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Division of Public Utilities

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Memorandum

To: Utah Public Service Commission

From: Division of Public Utilities
Philip Powlick, Director
Artie Powell, Manager, Energy Section
Thomas Brill, Technical Consultant
Charles Peterson, Technical Consultant
Shauna Benvegnu-Springer, Utility Analyst II

Date: April 23, 2008

Subject: Verified Request for Waiver of Solicitation Process and for Approval of Significant Energy Resource Decision, Docket No. 08-035-35.

Recommendation

The Division of Public Utilities (Division) recommends that the request for waiver be approved.

Background

On April 1, 2008, Rocky Mountain Power (Company) filed with the Utah Public Service Commission (Commission) an application for a waiver request of the solicitation process and for the approval of a significant energy resource decision in Docket No. 08-035-35. The waiver request of the solicitation process is due to the time-limited commercial opportunity available for the Company to acquire an electric generation plant. Independent of the Waiver Request, the Company also requests approval of the resource. Details of the commercial opportunity remain highly confidential. A technical

conference on the waiver request was held April 9, 2008. The Company filed its final Purchase and Sale Agreement April 11, 2008. In response to a number of requests for confidential documents at the technical conference, the Company provided most of these documents on April 14, 2008. A Procedural Order and Notice of Hearing was issued on April 15, 2008 in response to a request at the technical conference to schedule the Request for Approval of a Significant Energy Resource Decision.

Support for recommendation

The Division has examined whether the application for a waiver and supporting documentation demonstrates that: 1) the proposed acquisition represents a time-limited commercial opportunity; 2) that the particular resource is consistent with the current Integrated Resource Plan (IRP); 3) the resource is consistent with pending solicitation processes; 4) the value of the particular resource is comparable to similar resources; 5) this particular resource will be properly integrated into the current utility system; and 6) the effect upon the utility's power costs and revenue requirements.

The application filing states that the resource acquisition is a time-limited opportunity. In its initial application and in response to requests at the technical conference, the Company provided evidence explaining and documenting when it became aware of the opportunity and how it pursued the opportunity. The Company has made available a confidentiality agreement between it and the owner of the generating resource dated November 17, 2006 that states PacifiCorp's interest in purchasing the facility. The Company represents that in 2006 it was pushing the counterparty to sell the generation plant and, at that time, the counterparty did not want to sell. The Company also represents that there were ongoing negotiations between it and the counterparty based on the 2006 Confidentiality Agreement and that these negotiations were unsuccessful. Since that time, the Division has been told by the Company that the counterparty changed its strategic plan and reorganized. Based upon the information the Division has today, it appears that when the Company became aware of these changes, a time-limited opportunity was created. While we are not aware of evidence that would clearly

demonstrate that the Company has not met the “time-limited opportunity” requirement, the Commission should also be aware that this judgment is based upon a time-limited assembly of evidence and analysis.

The Division was critical of the Company’s most recent IRP and recommended that the Commission not acknowledge it, a recommendation that the Commission accepted. A significant component of the Division’s criticism centered upon PacifiCorp’s planned reliance upon market purchases to meet a large portion of its future load requirements. We therefore view the Company’s current intention to acquire a significant new generating asset in a positive light, given that it will reduce front office transactions in the immediate future and provide a physical asset. However, additional power for the eastside depends upon timely completion of Path C. At the April 9 technical conference the Division requested a PVRR analysis assuming no Path C upgrade. The Division understands that results of this modeling request will not be available by the date the waiver request comments are due. Nevertheless, the Division expects results of this modeling request to be available for the resource approval process.

The confidential testimony describes how the Company’s customers benefit from a generation plant acquisition in 2008 compared to the acquisition of a different resource in 2012. The Division has determined that the acquisition resource is not inconsistent with current solicitation processes. In Docket No. 05-035-47, the Commission approved the Company’s proposed request for proposals for the 2012-2014 time period (RFP 2012), and the Company is now in the final negotiation phase of the RFP 2012. The counterparty that has offered to sell the electric generation plant in this docket chose not to bid into the RFP 2012. The Division’s position is that the proposed acquisition of a generation plant will not materially affect the results of the RFP 2012. The scope of the new RFP 2012-2016 in Docket 07-035-94 is focused on system-wide, east and west control area, energy and capacity delivered to or into the Company’s transmission system. The new RFP for the 2012-2016 time period will not be issued, pending a Commission order in May 2008, until mid-2008. Based upon the Company’s representation that the seller of the generating facility will not entertain a sale within the

timeframe of this new RFP, the Division believes that the proposed acquisition of a generation plant will not materially affect the results of the new RFP 2012-2016. If the purchase of this asset were not approved in this expedited process, it appears unlikely that it would be bid into the new RFP. Due to the time-sensitive nature of the commercial opportunity, the Division does not believe that either RFP process has been or will be compromised.

The Division has made preliminary efforts to determine whether or not the price of the proposed acquisition is within the bounds of current market values for this type of power plant. The Division has identified two transactions, one quite recent, and the other about one and one-half years old that may be roughly comparable to the proposal before us here. The valuation ratios of the latest transaction appear to be fairly similar to those for the Company's proposed acquisition. The valuation ratios of the earlier transaction are about two-thirds of the Company proposal. However, given the significant increase in construction costs for new plants over the past couple of years, it is likely that if this earlier sale were properly adjusted to current dollars, it too would at least be "in the ballpark" of reasonable prices. Based upon this very preliminary data, the Division does not see an indication that the proposed purchase price is out of line with the current market.

In its confidential testimony, the Company has made comparisons with the proposed purchase price and what it believes the likely costs to build a new plant are. The apparently higher costs to build a new generation plant along with the need for market purchases of power while waiting for the new plant to come online create a significant net benefit for ratepayers. The Division has not yet made a detailed analysis of the cost projections by the Company, but on first impression the high rates of recent cost increases for power plants suggests that future plant construction or acquisition costs could be quite high.

Based upon the information that is available to the Division as of today, the Company's data indicate that ratepayers would be better off, i.e. the costs to rate payers would be

lower with the purchase of the proposed plant as opposed to following the Company's current business plan and updated IRP. With the purchase of the plant the Company expects to forego expensive market purchases of power as well as have an anticipated owned-resource online by this year's end as opposed to sometime in the 2012-2014 time frame.

Information provided in the confidential testimony adequately describes, for the purposes of the waiver request, how the generation plant will be connected to and integrated into the Company's transmission system. Generation plant characteristics are described and the overall improvement in system flexibility is explained.

The analysis provided in the confidential testimony demonstrates the anticipated effect of the generation plant on revenue requirement and that the acquisition is in the public interest. Based upon the information that is available to the Division as of today, it appears that the acquisition will not be disadvantageous to the Company's customers.

Conclusion

The Division recommends that the waiver of the solicitation process be approved. The Division has determined, based upon the available evidence and a statutorily-imposed brief examination, that the Company has a time-limited commercial opportunity and that acquisition of the generation is in the public interest and will be beneficial to the Company's customers. Finally, the Division is aware that waiver of the solicitation process does not necessarily lead to approval of the resource as measured by a significant energy resource decision. The Division is aware of the challenge of bringing much-needed resources on-line over the next decade and will make a good-faith effort in complying with any approved expedited schedule.

cc: Dave Taylor, Rocky Mountain Power
Michele Beck, Committee of Consumer Services