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To: Public Service Commission of Utah

From: Merrimack Energy Group, Inc.
Wayne Oliver, President
Independent Evaluator

Date: February 7, 2022

Re: Application of Rocky Mountain Power For Waiver of the Requirement For
Preapproval of Significant Energy Resource Acquisitions – Docket No. 22-035-03

Background

On January 24, 2022, PacifiCorp dba Rocky Mountain Power (“Rocky Mountain Power” or “Company”) requested under Utah Code Ann. Section 54-17-501 and Utah Admin. Code R746-430-4 that the Public Service Commission of Utah (“Commission”) issue an order granting the Company’s request to waive the requirement for Commission approval of five significant resource acquisitions (“the Projects”)¹ selected through the Company’s 2020 All Source Request for Proposals (“2020AS RFP”). The Company states that the 2020AS RFP complied with Utah Code Ann. Section 54-17-201 and was approved by the Commission. Rocky Mountain Power stated that the Company may obtain a waiver of the Commission approval process if the Commission determines that waiving the requirement is in the public interest. Because the Commission reviewed and supervised the 2020AS RFP solicitation process that resulted in the selection of the resources the Company will acquire, customers are protected. The Company stated that it understands that if a waiver is granted that the cost recovery the Company seeks in connection with the Projects will be subject to a future prudence review by the Commission. As a result, the Commission should grant the Company’s Application for a waiver.

Rocky Mountain Power claims that the waiver of the resource approval requirement is in the public interest because the 2020AS RFP and the Company’s 2021 IRP both identify the waiver Projects as benefitting customers. The Company indicated that it is willing to accept the risk of cost recovery for the Projects in the next general rate case, where the Commission and parties will have the opportunity to analyze the economics of the projects in more detail. If the Company were to seek approval at this time, substantial resources would be required from the parties involved. Potential changes to federal tax credits may require material updates during the course of the proceeding, which would add to the burden of analyzing the resources at this time. Given the oversight of the 2020AS RFP and the fact that the Company bears the risk of cost recovery, the benefit of the approval process is outweighed by the burden of the regulatory process.

Merrimack Energy Group, Inc. (“Merrimack Energy”) was appointed as Independent Evaluator for PacifiCorp’s 2020 All Source RFP by the Public Service Commission of

¹ The projects in question include: (1) Boswell Springs wind project - 320 MW PPA; (2) Cedar Springs IV wind project - 350 MW PPA; (3) Dominguez I standalone battery energy storage project - 200 MW BSA; Green River I & II solar + storage project - 400 MW PPA; and Rock Creek II wind project - 400 MW BTA.

Utah and has monitored the solicitation process from the development of the 2020AS RFP through evaluation and selection of the Final Shortlist, and recently via monitoring of contract negotiations with the final shortlisted project sponsors. Merrimack Energy hereby submits its comments on Rocky Mountain Power's application for a waiver of the requirement for preapproval of significant energy resource acquisitions.

Rocky Mountain Power's Basis of Support for the Waiver

Rocky Mountain Power raises several arguments in support of its waiver application. First, the Company states that the projects in question were selected through the Company's 2020 All Source Request for Proposals. The 2020AS RFP complies with Utah Code Section 54-17-201 and was approved by the Commission. The Company also stated that because the Commission reviewed and supervised the 2020AS RFP solicitation process that resulted in the selection of the resources the Company will acquire, customers are protected.

Second, the Company states that public interest is protected because the 2020AS RFP and the Company's 2021 IRP both identify the projects as benefitting customers.

Third, if the Company were to seek approval at this time, substantial resources would be required from the parties involved to process a full significant energy resource decision at this time, particularly because project economics could change from various factors, such as federal tax legislation, during the course of the regulatory proceeding. Potential changes to federal tax credits may require material updates during the course of the proceeding, which would add to the burden of analyzing the resources at this time. 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.

Fourth, given the oversight of the 2020AS RFP and the fact that the Company bears the risk of cost recovery, the benefits of the approval process are outweighed by the burdens of the regulatory process.

Merrimack Energy's Comments

Merrimack Energy recognizes that there are advantages and disadvantages associated with a waiver process relative to the required regulatory process. Advantages of a waiver process could include (1) a shorter schedule which could facilitate the ability of projects selected to achieve their proposed Commercial Operation Date ("COD") and allow additional time to complete negotiations and execution of contracts and (2) projects subject to the waiver request are competitive projects, selected through a detailed competitive procurement process, which should provide benefits to customers. On the other hand, one of the primary disadvantages of a waiver process instead of implementation of the regulatory process is that the waiver process eliminates the ability of the Commission to conduct a thorough evaluation of the resources selected with involvement from potential third-party intervenors.

In Merrimack Energy's view, some of the arguments raised by Rocky Mountain Power as the basis for support of its application for a waiver of the requirement for preapproval of significant energy resource acquisitions are not compelling or would have a similar impact under a waiver application or formal regulatory approval process.

For example, citing Commission approval of the 2020AS RFP as support for the waiver by Rocky Mountain Power is not a relevant argument. As the Commission stated on page 5 in its Order Approving the 2020 All Source RFP (issued on July 17, 2020) “Broadly, the Act requires electric utilities to obtain approval from the PSC prior to acquiring a resource that produces significant energy. Generally, this entails two distinct approvals from the PSC. First, having identified a need for energy, the utility develops and proposes a solicitation process to meet that need, which the utility must submit to the PSC for approval (“Solicitation Approval Requirement”). Second, once the utility has used the PSC-approved process to identify the particular resources it wants to procure, the utility must submit the resource it selects to the PSC and obtain approval to procure that specific resource (“Resource Approval Requirement”). We are here concerned only with the first stage. The Company seeks the PSC’s approval of the RFP to satisfy the Solicitation Approval Requirement. If the PSC approves the RFP in this docket, any resource that the Company ultimately selects out of this process is subject to the Act’s Resource Approval Requirement, i.e., the Company must still submit its choice to the PSC and obtain its approval.” The above reference to the Commission’s order clearly identifies the two separate approval processes for the RFP and does not imply that approval of the 2020AS RFP itself is linked to approval of the resources that result from the RFP.

On page 6 of its Order, the Commission stated “In evaluating a solicitation process, the Act requires the PSC to determine whether the proposed process (i) complies with the Act and applicable administrative rules; and (ii) is in the public interest. With respect to the latter, the Act enumerates the following factors the PSC must take into consideration in determining whether a solicitation is in the public interest: (A) whether the process “will most likely result in the acquisition, production and delivery of electricity at the lowest reasonable cost”; (B) long-term and short-term impacts; (C) risk; (D) reliability; (E) Financial impacts on the utility; and (F) other factors determined by the PSC to be relevant.

As the above reference to the PSC order illustrates there is a distinction between Commission approval of a solicitation and subsequent approval of the resources selected. While we concluded in our IE report on the RFP design that the RFP “should” lead to a significant, robust, and competitive market response that can reasonably be expected to lead to the acquisition and delivery of electricity at the lowest reasonable cost, the operable word here is “should”. The resource decision assesses whether or not the process did lead to evaluation and selection of resources that are in the public interest. Basing the reason for the waiver on the PSC’s order on the 2020AS RFP is not reasonable and over-reaches the objective of the PSC’s order regarding the RFP design. Certainly, the second step to review and approve resource selection is a separate decision which recognizes that one decision on the RFP design does not automatically lead to a conclusion for resource approval.

We also have some questions about the the Company’s point regarding the impacts of potential changes to federal tax credits and the implications on contract negotiations. While the Company states that the implications associated with changes to federal tax credits would appear to add to the burden of analyzing resources under a standard regulatory application process, Merrimack Energy would expect the burden will be similar whether a standard application process or a waiver process with future prudence reviews is implemented. The only issue would appear to be the timing. The Company used the argument of the implications of federal tax credit changes to justify the waiver,

but the Company did not distinguish why such changes would impact the two processes disproportionately. Furthermore, the potential changes to federal energy tax credits are not new or unique. There have been many cases where federal energy tax credits were set to expire and there was uncertainty about whether such tax credits would be extended or revised. Utilities have had to address this issue in contract negotiations if they are in the process of going through a procurement cycle or contract negotiation process. As IE, we have witnessed utilities under similar circumstances include provisions in the contract with a third-party developer to allow the utility to receive benefits for its customers if tax credits are extended, revised, or increased. We would expect the Company to address these issues in contract negotiations if necessary during the current negotiation process to benefit customers if tax incentives as expected result in increases in such benefits.

Merrimack Energy also considered whether conducting a standard regulatory application process could negatively impact the ability of any of the projects to meet their commercial operation dates generally by the fourth quarter of 2024 based on the additional time and resource requirements to undertake the process. If the Company filed its application by the end of February, 2022, given the 120 day schedule for the proceeding and based on the Company's response to a question from Mr. Artie Powell during the January 31, 2022 Technical Conference regarding the construction timeline for wind and solar projects, that it would take approximately two years to complete the project to achieve the COD date. Merrimack Energy would expect in any case that the Company would more aggressively pursue contract negotiations with these and other projects selected for the final shortlist to ensure the projects can meet their CODs given that the negotiation process is behind the original schedule proposed. The original schedule included completion of Terms and Conditions for resource agreements by October 15, 2021 with execution of Agreements on November 8, 2021. Since selection of the Final Shortlist was delayed until August, 2021, contract negotiations did not begin until late August or early September, 2021. In addition, Merrimack Energy found the negotiations to move at a relatively slower pace than it expected. It would appear based on our monitoring of the contract negotiation process that there is still work required to complete the Terms and Conditions for all the agreements expected to be executed.

From the perspective of resource evaluation and selection, both Merrimack Energy and PA Consulting, Independent Evaluator for the Public Utility Commission of Oregon, reached similar conclusions regarding the resources selected as PacifiCorp mentioned in the Direct Testimony of Ms. Shayleah LaBray. In our Shortlist Report filed in Docket No. 20-035-05 on September 2, 2021, Merrimack Energy stated that it viewed the selection of the final shortlist of nineteen² projects, including the five projects which are the subject of the Company's waiver application, to be a reasonable selection. The three wind projects were selected in all portfolios (price-policy scenarios) evaluated, with the exception of the Low gas/market price, no carbon price case while the Dominguez I Battery Energy Storage project and the Green River I and II Solar + Storage Projects were selected in every portfolio evaluated. All proposals above had positive net benefits.

In conclusion, while Merrimack Energy does not find some of the arguments to support the waiver as compelling, overall Merrimack Energy does not oppose the waiver request of the Company based on the customer benefits these resources provide as a

² One project withdrew leaving eighteen projects remaining on the Final Shortlist for contract negotiations.

component of a least cost portfolio which provides reliability benefits to the PacifiCorp system. In addition, since the Company will be subject to a future prudence review by the Commission to assess the cost recovery associated with these projects, it would appear that customer interests would be protected. One of the issues Merrimack Energy focuses on in its role as Independent Evaluator is the appropriate selection of resources by the utility combined with a reasonable risk-reward proposition in negotiation of the contracts. The latter considerations, including reflecting any benefits associated with changes in federal tax incentives in contract pricing, could be considered during the prudence review phase for these projects.