
Application of Rocky Mountain Power for Waiver of the Requirement for Preapproval of Significant Energy Resource Acquisitions	<u>DOCKET NO. 22-035-03</u>
	<u>ORDER</u>

ISSUED: February 11, 2022

1. Procedural Background

On January 24, 2022, Rocky Mountain Power (RMP) filed an Application for Waiver (“Application”) pursuant to Utah Code Ann. § 54-17-501 and Utah Admin. Code R746-430-4. RMP submitted confidential workpapers (“Confidential Information”) along with its Application. In the Application, RMP asks the Public Service Commission (PSC) to waive the requirement that RMP obtain approval of certain significant energy resource decisions. *See* Utah Code Ann. § 54-17-302. Specifically, RMP seeks waiver with respect to the following five projects (collectively, the “Projects”): (i) Boswell Springs; (ii) Cedar Springs IV; (iii) Dominguez I; (iv) Green River I & II; and (v) Rock Creek II. Utah Code Ann. § 54-17-501 (“Waiver Statute”) authorizes the PSC to grant such a request provided the PSC determines it is in the public interest and outlines an abbreviated procedural timeline.

Consistent with the statutory timeline, the PSC hosted a technical conference on January 31, 2022 and received comments from the PSC’s Independent Evaluator (Merrimack Energy Group, Inc., hereafter “IE”) on February 7, 2022. The PSC also received comments from the Division of Public Utilities (DPU), the Office of Consumer Services (OCS), and Interwest Energy Alliance on February 7, 2022.

The Waiver Statute requires the PSC issue a written decision “granting, granting with conditions, or denying” the Application by February 14, 2022, seven days after the deadline for comments.

2. Discussion, Findings, and Conclusions

The PSC may grant a request for waiver provided it determines doing so is in the public interest because there exists: (a) a clear emergency; (b) a time-limited commercial or technical opportunity that provides value to customers; or (c) any other factor that makes waiving the requirement in the public interest. Utah Code Ann. § 54-17-501(1).

RMP does not represent the circumstances constitute a clear emergency or offer a time-limited opportunity. RMP, instead, asserts the regulatory burden of the approval process outweighs the benefits under these circumstances. RMP emphasizes the need for the Projects is reflected in its 2019 Integrated Resource Plan, and these Projects were selected out of the 2020 All Source Request for Proposals, a solicitation process the PSC approved in Docket No. 20-035-05. RMP further argues adjudicating a request for approval would be a significant regulatory burden that is likely to be compounded should there be changes to certain federal tax credits. RMP stresses that adjudicating a request for approval requires substantial resources from all parties and changes to federal tax laws may require the parties to overhaul their analysis mid-proceeding, resulting in significant inefficiency and additional burden. Finally, RMP acknowledges waiver will result in RMP bearing the risk of cost recovery for the Projects. RMP affirmatively represents it is willing to bear such risk to avoid the regulatory burden associated with adjudicating a request for approval at this time.

The PSC received no comments opposing the Application. The DPU, OCS, and IE filed comments indicating they did not oppose the Application. However, the DPU and OCS requested the PSC impose certain conditions to ensure they have an opportunity to fully and fairly scrutinize the Projects during an eventual prudence review.

The DPU asks the PSC require:

- (a) RMP provide notice to the PSC in this docket upon finalization of each of the Projects' contracts so that the DPU can commence its review;
- (b) if RMP seeks prudence review for the Projects in its next general rate case (GRC), RMP file all information required to evaluate the Projects' prudency at least 60 days prior to filing the GRC and include information substantially similar to the requirements for major plant additions under Utah Admin. Code R746-700-30 ("MPA Equivalent Information");
- (c) if RMP seeks prudence review in a docket pertaining to its energy balancing account ("EBA Docket"), RMP state its intention to do so in its notice of its intent to file the EBA Docket and include MPA Equivalent Information with its application; and
- (d) if RMP seeks a prudence review in any other docket, RMP include MPA Equivalent Information with its initial filing.

The OCS similarly requested the PSC require RMP to provide adequate supporting information in any future filing seeking a prudence determination.

Given that no party has opposed the Application and the representations that the regulatory burden of seeking approval at this time outweighs any benefits, the PSC finds it is in the public interest to waive the approval requirement. The PSC underscores that RMP will bear

the risk of cost recovery in future prudence reviews consistent with Utah Code Ann. § 54-17-501(10) and Utah Admin. Code R746-430-4(3). The PSC finds the requests for waiver conditions to ensure other parties have a full and fair opportunity to evaluate the Projects during a later prudence review are reasonable and in the public interest. Nevertheless, we conclude that some aspects of the requested conditions would modify requirements of statute and administrative rule in a way that exceeds our authority in this order. Accordingly, we order the conditions as described in the following paragraph.

3. Order

Accordingly, the Application is granted subject to the following waiver conditions:

(i) RMP must file notice in this docket within 14 days of finalizing each contract. (ii) If RMP seeks prudence review for any of the Projects in its next GRC, RMP must file MPA Equivalent Information for such Projects at least 30 days prior to filing the GRC. We conclude that we cannot extend the GRC notice requirement from 30 days to 60 days.¹ We clarify that RMP's failure to satisfy this condition could be fatal to our consideration of the Projects that are the subject of this conditional waiver, but would not, alone, necessarily be sufficient to make the GRC filing incomplete. (iii) If RMP seeks prudence review for any of the Projects in an EBA Docket, RMP must state its intention to do so in the notice it files of its intention to file the EBA Docket and include MPA Equivalent Information in the application. We clarify that RMP's failure to satisfy this condition could be fatal to our consideration of the Projects that are the subject of this waiver, but that it would not necessarily impact the remainder of the EBA filing.

¹ Of course, nothing prevents RMP from respecting the DPU's requested time frame that is consistent with the time frame that would apply absent this conditional waiver. We strongly encourage that outcome.

(iv) If RMP seeks prudence review in any other docket, RMP must include MPA Equivalent Information with its initial filing.

4. Protective Order

The Confidential Information RMP submitted with its Application 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 exception: A person or party may access Confidential Information provided each executes a form of non-disclosure agreement attached to this order as Appendix A.

DATED at Salt Lake City, Utah, February 11, 2022.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#322320

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on February 11, 2022, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

Data Request Response Center (datareq@pacificorp.com, utahdockets@pacificorp.com)
PacifiCorp

Jana Saba (jana.saba@pacificorp.com)
Emily Wegener (emily.wegener@pacificorp.com)
Rocky Mountain Power

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Alyson Anderson (akanderson@utah.gov)
Bela Vastag (bvastag@utah.gov)
Alex Ware (aware@utah.gov)
(ocs@utah.gov)
Office of Consumer Services

Administrative Assistant

DOCKET NO. 22-035-03

- 8 -

APPENDIX A

DOCKET NO. 22-035-03

- 9 -

CONFIDENTIAL INFORMATION CERTIFICATE

IN DOCKET NO. 22-035-03

I have reviewed PSC Rule R746-1-603 with respect to the review and use of confidential information and agree to comply with the terms and conditions of said rule in Docket No. 22-035-03.

Signature

Name (Type or Print)

Employer or Firm

Business Address

Party Represented

Date Signed