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Application of Rocky Mountain Power for Approval of its Electric Vehicle Infrastructure Program	<u>DOCKET NO. 20-035-34</u> <u>ORDER GRANTING MOTION FOR PROTECTIVE ORDER</u>
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ISSUED: September 27, 2021

**1. Background**

On August 23, 2021, Rocky Mountain Power (RMP) filed a Motion for Protective Order (“Motion) with its Application for Approval of Electric Vehicle Infrastructure Program Authorized by Electric Vehicle Charging Infrastructure Amendments (“Application”). RMP included a significant amount of written testimony and other exhibits to support its Application, which RMP represents include “confidential commercial and financial information and trade secrets.” (Application at 15.) The Motion asks the PSC enter a Protective Order denying all intervening parties access to the information and materials RMP has designated as “Confidential” pursuant to Utah Admin. Code R746-1-602(2). This Order collectively refers to the materials RMP designated as “Confidential” collectively as “Confidential Information.”

The Motion asserts the Confidential Information includes “detailed estimates of its yearly expected expenditures, the per cost estimate for each charging station location, the estimated operating costs of the [proposed Electric Vehicle Infrastructure Program], and [RMP’s] calculations of revenue breakeven at various utilization levels.” (Application at 15.) RMP argues intervening parties could use this information to competitively disadvantage RMP, pointing out Confidential Information could be used for “competitive insight and advantage during the [request for proposals] process [RMP] will use to select an operator for the network of [RMP]-owned chargers” proposed in the Application. (*Id.*) RMP further argues “intervening parties may

use the information to compete directly with [RMP] as a provider of charging station locations.”  
(*Id.*)

On September 7, 2021, Utah Clean Energy (UCE), Western Resource Advocates (WRA), and ChargePoint, Inc. (“ChargePoint”) each filed responses to the Motion. RMP filed a Consolidated Reply on September 10, 2021.

In their respective responses, WRA and UCE both argue that they are not and cannot reasonably be anticipated to be competitors with RMP and require access to the Confidential Information to meaningfully participate in the docket. WRA’s response indicated that WRA and its staff had already signed non-disclosure agreements with respect to review and use of Confidential Information in the docket.

ChargePoint’s Response argues RMP has failed to meet its burden to demonstrate it will suffer a competitive disadvantage. ChargePoint emphasizes that RMP seeks to protect cost estimates, as opposed to actual costs, and that participants in the request for proposals process will be competing with one another, not RMP. ChargePoint further argues “[i]f the [PSC] approves RMP’s proposal to own and operate charging stations, third-party charging station site hosts will compete with RMP based on charging prices, locations, speed, co-located amenities, and similar factors” and, therefore, calculations regarding RMP’s revenue breakeven levels have “no relevance to the factors on which [RMP] will compete with third-party site hosts.” (ChargePoint’s Response at 2-3.) Finally, ChargePoint expresses concern that RMP has designated information beyond that addressed in its Motion as “Confidential” and asks the PSC to “clearly delineate which information” is covered by any protective order. (*Id.* at 3.)

Alternatively, ChargePoint argues its counsel, and other intervenors' counsel, should be permitted to access all Confidential Information provided counsel executes a non-disclosure agreement. ChargePoint explains that its outside counsel's normal job functions are to advise and represent ChargePoint in regulatory proceedings "and do not involve the competitive sides of ChargePoint's business such as selling [electric vehicle] charging stations and network services." (*Id.* at 5-6.)

In its Consolidated Reply, RMP acknowledges that WRA and UCE are nonprofit organizations that will not use the confidential information in a manner that could competitively disadvantage RMP and agrees to provide those intervenors access to Confidential Information subject to their execution of a non-disclosure agreement. With respect to ChargePoint, RMP agrees to the alternative proposal that its outside counsel may receive Confidential Information provided ChargePoint's outside counsel executes a confidentiality agreement in the form attached to RMP's Consolidated Reply. Anticipating that potential competitors may later seek intervention in this docket, RMP asks the protective order deny access to Confidential Information to other intervenors.

## **2. Findings, Conclusions, and Order**

Having reviewed the Motion, responses, and RMP's Consolidated Reply, the PSC finds and concludes RMP has a legitimate and lawful interest in preventing the disclosure of sensitive information and that disclosure of material RMP has designated as "Confidential" information in this docket would competitively disadvantage RMP. The PSC, therefore, grants RMP's request for a protective order.

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The Confidential Information shall not be disclosed to any person or party pursuant to Utah Admin. Code R746-1-602(1)(b)(i) or other governing law with the following exceptions:

- (1) WRA and UCE may access Confidential Information provided each executes a form of non-disclosure agreement consistent with the form attached to RMP's Consolidated Reply as Exhibit A.
- (2) ChargePoint's outside counsel may access Confidential Information provided the counsel to whom the information is disclosed executes a form of non-disclosure agreement consistent with the form attached to RMP's Consolidated Reply as Exhibit B.

In the event continued disagreement exists or later arises with respect to whether RMP has properly designated particular information as "Confidential," the party challenging such designation may file a motion, specifying information that the party contends RMP has improperly designated and the challenging party's basis upon which it requires access to the information to advance its legal interests in this docket.

DATED at Salt Lake City, Utah, September 27, 2021.

/s/ Michael J. Hammer  
Presiding Officer

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#320424

CERTIFICATE OF SERVICE

I CERTIFY that on September 27, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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