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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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**IN THE MATTER OF THE REQUEST OF** )  
**ROCKY MOUNTAIN POWER FOR APPROVAL OF** ) Docket No.17-035-40  
**RESOURCE DECISION TO CONSTRUCT WIND** )  
**RESOURCE AND TRANSMISSION FACILITIES** )

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**RESPONSE OF THE INTERWEST ENERGY ALLIANCE TO UTAH ASSOCIATION  
OF ENERGY USER’S MOTION TO STAY COMMISSION ORDER**

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The Interwest Energy alliance, by and through counsel, hereby responds to the *Motion to Stay Pending Review* (“Motion to Stay”) filed in this docket on October 12, 2018 by the Utah Association of Energy Users (“UAE”).

**I. PROCEDURAL BACKGROUND**

On June 30, 2017, Rocky Mountain Power (“RMP”) filed its request for approval of a significant energy resource decision under Utah Code 54-17-302 and 54-17-402 and Utah

Administrative Code R746-430-2.<sup>1</sup> On June 22, 2018, this Commission entered an order approving RMP's Application to obtain approval of a "significant energy resource decision" including three new wind farms and specified new transmission facilities, all located in Wyoming (the "Combined Projects"). The Commission approved the application in its June 22, 2018 Order entered in this Docket ("Application Approval Order") and this decision was affirmed as modified in the "Order on Review" issued on August 8, 2018.<sup>2</sup> UAE has appealed the Orders, and the appeal is now pending before the Utah Court of Appeals in Case No. 20170967-CA.<sup>3</sup> In its appeal, UAE asserts that the Commission improperly approved the request for proposals ("RFP") under which RMP acquired the wind facilities that were incorporated in the Combined Projects. UAE now asks the Commission to enter an order delaying the effective date of this decision pending appeal of the Orders in this docket, or in the alternative, to delay effectiveness of the Orders related to recovery of costs in rates.<sup>4</sup>

## II. SUMMARY OF ARGUMENT

Interwest did not provide testimony related to rate recovery in the period during which the application was under review, but rather, endorsed a tax expert to help provide transparency related to the construction deadlines and related eligibility requirements for the 100% production tax credits, during the time when federal tax policies were potentially in flux. The value of the federal tax credits underpinned this Commission's analysis and findings in the Orders. The wind farms were proposed to interconnect to the new transmission line, and completion and commercial

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<sup>1</sup> Application, *In the Matter of Application of Rocky Mountain Power for Approval of a Significant Energy Resource Decision and Voluntary Require for Approval of a Resource Decision*, Docket No. 17-035-40 filed on June 30, 2017 ("Application").

<sup>2</sup> The Order on Review is at times referred to collectively with the Application Approval Order as the "Orders."

<sup>3</sup> Interwest is not party to the appeal.

<sup>4</sup> Motion for Stay at 2.

operation of the wind farms is dependent upon completion of the transmission lines. The savings brought by the discounted wind energy is required to pay for the new transmission line and upgrades. The federal tax credits are available at the 100% level only if the wind farms are completed and online on a timely basis, by December 31, 2020.<sup>5</sup> These deadlines for eligibility for 100% level of the production tax credit remain in effect and failure to comply with the eligibility requirements would jeopardize these savings that the Combined Projects will bring to Utah electricity customers. Delay in completion of the transmission line could potentially bring about delay in commercial operation of the wind facilities. Interwest accordingly opposes the Motion to Stay on the grounds that delay would increase risks related to eligibility for the 100% level of the production tax credits for these wind projects. These increased risks are manifestly contrary to the public interest, and alone warrant denial of the Motion to Stay.

Furthermore, Interwest opposes the Motion to Stay because public policy considerations indicate that restrictions on the effectiveness of Commission orders pending appeals of those orders should be available only under very limited circumstances to protect the interests of party intervenors and the utility, and most importantly, Utah electricity consumers. All of the parties, especially Commission and Office staff, struggled valiantly to comply with the time deadlines which were required to complete thorough review of the discovery and evidence within one year so the transmission line construction could proceed as planned. Judicial economy now requires that the Commission's order be viable pending review. UAE and RMP have indicated that they cannot predict when the appeal will be fully decided. The unpredictable time frames associated with appellate decision-making creates an untenable variable related to when RMP can advance

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<sup>5</sup> Interwest refers the reader to the evidence in the docket for interpretation of the applicable federal tax guidance.

the construction requirements for these projects, again increasing overall risks and costs that are contrary to the public interest.

For these reasons, discussed more fully below, Interwest urges the Commission to deny the Motion to Stay, focusing primarily on the overall effective date of the Orders and whether RMP is able to proceed with its construction activities rather than UAE's alternative cost-recovery relief requested in the Motion to Stay.

### **III. ARGUMENT**

To prevail on its Motion to Stay, UAE must carry the weighty burden of showing that (1) there is a substantial likelihood that it will prevail on the merits; (2) it will suffer irreparable harm absent a stay; (3) the threatened injury to UAE outweighs injury to other parties; and (4) the stay is not contrary to the public interest. Utah R. Civ. P. 65A(e)(1)-(4). UAE fails to meet its burden. Among other reasons, the Motion to Stay should be denied because it will be manifestly contrary to the public interest to grant a stay of the Commission's Orders—a factor to which UAE dedicates one conclusory paragraph in its Motion. The Commission has already found that the Combined Projects are in the public interest, in large measure based on the time-sensitive nature of production tax credit eligibility. As shown below, the risks and potential harm associated with staying the Orders are far greater than any purported harm to UAE, and the Motion to Stay should be denied.

#### **A. The Commission Found, Based on a Thorough Review of the Evidence, that the Combined Projects Are in the Public Interest.**

The Combined Projects will advance RMP's clean energy transmission and generation portfolio to serve Utah electricity customers through zero emission, low-cost renewable energy for decades to come. RMP proposed to acquire new wind resources and transmission facilities to serve its load and provide savings yielded by the 100% level of federal tax credit discounts on wind energy, which drops off after December 31, 2020. RMP asserted from the outset that it

needed permission to acquire both types of facilities on a timely basis because the resources are available and cost-effective if acquired together, but not absent a combined approval.

The wind facilities were acquired through a robust pre-approved competitive bidding process. The permission to issue the RFP was granted in the associated "RFP Approval Docket"<sup>6</sup> after comments and a contested hearing by Order Approving RFP dated September 22, 2017 in the RFP Approval Docket ("RFP Approval Order").

The circumstances required prompt consideration, but the Commission's procedural orders allowed for a thorough review of the Application in this adjudicated docket by a diverse set of intervening parties. The Commission conducted a contested hearing which lasted most of a week, at which a number of expert witnesses testified and were cross-examined. The evidence included step-by-step discussion and analysis of the RFP and the modeling results. The Commission itself participated in the questioning. After a careful review, the Commission entered the Orders approving the Combined Projects.

The Commission found that the Combined Projects were in the public interest. Application Approval Order at 32. The Commission found RMP's economic analysis to be thorough and extensive," *id.* at 22, and the forecasts and the methodology underlying them were "reasonable," *id.* at 23. The Commission observed that RMP's 2017 Integrated Resource Plan ("2017 IRP") identified new Wyoming wind in its preferred portfolio and that RMP undertook a "relatively robust" RFP process in selecting the particular projects to provide this wind generation. Application Approval Order at 17. While RMP did not adopt the Commission's suggested modification to the RFP, the Commission found that "the 2017S RFP was modeled and analyzed

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<sup>6</sup> *Application of Rocky Mountain Power for Approval of Solicitation Process for Wind Resources*, Docket No. 17-035-23.

in a way that provided results meaningfully similar to what would have occurred had the wind and solar resources bid in to the same RFP.” *Id.* at 25. Further, the Commission found that “PacifiCorp’s economic modeling shows benefits in the vast majority of potential outcomes.” Application Approval Order at 22. The Commission placed reasonable conditions on its approval to protect electricity consumers, and instituted mechanisms to provide transparency and ensure information is as complete as possible with respect to the costs of the Combined Projects. *Id.* at 35. Thus, the Commission has already determined based on a thorough review of the evidence that implementation of its Orders is in the public interest.

**B. Time Remains of the Essence to Obtain 100% PTC Eligibility, and thus a Stay Is Contrary to the Public Interest.**

UAE does not allege any change in circumstance since the Orders were entered justifying a stay. RMP provided testimony that was relied upon by the Commission related to federal legal and timing requirements for production tax credit eligibility and associated time constraints, as are cited in the Motion for Stay.<sup>7</sup> RMP’s application was the subject of long hours of effort by the Commission, Commission staff, the Division, and a number of intervening parties throughout the period when it was filed in June 2017 and June 2018 when the order was entered. This Commission recognized the critical nature of a timely decision because the application was based on completion of construction of the transmission line in time for the wind projects to comply with the eligibility requirements of the higher levels of production tax credits. RMP has confirmed that it has continued its development and construction activities despite UAE’s appeal, and, in fact,

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<sup>7</sup> See Motion for Stay at 8 n.5 (citing, *e.g.*, May 30, 2018 Hr’g Tr. at 433:14-434:17 (RMP providing testimony as to federal legal requirements for PTC eligibility and associated time constraints)).

RMP now feels compelled by expectations that it act in a prudent manner to diligently pursue these savings for its customers.<sup>8</sup>

Interwest agrees with UAE that the public interest is infused with the interest of purchasers of electric power. Motion to Stay at 14. However, UAE's motion will potentially jeopardize the higher levels of production tax credit, which directly runs to the detriment of the interest of the electricity consumers as a whole, including those not represented by UEA. In addition, the Commission, parties and staff must be able to rely on Commission orders, even pending appeal. Consistent with the Commission's orders, RMP continues with its development and construction of the wind farms and transmission facilities.<sup>9</sup> The wind developers are likely continuing to pursue their own development activities and spending millions of dollars to ensure production tax credit eligibility, with active financing agreements. Time is of the essence, and a stay of uncertain length would jeopardize all of this investment already made and anticipated in the near future. An order approving the Motion to Stay would be extremely costly and prejudicial to the companies poised to bring these new clean energy projects online and into the utility's portfolio.

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<sup>8</sup> As RMP counsel stated on August 10, 2018 in a response for an extension of procedural deadlines filed with the Court of Appeals, "Because federal law requires certain construction activities and operational benchmarks to be timely achieved to realize the PTCs that will benefit all RMP customers, adherence to construction timelines is of utmost importance. Although the Company did not object to extensions to the time for filing the opening or response briefs, those filings occurred *before* the Commission issued its resource decision approving construction of the wind and transmission facilities. ... Nevertheless, now that RMP has received an order approving its resource decisions, it must act swiftly to ensure that customers will enjoy the benefits of federal tax credits that were the purpose of this project. Indeed, because the Company is required to act prudently to realize cost savings for its customers, RMP feels compelled by the commission orders to proceed, notwithstanding UAE's appeal. Accordingly, RMP hereby gives the Court and parties notice that it is pursuing the development and construction of the subject wind farms and transmission facilities." See Exhibit A to UAE's Mot. for Stay, "RMP's Response to Petitioner's Motion for Enlargement of Time to File Brief" filed in Utah Ct. of Appeals, Case No. 20170967-CA, at 2-3.

<sup>9</sup> *Id.* at 3 (unnumbered).

Public policy and judicial economy, along with the interests of all affected parties, requires that orders to stay effectiveness of Commission orders pending appeal should be entered only under very limited and unusual circumstances. As indicated above, this proceeding was fully litigated based on evidence presented in the docket, rather than summary judgement or a legal ruling which is subject to question, or a limited factual determination on which the entire decision relies. While these examples may not be the only circumstances under which a stay may be appropriate, they highlight the unusual nature of such circumstances, which simply are not present here. In fact, the circumstances argue to the contrary—due to the extremely high value that prompt action and the need to continue to pursue all development activities on a diligent path to meet the December 2020 production tax credit deadline, the Commission should place the bar higher.

#### **IV. CONCLUSION**

Federal tax deadlines are now fast approaching. Under these circumstances, it is important for the parties to act on an expedited basis, due to a combination of factors which are outside of RMP's control: the expiration of wind tax credits, with a substantial decline if the wind projects are not online by the end of 2020, and the complicated nature of permitting and construction of the transmission line, which is required to interconnect the wind projects to the extent they are located in Wyoming. The Commission's order approving the Combined Projects was entered after diligent and thorough review and a lengthy contested proceeding. Modifying the effectiveness of the Orders, even temporarily pending appeal, would result in loss of the value of this collective effort and degrade the extensive public process. The stay requested by UAE could impair eligibility for the higher levels of the production tax credit, costing Utah ratepayers millions in lost tax credits and energy savings. UAE's arguments in support of a stay fail on all counts, and the Motion for Stay should accordingly be denied.



DATED this 26<sup>th</sup> day of October

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed and served on the following, by email unless noted otherwise, on this 26<sup>th</sup> day of October, 2018

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