

October 16, 2017

VIA ELECTRONIC FILING

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Secretary

RE: In the Matter of the Application of Rocky Mountain Power for Approval of a Significant Energy Resource Decision and Voluntary Request for Approval of a Resource Decision
Docket No. 17-035-40

Dear Mr. Widerburg:

Rocky Mountain Power (the “Company”) hereby submits for filing its reply to the Office of Consumer Services’ Response to the Utah Industrial Energy Consumers’ Motion to Stay Proceedings in the above referenced matter.

The Company respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): datarequest@pacificorp.com
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By regular mail: Data Request Response Center
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Informal inquiries may be directed to Jana Saba, Manager, Utah Regulatory Affairs at (801) 220-2823.

Sincerely,



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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of:</p> <p>THE APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF A SIGNIFICANT ENERGY RESOURCE DECISION AND VOLUNTARY REQUEST FOR APPROVAL OF RESOURCE DECISION</p>	<p>Docket No. 17-035-40</p> <p>ROCKY MOUNTAIN POWER’S REPLY TO OFFICE OF CONSUMERS SERVICES’ RESPONSE TO THE UTAH INDUSTRIAL ENERGY CONSUMERS’ MOTION TO STAY PROCEEDINGS</p>
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I. INTRODUCTION

In accordance with Utah Admin. Code R746-1-301(2), PacifiCorp d/b/a Rocky Mountain Power (“Rocky Mountain Power” or “Company”) submits this Reply to the Office of Consumer Services’ (“OCS”) Response to the Utah Industrial Energy Consumers’ Motion to Stay Proceedings (“Response”) filed on October 6, 2017. OCS supports the Utah Industrial Energy Consumer’s (“UIEC”) Motion to Stay Proceedings (“Motion”) and recommends that the Public Service Commission of Utah (“Commission”) stay this case until the Company’s 2017R request for proposals (“RFP”) process is substantially completed.¹ OCS, however, fails to reconcile its position here with its earlier agreement to the procedural schedule that was approved by the Commission on July 27, 2017 (“Scheduling Order”). OCS also fails to explain why it waited until

¹ Response at 3.

now to reverse positions and contend that the Commission-approved procedural schedule violates the Energy Resource Procurement Act (“Act”). Finally, and most importantly, OCS’s legal argument that the schedule violates the Act ignores the Commission’s rules, Commission precedent, and well-established principles of administrative law. The Act does not “compel” the Commission to stay this case.

Utah Association of Energy Users (“UAE”) also joined UIEC in requesting that the Commission stay this case, but UAE did not offer any additional argument in support of the stay. Therefore, the Company’s reply is limited to the arguments presented by OCS in its Response.

II. ARGUMENT

A. OCS agreed to the current procedural schedule knowing that this case would run concurrent with the RFP.

On July 27, 2017, the Commission issued its Scheduling Order that allowed this case to run concurrent with the 2017R RFP, while ensuring that the Commission’s decision to approve the significant energy resource would occur after the conclusion of the solicitation process. All the parties that participated in the scheduling conference—including OCS—agreed on the schedule. At that time, OCS did not object or argue that the Act mandates that the 2017R RFP conclude before this case can move forward. In its Response, OCS never acknowledges that it agreed to the current schedule or explains why it agreed to a schedule that it now claims violates the Act. OCS’s concern that the Company’s filing is legally deficient rings hollow considering its unexplained reversal of position.

B. The Act does not require that the RFP be substantially completed prior to the initial filing requesting approval of a significant energy resource decision.

OCS argues that the Act requires that the “request for approval” include all the information required by the Commission’s rules; therefore, according to OCS, the statute mandates that

Company's *initial filing* must include all the information in Utah Admin. Code R746-430-2(1).² But neither the Act nor the Commission's rules explicitly require that the Company's *initial filing* include all the information in Utah Admin. Code R746-430-2(1). The Scheduling Order calls for the Company to submit supplemental direct testimony after the conclusion of the solicitation process, which will provide all the information required by Utah Admin. Code R746-430-2(1) that is not already included in the record. Thus, the Company's request for approval—including both the initial and supplemental filings—will contain all the information required by Utah Admin. Code R746-430-2(1). Neither the Act nor the Commission's rules specifically prohibit this procedural process, as OCS effectively conceded when it agreed to the current schedule.

OCS further claims that the “Commission does not have the discretion to waive or modify” the “statutory requirement” that the initial filing include all the information required by Utah Admin. Code R746-430-2(1).³ But even if the Commission's rules are read to require that the initial filing include all the information required by Utah Admin. Code R746-430-2(1), that requirement is imposed by rule, not statute. The Commission's rules specifically allow it to “deviate from a specified rule” if the “rule imposes a hardship that outweighs the benefit(s) of the rule.”⁴ The Commission previously relied on this rule to waive procedural requirements otherwise

² Response at 3.

³ Response at 3.

⁴ Utah Admin. Code R746-1-109.

imposed by its rules.⁵ The Commission has also waived substantive requirements imposed by its own rules implementing the Act when doing so advanced the public interest.⁶

Moreover, general principles of administrative law hold that it is within the discretion of an administrative agency to modify the requirements of a procedural rule. In *American Farm Lines v. Black Ball Freight Service*, the Interstate Commerce Commission (“ICC”) granted a motor carrier’s application for temporary operating authority even though the carrier’s application did not contain certain information required by the ICC’s rules.⁷ Competing motor carriers contended that the ICC was required by its own rules to reject the application as incomplete. The U.S. Supreme Court rejected the competing carrier’s argument after concluding that the procedural rules were “promulgated for the purpose of providing the necessary information for the [ICC] to reach an informed and equitable decision.”⁸ The Court found that “there is no reason to exempt this case from the general principle that it is always within the discretion of . . . an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.”⁹

⁵ See; *In the Matter of the Petition of Qwest Corporation dba CenturyLink QC for Approval to Deviate from and/or Waive the End-User Service Quality Rules Only Applicable to CenturyLink*, Docket No. 13-049-13 (June 28, 2013) (waiving end user service quality rules based on prior version of Utah Admin. Code R746-430-2(1)); see also, *In the Matter of the Application of Garkane Energy Cooperative for a Declaratory Ruling Regarding the Proposed Acquisition of the Electric Utility Assets of Kanab City*, Docket No. 04-028-01 (Jan. 1, 2001) (waiving the rule for delayed effectiveness of an order based on general authority to waive rules).

⁶ Utah Code Ann. §54-17-201(2)(c)(i) (Act requires that the Commission determine whether the solicitation process complies with the Act and its rules); Utah Admin. Code R746-420-3(10)(a) (rules require that all bids be “blinded”); *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*, Docket No. 07-035-94, Commission’s Suggested Modifications and Order at 18 (May 23, 2008) (granting waiver of blinding requirement in Utah Admin. Code R746-420-3(10)(a)); see also *In the Matter of the Voluntary Request of Rocky Mountain Power for Approval of Resource Decision to Acquire Natural Gas Resources*, Docket No. 12-035-102, Report and Order (Apr. 19, 2013) (approving voluntary resource decision before RFP results were finalized).

⁷ *American Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539, 25 L. Ed. 2d 547, 90 S. Ct. 1288 (1970); see also *Health Sys. Agency of Okla. v. Norman*, 589 F.2d 486, 490 n.5 (10th Cir. 1978) (“An administrative agency is not a slave of its rules.”) (internal citation and quotations omitted); *Colo. Envtl. Coalition v. Wenker*, 353 F.3d 1221 (10th Cir. 2004) (“[A]gencies are permitted to waive compliance with their own procedural rules.”).

⁸ *Id.* at 538.

⁹ *Id.* at 539.

Based on the Commission's own rules, and general principles of administrative law, even if the Commission's rules require that the *initial filing* include all the information set forth in Utah Admin. Code R746-430-2(1), that requirement can be modified in the public interest. As described in the Company's Application and response to UIEC's Motion, such a modification is in the public interest.

III. CONCLUSION

Rocky Mountain Power respectfully requests that the Commission deny UIEC's Motion for the reasons set forth in the Company's response filed on October 10, 2017. The OCS has provided no additional basis to conclude that the procedural schedule agreed to by the OCS and approved by the Commission violates the Act.

DATED this 16th day of October, 2017.

Respectfully submitted,

/s/ R. Jeff Richards

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CERTIFICATE OF SERVICE

Docket No. 17-035-40

I hereby certify that on October 16, 2017, a true and correct copy of the foregoing was served by electronic mail to the following:

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