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DEPARTMENT OF COMMERCE
Office of Consumer Services

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To: The Public Service Commission of Utah

From: The Office of Consumer Services

Michele Beck, Director
Béla Vastag, Utility Analyst

Date: February 7, 2022

Subject: Docket 22-035-03

**Application of Rocky Mountain Power for Waiver of the Requirement
for Preapproval of Significant Energy Resource Acquisitions**

INTRODUCTION

On January 24, 2022, Rocky Mountain Power (“RMP”) filed with the Utah Public Service Commission (“PSC”) an application for a waiver of Utah Code Section 54-17-302 which requires RMP to obtain the PSC’s preapproval to acquire a significant energy resource.¹ On January 25, 2022, the PSC issued a Notice of Filing, Virtual Technical Conference, and Comment Period that set a deadline of February 7, 2022 for parties to file comments. In accordance with the PSC’s Notice, the Utah Office of Consumer Services (“OCS”) submits these comments on RMP’s request for a waiver of the resource acquisition preapproval requirements.

BACKGROUND

PacifiCorp issued an RFP for electric generating and storage resources in 2020 that sought to fulfill the needs identified in its 2019 IRP. Five of the eighteen² projects selected from PacifiCorp’s 2020 All Source RFP meet the requirements of the significant energy resource statute. Unless RMP obtains a waiver for the five projects, RMP must obtain preapproval from the PSC prior to proceeding to acquire these projects by making significant energy resource decision filings with the PSC.

¹ Utah Code Section 54-17-501 authorizes a utility to request a waiver of the significant energy resource decision pre-approval requirement if certain conditions are met.

² The RFP final short list initially contained 19 projects, but one, DESRI Steel Solar I, has dropped out.

RMP supports its request for a waiver of the preapproval requirement by relying on Utah Code Section 54-17-501(1)(c) – “any other factor that makes waiving the requirement in the public interest.” Paraphrasing its application, RMP claims that there are two factors which justify its request for a waiver:

1. RMP claims that a waiver is justified because it would reduce the workload burden of all parties who would be involved in reviewing and litigating the significant energy resource decision filings for these five projects. Furthermore, if the significant energy resource filings proceeded, RMP claims that the workload burden on parties may be exacerbated by potential federal tax law changes which could require updates to these filings midstream.
2. RMP claims that these projects have already received significant review through the public 2020 AS RFP and 2019 & 2021 IRP processes, including PacifiCorp’s analyses that claimed that the projects were economically beneficial for its customers.

The OCS notes that PacifiCorp would own only one of the five projects covered in this filing – a 400 MW project which would be acquired via a build transfer agreement (“BTA”). The other four projects totaling 1,270 MW would not be owned by PacifiCorp but would be under contract – typically a power purchase agreement (“PPA”). Overall, the eighteen projects selected from the 2020 AS RFP add up to over 3,290 MW with 590 MW being BTAs and 2,700 MW as PPAs.³

OFFICE OF CONSUMER SERVICES DOES NOT OBJECT TO THE WAIVER

The OCS does not necessarily agree with RMP’s factors justifying the need for a waiver but also does not object to RMP’s request for a waiver.

However, the OCS is concerned whether or not RMP will provide in a future proceeding involving prudence review the same level of supporting information and analyses for these five projects (and the other thirteen smaller projects) that it would provide in a significant energy resource decision filing. Because some projects are BTAs and some are PPAs, some will receive prudence reviews in a general rate case and some in an energy balancing account (EBA) filing. It is possible that some projects may be brought to the PSC in a major plant addition (MPA) filing. Therefore, depending on when these projects come online, the prudence review of these projects could be “scattered” across various dockets and timeframes and their prudence reviews could be lost in the “weeds” of the multiple issues addressed in a large proceeding. Taken as whole, the resources resulting from the 2020 RFP are very significant, both in terms of MWs and cost, and should receive a robust prudence review before the PSC.

³ To be clear, one 200 MW project is contracted for under a battery storage agreement (BSA).

RECOMMENDATION

The OCS does not object to RMP's request for a waiver of the significant energy resource preapproval requirements for the five resources in this proceeding. However, the OCS recommends that the PSC require RMP to provide in future filings the same level of supporting information for these resources as it would provide in a significant energy resource case. The OCS would prefer that all eighteen projects selected from the 2020 AS RFP receive this treatment.

cc:

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