

- 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
ORDER DENYING MOTION TO
STAY

ISSUED: November 15, 2018

On October 12, 2018, the Utah Association of Energy Users (“UAE”) filed a Motion for Stay Pending Review (“Motion”). UAE asks the Public Service Commission (“PSC”) to stay its Order issued June 22, 2018 and its Order on Review issued August 8, 2018 (collectively, the “Orders”). “In the alternative, UAE seeks a stay of the effectiveness of any claimed cost-recovery aspect of those Orders.” (Motion at 1.) We deny the Motion.

UAE has appealed the Orders in this docket and has filed an appeal (“RFP Appeal”) of our final order in a related docket, Docket No. 17-035-23 (“RFP Docket”). In the RFP Docket, we approved the solicitation process that PacifiCorp dba Rocky Mountain Power (“RMP”) employed in making the resource decisions our Orders in this docket later approved. UAE largely premises its request for a stay on the pendency of these appeals and argues a stay is appropriate because RMP “has indicated that it does not intend to wait for [] a ruling [on the RFP Appeal] and plans to move forward with the construction of the [projects we approved in this docket].” (Motion at 3.)

The parties assert and we conclude that the standard applicable to the stay UAE seeks is generally the same as the standard for granting preliminary injunctions under the Utah Rules of Civil Procedure. Accordingly, UAE must show the following to warrant our granting a stay: (i) it will suffer irreparable harm unless the PSC grants the Motion; (ii) the threatened injury to UAE outweighs whatever damage the stay may cause; (iii) the stay, if issued, would not be adverse to

the public interest; and (iv) a substantial likelihood exists UAE will prevail on the merits of its appeal. *See* Utah R. Civ. P. 65A.

In approving the projects at issue, we have already found RMP complied with applicable statutes and administrative rules in reaching its resource decisions and that the projects are in the public interest. Those findings and conclusions are discussed at length in our June 22, 2018 Order. We will not reiterate them at length here, but we highlight the following of our findings and conclusions: (i) the projects will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost; (ii) the projects are in the public interest in both the short-term and long-term; and (iii) the public interest favors RMP developing the projects soon enough to capitalize on otherwise expiring production tax credits (“PTCs”). We expressly “recognize[d] the risk of [RMP] and its customers foregoing up to \$1.2 billion in PTC values over 10 years.” (June 22, 2018 Order at 27.) Indeed, the evidence showed the projects are “time-sensitive because they must be in commercial operation by the end of 2020 to fully achieve the PTC benefits.”¹ (*Id.* at 6, n.5.) We conclude nothing in the Motion or subsequent briefing undermines these prior findings and conclusions.

We conclude UAE has failed to show any of the required elements to warrant a stay. While the construction of the projects at issue may ultimately cause an adjustment to the rates UAE’s members pay for electricity, the record in this docket supports our prior finding the projects will most likely result in benefits to UAE’s members in their capacity as customers of

¹ For simplicity, we refer generically and collectively to the projects in this order. As the Orders discuss in greater detail, certain projects involve the construction of wind resources to produce electricity (for which RMP intends to seek PTCs) and other projects relate to the construction of transmission facilities to service the new wind and other generation resources.

RMP. While the parties disagree as to whether potentially higher retail rates may constitute “irreparable harm,” we need not reach the issue because we have already found the record demonstrates the projects will most likely result in net benefits to customers, including UAE’s members.

We further conclude that to grant a stay and delay the projects such that RMP and, by extension, its customers may lose the benefit of potentially more than a billion dollars in PTCs significantly outweighs UAE’s speculative concerns about marginally higher retail electricity rates. Additionally, we have already found the projects to be in the public interest and conclude it would be highly adverse to the public interest to grant a stay that may jeopardize the projects’ eligibility for the expiring PTCs.

Finally, the PSC made its findings and conclusions in this docket and the RFP Docket after full hearings and consideration of the entire records. UAE’s Motion does not present any argument, legal or factual, that persuades us it is substantially likely to prevail on the merits of its appeals. Although we recognize the Court of Appeals may ultimately disagree with our decisions, we cannot conclude UAE is substantially likely to prevail on the merits.

For these reasons, the Motion is denied.

DOCKET NO. 17-035-40

- 4 -

DATED at Salt Lake City, Utah, November 15, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#305488

CERTIFICATE OF SERVICE

I CERTIFY that on November 15, 2018, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic-Mail:

Data Request Response Center (datarequest@pacificorp.com)
PacifiCorp

Jana L. Saba (jana.saba@pacificorp.com)
Yvonne Hogle (yvonne.hogle@pacificorp.com)
Jeff Richards (robert.richards@pacificorp.com)
Rocky Mountain Power

Sarah K. Link (sarah.kamman@pacificorp.com)
Karen J. Kruse (karen.kruse@pacificorp.com)
Pacific Power

Katherine McDowell (katherine@mrg-law.com)
Adam Lowney (adam@mrg-law.com)
McDowell Rackner Gibson PC

Gary A. Dodge (gdodge@hjdllaw.com)
Phillip J. Russell (prussell@hjdllaw.com)
Hatch, James & Dodge, P.C.

Peter J. Mattheis (pjm@smxblaw.com)
Eric J. Lacey (ejl@smxblaw.com)
Stone Mattheis Xenopoulous & Brew, P.C.

Jeremy R. Cook (jcook@cohnekinghorn.com)
Cohne Kinghorn

Mitch M. Longson (mlongson@mc2b.com)
Manning Curtis Bradshaw & Bednar PLLC

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

DOCKET NO. 17-035-40

- 6 -

Kate Bowman (kate@utahcleanenergy.org)
Hunter Holman (hunter@utahcleanenergy.org)
Utah Clean Energy

William J. Evans (bevans@parsonsbehle.com)
Vicki M. Baldwin (vbaldwin@parsonsbehle.com)
Chad C. Baker (cbaker@parsonsbehle.com)
UIEC, Parsons Behle & Latimer

Nancy Kelly (nkelly@westernresources.org)
Sophie Hayes (sophie.hayes@westernresources.org)
Western Resource Advocates

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Steven Snarr (stevensnarr@agutah.gov)
Assistant Utah Attorneys General

Erika Tedder (etedder@utah.gov)
Division of Public Utilities

By Hand-Delivery:

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Administrative Assistant