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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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
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**APPLICATION OF UTAH ASSOCIATION OF ENERGY USERS FOR
RECONSIDERATION AND REHEARING OF COMMISSION ORDER
ISSUED JUNE 22, 2018**

Pursuant to Utah Code sections 54-7-15 and 63G-4-301, and Rule R746-1-801 of the Utah Administrative Code, the Utah Association of Energy Users (“UAE”) hereby submits this Petition for Reconsideration and Rehearing of the Public Service Commission of Utah’s (“Commission”) June 22, 2018 Order (“Order”) granting the Application of Rocky Mountain Power (“RMP” or “Company”) for Approval of a Significant Energy Resource Decision and Voluntary Request for Approval of Resource Decision (“Application”). UAE respectfully requests that the Commission reconsider, and/or grant rehearing of, its Order to remedy all of the legal errors discussed herein.

THE ORDER APPROVES RESOURCE DECISIONS RESULTING FROM AN IMPROPER SOLICITATION PROCESS IN VIOLATION OF THE ACT

The Energy Resource Procurement Act (“Act”),¹ which governs both the Application and the Order, requires that, before a utility may “acquire or construct a significant energy resource,” it must first “conduct a solicitation process that is approved by the commission.”² Utah law also requires that, before a utility may construct a significant energy resource that results from an approved solicitation process, the utility must obtain Commission approval of the significant energy resource decision, and such Commission approval must be fully compliant with the Act.³ *If* a solicitation process is proper and properly approved by the Commission, and *if* the resulting significant energy resource decision is properly approved, then the Commission is required to include in the utility’s electric retail rates the state’s share of costs associated with the significant energy resource decision.⁴ Conversely, if the solicitation process is not properly approved and/or the significant energy resource decision is not properly approved, then the Commission is not required to include in rates the costs associated with the significant energy resource decision.

An appeal currently pending before the Utah Court of Appeals in Appellate Case No. 20170967 (“RFP Appeal”) raises the issue of whether the solicitation process associated with the resource decisions at issue in this docket was improperly approved in Docket No. 17-035-23. For all of the reasons raised, but not yet resolved, in the RFP Appeal, UAE maintains that, under the Act, no resource decisions resulting from or associated with the flawed RFP process can

¹ Utah Code §§ 54-17-101 to -806.

² *Id.* § 54-17-201(2)(a).

³ *Id.* §§ 54-17-302(1), (3).

⁴ *Id.* § 54-17-303(1).

properly be approved. For those reasons, UAE respectfully asks the Commission to vacate its order and deny approval of the Company’s resource decisions in this docket.

Moreover, if the RFP Appeal results in the solicitation process being reversed, all resource decisions approved in this docket will not have resulted from a properly-approved solicitation process under the Act. UAE thus respectfully asks the Commission in all circumstances to modify the Order to clarify that the Wind Projects at issue in this docket are approved only to the extent that the Commission’s order approving the solicitation process in Docket No. 17-035-23 is not reversed as a result of the RFP Appeal.

The Order in this docket approved both “significant energy resource decisions” to construct or procure new Wyoming wind resources pursuant to Utah Code § 54-17-302 (the “Wind Projects”), and associated “resource decisions” under Utah Code § 54-17-402 to construct certain transmission facilities (the “Transmission Projects”). The Company’s Application and subsequent filings in this docket and the Commission’s Order all make it clear that the Wind Projects and Transmission Projects (the “Combined Projects”) are “inextricably linked” and “mutually dependent” on each other and that neither project is economic without the other and should not be developed without the other.⁵ Given this interdependency, the Order in this docket

⁵ See, e.g., June 30, 2017 Application at 5 (“The Combined Projects are time-limited opportunities and inextricably-linked—the Transmission Projects relieve congestion in eastern Wyoming, and the Wind Projects will rely on the new Transmission Projects for interconnection and allow the Company to realize the benefits of zero-fuel-cost energy and associated PTCs.”); *id.* at 9 (“The Combined Projects are mutually dependent. The Wind Projects are not economic without the Transmission Projects, which are needed to relieve existing congestion and to interconnect new PTC-eligible wind resources in high-wind areas of Wyoming. The Transmission Projects are not economic if there are no incremental cost-effective wind resources generating zero-fuel-cost energy and the associated PTCs. This interdependence requires that the Combined Projects be developed together.”). See also, e.g., Order at 7 (“PacifiCorp’s Application emphasizes the time-sensitive, mutually dependent nature of the Combined

should make clear that all of the Combined Projects are approved only to the extent that the Commission’s order approving the solicitation process in Docket No. 17-035-23 is not reversed as a result of the RFP Appeal. The statutory requirements of the Act prevent the Company from constructing any of the Combined Projects without a properly-approved solicitation process. If the order approving the solicitation process is overturned in the RFP Appeal, no aspect of the Order in this docket can properly stand.

For the reasons set forth in the RFP Appeal and this Application, UAE will be substantially prejudiced if the Order in this docket is not modified. A Commission Order approving the Combined Projects absent a properly-approved solicitation process in violation of the Act will substantially prejudice UAE because the Commission will have “acted beyond the jurisdiction conferred by any statute,”⁶ “erroneously interpreted or applied the law,”⁷ “engaged in an unlawful procedure or decision-making process, or . . . failed to follow prescribed procedure,”⁸ “abuse[d] the discretion delegated to the agency by statute,”⁹ and/or acted in a manner that is “otherwise arbitrary or capricious.”¹⁰

CONCLUSION

For the foregoing reasons, UAE respectfully asks the Commission to vacate the Order and deny approval of the Combined Projects. Furthermore, and in any event, UAE asks the

Projects”); *id.* at 32 (“We find the availability of the expiring PTCs to subsidize the fulfillment of these existing needs to be highly relevant and to strongly favor our finding the Combined Projects are in the public interest.”).

⁶ Utah Code § 63G-4-403(4)(b).

⁷ *Id.* § 63G-4-403(4)(d).

⁸ *Id.* § 63G-4-403(4)(e).

⁹ *Id.* § 63G-4-403(4)(h)(i).

¹⁰ *Id.* § 63G-4-403(4)(h)(iv).

Commission to clarify its Order to specifically provide that all of the Combined Projects are approved only insofar as the order approving the solicitation process in Docket No. 17-035-23 is not disturbed on appeal.

DATED this 20th day of July 2018.

Respectfully submitted

By: /s/ Gary A. Dodge
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Certificate of Service
Docket No. 17-035-40

I hereby certify that a true and correct copy of the foregoing was served by email this 20th day of July 2018, on the following:

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