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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Application of Rocky Mountain Power for)	Docket No. 17-035-40
Approval of a Significant Energy Resource)	
Decision and Voluntary Request for Approval of)	Joint Petition for Review or
Resource Decision)	Clarification
)	

Pursuant to Utah Code §§ 63G-4-301, 54-7-15 and Utah Admin. Code r. 746-1-801, Petitioners Office of Consumer Services (“Office”) and Division of Public Utilities (“Division”) submit this Joint Petition for Review and Clarification requesting this Utah Public Service Commission (“Commission”) review and clarify its June 22, 2018 Order (“Order”) to the extent the Order fails to adequately address PacifiCorp’s, dba Rocky Mountain Power (“RMP”), express commitment to assume the risks that the Wind Projects will not qualify for 100% of the

projected Production Tax Credits (“PTCs”) because of conditions within RMP’s or its contractors’ control.

ARGUMENT

In both its pre-filed and hearing testimony, RMP expressly and unambiguously committed to assume the risk of the failure of the Wind Projects to qualify for 100% of the projected PTCs caused by any event within RMP’s or its contractors control, excluding only force majeure events and changes in law. *See e.g.*, May 18, 2018 Pre-Filed Sur-Rebuttal Testimony of Chad A. Teply at ln. 68-73; May 18, 2018 Pre-Filed Sur-Rebuttal Testimony of Joelle R. Steward at ln. 261-270. RMP offered testimony explaining: “What this means is that to the extent any new wind projects or turbine fails to qualify for PTCs, . . . PTCs will be imputed to each such project based on that project’s actual wind output for equipment placed in service and included in rate base at full revenue value.” May 18, 2018 Pre-Filed Sur-Rebuttal Testimony of Joelle R. Steward at ln. 265-269.

In addition, in its hearing testimony, RMP expressly extended this guarantee to the acts and omissions of its contractors. Specifically, the hearing testimony of Cindy Crane, C.E.O. of Rocky Mountain Power, contains the following questions and answers.

Q: I am going to hand you a document marked OCS Exhibit “A”. This document contains a portion of Mr. Gary Hoogeveen’s April 23rd, 2018 supplemental rebuttal testimony in the repowering docket. That’s docket 17-035-39. I’m going to direct you to lines 176 and 185 on the second page.

A. I am there.

Q. Can you read that question and answer into the record?

. . . .

A. Okay. “Does the company stand by its commitment to assume the risk of nonqualification for production tax credits if it is related to the company’s performance?”

The answer states, “Yes. If the repowered facilities are not 100 percent PTC eligible because of some occurrence within the company’s control, shareholders will hold customers harmless. This commitment extends to entities with whom the company has contracted for services, including contractors, vendors, and suppliers, meaning that if the failure to qualify for production tax credits is due to an event within a contractor’s control, the company will hold customers harmless.”

Q. I just want to make this crystal clear on the record. My question to you is, does the company provided the same guarantee to customers of this docket, the wind transmission docket, that the customers will be held harmless if the combined projects fail to qualify for 100 percent PTCs due to an event within the contractors’, vendors’ or suppliers’ control?

A. Yes.

Hearing Tran. 05/29/2018 pg. 107-109.

Therefore, RMP’s testimony establishes that it has committed to assume all risks of the failure of the wind projects to qualify for 100% of the PTCs because of conditions within its and its contractors’ control, with the only exception being the occurrence of a force majeure event or a change in law. However, this Commission’s Order does not clearly recognize that RMP makes this commitment. This could lead to some confusion given that in the Repowering Docket, docket 17-035-39, this Commission ruled:

We therefore conclude that PacifiCorp must honor its commitment that PacifiCorp will bear the risk related to any portion of the Repowering Project that does not qualify for the maximum PTCs available unless the failure to qualify for PTCs is a result of either: 1) a change in law; or 2) an event that is beyond the reasonable control of PacifiCorp and the entities with whom PacifiCorp has contracted for services including contractors, vendors, and suppliers.

Voluntary Request of Rocky Mountain Power for Approval of Resource Decision to Repower Wind Facilities, Docket 17-035-39, Order at * 22 (Utah P.S.C. May 25, 2018).

Accordingly, the Office and the Division request that this Commission clarify its Order to include a ruling mirroring the ruling in the Repowering Docket, i.e., that RMP is held to its commitment to hold ratepayers harmless for the wind projects failure to qualify for full PTCs caused by any action or omission on the part of RMP or its contractors, with the only exception of a force majeure event or a change in law.

Respectfully submitted, July 19, 2018.

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