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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>IN THE MATTER OF: GLEN CANYON SOLAR A, LLC AND GLEN CANYON SOLAR B, LLC'S REQUEST FOR AGENCY ACTION TO ADJUDICATE RIGHTS AND OBLIGATIONS UNDER PURPA, SCHEDULE 38 AND POWER PURCHASE AGREEMENTS WITH ROCKY MOUNTAIN POWER</p>	<p>DOCKET NO. 17-035-36</p> <p>UTAH DIVISION OF PUBLIC UTILITIES' RESPONSE TO ROCKY MOUNTAIN POWER'S MOTION TO DISMISS.</p>
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Pursuant to Utah Admin. Code r.746-100 the Utah Division of Public Utilities (“Division”) files this Response to Rocky Mountain Power’s (“RMP”) Motion to Dismiss. The Commission should deny the Motion to Dismiss.

INTRODUCTION

On June 7, 2017 Glen Canyon Solar filed a Request for Agency Action (“Request”) requesting that the Commission order RMP to:

1. Utilize all of its existing network transmission right and resources, including planning and operational redispatch options, to avoid unnecessary and uneconomic Network Upgrades.
2. Submit a timely and appropriate transmission service request pursuant to Schedule 38, Section I.B.8.e, for the GC Resources that

requests that studies done by PacifiCorp's transmission function ("PacTrans") include studies and analyses of all available planning and operational redispatch options designed to avoid uneconomic Network Upgrades.

3. Submit a timely and appropriate request that PacTrans perform interconnection studies for the GC Resources in a manner consistent with transmission studies that assume resource redispatch.

4. Utilize and request studies of operational redispatch options consistent with the redispatch of resources assumed in setting avoided cost prices in the GC PPAs.

5. Avoid imprudent actions or failures to act that might trigger unnecessary, uneconomic Network Upgrades, the costs of which could fall on PacifiCorp and its customers under applicable regulations and precedent.

6. Avoid unlawful discrimination by utilizing available operational dispatch options for the GC Resources.¹

On July 14, 2017 RMP filed a Motion to Dismiss based on two arguments, both based on jurisdiction. The first is that the Request is based on a requirement that RMP's relies on its Network Operating Agreement Amendment ("NOAA") to redispatch its own resources. The NOAA is subject to the Federal Energy Regulatory Commission's ("FERC") exclusive jurisdiction, therefore RMP asserts that the Commission lacks jurisdiction over the Request. The second basis for its Motion to Dismiss is that the request is not ripe for adjudication.

DISCUSSION

The Division recommends that the Commission deny RMP's Motion to Dismiss. The first argument in favor of dismissal of the request for action is that the Commission lacks jurisdiction over the NOAA. RMP asserts that the NOAA is exclusively FERC jurisdictional and only relates to transmission service agreements, not to interconnection agreements. RMP argues

¹ Request for Agency Action at p. 1-2.

that if the Commission were to require RMP to seek to use the NOAA in order to avoid transmission facility upgrades that would otherwise be necessitated by the requirement to provide Network Resource (“NR”) service to Glen Canyon Solar’s proposed project the Commission would be venturing into exclusive FERC jurisdictional territory over transmission service.

The Division disagrees in part. The Division does not disagree with RMP that the NOAA and its application are exclusively FERC jurisdictional matters. That does not necessarily preclude the Commission from jurisdiction over all of RMP’s actions related to the NOAA. PacifiCorp was granted an amendment by FERC to its Network Operating Agreement between PacifiCorp’s merchant function RMP and PacifiCorp Energy that may be useful in alleviating at least some of these constraints. In its Order approving the amendment FERC described largely the same issue that may be presented in this docket.²

Specifically, PacifiCorp explains that, because PURPA requires a utility to purchase QF power and make firm transmission arrangements to deliver it even if the QF has chosen to site in a constrained area, but Commission precedent does not allow the designation of a new network resource until sufficient ATC is available, a utility is in the position of having to construct network upgrades to accommodate the PURPA-required QF firm transmission service, even if the utility would not have otherwise constructed those upgrades for economic or reliability reasons.

FERC granted the amendment allowing RMP to deliver QF power on a firm basis and designate new QFs as network resources even though there may not be available transmission capacity to do so otherwise. The amendment applies to only RMP’s own network rights and requires PacifiCorp to curtail its own NR resources prior to curtailing QF resources.

² *PacifiCorp*, 151 FERC ¶ 61170, 62057–58 at P1.

The Division agrees with RMP that FERC has exclusive jurisdiction over both transmission agreements and the operation and application of the NOAA. However, the Commission need not necessarily venture into actual transmission regulation to order RMP to use its best efforts to apply the NOAA.

QF pricing and interconnection are within the jurisdiction of the Commission. This is not disputed by any party. Moreover, the method of calculation of the avoided cost is within the jurisdiction of the Commission so long as such calculation reasonably and fairly reaches the cost RMP would avoid as a result of the QF. FERC further requires that RMP accept all power delivered by a QF on an NR basis. While the Commission may lack authority to either apply the NOAA directly to the Glen Canyon facility or any other transmission agreement, the Commission has authority to require RMP to operate in a manner that is the lowest cost to customers. Moreover, the Commission has authority to require RMP to act prudently.

In the event that the lowest cost to customers is RMP's best efforts to apply the NOAA under FERC jurisdiction to the transmission agreement with Glen Canyon Solar's proposed project, the Commission has authority to require RMP to do so. Ordering RMP to use its best available option to provide the transmission necessary for Glen Canyon Solar's proposed project is part of the request made by Glen Canyon Solar in this docket. That action is squarely within the jurisdiction of the Commission.

The issue is sufficiently ripe for adjudication that it should not be dismissed. RMP asserts that the issue is not ripe for adjudication. RMP contends that it is possible that other QFs ahead of Glen Canyon Solar in the que may necessitate facility upgrades that would render the current request moot.

One application of this principle is the doctrine of ripeness for adjudication. In order to constitute a justiciable controversy, a

conflict over the application of a legal provision must have sharpened into an actual or imminent clash of legal rights and obligations between the parties thereto. Where there exists no more than a difference of opinion regarding the hypothetical application of a piece of legislation to a situation in which the parties might, at some future time, find themselves, the question is unripe for adjudication.³

The Division recognizes that there may be intervening factors that will render the result of this request moot. Certainly, the construction of facility upgrades for other reasons that provide sufficient capacity without the NOAA could moot this issue. However, the possibility of some intervening event occurring is not enough to remove the justiciability of the request. Glen Canyon Solar has a signed PPA for this project pending before the Commission in Docket No. 17-035-26. There is an interconnection study in progress. And Glen Canyon Solar is seeking action to further its project. There plainly is a dispute over the nature of RMP's obligation to provide transmission service for the energy generated by Glen Canyon Solar's proposed project. And the obligation of RMP to seek application of the NOAA and redispatch of its own generation is disputed. For these reasons, the issue has sharpened to an actual or imminent clash of legal rights and obligations between the parties. The Commission should not dismiss the Request on the basis of lack of justiciability.

CONCLUSION

The Commission should deny RMP's Motion to Dismiss. The jurisdictional issues presented are mixed. The Commission may lack jurisdiction over the transmission function of PacifiCorp. The Commission does have jurisdiction over the prudence of the actions of RMP both with respect to the pricing of the PPA to account for all costs associated with the proposed

³ *Redwood Gym v. Salt Lake County Commission*, 624 P.2d 1138, 1148 (Utah 1981)

project as well as the obligation to use available options including seeking application of the NOA amendment where applicable.

The Division has not yet taken a position on whether it believes that the NOAA is in fact applicable to the Glen Canyon Solar proposed project. This is in large part due to the lack of concrete information regarding the current availability of transmission capacity on the line and what options for that line are available to RMP or PacTrans. For example, it is uncertain to the Division whether there is sufficient capacity even with the NOA to provide NR service year-round. The Division recommends that the Commission deny the Motion to Dismiss and allow this docket to proceed and a more complete record be created before ruling.

Submitted this 11th day of August, 2017.

/s/ Justin C. Jetter

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