarding this Request should be addressed to:

David L. Taylor  
Utah Regulatory Affairs Manager  
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[dave.taylor@pacificorp.com](mailto:dave.taylor@pacificorp.com)

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2. Rocky Mountain Power requests that any data requests regarding this Request be addressed to:

By email (preferred)

[datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail

Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, OR 97232

By facsimile

(503) 813-6060

Informal inquiries may be directed to Daniel E. Solander at (801) 220-4014 or David L. Taylor at (801) 220-2923.

## **BACKGROUND**

3. Rocky Mountain Power is a division of PacifiCorp, an Oregon corporation. The Company is authorized to do business in the state of Utah and is an electrical corporation holding a certificate of convenience and necessity issued by the Commission authorizing it to provide electric service in many parts of the state of Utah. Rocky Mountain Power currently provides electric service to approximately 760,000 customers in the state of Utah and is an affected electrical utility as defined in the Energy Resource Procurement Act, codified as Chapter 17 of Title 54 of the Utah Code (“Act”). Rocky Mountain Power also provides electric service to customers in Idaho and Wyoming. Pacific Power, another division of PacifiCorp, provides electric service to customers in California, Oregon and Washington. Rocky Mountain Power and Pacific Power share generation and transmission resources for the Company’s east and west control areas (“System”) under the PacifiCorp Inter-Jurisdictional Cost Allocation Protocol effective June 1, 2004 (“Revised Protocol”).

4. The Company’s need to acquire new System-wide resources to serve its growing customer base and increasing demand for electricity has been well established in its integrated resource plans (“IRP”), RFP approval applications and other proceedings before the Commission. Customer growth and increasing loads, coupled with environmental requirements and improved reliability expectations from customers, are drivers for new utility plant investments.

5. In 2005, the Utah Legislature enacted the Act. The Act was based on the acknowledged need of the Company to acquire substantial new System energy resources. It

established standards and procedures for submission of action plans in conjunction with IRPs, solicitations, including use of an independent evaluator, and approval of significant energy resource decisions.

6. Pursuant to the Act, the Company submitted action plans and requested approval of solicitation processes for new System resources as contemplated by its action plans.

a. The Company filed an application in June 2005 in Docket No. 05-035-47, seeking approval of the action plan filed with its 2004 IRP. Among other things, the application sought approval of a 2009 RFP. In September 2005, the Company sought to suspend the schedule based on the pendency of an IRP update filed in November 2005 in Docket No. 05-2035-01. Further suspension of the schedule was sought pending the acquisition of the Company by MidAmerican Energy Holdings Company.

b. In July 2006, the Company filed a modified proposal, seeking approval of the proposed 2012 RFP. In April 2007, the Commission approved the 2012 RFP with some modifications, including increasing the resource need from 840 megawatts (“MW”) up to 1,700 MW of generation. However, as recently disclosed on a confidential basis to the Commission and parties to Docket No. 05-035-47 entitled to receive confidential information, the 2012 RFP will, at most, result in new System resources with total capacity substantially less than the amount solicited.

c. In May 2007, the Company filed its 2007 IRP in Docket No. 07-2035-01. The Commission issued its Report and Order in the docket on February 6, 2008, refusing to acknowledge the 2007 IRP. The System resource needs assessment conducted for the 2007 IRP showed a PacifiCorp incremental peak capacity need of over 2,400 MW by 2012.

d. In February 2008, the Company filed its 2008 All-Resource RFP in Docket No. 07-035-94. The 2008 All-Resource RFP is currently pending before the Commission.

7. In 2007, the Act was amended to allow a waiver of the solicitation process and approval of the acquisition of a significant energy resource under certain circumstances.

8. The Commission has adopted rules pursuant to the Act providing, among other things, standards and procedures for obtaining a waiver of the solicitation process and for obtaining approval of a significant energy resource acquisition.

9. The Testimony explains the process by which the Company became aware of the Plant and its actions in response to that information. The parties have negotiated all of the essential terms of a Purchase and Sale Agreement (“PSA”) that gives PacifiCorp the exclusive right to acquire the Plant while it seeks necessary state and federal regulatory approvals with a time-limited period. The PSA is substantially final, awaiting completion of accompanying disclosure schedules.

10. Given the commercially sensitive nature of the information regarding the Company’s opportunity to acquire the Plant,<sup>2</sup> but cognizant of the Commission’s desire for public disclosure of non-confidential information, Rocky Mountain Power will provide general, non-confidential information regarding the Plant and the proposed terms and conditions of the agreement for acquisition of the Plant in this Request and the Testimony of Mr. Williams. More detailed, confidential information will be provided in the Confidential Testimony of

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<sup>2</sup> PacifiCorp was required to enter into a Confidentiality Agreement with the owner of the Plant under which it agreed not to disclose information regarding the Plant or terms and conditions for its acquisition and related agreements. This agreement has now been incorporated into the PSA. The PSA allows PacifiCorp to disclose information in connection with regulatory filings and documents in sufficient detail to gain approval of the acquisition, but PacifiCorp must disclose the information under terms and conditions that will preserve its confidentiality to the greatest extent possible.

Messrs. Bird and Duvall filed with this Request. The confidential Testimony will be made available to interested parties under the terms of the Generic Protective Order issued by the Commission in Docket No. 07-999-03 pursuant to the Act with respect to the request for waiver of the solicitation process. With respect to the request for approval of the Company's significant energy resource decision to acquire the Plant, the Company will request issuance of a protective order in this docket hereafter.

### **WAIVER OF SOLICITATION**

11. Rocky Mountain Power requests that the Commission grant it a waiver of the solicitation process contemplated by the Act and the Commission's rules based on the time-limited commercial opportunity to acquire the Plant.

12. Based on its experience since passage of the Act, Rocky Mountain Power anticipates that conducting the solicitation process otherwise required by the Act in connection with acquisition of the Plant would take from ten to twelve months. If that period is added to the approval process, which may take as much as 180 days or six months, Utah Code Ann. § 54-17-302(5), the Company cannot complete the acquisition within the time allowed by the owner of the Plant and could lose the opportunity to acquire the Plant on the terms and conditions currently available under the PSA. In addition, Rocky Mountain Power is just completing the 2012 RFP and recently filed its 2008 All-Resource RFP for capacity and energy resource needs for 2012 – 2016. Conducting yet another RFP for this transaction is not likely to result in the identification of any added resources nor would it materially contribute to the public interest.

13. As described below, the acquisition of the Plant is in the public interest and provides a reasonably-priced resource that will assist Rocky Mountain Power in meeting the

needs of its customers. Therefore, granting a waiver of the solicitation process is in the public interest.

### **APPROVAL OF ACQUISITION**

14. Acquisition of the Plant is consistent with the 2012 RFP because the resources that are available under the 2012 RFP will fall substantially short of the 1,700 MW contemplated by the 2012 RFP. Furthermore, based on the resource needs assessment conducted for the 2007 IRP, PacifiCorp's incremental peak capacity need is over 2,400 MW by 2012. Acquisition of the Plant will assist the Company in meeting this need.

15. Acquisition of the Plant will add valuable incremental generation to backstop the intermittent profile of the Company's growing renewable wind portfolio and offset the loss of flexible System hydro legacy contracts that are due to expire between 2009 and 2012.

16. As explained in the confidential Testimony, the Plant is available to the Company on reasonable terms and conditions. The Plant reduces risk because as an existing resource, the Plant is not subject to permitting and construction cost, schedule and the escalating cost of steel, materials and labor risks to which the Company would be exposed in a new construction resource alternative.

17. The PSA is fair and reasonable. The substantially-final PSA is provided as an exhibit to the confidential Testimony.

18. The information, data, models and analyses used by the Company to evaluate the acquisition of the Plant demonstrate that acquisition of the Plant is in the public interest and will be beneficial to the Company's customers. This information is provided in the confidential Testimony.



19. An analysis of the estimated effect of the Plant on the Company's revenue requirement demonstrates that acquisition of the Plant is in the public interest and will be beneficial to the Company's customers. The analysis is provided in the confidential Testimony.

20. The Company has the ability to acquire the Plant without impairing its credit or financial viability. Financial information demonstrating this is provided in the Testimony of Mr. Williams.

21. Rocky Mountain Power has complied with all requirements of the Act and the Commission's rules issued under the Act in connection with this Request. Rocky Mountain Power filed and served on the service list maintained by the Commission a pre-filing notice and public notice of this Request in accordance with Utah Admin. Code R746-440-1(2)(a) and (b) and paragraph 8 of the Generic Protective Order issued April 17, 2007 in Docket No. 07-999-03 at least five calendar days and four business days prior to filing this Request. In addition, Rocky Mountain Power provided media notice of the pending filing.<sup>3</sup>

### **REQUEST FOR RELIEF**

WHEREFORE, Rocky Mountain Power requests relief as follows:

1. That the Commission, by the next business day following the date this Request is filed (April 2, 2008), notice a technical conference on the request for waiver of the solicitation process during the period from three business days to seven calendar days following the date of this Request in accordance with Utah Code Ann. § 54-17-501(4). Rocky Mountain Power suggests that the technical conference be scheduled on April 8, 2008, the last day permitted under the statute, if that day is available on the Commission's calendar.

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<sup>3</sup> See "Rocky Mountain seeking OK to buy a generating plant," Deseret Morning News (March 27, 2008).

2. That the Commission proceed to require the filing of comments on the waiver request during the period from three business days to seven calendar days following the technical conference held pursuant to the foregoing paragraph in accordance with Utah Code Ann. § 54-17-501(6). If the technical conference is held on April 8, 2008, the Commission may require comments on any day from April 11-15, 2008. Rocky Mountain Power suggests that comments be due on April 15, 2008.

3. That the Commission issue its written decision on the waiver request within seven calendar days following the date comments on the waiver request are due pursuant to the foregoing paragraph in accordance with Utah Code Ann. § 54-17-501(7). If Rocky Mountain Power's suggested dates are adopted for the technical conference and filing comments, the Commission's decision would be due on April 22, 2008.

4. That the Commission grant the waiver of the solicitation process sought in this Request.

5. That the Commission notice a scheduling conference to set a schedule for interested persons to file comments and reply comments on the request for approval of the significant energy resource decision to acquire the Plant, for any technical conferences deemed useful to the Commission or interested parties, for a hearing on the approval Request and for other processes and procedures deemed reasonable or necessary by the Commission in determining to approve Rocky Mountain Power's acquisition of the Plant.

6. That the Commission approve Rocky Mountain Power's acquisition of the Plant, to the extent possible, before the negotiated closing date of September 14, 2008, which is only two weeks short of the 180-day period permitted by Utah Code Ann. § 54-17-302(5).

RESPECTFULLY SUBMITTED: April 1, 2008.

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Mark C. Moench  
Daniel E. Solander  
Rocky Mountain Power

Gregory B. Monson  
Stoel Rives LLP

*Attorneys for Rocky Mountain Power*

**VERIFICATION**

STATE OF OREGON                    )  
  : ss.  
COUNTY OF MULTNOMAH        )

Stefan A. Bird, being first duly sworn upon his oath, testifies that:

- 1.     He is the Senior Vice President, Commercial and Trading, for PacifiCorp Energy.
- 2.     He has read the foregoing Verified Request for Waiver of Solicitation Process and Approval of Significant Energy Resource Decision (“Request”).
- 3.     The statements in the Request are true and correct to the best of his knowledge, information and belief.

\_\_\_\_\_  
Stefan A. Bird

Subscribed and sworn to before me on April 1, 2008.

\_\_\_\_\_  
Notary Public

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **VERIFIED REQUEST FOR WAIVER OF SOLICITATION PROCESS AND FOR APPROVAL OF SIGNIFICANT ENERGY RESOURCE DECISION** to be served upon the following by electronic mail and hand delivery to the addresses shown below on April 1, 2008:

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