



# State of Utah

## Department of Commerce Division of Public Utilities

MARGARET W. BUSSE  
*Executive Director*

CHRIS PARKER  
*Director, Division of Public Utilities*

SPENCER J. COX  
*Governor*

DEIDRE HENDERSON  
*Lieutenant Governor*

## Comments

**To:** Public Service Commission of Utah

**From:** Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Manager

Doug Wheelwright, Utility Technical Consultant Supervisor

David Williams, Utility Technical Consultant

**Date:** February 7, 2022

**Re:** **Docket No. 22-035-03**, Application of Rocky Mountain Power for Waiver of the Requirement for Preapproval of Significant Energy Resource Acquisitions—Division Comments

### Recommendation (Do Not Oppose)

On January 24, 2022, Rocky Mountain Power (the “Company”) filed an application with the Public Service Commission of Utah (“Commission”) for a waiver of the significant energy resource approval process for five projects that are on the final short list in the 2020 All Source Request for Proposals (“2020AS RFP”).<sup>1</sup> The Utah Division of Public Utilities (“Division”) does not oppose the request for a waiver; however, if Commission grants the waiver, the Division recommends that approval be conditioned on filing and timing requirements as discussed below.

---

<sup>1</sup> *Application for Waiver*, Docket No. 22-035-03, Application of Rocky Mountain Power for Waiver of the Requirement for Preapproval of Significant Energy Resource Acquisitions, filed Jan. 24, 2022 (“Application”).

The 2020AS RFP was approved by the Commission in Docket No. 20-035-05 (*Application of Rocky Mountain Power for Approval of Solicitation Process for 2020 All Source Request for Proposals*, Order Approving 2020 All Source RFP, July 17, 2020).

## Issue

The five projects in question were selected to the final short list in the 2020AS RFP. Under Chapter 17 of Title 54 of the Utah statutes,<sup>2</sup> these five projects (the “Projects”) count as “significant energy resources” due to the resource capacity and term of each project.

For energy resources that are “renewable energy sources” under Utah Code § 54-17-601(10), any project that is 300 MW or under is exempt from the requirements of sections 54-17-102 through 54-17-404. The exemption appears in section 54-17-502(1). Thus, for renewable energy projects, only projects over 300 MW require either a 54-17-302 approval or a 54-17-501 waiver.

For resources that are not “renewable resources” under Utah Code § 54-17-601(10), any project over 100 MW requires either a 54-17-302 approval or a 54-17-501 waiver.

One of the Projects is a stand-alone battery storage project; this project is 200 MW and is not deemed to be a renewable energy source, and so the 100 MW threshold applies to it. The other four Projects are renewable resources that are over 300 MW.

## Background

The 2020AS RFP is ongoing; the Company selected a final shortlist and is currently negotiating contract terms with the developers on 18 projects. These 18 projects were selected “to meet the Company’s projected resource need identified in the 2019 IRP and confirmed in the 2021 IRP.”<sup>3</sup> The five Projects are on the final shortlist, and are summarized as follows:<sup>4</sup>

---

<sup>2</sup> Utah Code §§ 54-17-101 through 54-17-901.

<sup>3</sup> *Direct Testimony of Shayleah J. LaBray*, Docket No. 22-035-03, January 24, 2022, (“LaBray Testimony”), lines 64-65, p. 3. There were originally 19 projects on the final shortlist; one dropped out.

<sup>4</sup> *PacifiCorp’s Application for Waiver of Significant Energy Resource Acquisitions*, presented at Technical Conference in Docket No. 22-035-03, Jan. 31, 2022 (“Technical Conference Presentation”), slide 3.

**Table 1 Description of Projects**

<b>Project Name</b>	<b>Resource Type</b>	<b>Location</b>	<b>Bid Type*</b>	<b>MW</b>	<b>Term/Life Years</b>	<b>Commercial Operation Date</b>
Boswell Springs	Wind	WY	PPA	320	30	10/1/2024
Cedar Springs IV	Wind	WY	PPA	350	30	12/1/2024
Dominguez I	Battery	UT	BSA	200	15	6/30/2024
Green River I & II	Solar + Storage	UT	PPA	400	20	12/31/2024
Rock Creek II	Wind	WY	BTA	400	30	12/31/2024

\*power-purchase agreement (PPA), battery-storage agreement (BSA), build-transfer agreement (BTA)

These five Projects are the projects from the shortlist that require either a 54-17-302 approval or a 54-17-501 waiver, as described above. The remaining 13 projects on the final shortlist are renewable resources under 300 MW, and so are exempt from the requirements of sections 54-17-102 through 54-17-404 (the “Exempt Projects”).

A waiver for an approval of a significant energy resource decision is possible when there exists at least one of the following:

- (a) a clear emergency.
- (b) a time-limited commercial or technical opportunity that provides value to the customers of the affected electrical utility; or
- (c) any other factor that makes waiving the requirement in the public interest.<sup>5</sup>

The Company is not seeking a waiver under subsections (a) or (b).<sup>6</sup> The Company is proceeding under subsection (c), and so is claiming the waiver is justified under factors that make it in the public interest. The Company argues that multiple factors, taken as a whole, make this waiver in the public interest. First, the Company states that “possible changes to federal tax credits could require updates to the project economics,” and that “updates in the middle of a proceeding have

<sup>5</sup> Utah Code § 54-17-501(1).

<sup>6</sup> Direct Testimony of Joelle R. Steward, Docket No. 22-035-03, January 24, 2022, (“Steward Testimony”), lines 33-35, p. 2.

historically been challenging for parties.”<sup>7</sup> The Company believes that in light of the possibility of tax changes, “coupled with the fact that these resources were identified as part of the Company’s 2019 Integrated Resource Plan (“2019 IRP”) and then selected in the approved 2020AS RFP, a waiver of the requirement would be a more prudent use of resources.”<sup>8</sup> The Company states that “[s]ubstantial resources would be required from the parties involved to process a full significant energy resource decision at this time,” and that “[a] waiver would allow parties to focus their efforts on resolution of the inter-jurisdictional cost allocation through the Multi-State Process and the upcoming 2022 All Source RFP.”<sup>9</sup>

The Company states that if the waiver is granted, the prudence of the Projects will be demonstrated in a future rate proceeding, and the Company will bear the burden of proof at that time.<sup>10</sup> Ms. LaBray’s testimony is geared towards showing that the Company followed prudent procedures when selecting the Projects, and therefore the acquisitions of the Projects are likely to be deemed prudent by the Commission, in whatever docket the prudence is discussed. Ms. LaBray covers the following topics:

- The 2020AS RFP was approved by the Commission, and the process was overseen by the Utah independent evaluator (“IE”)
- The Company used 2019 IRP modeling tools to evaluate the Projects, and the 2021 IRP modeling system to validate and demonstrate customer benefits of the Projects<sup>11</sup>

The Company indicated during the technical conference that it expects the prudence of the Projects to be reviewed in the next general rate case. The Division’s understanding is that the remaining 2020AS RFP Exempt Projects will be reviewed for prudence in an energy balancing account (“EBA”) proceeding.

---

<sup>7</sup> Steward Testimony, lines 40-41, p. 2; lines 52-53, p. 3.

<sup>8</sup> *Id.* at lines 67-69, p. 4.

<sup>9</sup> *Id.* at lines 63-64, p. 4; lines 69-71, p. 4.

<sup>10</sup> *Id.* at lines 74-76, p. 4.

<sup>11</sup> LaBray Testimony, lines 33-42, p. 2.

The Company believes that for the reasons given by Ms. Steward and Ms. LaBray, the waiver is in the public interest and should be granted.

## **Discussion**

The Company presents three main reasons why a waiver for the Projects is in the public interest. First, a resource decision proceeding under section 54-17-302 could be a burden on parties, especially if tax laws change mid-proceeding. Second, the Company followed prudent procedures in selecting the Projects, by means of IRPs and associated modeling, and a competitive RFP. Third, the Company assumes the risk of prudence review in a future proceeding, presumably in the next general rate case.<sup>12</sup>

The Division agrees that a possible tax change in the middle of a 54-17-302 significant energy resource approval docket would be burdensome on the participating parties, as the original analysis would need to be re-done. However, tax changes could occur (or not occur) in any given time period, including during a general rate case, and it is not clear that a waiver should be based on the mere possibility of a tax change, absent any stronger indication that a tax change is coming. Furthermore, although parties are indeed busy now with the Multi-State Process, the upcoming 2022 All Source RFP, and other dockets, parties are often busy, and there is no reason to believe the time around the next general rate case will be any less busy.

The Company's second and third reasons for why the public interest is served by a waiver do not add much to its case. The fact that the proper procedures were followed (*i.e.* a Commission-approved RFP, IE oversight, IRP modeling) does not speak to the need for a waiver, even in combination with the other factors—the proper procedures should be followed in every significant resource decision. Similarly, it is true that the burden of prudence will be on the

---

<sup>12</sup> The Company summarized these public interest factors in its Technical Conference Presentation as follows:

- Efforts to evaluate projects with possible changes to assumptions (such as tax law)
- Projects were selected in competitive RFP with IE oversight and validated in two IRPs
- RMP assumes risk of prudence review and cost recovery in next GRC

See Technical Conference Presentation, slide 5, titled “Public Interest Considerations.”

Company in a future proceeding, but this is a consequence of the statutory process, not an argument for the waiver.<sup>13</sup>

The Division also points out that the granting of a waiver could adversely impact parties down the road—for example, if the Company files all prudency documentation for the Projects at the same time it files all its other materials for a general rate case, parties such as the Division, the Office of Consumer Services, and intervening parties will have a double burden. They will have to evaluate the “regular” rate case, which is already burdensome, and have the extra burden of evaluating the Projects, all within the statutory rate case timeline. The same issues apply to future EBA dockets (or whatever dockets in which the Exempt Projects are evaluated).

Despite some reservations about the Company’s arguments, the Division does not oppose a waiver if no party to this docket presents good reasons to oppose the waiver. However, the Division recommends that the Commission, as a condition of granting the waiver, require the following, so that parties are not overburdened by future filings:

1. The Company must provide notice to the Commission in the present docket when each of the 2020AS RFP contracts are finalized, so that the Division and other parties can start reviewing them.
2. If the Company seeks prudency review for the Projects or the Exempt Projects during its next general rate case, the Company must file all information required to evaluate the prudency of the projects at least 60 days prior to the filing of the general rate case. This will give the Division and other parties sufficient time to seek the assistance of outside experts, if required, and ensure that the parties are not unduly burdened during the rate case itself. The information filed should be, at a minimum, substantially similar to the information that would be filed under a major plant addition case (as described in Utah Admin. Rule R746-700-30) (“MPA equivalent information”).

---

<sup>13</sup> In other words, the second and third factors apply to any significant energy resources—the correct procedures should be followed, and if a waiver is granted, the Company will bear the burden of demonstrating prudency. Since these factors apply to any significant energy resources that require an approval, they can’t be used to support a waiver in any particular case.

3. For any project from the 2020AS Shortlist, if the prudence of those projects is to be determined in an EBA docket for a given year, the Company must: (i) state in its notice of its intent to file an EBA application for approval that the relevant 2020AS Exempt Projects will be included in the EBA application, and (ii) file MPA equivalent information for the 2020AS Exempt Projects along with the EBA application.
4. For 2020AS Exempt Projects whose prudence determination is not sought in an EBA filing, or in a rate case, but in another docket, the Company must file the MPA equivalent information with its initial filing in the docket.

### **Conclusion**

The Division does not oppose the Company's request for a waiver for the Projects. However, to ensure that the waiver does not result in a burden on the Division and other parties, the Division recommends that if the waiver is approved, that it be conditioned on the timing and filing requirements listed above.

Cc: Michele Beck, Office of Consumer Services  
Jana Saba, Rocky Mountain Power