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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Application of Rocky)	Docket No. 17-035-40
Mountain Power for Approval of a Significant)	
Energy Resource Decision and Voluntary Request)	Response to the Utah Industrial
for Approval of a Resource Decision)	Energy Consumers' Motion to
)	Stay Proceedings
_____)	

Pursuant to Utah Code § 54-10a-301 and Utah Admin. Code r. 746-1, the Office of Consumers Services (“Office”) files this Response in support of the Utah Industrial Energy Consumers’ (“UIEC”) Motion to Stay the Proceedings until the completion of the solicitation process for the reasons outlined in UIEC’s Motion. Specifically, the Utah Energy Resource Procurement Act’s statutory and regulatory scheme requires that the Utah Code § 54-17-201’s solicitation process be completed, or substantially completed, prior to the filing of the request for approval of significant energy resource decision under Utah Code § 54-17-302. The Office writes separately only to emphasize that the interplay between section 54-17-302(2)(b) and Utah Admin. Code r. 746-430-2(1) compels this conclusion.

Section 54-17-302(2)(b) provides: “The **request for approval** required by this section **shall** include any information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.” (emphasis added.) The term “request for approval” refers to the initial filing that institutes the proceedings for a request for approval

of a significant energy resource decision, in this case PacifiCorp's June 30, 2017 Application. *See*, section 54-17-302(2)(a) ("To obtain approval required by Subsection (1), the affected electrical utility shall file a request for approval with the commission."); section 54-17-302(5) ("within 120 days of the day on which the affected electric utility files a request for approval, the commission shall;" approve, condition or disapprove the significant energy resource decision.)

The "word 'shall' in a statute creates a mandatory condition, eliminating any discretion on the part of the [Commission]." *Diener v. Diener*, 2004 UT. App. 314, ¶ 12, 98 P.3d 1178; Utah Code § 68-3-12(1)(j) ("'Shall' means that an action is required or mandatory.") Accordingly, pursuant to section 54-17-302(2)(b), it is mandatory that the request for approval—the initial filing—include the information required by applicable rule, rule 746-430-2(1). Finally, rule 746-430-2(1) requires the filing of information that will not be available until the end of the solicitation process. Thus, under section 54-17-302(2)(b) and rule 746-430-2(1), it is not possible to make a legally sufficient filing to initiate the process for approval of a significant energy resource decision until the end of the solicitation process.

For example, rule 746-430-2(1)(c)(i) and (ii), provides that when "an Affected Utility files a request to approve a Significant Energy Resource pursuant to Section 54-17-302, the utility shall include . . . Summaries of all bids received; . . . Summaries of the Affected Utilities rankings and evaluation of bids." Of course, summaries, rankings and evaluations of bids will not be available until the end of the solicitation proceedings and therefore a utility cannot initiate the approval of a significant energy resource decision process under section 54-17-302 until the conclusion of the section 54-17-201 solicitation procedures. Moreover, because the term "shall" in section 54-17-302 deprives the Utah Public Service Commission ("Commission") of discretion in complying with the statute, the Commission cannot waive this requirement or

modify the information that section 54-17-302(2)(b) and rule 746-430-2(1) require to be filed with the initial request for approval.

It follows that PacifiCorp’s June 30, 2017 request for approval, which does not and could not include the information required to be filed by section 54-17-302(2)(b) and rule 746-430-2(1), is legally deficient and cannot serve as a vehicle to initiate the proceedings to request approval of a significant energy resource decision. PacifiCorp’s contention that it will supplement its filing with the required information when it becomes available at the end of the solicitation process ignores section 54-17-302(2)(b)’s language mandating that the information be filed with the request for approval at the initiation of the section 54-17-302 approval process. The reasons that section 54-17-302’s statutory and regulatory scheme requires the solicitation process to be completed, or substantially completed, prior to the initiation of the approval process are presented in UIEC’s Motion. Again, the Office writes separately only to emphasize that in addition to the policy reasons for this approach, section 54-17-302(2)(b) and rule 746-430-2(1) mandate this result and the Commission does not have the discretion to waive or modify this statutory requirement.

In sum, the Utah Energy Resource Procurement Act’s statutory and regulatory scheme requires that the solicitation process be completed, or substantially completed, prior to the filing of the request for approval of a significant energy resource decision. Accordingly, the Office supports UIEC’s contention that these proceedings should be stayed until the end of the solicitation process to allow PacifiCorp to file a legally sufficient request for approval.

Respectfully submitted, October 6, 2017.

_____/s/ Robert J. Moore_____
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