

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Application of Rocky Mountain Power for  
Approval of a Significant Energy Resource  
Decision and Voluntary Request for  
Approval of Resource Decision

DOCKET NO. 17-035-40  
ORDER DENYING MOTION TO  
STAY

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ISSUED: November 7, 2017

**1. Background**

On June 30, 2017, PacifiCorp dba Rocky Mountain Power ("RMP") filed an Application for Approval of a Significant Energy Resource Decision and Voluntary Request for Approval of Resource Decision ("Application"). RMP's Application alleges it is "time-sensitive because [the resources for which RMP seeks approval] must be in commercial operation by the end of 2020 to fully achieve [certain production tax credit] benefits." (Application at 3.) To accommodate this time sensitivity, the Application requested a hearing be set for February 12, 2018.

The Public Service Commission ("PSC") held a scheduling conference on July 12, 2017, during which the participating parties stipulated to a schedule for the Application's adjudication. The PSC adopted the stipulated schedule and memorialized it in an order ("Scheduling Order") on July 27, 2017. The Scheduling Order established deadlines for the submission of written testimony and intervention and set a technical conference on August 30, 2017. Pursuant to the stipulated schedule, the Scheduling Order set the matter for hearing on March 6, 2018.

On September 22, 2017, the Utah Industrial Energy Consumers ("UIEC") filed a Motion to Stay Proceedings (the "Motion"). The PSC received the following briefing on the Motion:

- (i) On October 6, 2017, the Office of Consumer Services ("OCS") filed a response in support of the Motion ("OCS's Response");
- (ii) On October 10, 2017, the Utah Association of Energy Users ("UAE") filed a Joinder in UIEC's Motion and OCS's Response;

- (iii) On October 10, 2017, RMP filed a Response to the Motion ("RMP's Response");
- (iv) On October 16, 2017, RMP filed a reply to OCS's Response;
- (v) The Division of Public Utilities also filed a document on October 16, 2017, which it styled as a reply to OCS's Response ("DPU's Reply"); and
- (vi) On October 25, 2017, UIEC filed a reply in support of its Motion.

The Motion asks the PSC to stay this docket until RMP has completed its request for proposal ("RFP") process and made a resource decision. UIEC's primary arguments are (i) RMP's Application fails to comply with the Energy Resource Procurement Act (the "Act")<sup>1</sup> and applicable administrative rules, which UIEC argues require RMP to complete its solicitation process and make a resource decision prior to filing for the relief sought in its Application; and (ii) RMP will not be unduly prejudiced by a stay because it has the option to waive the solicitation and approval process under Utah Code Ann. § 54-15-501(1).

RMP asks the PSC to deny the Motion. RMP asserts the PSC approved the current procedural schedule by issuing its Scheduling Order with knowledge this proceeding would run concurrently with RMP's request for approval of its solicitation process in Docket No. 17-035-23. RMP argues UIEC's Motion, filed nearly two months later, is untimely. RMP maintains it has planned to and will comply with the milestones established in the Scheduling Order and that the concurrent resolution of its RFP process (in Docket No. 17-035-23) and this docket advances the public interest. Finally, RMP emphasizes that "[n]othing in the Act prohibits overlap of the solicitation and resource approval processes, as long as the solicitation process concludes first, as it [will] here." (RMP's Response at 7.)

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<sup>1</sup> Codified at Utah Code Ann. § 54-17-101, *et seq.*

The DPU acknowledges that "certain actions of [RMP] have been contrary to the transparent process contemplated by the relevant statutes," but nevertheless opposes the Motion. (DPU's Reply at 1.) The DPU argues "[t]he regulatory process must be nimble enough to permit regulated public utilities to react to time-limited opportunities" and that "prior completion of the solicitation process ... is not a condition precedent ... for approval in this docket of an energy resource." (*Id.* at 1-2.)

The OCS disagrees, maintaining the Act "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." (OCS's Response at 3.) The OCS supports the Motion and believes "these proceedings should be stayed until the end of the solicitation process." (*Id.*)

## **2. Order**

In its Application and elsewhere, RMP has emphasized the time sensitive nature of the relief it seeks from the inception of this docket — insofar as it seeks to capitalize on the availability of certain tax credits. Granting the indefinite stay UIEC seeks in its Motion would jeopardize RMP's objective and may effectively deny RMP's requested relief. The PSC concludes RMP's relief should be granted or denied on the merits, not by a procedural motion to stay the schedule.<sup>2</sup>

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<sup>2</sup> While the parties opposing the Application appear to believe the Application should be denied as a matter of law, no party requested dispositive motion practice be included in the adjudication schedule and no party filed a dispositive motion.

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In denying the request for a stay, the PSC need not make any conclusions with respect to the legal arguments going to the merits of RMP's Application that the parties raised in the Motion and consequent briefing, and the PSC expressly declines to do so.<sup>3</sup>

For the foregoing reasons, the Motion is denied. This docket will proceed as established in the Scheduling Order.

DATED at Salt Lake City, Utah, November 7, 2017.

/s/ Michael J. Hammer  
Presiding Officer

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#297802

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<sup>3</sup> The PSC also notes that, to the extent RMP's Response suggests the Scheduling Order made any legal conclusions with respect to the Application, it did not. The Scheduling Order accommodated the schedule the participating parties requested. In adopting the stipulated schedule, the PSC did not make any findings or conclusions on the merits of RMP's Application.

CERTIFICATE OF SERVICE

I CERTIFY that on November 7, 2017, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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