

WILLIAM J. EVANS (5276)
VICKI M. BALDWIN (8532)
CHAD C. BAKER (14541)
PARSONS BEHLE & LATIMER
Attorneys for UIEC, an Intervention Group
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Application of Rocky Mountain Power for Approval of a Significant Energy Resource Decision and Request to Construct Wind Resource and Transmission Facilities	Docket No. 17-035-40 UIEC’s REPLY COMMENTS IN SUPPORT OF MOTION TO VACATE REMAINING SCHEDULE AND REQUEST FOR EXPEDITED TREATMENT
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The Utah Industrial Energy Consumers (“UIEC”)¹ agree that if the Utah Public Service Commission (“PSC” or “Commission”) is to review Rocky Mountain Power’s (“RMP” or “Company”) request for approval of the Combined Projects, such a review and associated decision “should be granted or denied on the merits[.]”² RMP’s submissions in this docket, however, prevent such a review. RMP initially filed an incomplete application that did not comply with the requirements of the Act or incorporated rules.³ On January 16, 2018, RMP essentially submitted a new filing that, despite containing over 640 pages of new information,⁴ similarly appears to be missing certain information necessary for a meaningful review. These Reply Comments in Support of Motion to Vacate Remaining Schedule and Request for Expedited Treatment are filed

¹ For purposes of these reply comments, the UIEC is a reference, for convenience only, of Kennecott Utah Copper LLC, Tesoro Refining & Marketing Company LLC, LafargeHolcim Ltd., and Post Consumer Brands, LLC, as Petitioners for Intervention in Utah P.S.C. Docket No. 17-035-40

² Order Denying Motion to Stay, 3, Utah P.S.C. Docket No. 17-035-40 (Nov. 7, 2017).

³ See UIEC Motion to Stay Proceedings, Utah P.S.C. Docket No. 17-035-40 (Sept. 22, 2017).

⁴ See UAE Comments In Support of Motion to Vacate Schedule, Utah P.S. C. Docket No. 17-035-40 (Jan. 24, 2018).

pursuant to the PSC Notice Setting Deadlines to Respond to the Motion to Vacate Remaining Schedule issued on January 19, 2018.

The UIEC agree with the Division of Public Utilities (“Division”), the Office of Consumer Services (“Office”), and the Utah Association of Energy Users (UAE) that the Commission should expeditiously vacate the remaining schedule in the above captioned docket and convene a new scheduling conference. Extending the schedule approximately 60 days as RMP proposes,⁵ while RMP’s request remains incomplete – and necessary information remains unknown – will not adequately remedy the harm and will further burden parties who have already expended significant resources evaluating phantom projects. Nor will it remedy the prejudice and harm parties and the Commission will suffer as a result of a time limited and inadequate review.

RMP would like the Commission to believe that supplementing an incomplete application with over 640 pages of new testimony and exhibits (and apparently new justifications)⁶ satisfies the “spirit” of the Act, and complies with the Commission’s original schedule.⁷ The Commission previously concluded that the initial scheduling order did not contain any legal conclusions regarding the adequacy of RMP’s submissions.⁸ RMP’s efforts to argue the prior schedule contemplated the submission of replacement projects ignores the non-precedential effects of the initial scheduling order.

Moreover, RMP’s argument that the parties cannot be surprised that RMP selected replacement projects over the “proxies” contradicts RMP’s previous arguments. RMP previously relied heavily on the likelihood that RMP would select the proxies: “The Company’s inclusion of the Wind Projects in its initial filing was specifically intended to allow parties to review those

⁵ RMP’s Response to Motion to Vacate, 2, Utah P.S.C. Docket 17-035-40 (Jan. 24, 2018).

⁶ See Motion to Vacate Remaining Schedule and Request for Expedited Treatment, Utah P.S.C. Docket 17-035-40 (Jan. 18, 2018).

⁷ See generally, RMP’s Response to Motion to Vacate, *supra* note 5.

⁸ Order, *supra* note 2.

resources, which will be submitted as benchmark resources in the RFP . . . if the Wind Projects are ultimately selected . . . parties will have had over eight months of meaningful review before the hearing.”⁹ RMP now claims, however, that the Company has been clear that these benchmark resources would potentially be replaced.¹⁰ The eight months that the parties have had to review the proxies, however, turns out to be time (and resources) largely wasted on evaluating hypotheticals. Even though RMP has selected four of its self-build projects, it has substantially changed the economics and justifications, leaving the parties to start from scratch with insufficient data to make the statutorily required analysis and evaluation.

The Act contemplates an expedited review process, but RMP confuses the expedited process with the full review of a selected resource. The Act provides two procedures for review of significant energy resources. The first process – a deliberate and orderly process – requires PSC approval of a proposed solicitation process, completion of the solicitation process, and a review of that resulting resource selection to determine that it complied with the requirements of the Act, complied with the solicitation process, and is in the public interest.¹¹ The legislature allowed the PSC to extend the contemplated 120 (and 180 for voluntary resource decisions) review period if “additional time to analyze a significant energy resource (“SER”) is warranted and is in the public interest.”¹²

The second process allows the utility to obtain an expedited review for, among other things “time-limited” opportunities.¹³ In creating an expedited review for “time-limited” opportunities, the legislature shielded customers from risks associated with expedited decisions and actions by

⁹ RMP’s Response to UIEC Motion To Stay, 8. Utah P.S. C. Docket 17-035-40 (Oct. 10, 2017).

¹⁰ RMP’s Response to Motion to Vacate, 4, *supra* note 5.

¹¹ Utah Code Ann. §54-17-302. A utility can also seek a review of a voluntary resource decision that follows a process similar to the approval of the SER. See Utah Code Ann. § 54-17-402.

¹² Utah Code Ann. §54-17-302(5).

¹³ Utah Code Ann. § 54-17-501.

deferring decisions on cost recovery for future prudence reviews and withholding any presumption that such expedited actions were prudent.¹⁴ Thus, the “regulatory process” is already “nimble enough to permit regulated public utilities to react to time-limited opportunities” pursuant to Section 54-17-501. RMP, however, elected not to avail itself of that process. Instead, it filed an incomplete application invoking Section 54-17-302 and -402 so that it could push the risks associated with this “time-limited” opportunity to the rate payers. The PSC should not shortcut the SER approval process that RMP has selected. If RMP requires a more expedited process, it can withdraw its application in this Docket and proceed under 54-1-7-501 to capture the purported “customer benefits . . . driven by expiring PTC benefits[.]”¹⁵ Alternatively, the Commission should vacate the current schedule and establish, after a new scheduling conference, a schedule that would permit a full and fair review of all of the information required for evaluating the final resource selection(s) (once the Company has provided all the requisite information).

UIEC agrees with DPU, OCS, and UAE that the supplemental filing “significantly changes the basis for approval of the Application[.]”¹⁶ Debating the degree of similarities or differences between the hypothetical proxies and the “selected” resources, as RMP seeks to do, misses the fundamental and determinative issues – the Parties and the Commission still need the information required by law to review RMP’s request. For example, RMP admits interconnection studies, which could impact the final shortlist, remain incomplete.¹⁷ The independent evaluator reports for the 2017 R RFP appear to be missing. And RMP is still “actively negotiating contract terms, conditions, and pricing for the Wind Projects, and is engaged in similar efforts for the Aeolus-to-Bridger/Anticline transmission line[.]”¹⁸ The absence of final pricing, contract terms, and

¹⁴ *Id.* -501(10)(b), (c).

¹⁵ RMP Response to Motion to Vacate, 3, *supra* note 5.

¹⁶ Motion to Vacate, 2, *supra* note 6.

¹⁷ *Id.* at 2.

¹⁸ Supplemental Direct and Rebuttal Testimony of Chad A. Teply, 23:479 – 24:481, Utah P.S.C. Docket 17-035-40 (Jan. 16, 2018).

conditions for the engineering and procurement contracts (“EPC”) is especially troubling given that RMP contends that the EPCs will mitigate much of the risk parties identified in their direct testimony: “The Company *will also* prudently negotiate precautionary off-ramps in contracts to allow it to exit the Transmission Projects if they become uneconomic.”¹⁹ Such mitigation measures, which are critical to determining the Combined Project’s economics, risk, and public interest, are likely to remain unknown into April. It is unreasonable and inappropriate, therefore, to continue the current schedule or merely grant an approximately 60-day extension.

CONCLUSION

Accordingly, UIEC respectfully requests that the PSC vacate the existing schedule as requested by DPU and OCS and set a new scheduling conference to establish a schedule that opens the matter for new interventions, and provides adequate time to ensure the completeness of RMP’s submissions, to conduct discovery, and to fully evaluate the merits of the newly proposed resource decision.

DATED this 26^h day of January 2018.

/s/ Chad C. Baker

WILLIAM J. EVANS
VICKI M. BALDWIN
CHAD C. BAKER
PARSONS BEHLE & LATIMER
Attorneys for UIEC

¹⁹Supplemental Direct and Rebuttal Testimony of Cindy A. Crane, 9:192-193, Utah P.S.C. Docket 17-035-40 (Jan. 16, 2018).

CERTIFICATE OF SERVICE
(Docket No. 17-035-40)

I hereby certify that on this 26th day of January 2018, I filed by email to psc@utah.gov UIEC's **REPLY COMMENTS IN SUPPORT OF MOTION TO VACATE REMAINING SCHEDULE AND REQUEST FOR EXPEDITED TREATMENT**. I caused to be filed by e-mailed, a true and correct copy to:

ASSISTANT ATTORNEYS GENERAL

Patricia Schmid
pschmid@agutah.gov

Justin Jetter
jjetter@agutah.gov

Robert Moore
rmoore@utah.gov

Steven Snarr
stevensnarr@agutah.gov

OFFICE OF CONSUMER SERVICES

Michele Beck
mbeck@utah.gov

DIVISION OF PUBLIC UTILITIES

Chris Parker
chrisparker@utah.gov

ROCKY MOUNTAIN POWER

R. Jeff Richards
robert.richards@pacificorp.com

Yvonne R. Hogle
yvonne.hogle@pacificorp.com

Jana Saba
Jana.saba@pacificorp.com

Katherine McDowell
katnerine@mrg-law.com

Adam Lowney
adam@mrg-law.com

PACIFIC POWER

Sarah K. Link
Sarah.link@pacificorp.com

Karen J. Kruse
Karen.kruse@pacificorp.com

UTAH CLEAN ENERGY

Sophie Hayes
sophie@utahcleanenergy.org

Kate Bowman
kate@utahcleanenergy.org

INTERWEST ENERGY ALLIANCE

Mitch M. Longson
mlongson@mc2b.com

Lisa Tormoen Hickey
[lisahickey@newLawgroup.com](mailto:lisahickey@newlawgroup.com)

NUCOR STEEL-UTAH, A DIVISION OF NUCOR CORPORATION

Peter J. Mattheis
pjm@smxblaw.com

Eric J. Lacey
elacey@smxblaw.com

Jeremy R. Cook
jcook@cohnekinghorn.com

UTAH ASSOCIATION OF ENERGY USERS

Gary A. Dodge
gdodge@hjdllaw.com

Phillip J. Russell
prussell@hjdllaw.com

WESTERN RESOURCE ADVOCATES

Jennifer E Gardner
Jennifer.gardner@westernresources.org

Nancy Kelly
nkelly@westernresources.org

Penny Anderson
penny.anderson@westernresources.org

s/ Joy Prout _____