

- 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 | <u>DOCKET NO. 17-035-40</u> <u>ORDER ON REVIEW</u> |
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ISSUED: August 8, 2018

On July 20, 2018, the Utah Association of Energy Users (“UAE”) filed an Application for Reconsideration and Rehearing of Commission Order Issued June 22, 2018 (“Application for Reconsideration”). UAE argues the solicitation process, which the Public Service Commission (“PSC”) approved in a separate docket (the “Solicitation Process Docket”),¹ that PacifiCorp dba Rocky Mountain Power (“PacifiCorp”) employed for the Wind Projects,² which we approved in our June 22, 2018 order in this docket (“Underlying Order”), was legally deficient. UAE emphasizes the PSC’s decision in the Solicitation Process Docket is presently on appeal. “UAE maintains that ... no resource decisions resulting from or associated with the flawed [solicitation] process can properly be approved.” (Application for Reconsideration at 2-3.) UAE requests the PSC modify the Underlying Order and conclude the projects it approved in the Underlying Order “are approved only to the extent that the [PSC’s] order approving the solicitation process in [the Solicitation Process Docket] is not reversed as a result of the [appeal].” (*Id.* at 3.)

On August 6, 2018, PacifiCorp filed a response to the Application for Reconsideration. PacifiCorp asserts nothing in the law requires a PSC-approved solicitation process to be affirmed by an appellate court before the PSC may approve a resource decision arising out of the

¹ *Application of Rocky Mountain Power for Approval of Solicitation Process for Wind Resources*, Docket No. 17-035-23.

² In this Order on Review, Wind Projects refers to those projects identified at p. 11, n. 7 of the Underlying Order.

approved process. PacifiCorp also emphasizes that the law includes a process to address circumstances where a resource decision is approved but material circumstances change subsequent to approval (*e.g.*, an appellate court reverses approval of the underlying solicitation process). Specifically, the law provides the PSC may “disallow some or all costs” if the PSC finds the utility’s actions in implementing the approved resource decisions are not prudent because of new information or changed circumstances that occur subsequent to approval. Utah Code Ann. §§ 54-17-303, 54-17-403. The law further provides utilities with an opportunity to seek an order to proceed where the utility desires guidance from the PSC whether it should proceed in light of changed circumstances. *Id.* at §§ 54-17-304, 54-17-404.

We conclude that our orders in both the Solicitation Process Docket and in this docket have not been stayed, and therefore are currently legally effective. We conclude that a decision from an appellate court modifying our decision in the Solicitation Process Docket would be a changed circumstance to which Utah Code Ann. §§ 54-17-303, -304, -403, and -404 could apply. We conclude that those statutes speak for themselves as to the legal impact of a changed circumstance, and we decline to modify or augment those statutes with speculative contingencies written into our orders. UAE cites no law to support its argument that our approval of the projects should be contingent on resolution of its appeal, and has offered no additional basis on which to reconsider the findings and conclusions in our Underlying Order. We deny the Application for Reconsideration.

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DATED at Salt Lake City, Utah, August 8, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#303860

Notice of Opportunity for Agency Review or Rehearing

Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and with the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on August 8, 2018, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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