

PATRICK GRECU (#17668)
PATRICIA E. SCHMID (#4908)
Assistant Attorneys General
Utah Attorney General's Office
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone: (385) 377-2812
pgrecu@agutah.gov
Counsel for the Division of Public Utilities

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF SOLICITATION PROCESS FOR 2022 ALL SOURCE REQUEST FOR PROPOSALS	Docket No. 21-035-52 Motion for Order to Preserve Records

Pursuant to Utah Code sections 54-3-21, 54-4-1, 54-4-23, and 54-4a-1, the Division of Public Utilities (“Division”) files this Motion for Order to Preserve Records (“Motion”). The Division moves the Public Service Commission of Utah (the “Commission”) for an order requiring PacifiCorp dba Rocky Mountain Power (“RMP” or the “Company”) to preserve all records related to bids received in response to the Company’s 2022 All Source Request for Proposals (“2022 AS RFP” or “RFP”).

BACKGROUND

On April 22, 2022, the Commission approved RMP’s application to conduct a solicitation process under Utah Code Title 54, Chapter 17, Energy Resource Procurement Act, and Utah Administrative Code R746-420.¹ The Company initiated the 2022 AS RFP in response to its

¹ Order Approving 2022 All Source RFP [hereinafter Order].

2021 Integrated Resource Plan that identified a need to add certain resources to PacifiCorp's system.² The 2022 AS RFP was to solicit bids for approximately 1,345 megawatts of renewable and non-renewable resources and 600 megawatts of battery storage, with the intent to deliver energy and capacity service to PacifiCorp's system by December 31, 2027.³

After issuing the 2022 AS RFP to market in April 2022, PacifiCorp filed a notice in this docket informing the Commission and interested parties that the September 17, 2023, date for PacifiCorp's final short list for the 2022 AS RFP would be delayed.⁴ On September 29, 2023, the Company filed a second notice with the Commission stating that PacifiCorp is "suspending its 2022AS RFP" due to changing "operational and regulatory environments."⁵ The second notice also states that "[d]etails on resumption and bid eligibility will be forthcoming. PacifiCorp will provide updates periodically until the 2022AS RFP is resumed or terminated."⁶ PacifiCorp has communicated that, under the terms of the approved 2022 AS RFP, the Company "reserves the right, without limitation or qualification and in its sole discretion, to reject any or all bids, and to terminate or suspend this RFP in whole or in part at any time."⁷ Because the Company has yet to provide additional information about the future of the RFP at this date, the Division is uncertain whether the Company will eventually acquire additional resources through the RFP or through some other process.

REQUEST FOR RELIEF

While not without limit, the Commission "has broad authority to regulate a utility's

² Application at 2.

³ Order at 1-2.

⁴ Rocky Mountain Power's Notice of Update to Schedule in 2022 All Source Request for Proposals.

⁵ Rocky Mountain Power's Second Notice of Update to Schedule in 2022 All Source Request for Proposals [hereinafter Second Notice].

⁶ *Id.* at 2.

⁷ PacifiCorp's 2022 All-Source Request for Proposals, PACIFICORP, <https://www.pacificorp.com/suppliers/rfps/2022-all-source-rfp.html> (last visited Oct. 25, 2023).

business.”⁸ Utah Code section 54-4-1 provides the Commission the “power and jurisdiction to supervise and regulate every public utility in this state . . . and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction.” In addition, every public utility has a duty to provide the Commission information and records as the Commission may require.⁹ The Division also has its own statutory authority under Utah Code subsection 54-4a-1(1)(e) to require a public utility to provide information.¹⁰ Thus, the Commission has the jurisdiction and statutory authority to issue an order requiring the preservation of a public utility’s records for later review by the Commission or Division.

Because PacifiCorp has decided to indefinitely suspend or possibly terminate its 2022 AS RFP,¹¹ the Division moves the Commission to issue an order requiring PacifiCorp to preserve all records related to bids received in response to the 2022 AS RFP. These records encompass any information that the Company would use to evaluate bids, determine a final shortlist, or otherwise determine which acquisitions are prudent, including: third-party bids; benchmark bids; resource commercial operation dates; prices; resource types; resource operating characteristics such as expected energy, supply curves, and capacity; bid terms; company communication with bidders; and internal information and communication regarding bids.

The preservation of 2022 AS RFP records will allow the Division to perform its statutory

⁸ See *Utah Dep’t of Bus. Regul. v. Public Serv. Comm’n*, 720 P.2d 420, 423 (Utah 1986); see also *Hi-Country Estates Homeowners Ass’n v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (noting that “[d]espite its broad language, section 54-4-1 does not confer upon the Commission a limitless right to act as it sees fit . . . [, and] [t]he [Commission] has no inherent regulatory powers and can only assert those which are expressly granted or clearly implied as necessary to the discharge of the duties and responsibilities imposed upon it.”).

⁹ Utah Code Ann. § 54-3-21.

¹⁰ Utah Code Ann. § 54-4a-1(1)(e) (the Division may, among other things, “require any person or entity subject to the jurisdiction of the Public Service Commission to provide information, reports, and other data compilations relevant to matters within the jurisdiction of the commission . . . [and] provide access to inspect and copy records and other data compilations relevant to matters within the jurisdiction of the commission . . .”).

¹¹ Second Notice.

duty to evaluate the prudence of and costs associated with the Company's decision to suspend the RFP and the Company's costs incurred in acquiring future resources, whether through the resumed or modified RFP process or in lieu of the approved 2022 AS RFP.

Accordingly, the Division respectfully requests the Commission to issue an order requiring PacifiCorp to preserve all records related to bids the Company received in response to the 2022 AS RFP.

Respectfully submitted this 26th day of October, 2023.

/s/ Patrick Grecu
Patrick Grecu
Attorney for the Utah Division of Public Utilities

CERTIFICATE OF SERVICE

I certify that on October 26, 2023, I caused a true and correct copy of the foregoing to be filed with the Public Service Commission and served by the Utah Division of Public Utilities to the following in Utah Docket No. 21-035-52 as indicated below:

BY Electronic-Mail:

Utah Office of Consumer Services

Alyson Anderson akanderson@utah.gov
Bela Vastag bvastag@utah.gov
Alex Ware aware@utah.gov
ocs@utah.gov

Division of Public Utilities

Madison Galt mgalt@utah.gov
dpudatarequest@utah.gov

Assistant Attorneys General

Patricia Schmid pschmid@agutah.gov
Robert Moore rmoore@agutah.gov
Patrick Greco pgreco@agutah.gov

Interwest Energy Alliance

Lisa Tormoen Hickey lisahickey@newlawgroup.com
Nate Blouin nate@interwest.org

Utah Association of Energy Users

Phillip J. Russell prussell@jdrsllaw.com
Kevin C. Higgins khiggins@energystrat.com

Western Resource Advocates

Sophie Hayes sophie.hayes@westernresources.org
Nancy Kelly nkelly@westernresources.org
Karl Boothman karl.boothman@westernresources.org
Jessica Loeloff jessica.loeloff@westernresources.org

Rocky Mountain Power

Data Request Response Center datarequest@pacificorp.com
Jana Saba jana.saba@pacificorp.com
utahdockets@pacificorp.com
Carla Scarsella carla.scarsella@pacificorp.com
Joseph Dallas joseph.dallas@pacificorp.com

/s/ Madison Galt

Madison Galt, Paralegal
Utah Division of Public Utilities