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UTAH DEPARTMENT OF COMMERCE

Division of Public Utilities

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Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
Brenda Salter, Assistant Director
Doug Wheelwright, Utility Technical Consultant Supervisor
Bob Davis, Utility Technical Consultant

Date: March 16, 2023

Re: **Docket No. 23-035-11**, Application of Rocky Mountain Power for Waiver of the Solicitation Process and Waiver of the Requirement for Preapproval of Significant Energy Resource Decision

Recommendation (Approval)

The Division of Public Utilities (Division) recommends the Public Service Commission (Commission) approve Rocky Mountain Power's (RMP or Company) Application for Waiver of the Solicitation Process and Waiver of the Requirement for Preapproval of Significant Energy Resource Decision (Application).¹

Issue

On March 6, 2023, RMP filed its Application asking the Commission to approve its requested waivers. On March 6, 2023, the Commission issued an action request to the Division asking it to review RMP's Application and make recommendations. The Commission asked the Division to report back as soon as possible. On March 6, 2023, the Commission issued its Notices of Filing, Virtual Technical Conference, and Comment Period asking any interested person to submit comments by March 16, 2023.

¹ Application of Rocky Mountain Power for Waiver of the Solicitation Process and Waiver of the Requirement for Preapproval of Significant Energy Resource Decision, Docket No. 23-035-11, filed on March 6, 2023, <https://pscdocs.utah.gov/electric/23docs/2303511/327203AplctnWvrs3-6-2023.pdf>.

Background

Utah Code Section 54-17-806 enacted into law on March 29, 2016, grants the Commission the authority to approve a renewable energy tariff that it determines to be reasonable and in the public interest.² Pursuant to the authority granted under Section 54-17-806, the Commission first approved Electric Service Schedule No. 34, Renewable Purchases for Qualified Customers – 5,000 kW and Over on October 9, 2018, in Docket No. 16-035-T09. Schedule No. 34 allows a qualified customer to enter into a contract with the Company to have the Company purchase renewable energy on the customer's behalf and provide delivery of electricity from the renewable energy resources to the customer over the utility's transmission and distribution system.³

Title 54, Chapter 17, of the Utah Code, known as the Energy Resource Procurement Act, outlines the requirements to acquire or construct a significant energy resource.⁴ Section 54-17-201(2)(a) requires an affected electric utility to conduct a solicitation process approved by the Commission. Section 54-17-501(1) provides that the affected electrical utility may obtain a waiver of the solicitation requirement or the requirement that it obtain approval of a significant energy resource decision under Part 3, Resource Plans and Significant Energy Resource Approval, if the Commission determines that waiving the requirements is in the public interest.⁵ Finally, Commission Rule R746-430-4(4) allows the Commission to grant a waiver on conditions that the Commission finds to be just, reasonable, and in the public interest.⁶

The Energy Procurement Act defines a significant energy resource (SER) as a resource that consists of a total of 100 megawatts (MW) or more of generating capacity that has a dependable life of ten or more years.⁷ The SER definition also includes the purchase of electricity, electric generating capacity, or both if the contract is for a term of ten years or more and not less than 100 MW.⁸ Furthermore, if the SER is a renewable energy source as defined in Utah Code Section 54-17-601, approval is only required if the nameplate capacity exceeds 300 MW.⁹

² Utah Code Ann. § 54-17-806.

³ *Rocky Mountain Power's Electric Service Schedule No. 34*, Application, at 34.1, <https://www.rockymountainpower.net/content/dam/pcorp/documents/en/rockymountainpower/rates->

RMP's Application represents the seventh tranche of renewable energy services contracts (RESCs) with Stadion under Schedule No. 34. Prior to this tranche, RMP has notified the Commission of its intent to acquire six additional resources, approved on September 9, 2019, August 13, 2020, and July 30, 2021, respectively.¹⁰ However, none of these six resources triggered the solicitation process or approval of a SER decision.

Discussion

RMP is seeking Commission approval of its Application to waive the solicitation process and preapproval for a project with Stadion, LLC (a wholly owned subsidiary of Meta Platforms, Inc.). The proposed project consists of a 525 MW power purchase agreement (PPA) and a 150 MW battery storage agreement (BSA) with 4-hour duration constructed by Faraday Solar B, LLC (Faraday).¹¹ The PPA is expected to begin operation on September 30, 2025, with the BSA beginning operation on June 1, 2026.¹²

RMP requests the waivers pursuant to Utah Code Section 54-17-501(1)(c), which allows the Commission to grant a waiver if the Commission determines there is "any other factor that makes waiving the requirement in the public interest" as well as under certain other conditions.¹³

Furthermore, under rule R746-430-4(4), "the Commission may condition the granting of a waiver on such conditions as the Commission may determine to be just, reasonable, and in the public interest." In response to the Commission's action request, the Division identifies some concerns noted in its review of RMP's Application.

[regulation/utah/rates/034_Renewable_Energy_Purchases_for_Qualified_Customers_5000kW_and_Over.pdf](https://pscdocs.utah.gov/electric/23docs/2303511/327204DirTstmnyCraigMEllerRMP3-6-2023.pdf).

⁴ See Utah Code Ann. § 54-17-101 to -909.

⁵ Utah Code Ann. § 54-17-501(1).

⁶ See Utah Admin. Code r. 746-430-4.

⁷ See Utah Code Ann. § 54-17-102(4).

⁸ *Id.*

⁹ See Utah Code Ann. § 54-17-502(1).

¹⁰ RMP's Application, *supra* note 1, at 6-7.

¹¹ Direct Test. of Craig M. Eller, Docket No. 23-035-11, filed on March 6, 2023, at 28-31 [hereinafter C. Eller Direct Test.], <https://pscdocs.utah.gov/electric/23docs/2303511/327204DirTstmnyCraigMEllerRMP3-6-2023.pdf>.

¹² *Id.* at 34-42.

¹³ The other opportunities for waiver found in Utah Code Ann. § 54-17-501(1) are inapplicable here.

Large Generator Interconnection Agreement

RMP signed the resource PPA and BSA agreement with Stadion on January 20, 2023, with an expiration date of April 30, 2046.¹⁴ The seller is Faraday Solar B, LLC and Faraday Energy Storage, LLC, which RMP will purchase energy from on behalf of Stadion. RMP states that Faraday has sought interconnection with PacifiCorp's system and is finalizing its large generator interconnection agreement (LGIA).¹⁵ The LGIA requires Faraday to pay for the construction of a new substation for the solar/battery facility.¹⁶ The Division assumes that any energy produced by Faraday (either energy or demand response benefits from the battery storage resource) not consumed by Stadion, will flow through the energy balancing account (EBA) as net power costs (NPC). The Division has not reviewed the PPA or the LGIA and offers no comment or recommendation on the structure of the agreements.

The Division has some initial concerns surrounding the LGIA process because there are seemingly many third-party resources seeking interconnections within the same bubble. However, these interconnection issues likely are more appropriately raised elsewhere, given the transmission interconnection process is generally addressed at FERC.

Integrated Resource Planning

RMP's witness, Mr. Craig M. Eller, claims that the project (i.e., Stadion's load and solar generation/battery storage resource) was not part of either PacifiCorp's 2021 Integrated Resource Plan (IRP) or its 2021 IRP Update.¹⁷ However, Mr. Eller stated during the Technical Conference held on March 9, 2023, that the proposed resource project and load are included in the pending 2023 IRP.^{18,19} As of the date of this memo, the 2023 IRP has not been filed and the Division is unable to verify if the proposed project and load have been included in it.

¹⁴ *Supra* note 11, at 41-42.

¹⁵ *Id.* at 152-153. Note that RMP's witness Mr. Eller claims that the LGIA with Faraday has been signed by the parties. See the *Commission's Technical Conference* in Docket No. 23-035-11, March 9, 2023, <https://www.youtube.com/watch?v=3CcTLRR8oDQ>, at 17:22 through 20:59.

¹⁶ C. Eller Direct Test. at 153-154.

¹⁷ *Id.* at 120-122.

¹⁸ At the time of this filing, PacifiCorp's 2023 Integrated Resource Plan, in Docket No. 23-035-10 has not been filed with the Commission for approval.

¹⁹ RMP's witness Mr. Eller's statement during the *Commission's Technical Conference* in Docket No. 23-035-11, March 9, 2023, <https://www.youtube.com/watch?v=3CcTLRR8oDQ>, at 17:22 through 20:59.

The Division also has some concerns regarding the impacts of the resource and load to the pending 2023 IRP and potential impacts to the EBA when the solar/storage resource is not providing enough energy to meet Stadion's load requirements or is producing more energy than is needed.

Public Interest

The LGIA requires Faraday to construct the solar and battery storage resources, along with the substation, to interconnect the combined resources to the grid. Stadion commits to covering 100% of all costs, including provisions for full payment if either Faraday or Stadion defaults on the project.²⁰ The Division's understanding is that RMP will purchase 525 MW of energy from Faraday and deliver it to Stadion under Schedule No. 34. Stadion will purchase any additional energy needed from RMP under its normal service rate schedule. With these provisions and those mentioned above, potential cost shifting to other customers seems unlikely based on past Commission Orders but not easily determinable with the information provided in this filing. However, given the absence of sufficient information to verify this, RMP should bear the risk if this proves to be untrue.

Based on RMP's application, Mr. Eller's testimony, and information RMP provided during the March 9th technical conference, the Division concludes that RMP's Application satisfies the required public interest standard set forth in the statute and recommends Commission approval. The Division's review of RMP's Application concludes that RMP has followed the applicable statutes and Commission rules pertaining to renewable energy services contracts and waivers associated with the solicitation process and preapproval of a SER decision.

The PPA between RMP and Faraday was signed on January 20, 2023, prior to filing its request for waivers of the solicitation process and SER requirements on March 6, 2023. The Division has not reviewed the PPA or the LGIA and offers no comment or recommendation on the structure of the agreements. The Division is aware of the urgency to approve the

²⁰ C. Eller Direct Test. at 75-85. RMP did not provide copies of the confidential PPA or LGIA agreements, therefore, the Division has not reviewed the terms of the agreements to support RMP's statements. However, Electric Service Schedule No. 34, under Conditions of Service, (1)(d), provides provisions for the customer to pay all costs in the event the Customer terminates its contract early.

waivers for the timing of the expected resource commercial operation date and the need to meet the customer's forecast load. However, that urgency should not supplant the Division's ability to conduct a thorough review or RMP's obligation to provide adequate evidence supporting its Application for a waiver under Section 54-17-501. In this instance, the Division concludes that it had adequate time to review RMP's Application and the information provided by RMP.

Conclusion

The Division concludes that RMP's Application is just, reasonable, in the public interest, and therefore recommends the Commission approve it.

cc: Jana Saba, RMP
Joseph Dallas, RMP
Michele Beck, OCS