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# State of Utah

## Department of Commerce

### Division of Public Utilities

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## Comments

**To:** Public Service Commission of Utah

**From:** Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Manager

David Williams, Utility Analyst

**Date:** February 13, 2019

**Re:** In the Matter of the Application of Rocky Mountain Power for Approval of Solicitation Process for Solar Photovoltaic and Thermal Resources, Docket No. 18-035-47

## Recommendation (Approval With Conditions)

The Utah Division of Public Utilities (“Division”) recommends that the Public Service Commission of Utah (“Commission”) approve with conditions the Solicitation Process for Solar Photovoltaic and Thermal Resources filed by Rocky Mountain Power. The Division’s conditions and recommendations for improvements in the Application are noted below.

## Issue

Rocky Mountain Power (“RMP” or the “Company”) wants to solicit bids so that it may acquire solar photovoltaic or solar thermal resources.<sup>1</sup> On December 28, 2018, the Company filed its application (“Application”) regarding its solicitation process in Docket No. 18-035-47. The Company is seeking Commission approval of its Application format and solicitation process for

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<sup>1</sup> In these Comments, we use “acquire” to include both purchasing a solar resource, and purchasing the output from a solar resource, as in Utah Code Section 54-17-807(1).

its 2019 Renewable Resource Utah Request for Proposals (“RFP”). RMP intends to use the winning bid or bids from the RFP to meet specific customers’ sustainability goals. The specific customers listed by RMP are Salt Lake City, Park City, Summit County, Vail Resorts, Utah Valley University, and Deer Valley Resort (the “Customers”), and RMP plans to administer the RFP on their behalf.

If approved by the Commission, this RFP would be the first to proceed under Utah Administrative Code rule R746-450, which went into effect December 24, 2018. Rule R746-450 spells out the solicitation process established by the Commission in response to Utah Code Section 54-17-807(11). Section 54-17-807 of the Utah Code details the process by which RMP can acquire solar photovoltaic or thermal energy facilities “using rate recovery based on a competitive market price...”<sup>2</sup> RMP submitted its draft Application and accompanying testimony in Docket No. 18-035-47. Since the possible solar acquisitions are for the sole use of the specific Customers, and not the general group of all RMP customers, RMP deems this RFP to be a “Specific Customer Solicitation” under the definition in rule R746-450-1(8).

The solicitation requirements are found throughout Rule R746-450. Many of the specific requirements for the RMP RFP are in rule R746-450-3(1) (which applies to all solicitations arising out of Utah Code Section 54-17-807) and rule R746-450-3(2)(a) (which applies to Specific Customer Solicitations).

## **Background**

On December 28, 2018, RMP filed its Application pursuant to Utah Code Section 54-17-801 *et seq.*, seeking approval of the solicitation process for its RFP and initiating this docket. On December 31, 2018, the Commission issued a Notice of Filing and Comment Period establishing Wednesday, January 30, 2019 as the due date for initial comments. In a Request for Scheduling Conference submitted January 7, 2019; the Division requested to have the reply dates for comments extended. The Commission held a scheduling conference on Tuesday, January 15,

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<sup>2</sup> Utah Code Section 54-17-807(2)(a).

2019. In that conference the parties agreed to revised comment dates of February 13, 2019 for initial comments, and February 28, 2019 for reply comments.

At the scheduling conference, the Division presented the Company with a list of preliminary questions it had about the RFP. The Company held an informal meeting on January 24, 2019 (the “Informal Meeting”) where it addressed the Division’s and other parties’ questions. The Company summarized its answers to these questions in a document sent to parties on February 1, 2019 (the “RMP Responses to DPU”).<sup>3</sup>

## **Discussion**

The Division’s comments in this docket fall into four main categories:

1. Reviewing the Company’s RFP and Application to ensure compliance with the applicable statutory provisions and administrative regulations.
2. Making recommendations that increase the chances that the bidding process will be fair and competitive.
3. Ensuring that ratepayers who are not involved with the solicitation or any resulting renewable acquisition do not bear any of the associated costs.
4. Issues relating to RMP’s possible purchase of a winning bid (including questions regarding the requirement in the RFP for bidders to submit both a PPA price and BTA price).

The Division also has miscellaneous comments that do not fall into the categories above. Some issues are more appropriately discussed when the Commission decides whether to approve the winning bid (if there is one).

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<sup>3</sup> UT Docket No. 18-035-47 - Rocky Mountain Power’s Responses to DPU Informal Set 1 (1-16), sent to parties on February 1, 2019 via email.

## **1. Statutory and Administrative Application and RFP Requirements**

The form and requirements of the Application are dictated primarily by Utah Code Section 54-17-807 and Utah Administrative Code rule R746-450. Some statutory requirements for an approved solicitation process will be discussed in the next section of these Comments.<sup>4</sup> This section focuses on the application requirements in rule sections R746-450-3(1) and (2)(a). The Company's Application meets these requirements, with the exceptions as noted below.

### *Utah Administrative Code Rules R746-450-3(1) Requirements*

Utah Administrative Code rules R746-450-3(1)(a)-(i) list criteria for a solar solicitation approval.

Under Rule R746-450-3(1)(b), the Company should provide "a copy of the complete proposed solar solicitation with any appendices, attachments and draft pro forma contracts." For the most part, the Company has done this; however, the Division recommends that all appendices and attachments be named so that the titles match the description in the RFP. For example, Appendix C of the RFP refers to an "Appendix C-1 spreadsheet." This spreadsheet is provided in RMP's proprietary exhibits; however, there it is named "PROPRIETARY RMP Exhibit 11- Bid Summary 12-28-2018". All appendices should be named accordingly.

Under Rule R746-450-3(1)(d), the Company should provide:

descriptions of the criteria and the methods to be used to evaluate bids, including the weighting and ranking factors to be used to evaluate bids, and explanation of the extent to which grid services frequency regulation, spinning reserves, and/or ramp control that the resource is capable of providing in addition to energy and/or capacity will be considered or evaluated...

The Division does not see that the Company has given an "explanation of the extent to which grid services frequency regulation, spinning reserves, and/or ramp control ... will be considered

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<sup>4</sup> *E.g.*, the requirement in Utah Code Section 54-17-807(6)(b) that "that the solicitation and evaluation processes to be used will create a level playing field in which the qualified utility and other bidders can compete fairly..."

or evaluated” in the RFP. The Division recommends that this be included explicitly in Section 6 (“Bid Evaluation and Selection”).

Other criteria in sections R746-450-3(1)(a)-(h) not mentioned in these Comments have been sufficiently covered by the Company’s Application. Section R746-450-3(1)(i) allows the Commission to require more information if needed.

*Utah Administrative Code Rules R746-450-3(2) Requirements*

Subsections (2)(a)(i)(A)-(D) of rule R746-450-3 give four more items that are required in an application for a specific customer solicitation. Subsection (A) requires that “the solar solicitation and bid evaluation will create a level playing field that will allow fair competition between the qualified utility and other bidders.”<sup>5</sup> This requirement is discussed below in a separate section of these Comments.

Subsection (B) ensures that interconnection and transmission requirements apply equally to utility bidders and non-utility bidders.<sup>6</sup> The Company is not sponsoring a bid and so this subsection is satisfied.

Subsection (C) is satisfied; the Company has a procedure for objectively considering the “impacts of the interconnection or delivery locations” given by the bidders.<sup>7</sup> The interconnection requirements in general are as follows:<sup>8</sup>

Rocky Mountain Power is seeking renewable resources physically located in Utah capable of: (1) directly interconnecting with PacifiCorp’s system in its PACE balancing area or (2) interconnecting with a third-party system and using third-party firm transmission service to deliver to the PACE transmission system. With either method, Rocky Mountain Power prefers bids that will not face significant transmission costs or constraints between: (1) the resource’s point of interconnection or the resource’s delivery point on PacifiCorp’s transmission system; and (2) PacifiCorp network load.

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<sup>5</sup> Utah Administrative Code Rule R746-450-3(2)(a)(i)(A).

<sup>6</sup> Utah Administrative Code Rule R746-450-3(2)(a)(i)(B).

<sup>7</sup> Utah Administrative Code Rule R746-450-3(2)(a)(i)(C).

<sup>8</sup> RFP, Section 5.B., p. 17.

Section 5.B. of the RFP states that:

When the Company requests Best and Final Offers we will require a completed interconnection system impact study (SIS) (for projects directly interconnected to the Company's system) or a completed third-party interconnection SIS and a completed third-party transmission service study (for projects using third-party transmission) to determine the actual direct assigned cost for the interconnection or transmission services. Bids will be evaluated based on the direct assigned interconnection costs submitted in the bids, which will be considered firm costs for the initial shortlist evaluation.

These interconnection requirements and transmission requirements present a mostly level playing field, as projects can connect on the PACE system anywhere in Utah. RMP does express preference for a project that "will not face significant transmission costs or constraints" between the connection point and the network load. RMP also places extra requirements on projects choosing third-party interconnection and transmission.<sup>9</sup> However, as long as a sufficient number of bids are received, the Division does not consider these preferences and extra requirements to create an "unlevel" playing field.

Subsection (D) requires that the solicitation be in the public interest. If the Company makes the changes and conditions mentioned in these Comments, the solicitation will be in the public interest.

## **2. Ensuring a Fair and Competitive Bidding Process**

One statutory requirement that deserves special attention is the requirement in Utah Code Section 54-17-807(6)(b) that "that the solicitation and evaluation processes to be used will create a level playing field in which the qualified utility and other bidders can compete fairly..." The phrase "level playing field" is also used in rule R746-450-3(2)(a)(i)(A). While the Division finds the "level playing field" phrase to be imprecise, we suggest guidelines for how to determine whether the playing field is level and the winning bid is competitive.<sup>10</sup>

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<sup>9</sup> See *id.*, p. 18.

<sup>10</sup> See, e.g., Utah Code Section 54-17-807(2)(a): "qualified utility may file an application with the commission for approval to acquire a photovoltaic or thermal solar energy resource using rate recovery based on a competitive market price." The word "competitive" is not defined in the statute.

One way to judge whether a bidding process is competitive is simply to examine the number of bids. If RMP gets (for example) nine or ten bids from separate unaffiliated entities, this is a strong indicator that the winning bid is competitive. If RMP receives one or two bids, then the Division would have concerns as to whether the winning bid is competitive. Unfortunately, we will not know how many bids are received until after the RFP is approved and completed.

The Division's understanding is that ten or more projects are far along enough in the process to be eligible to bid on the RFP. The Division does not know how many of these projects are based in Utah. The Division also does not know how many of these projects will ultimately bid, or how many of them may be owned by the same entity or affiliated with each other. In the docket where the winning bid (if any) is approved, the Division will be very concerned about the competitiveness of the process if there are a low number of bids, whereas a high number of independent bids may create a *prima facie* case that the winning bid is competitive.<sup>11</sup>

What constitutes a "level playing field" under 54-17-807(6)(b) or R746-450 is not defined. The Division suggests that the following criteria may help in this area:

- The greater the number of independent bids that are made, the more level the playing field is likely to be.
- RMP should not impose any RFP conditions that favor projects it already owns or has plans to own.
- Geographic restrictions should be kept to a minimum, except for valid technical reasons or requests by the Customers.
- Interconnection requirements should not be unduly onerous and should not favor any particular project or location.

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<sup>11</sup> Under Utah Code Section 54-17-807(7)(d)(i), if the Commission approves a bid, the price of that bid is deemed to constitute competitive market prices. However, the Division might argue against such approval under some circumstances.

The number of bids is yet to be seen. RMP indicated in its testimony filed with its Application that no projects owned by it are being bid.<sup>12</sup> The Division asked RMP if it has any already-commenced plans or preliminary negotiations to purchase any of the projects it expects will bid, and RMP stated it is “not in negotiations with any developers concerning a project to be bid into the request for proposals.”<sup>13</sup> Assuming there are no plans or negotiations with a specific project that will be bidding, there are no bid conditions that favor projects currently owned or planned to be owned by RMP.

RMP’s Application imposes geographic restrictions on bid eligibility:<sup>14</sup>

The Company will accept proposals for new greenfield renewable energy resource projects in Utah capable of directly interconnecting with and delivering energy to PacifiCorp’s PACE network transmission system in Utah or capable of delivering energy to PacifiCorp’s transmission system in Utah with the use of third-party firm transmission service.

According to Rule R746-450-3(2)(a)(i)(C), the Customers can dictate the location of projects eligible to bid.<sup>15</sup> In its Responses to DPU, RMP stated that “[t]his decision is up to the

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<sup>12</sup> See Direct Testimony of Mark Tourangeau, December 2018, lines 184-7: “Because the Company is not sponsoring a project to bid, and is instead evaluating whether to purchase any of the third-party resources that bid into the RFP through the requested BTA bids, there is a minimal risk of bias in the administration and selection process.”

See also Appendix B, p. 4 of the Application: “Bids from a PacifiCorp affiliate, or for power from generating facilities owned in part or in whole by PacifiCorp or a PacifiCorp affiliate will not be accepted for evaluation in this RFP.”

<sup>13</sup> Rocky Mountain Power’s Responses to DPU Informal 1st Set Data Requests, filed February 1, 2019, Docket No. 18-035-47, Response to DPU Informal Data Request 1.3. Nonetheless, RMP is establishing separate evaluation teams for power purchase agreements and build-transfer agreements. See Direct Testimony of Mark Tourangeau, lines 187-93. We discuss this procedure later in our Comments.

<sup>14</sup> Request for Proposals Renewable Resources, Exhibit Accompanying Direct Testimony of Mark Tourangeau, filed December 28, 2018, Docket No. 18-035-47, p. 1. See also RFP p. 17: “Rocky Mountain Power is seeking renewable resources physically located in Utah...”

<sup>15</sup> That rule provides that the Application should have information showing the following:

that projects proposing to interconnect or deliver to various locations on the qualified utility's transmission system will have a fair opportunity to bid and have the impacts of the interconnection or delivery locations objectively considered in the selection process, provided that **solicitation parameters requested by specific customers may limit interconnection or delivery locations.**

(Bolded emphasis added.) Although location of the project itself is not specifically listed as a permissible parameter, in practice, limitation of the delivery or interconnection locations can mimic state borders closely.



cities/customers, who have decided to seek Utah bids only.”<sup>16</sup> While opening up the bids to other states would make the process more competitive, the Division believes the Customers’ wishes should be followed on this issue. However, again, if the number of independent bids is low, this will prompt extra scrutiny at the approval stage.

The interconnection requirements in the Application do not appear to create an “unlevel” playing field. For example, if the RFP receives a healthy number of bids, it is unlikely that the interconnection requirements were too onerous. However, if few bids are received, further investigation in to the interconnection requirements may be warranted going forward.

With respect to timing, only a project that has progressed down the timeline will be able to make RMP’s deadlines. For example, p. 8 of the RFP states that a bid may be rejected because of:

Failure to provide evidence that the proposed project has either: (1) requested a direct interconnection with PacifiCorp’s PACE system and executed an interconnection feasibility study or system impact study (SIS) agreement with PacifiCorp’s transmission function; or (2) requested interconnection with a third party’s system, executed an interconnection feasibility study agreement with the third party transmission provider, and requested long-term, firm third-party transmission service from the resource’s point of interconnection with the third party’s system to the proposed point of delivery on PacifiCorp’s PACE system.

Thus a project that has not already entered the transmission queue or has not undergone a feasibility/SIS study would not qualify for the RFP. Given the Customer’s desires, this timeline is reasonable. Even given the somewhat tight timeline required by the Customers, if enough projects bid under the RFP, the process should still produce a competitive bid.

### **3. Non-Participating Customers and Costs**

RMP states on p. 7, ¶ 17 of the Application that:

The selection criteria in the 2019R Utah RFP meet the requirements of Utah Code Ann. § 54-17-807(6) and (7) and are also designed to minimize the risk that non-participating customers will bear any cost burden related to the solicitation or acquisition of renewable resources under the RFP.

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<sup>16</sup> Rocky Mountain Power’s Responses to DPU Informal 1st Set Data Requests, filed February 1, 2019, Docket No. 18-035-47, Response to DPU Informal Data Request 1.15.

RMP also discusses this issue in the Tourangeau testimony, lines 115-119:

The RFP is designed to analyze the costs of network upgrades required to interconnect the renewable energy resource and transmit the power as a PacifiCorp designated network resource to ensure that non-participating customers of the Company are not burdened with excess costs as a result of the Participating Customers' election to utilize a higher percentages of renewable energy.

In the RMP Responses to DPU, RMP answered a DPU question regarding the "excess costs" mentioned in the testimony:<sup>17</sup>

Excess costs in this case refers to any costs incurred by the utility in order to provide renewable power for a customer under Schedule 32 or Schedule 34, with transmission costs being a primary example. The request for proposals (RFP) is structured to allow RMP and the participating customers to evaluate any such costs as a part of the selection process. To the extent such costs are anticipated based on the resource selected accounting for those costs will be dealt with in the approval dockets for the related Schedule 32 or Schedule 34 customer contracts.

RMP expects the question of ensuring non-participating customers do not bear costs from this RFP or the acquired projects will be addressed in another docket (probably the Schedule 34 contract approvals docket). The Division agrees that the current Application process is not the place to get into these details, but it notes that the costs associated with this RFP could be more than just transmission/connection upgrades and other obvious costs (*e.g.* resources assigned to acquisition of the winning projects). For example, if the selected projects are in southern Utah, there could be transmission congestion issues or line losses that would not be present if the Customers were served by a closer load, even if no transmission upgrades are required.

Furthermore, there is the question of stranded costs as customers begin switching to renewables. Transmission, distribution, or generation plant may have been built in the Customers' regions based on the assumption that the Customers would use that plant, and grow into its capacity. If the Customers instead use different sources of generation, the non-participating customers may be harmed even if the immediate upgrades resulting from acquisitions from the RFP are paid for by the Customers. These issues will be exacerbated if total load in the Customers' area or in

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<sup>17</sup> *Id.* Response to DPU Informal Data Request 1.5.

RMP's territory as a whole remains flat or declines. The risk of stranded costs will be low in the present case, but will increase as more customers switch to renewables (as the present Customers are beginning to do). The Division notes that these issues may arise in future dockets.

#### **4. Issues Related to Power Purchase Agreement and Build-Transfer Agreement**

RMP requires two bids from each bidder: one price for a power purchase agreement ("PPA"), and one for a build-transfer agreement ("BTA").<sup>18</sup> One of the reasons listed in the RFP for rejecting a bid includes "Failure to provide BTA pricing in addition to PPA pricing in the base proposal."<sup>19</sup> The Division understands that the PPA evaluation will be the means of selecting a project for the Customers, and that a bid with no BTA will be rejected out of hand. The BTA bids are evaluated separately, after the PPA process, to determine whether RMP would seek to purchase the project.

Requiring a BTA bid as part of the RFP is not in the public interest. This requirement may unnecessarily cut down on the number of bids, with no described benefit for the Customers, or other ratepayers. The number of bids may already be reduced by the requirement that the projects be located in Utah. It is not clear to the Division that a developer who typically only bids on PPA projects will read the RFP and think "We can simply make our BTA bid high, so that it will not be accepted." The BTA RFP requirements are spelled out in Section B of the RFP, and these requirements are not insubstantial. For example, the RFP states:<sup>20</sup>

Appendix C – Bid Summary and Pricing Input Sheet shows the form of project information required for a "Build-Transfer" transaction. This is an Excel-based worksheet that covers ... bid summary information, electrical interconnection information, 8760 energy production profile, PV degradation information, and pricing and other cost assumption inputs for the BTA. The bidder's proposal must contain the information requested in Appendix F-1 – BTA Instructions to Bidders. The bidder must provide information, representations, and warranties sufficient to assure Rocky Mountain

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<sup>18</sup> See, e.g., RFP Section 1, p. 1: "The Company will consider proposals for the two following transaction structures, both of which must be submitted by the bidder in their proposal: 1. "Build-Transfer" transaction... 2. Power purchase agreement (PPA) for up to a twenty-five (25) year term..."

<sup>19</sup> See Section 3.F. of the RFP, p. 8 ("Minimum Eligibility Requirements for Bidders").

<sup>20</sup> Section 4.B. of the RFP, p. 12.

Power that any proposed project will successfully complete construction and 2019 UTAH RFP – pg. 15 achieve full commercial operation within the timeframe listed in Section 2. The bidder must also provide evidence that any new resource will be eligible to claim, as applicable, the full or partial federal PTC/ITC as interpreted by applicable guidelines and rules of the Internal Revenue Service.

...

The BTA pro forma documents are attached as Appendix F-2 – Build Transfer Agreement (BTA). Bidders should include a redlined or marked up version of Appendix F-2 Build Transfer Agreement showing exceptions to the terms of the pro forma BTA document. Bidders objecting to terms should provide alternate language and context to the objections for Rocky Mountain Power to evaluate the alternate language.

Why would a bidder who has no experience with BTA projects, and no desire to bid on one, go through these requirements? The BTA bid requirements are much more involved than simply listing a price. The BTA bid portion of the RFP project appears to be for RMP's benefit, not the Customers' benefit or the public interest (RMP has not presented evidence that the Customers are concerned with or favor BTA bids). If the winning project is based on the PPA bids, the Customers will be indifferent as to whether RMP ultimately signs a BTA agreement with the winning PPA bids.

In the Division's view, this confusion occurs in the evaluation process as well. RMP should make clearer in Section 6 of the RFP that the bid evaluation and selection for the Customers is based solely on the PPA bid. RMP should reiterate that a project could be accepted under a PPA bid, but not be chosen for purchase under the BTA bid. The confusion is caused by the lack of clarity between the two processes (PPA bid and BTA bid), and other language in the RFP. For example, in the RFP Introduction, the Company states that "[t]he Company will consider proposals for the two following transaction structures, both of which must be submitted by the bidder in their proposal," then it lists the BTA structure first. This and other wording can give the impression that the Customers are concerned equally with the BTA and PPA structures. However, the PPA bid is the one that determines the winning bid; the BTA bid comes into play after the winning bid is selected, and is for RMP's benefit. The RFP should make this clearer.

The Division makes the following recommendations regarding description of the evaluation processes:

- Make the BTA portion of the bid optional.

- Make more explicit the fact that the RFP evaluation process described in the submitted RFP applies only to PPA bids, and that a project or projects could be selected for acquisition under the PPA bid, but not the BTA bid.
- Describe in a separate section the evaluation processes for BTA bids.

## **5. Miscellaneous Issues**

On February 8, 2019, the Company filed its “Corrected Pre-filed Direct Testimony and Exhibits of Mr. Mark Tourangeau” which included a template for a 2019R Utah RFP Purchased Power Agreement (“Sample PPA Agreement”).<sup>21</sup> The Sample PPA Agreement was inadvertently omitted from the initial filing. As this was filed Friday afternoon on February 8, and initial comments are due February 13, the Division reserves the opportunity to comment on the Sample PPA Agreement in its reply comments. The Division will also have further comments on the final PPA agreements if and when they are submitted for Commission approval.

## **Conclusion**

The Division recommends approval of RMP solicitation process, if certain conditions are met:

- All appendices should be named to match their title and/or description in the RFP so that parties can ensure all appendices/attachments are present.
- The Company should provide descriptions and explanations in the RFP corresponding to Rule R746-450-3(1)(d).
- The BTA portion of the RFP should be made optional, and the Company should make more explicit that the Customer solicitation is based solely on the PPA bid.

In addition to these conditions, the Division notes that it will assess the competitiveness of the winning bid after the bids are in. The Division will also assess the risk that non-participating customers will bear costs related to the solicitation or acquisition of renewable resources under this RFP at a later time.

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<sup>21</sup> Rocky Mountain Power’s Corrected Pre-filed Direct Testimony and Exhibits of Mr. Mark Tourangeau, filed February 8, 2019 in Docket No. 18-035-47.

Cc: Michele Beck, Office of Consumer Services  
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