

September 10, 2021

VIA ELECTRONIC FILING

Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Administrator

RE: **Docket No. 20-035-34 – In the Matter of the Application of Rocky Mountain Power’s Application for Approval of Electric Vehicle Infrastructure Program**
RMP Consolidated Reply

In accordance with the Notice of Virtual Scheduling Conference and Motion for Protective Order issued by the Public Service Commission of Utah (“Commission”) on August 26, 2021, Rocky Mountain Power (“the Company”) hereby submits its consolidated reply to the responses filed by Western Resource Advocates, Utah Clean Energy and ChargePoint, Inc. regarding the Company’s Motion for Protective Order in the above referenced docket.

Rocky Mountain Power respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): datarequest@pacificorp.com
jana.saba@pacificorp.com
stephanie.barber-renteria@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Informal inquiries may be directed to Jana Saba at (801) 220-2823.

Sincerely,



Stephanie Barber-Renteria
Attorney, Rocky Mountain Power

Enclosures

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Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of)	
Rocky Mountain Power for Approval of)	Docket No. 20-035-34
Electrical Vehicle Infrastructure Program)	
)	
)	

CONSOLIDATED REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

PacifiCorp, dba Rocky Mountain Power (“Rocky Mountain Power” or the “Company”), hereby submits this Consolidated Reply in Support of its Motion for Protective Order (“Reply”). This Reply addresses the Responses to Motion for Protective Order filed by Western Resource Advocates (“WRA”), Utah Clean Energy (“UCE”), and ChargePoint, Inc. (“ChargePoint”). No other intervening parties or interested persons filed responses to the Company’s motion.

REPLY TO RESPONSES

Regarding the Responses of WRA and UCE, the Company recognizes that these parties are nonprofit organizations who, through the performance of their normal job functions, will not use the confidential information in a manner that may competitively disadvantage the

Company. Therefore, subject to their execution of the confidentiality agreement attached hereto as Exhibit A, the Company agrees to provide WRA and UCE access to the confidential information.

Regarding the Response of ChargePoint, the Company will accept ChargePoint's alternative proposal that its outside counsel be provided the confidential information, provided that counsel is willing to execute the confidentiality agreement attached hereto as Exhibit B. The Company continues to seek a protective order denying employees, consultants, and individuals affiliated with ChargePoint, other than its outside counsel, access to the confidential information.

As to all other intervening parties and interested persons who have not yet filed motions to intervene but who may later become parties, the Company continues to seek a protective order denying such parties access to the confidential information. Parties that have already sought leave to intervene in this matter and did not file responses in this matter have plainly indicated that they do not object to the Commission granting a protective order. Interested persons that have not yet filed but may subsequently seek leave to intervene may be vendors and/or competitors who may use the confidential information to the Company's competitive disadvantage. Therefore, a protective order denying such parties access to confidential information is reasonable.

APPLICABLE RULES

Utah Administrative Code Rule R746-1-601 provides that any party to a docket may request that information included in the record be treated as confidential. The rule allows a party to petition the Public Service Commission of Utah ("Commission") for an order granting additional protective measures. *See* Utah Admin. Code R746-1-601(2)(a)(ii). The petitioning

party must set forth (1) the particular basis for the claim, (2) the specific protective measures requested, which may include restricting or prohibiting specific individuals from accessing information, and (3) the reasonableness of the requested protection. *See id.* R746-1-601(2)(b)(i) – (iii). Utah Administrative Code Rule R746-1-602(2)(a) provides that a person, including an expert who is employed or retained by a party, may not receive confidential information if, in performing the person’s normal job functions, the person could use the information to the competitive disadvantage of the party providing the information.

Basis for Claim of Confidentiality and Protective Order

In support of its Application for Approval of Electric Vehicle Infrastructure Program (“EVIP Application”), the Company filed confidential commercial and financial information for which it seeks a protective order. Specifically, the Company seeks to protect its yearly estimates for spending on equipment, infrastructure, incentives, and expenses, including costs for program management, marketing, and network services. The Company also seeks to protect its annual revenue calculations per location and estimated totals for all Company-owned chargers and its calculations of breakeven at various utilization levels.

The Company’s claim of confidentiality and the basis of its request for a protective order stem from the fact that all intervening parties in this matter are not yet known and such parties may be vendors and/or competitors in the electric vehicle infrastructure arena, as is the case with ChargePoint. Such parties may use the confidential information to competitively disadvantage the Company. *See Utah Admin Code R746-1-602(2).*

As discussed in the EVIP Application, the Company plans to issue a Request for Proposals (“RFP”) to select an operator to install, maintain, and operate Company-owned chargers. Because this process has not yet taken place, the Company’s actual costs of the

program are not yet known and will only be determined after the RFP is concluded and a network operator is selected. Parties who obtain access to the Company's estimated expenditures, revenue, and breakeven analysis for Company-owned chargers may be able to undermine an objective RFP process by submitting artificially inflated bids that reflect the Company's estimates. Contrary to ChargePoint's arguments, the Company's estimated expenditures are more important for protection than actual costs because the protection of the estimates will ensure a robust and competitive RFP process.

Intervening parties, such as ChargePoint, who are also competitors of the Company in the electric vehicle charging market must also be denied access to the confidential information. The area of electric vehicle charging is an emerging market, and the disclosure of the Company's estimated costs, revenues, and breakeven analysis could be used by the Company's competitors to undermine its position in the market.

Specific Measures Requested

The Commission's rules governing protective orders allow the Company to seek protective measures that include restricting or prohibiting specific individuals from accessing information. *See* Utah Admin. Code R746-1-602(2)(b)(ii). In this matter, the Company seeks a protective order denying access to confidential information to parties or individuals who could use the confidential information to competitively disadvantage the Company.

At this stage in the proceeding, the Company has identified the employees, consultants and persons affiliated with ChargePoint, other than its outside counsel, as individuals who should be denied access. ChargePoint is a competitor of the Company in the electric vehicle charging business and it may also be a vendor in the RFP process. Furthermore, because the deadline for intervention has not yet passed and the Company does not yet know the identity

of all intervening parties, the Company seeks a protective order denying access to parties that may later seek to intervene in this matter. Such parties may also be competitors and/or vendors in the electric vehicle charging market.

Reasonableness of Requested Protection

The protective order requested by the Company in this matter is reasonable under the circumstances. The Company has agreed to grant access to confidential information to WRA, UCE, and the outside counsel of ChargePoint, subject to their execution of the attached confidentiality agreements. Thus, the Company’s request for a protective order is limited to what is necessary to protect the confidential information given that the identities of all intervening parties are not yet known.

WHEREFORE, the Company respectfully requests that the Commission enter a Protective Order preventing intervening parties from receiving and reviewing information designated as “Confidential,” subject to the agreements attached hereto as Exhibits A and B, between the Company and WRA, UCE, and counsel for ChargePoint.

DATED this 10th day of September 2021.

Respectfully submitted,
ROCKY MOUNTAIN POWER



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Attorneys for Rocky Mountain Power

EXHIBIT A

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT BETWEEN PACIFICORP DBA ROCKY MOUNTAIN POWER AND _____ FOR ELECTRIC VEHICLE INFRASTRUCTURE PROGRAM CONFIDENTIAL INFORMATION

This Confidentiality and Non-Disclosure Agreement (“Agreement”) is entered into effective the _____ day of _____ 2021, by and between PacifiCorp, doing business as, Rocky Mountain Power, an Oregon corporation (the “Company”), and _____, a _____ nonprofit corporation (the “Organization”), each a “Party” and together the “Parties.”

Recitals

A. The Company has submitted confidential information and may submit additional confidential information to the Public Service Commission of Utah (“Commission”) in connection with Docket No. 20-035-34, Application of Rocky Mountain Power for Approval of its Electric Vehicle Infrastructure Program (“EVIP Application”).

B. The Company requested the Commission enter a protective order preventing intervening parties from accessing the confidential information.

C. The Organization is an intervening party in the EVIP Application and is seeking access to the confidential information filed and to be filed by the Company in the pending matter.

D. The Company and the Organization wish to enter into an agreement to govern the terms pursuant to which the Organization may have access to the confidential information.

Agreement

NOW THEREFORE, the Parties agree as follows

1. Definitions. For purposes of this Agreement, the following terms are defined as follows:

a. “Documents” means and includes all written, recorded or electronic graphic matters of any kind or nature whatsoever, and shall extend to any subsequent compilation, summary, quotation or reproduction thereof prepared at any subsequent time in any subsequent form or proceeding, in whole or in part.

b. “Confidential Information” means and includes any Documents and all contents thereof made available by the Company to the Organization in connection with the EVIP Application that are marked “Confidential.”

- c. “Authorized Persons” means and is limited solely to the attorneys, analysts, and employees of the Receiving Party (defined below) who will assist counsel in the evaluation and analysis of the EVIP Application. No person shall be an Authorized Person under this Agreement unless such person is qualified pursuant to paragraph 2.c. below.
 - d. “Authorized Use” means and is limited to use solely to evaluate and analyze the EVIP Application.
 - e. “Disclose,” “make disclosure of” or “disclosure” means and includes the dissemination to any person, firm, corporation, or other entity the contents of a Document, whether that dissemination is made by means of the transmittal or transfer of the original or a copy of that Document or any verbal or other dissemination of the contents of the Document.
 - f. “Producing Party” means the Party that is producing the Confidential Information.
 - g. “Receiving Party” means the Party that is receiving the Confidential Information.
2. Confidentiality; Disclosure. All Confidential Information and the disclosure thereof shall be subject to the following restrictions:
- a. A Receiving Party shall not disclose any Confidential Information to anyone other than its Authorized Persons for Authorized Use.
 - b. When Confidential Information has been produced in hard copy or in some other form, the Receiving Party shall make no copies or reproduction of any kind or nature whatsoever. Unless otherwise ordered, Confidential Information shall remain under protective or other order of the Commission, shall continue to be subject to the protective requirements of this Agreement, and shall be returned to counsel for the Producing Party within 30 days after final settlement or conclusion of any matter, including administrative appeal or judicial review, related to the EVIP Application. Alternatively, the Organization may certify within 30 days after final settlement or conclusion of any matter, including administrative appeal or judicial review, related to the EVIP Application, that the Confidential information has been destroyed. Counsel who are provided access to Confidential Information pursuant to the terms of this Agreement may retain their notes, work papers or other documents that would be considered the attorneys’ work product created with respect to their use and access to Confidential Information. An analyst or employee accorded Confidential Information, pursuant to this Agreement, shall provide to counsel for the Organization their notes, work papers or other documents pertaining to the Confidential Information. Counsel shall retain those documents with counsel’s documents.
 - c. The foregoing notwithstanding, the Receiving Party may not disclose Confidential Information to an Authorized Person unless, prior to the disclosure of such Confidential

Information, the Authorized Person has signed a Nondisclosure Agreement in the form attached hereto as "Exhibit 1" and incorporated herein by reference. Upon execution of "Exhibit 1," the signed originals shall be furnished to counsel of record for the Producing Party.

3. Continuation of Protection. The provisions of this Agreement, insofar as they restrict the disclosure and use of Confidential Information shall, without written agreement of the Parties or further order of the Commission, or if appropriate, a court of competent jurisdiction, continue to be binding until superseded by an order of the Commission.

4. Litigation. To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate, or to request the consolidated of, any action in which a jury trial, has been waived with any other action in which a jury trial cannot be or has not been waived.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date first written above.

ROCKY MOUNTAIN POWER

Signature

Name: _____

Date: _____

_____ **(Organization)**

Signature

Name: _____

Date: _____

EXHIBIT 1

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT BETWEEN PACIFICORP
DBA ROCKY MOUNTAIN POWER AND _____ FOR ELECTRIC
VEHICLE INFRASTRUCTURE PROGRAM CONFIDENTIAL INFORMATION**

I hereby agree that I have read the Confidentiality and Non-Disclosure Agreement between PacifiCorp DBA Rocky Mountain Power and _____ for Electric Vehicle Infrastructure Program Confidential Information and agree to be bound by the terms thereof.

Name

Employer or Firm

Business Address

Date

EXHIBIT B

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT BETWEEN PACIFICORP DBA ROCKY MOUNTAIN POWER AND SCOTT F. DUNBAR FOR ELECTRIC VEHICLE INFRASTRUCTURE PROGRAM CONFIDENTIAL INFORMATION

This Confidentiality and Non-Disclosure Agreement (“Agreement”) is entered into effective the _____ day of _____ 2021, by and between PacifiCorp, doing business as, Rocky Mountain Power, an Oregon corporation (the “Company”), and Scott F. Dunbar, Partner, Keyes & Fox, LLP, as Counsel for ChargePoint, Inc. (“Counsel”), each a “Party” and together the “Parties.”

Recitals

A. The Company has submitted confidential information and may submit additional confidential information to the Public Service Commission of Utah (“Commission”) in connection with Docket No. 20-035-34, Application of Rocky Mountain Power for Approval of its Electric Vehicle Infrastructure Program (“EVIP Application”).

B. The Company requested the Commission enter a protective order preventing intervening parties from accessing the confidential information.

C. Counsel is the attorney of record for ChargePoint, Inc., an intervening party in the EVIP Application and is seeking access to the confidential information filed and to be filed by the Company in the pending matter.

D. The Company and Counsel wish to enter into an agreement to govern the terms pursuant to which Counsel may have access to the confidential information.

Agreement

NOW THEREFORE, the Parties agree as follows

1. Definitions. For purposes of this Agreement, the following terms are defined as follows:

a. “Documents” means and includes all written, recorded or electronic graphic matters of any kind or nature whatsoever, and shall extend to any subsequent compilation, summary, quotation or reproduction thereof prepared at any subsequent time in any subsequent form or proceeding, in whole or in part.

b. “Confidential Information” means and includes any Documents and all contents thereof made available by the Company to Counsel in connection with the EVIP Application that are marked “Confidential.”

c. “Authorized Persons” means and is limited solely to the attorneys, paralegals, assistants, and expert witnesses employed by the Receiving Party (defined below) who will assist Counsel in the evaluation and analysis of the EVIP Application. No person shall be an Authorized Person under this Agreement unless such person is qualified pursuant to paragraphs 2.c. and 2.d. below.

d. “Authorized Use” means and is limited to use solely to evaluate and analyze the EVIP Application.

e. “Disclose,” “make disclosure of” or “disclosure” means and includes the dissemination to any person, firm, corporation, or other entity the contents of a Document, whether that dissemination is made by means of the transmittal or transfer of the original or a copy of that Document or any verbal or other dissemination of the contents of the Document.

f. “Producing Party” means the Party that is producing the Confidential Information.

g. “Receiving Party” means the Party that is receiving the Confidential Information.

2. Confidentiality; Disclosure. All Confidential Information and the disclosure thereof shall be subject to the following restrictions:

a. A Receiving Party shall not disclose any Confidential Information to anyone other than its Authorized Persons for Authorized Use.

b. When Confidential Information has been produced in hard copy or in some other form, the Receiving Party shall make no copies or reproduction of any kind or nature whatsoever. Unless otherwise ordered, Confidential Information shall remain under protective or other order of the Commission, shall continue to be subject to the protective requirements of this Agreement, and shall be returned to counsel for the Producing Party within 30 days after final settlement or conclusion of any matter, including administrative appeal or judicial review, related to the EVIP Application. Alternatively, Counsel may certify within 30 days after final settlement or conclusion of any matter, including administrative appeal or judicial review, related to the EVIP Application, that the Confidential information has been destroyed. Counsel may retain their notes, work papers or other documents that would be considered the attorneys’ work product created with respect to their use and access to Confidential Information. An expert witness accorded Confidential Information, pursuant to this Agreement, shall provide to Counsel the expert’s notes, work papers or other documents pertaining to the Confidential Information. Counsel shall retain the expert’s documents with Counsel’s documents.

c. The foregoing notwithstanding, the Receiving Party may not disclose Confidential Information to an Authorized Person unless, prior to the disclosure of such Confidential Information, the Authorized Person has signed a Nondisclosure Agreement in the form

attached hereto as "Exhibit 1" and incorporated herein by reference. Upon execution of "Exhibit 1," the signed originals shall be furnished to counsel of record for the Producing Party.

d. Counsel shall be responsible for designating the Authorized Person to whom disclosure of Confidential Information is deemed necessary to assist Counsel in the evaluation and analysis of the EVIP Application. The names of the Authorized Persons shall be provided to the Producing Party at least three (3) business days prior to any disclosure to enable the Producing Party to challenge the right of an individual to review the Confidential Information prior to disclosure to that individual. In the event the Parties cannot resolve a challenge between themselves, the Parties agree that the challenge will be resolved by the Commission. During the pendency of the challenge, no disclosure shall be made to the individual in question and the Commission shall have the specific authority to extend or adjust deadlines as justice may dictate due to delays caused by the exercise of rights under this provision.

3. Continuation of Protection. The provisions of this Agreement, insofar as they restrict the disclosure and use of Confidential Information shall, without written agreement of the Parties or further order of the Commission, or if appropriate, a court of competent jurisdiction, continue to be binding until superseded by an order of the Commission.

4. Litigation. To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate, or to request the consolidated of, any action in which a jury trial, has been waived with any other action in which a jury trial cannot be or has not been waived.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date first written above.

ROCKY MOUNTAIN POWER

Signature

Name: _____

Date: _____

Signature

Name: _____

Date: _____

EXHIBIT 1

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT BETWEEN PACIFICORP
DBA ROCKY MOUNTAIN POWER AND SCOTT F. DUNBAR FOR ELECTRIC
VEHICLE INFRASTRUCTURE PROGRAM CONFIDENTIAL INFORMATION**

I hereby agree that I have read the Confidentiality and Non-Disclosure Agreement between PacifiCorp DBA Rocky Mountain Power and Scott F. Dunbar for Electric Vehicle Infrastructure Program Confidential Information and agree to be bound by the terms thereof.

Name

Employer or Firm

Business Address

Date

CERTIFICATE OF SERVICE

Docket No. 20-035-34

I hereby certify that on September 10, 2021, a true and correct copy of the foregoing was served by electronic mail to the following:

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Katie Savarin

Katie Savarin
Coordinator, Regulatory Operations