

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Rocky Mountain Power for Approval of Solicitation Process for the Community Renewable Energy Program and Motion to Deviate from Utah Admin. Code R746-314-402(4)	<u>DOCKET NO. 24-035-55</u> <u>ORDER GRANTING ROCKY MOUNTAIN POWER'S APPLICATION AND MOTION</u>
---	--

ISSUED: May 13, 2025

On November 19, 2024, Rocky Mountain Power (RMP) filed its Application for Approval of Solicitation Process (“Application”) and Motion for Deviation from Utah Admin. Code R746-314-402(4) (“Motion”). The Application seeks approval of a solicitation process, the 2025 Utah Renewable Communities’ Request for Proposals (“URC RFP”), for a community renewable energy program pursuant to the Community Renewable Energy Act (“Act”).¹ In the Motion, RMP requests authorization to deviate from one of the administrative rules that governs the solicitation and acquisition processes of solar resources for community renewable energy programs, specifically Utah Admin. Code R746-314-402(4) (“Program RFP Rule”). RMP attaches a proposed “rule” to govern the solicitation for which it seeks approval in the Application (“Proposed RFP Rule”).²

¹ The Act allows for creation of a community renewable energy program (“Program”) and is codified at Utah Code § 54-17-901 through 909, et seq. Under such a Program, participating communities and an electric utility coordinate to facilitate customers in the participating communities receiving energy from non-emitting resources.

² See Application at Ex. A.

APPLICATION AND MOTION

The Application identifies 19 communities (“Communities”) that have executed a “governance agreement”³ and seek to establish a Program under the Act.⁴ Their governance agreement established the Community Renewable Energy Agency (“Agency”) and grants the Agency authority to act on their behalf with respect to certain aspects of the Program.⁵

In the Application, RMP seeks approval of the URC RFP as described in Exhibit B of the Application. RMP represents it collaborated with the Communities to design the Program and to draft the URC RFP. The Agency will administer the URC RFP on behalf of the Communities.

In the Motion, RMP explains the Program RFP Rule contains separate solicitation and acquisition requirements for solar resources,⁶ requiring two separate processes for solar and non-solar resources. RMP argues the Program RFP Rule was previously necessary because federal tax rules rendered it difficult for utilities to submit competitive bids for solar resources. However, “[t]hose federal tax rules have

³ See Utah Admin. Code R746-314-101(9), R746-314-101(5).

⁴ RMP has initiated a docket to obtain approval to implement the Communities’ Program but has asked the PSC refrain from setting the matter for scheduling conference pending RMP’s filing of additional materials. *See Application of RMP to Implement Community Clean Energy Program Authorized by the Act*, Docket No. 25-035-06 (“Program Docket”).

⁵ The PSC granted the Agency’s Petition to Intervene in this docket. Order Granting Intervention of the Agency issued December 10, 2024.

⁶ See Utah Admin. Code R746-314-402(5).

since been modified such that the separate solar resource solicitation rules are no longer necessary.”⁷ RMP and the Agency prefer to issue a single solicitation for all eligible resource types, allowing them to gain information on potential resource pricing and thereby better inform the Program’s design.

PROCEDURAL HISTORY

The PSC issued a Scheduling Order and Notice of Virtual Hearing on December 5, 2024 (“Scheduling Order”).

Consistent with the Scheduling Order, the following stakeholders filed comments: State of Utah School and Institutional Trust Lands Administration (SITLA); the Agency; the Division of Public Utilities (DPU); the Office of Consumer Services (OCS); Western Resource Advocates (WRA); Utah Clean Energy (UCE); and Vote Solar. Additionally, Sierra Club jointly filed comments on behalf of Sierra Club Utah Chapter, Healthy Environment Alliance of Utah, HEAL Utah, Stewardship Utah, Utah Physicians for a Healthy Environment, Utah Youth Environmental Solutions, and League of Women Voters Utah (collectively, “Sierra Club”).

On February 13, 2025, RMP, DPU, and the Agency filed reply comments.

On February 28, 2025, the PSC held a hearing to consider the Application during which RMP, OCS, DPU, and the Agency testified.

⁷ Application at 5.

PARTIES' COMMENTS

The Agency, SITLA, WRA, UCE, Vote Solar, and Sierra Club each filed initial comments strongly in support of the Application.⁸

In its initial comments, DPU questioned whether approval of the URC RFP is appropriate given that the PSC has not yet approved the underlying Program. DPU also questioned whether the Proposed RFP Rule could adversely impact RMP's transmission queue and prospective resource developers in RMP's 2025 Integrated Resource Plan ("IRP").

DPU initially recommended the PSC "contingently approve" the Application with the following conditions: (a) the winning bidder's pricing must be "reasonably similar" to other resources already in the queue in-line with current IRP modeling; (b) adequate transmission capacity must exist to meet RMP's load requirements without costs to non-participating customers; (c) a deficit must exist such that the Program's requirements are not already met under the IRP's current generation forecast; and (d) "[p]roof that there will be no undue cost shifting to non-Program customers in the event that the Program fails in the future."⁹

⁸ The PSC notes the Agency's initial comments proposed several modifications to the RFP. However, neither RMP nor the Agency subsequently addressed those proposed changes in their respective reply comments or their testimony at hearing. That is, the PSC cannot discern whether the Agency continues to believe those modifications are appropriate or whether RMP concurs. Therefore, this order will consider the URC RFP, as filed, without modification.

⁹ DPU's Comments at 1-2.

The OCS concludes approval of the Application is reasonable so long as any risks associated with resources procured from the URC RFP remain solely with the Program and its participating customers. OCS initially expressed concern that the Agency and the consultants hired to assist it may not have the same level of expertise as RMP in evaluating requests for proposals (RFPs) for electric generating resources. OCS represents it will closely monitor Program implementation.

In reply comments, RMP argues that DPU's concerns can all be adequately addressed in the Program Docket. RMP emphasizes it is merely complying with the Act by working with the Communities to implement the Program, which necessarily includes conducting an RFP and later acquiring qualifying resources. RMP also clarifies in its reply comments that it seeks only to deviate from the Program RFP Rule (R746-314-402(4)), not other provisions of Utah Admin. Code R746-314, which RMP acknowledges should remain applicable to the Program.

RMP further agrees the PSC should approve the Program's design prior to approval and acquisition of Program resources. RMP insists, however, that approval and implementation of the URC RFP will constructively inform the Program's design, and the PSC can and should allow the URC RFP to proceed prior to the Program's approval.

TESTIMONY AT HEARING

At hearing, DPU testified that it does not oppose the PSC granting the Application or the Motion. DPU further testified it believes the PSC may properly address any concerns DPU has about the Program in the Program Docket. DPU testified that granting the Motion is in the public interest and recommended the PSC grant it and the Application.

OCS testified that the Agency's reply comments demonstrated the Agency's (and its consultants') expertise in administering an RFP. OCS further testified the RFP and Proposed RFP Rule are reasonable so long as any risks associated with resources RMP procures from the URC RFP remain solely with the Program and its participating customers, which the OCS expects to be thoroughly addressed in the Program Docket. Like DPU, OCS recommended the PSC approve the Application and grant the Motion.

The Agency testified about the Application's benefits to the Communities and their climate initiatives and goals. The Agency further testified that it believes the "[P]rogram can be designed to prevent shifting projected [P]rogram costs and benefits from participants to nonparticipants."¹⁰

RMP reiterated at hearing that any concerns DPU or OCS have expressed may be addressed in the Program Docket and recommended the PSC grant the Motion and Application, noting the absence of any opposition to the relief RMP seeks.

¹⁰ Hr'g Tr. at 27:9-11.

Finally, the parties clarified at hearing that RMP is not here seeking to amend the Utah Administrative Code. RMP requests the PSC approve its Proposed RFP Rule only for the purpose of governing the Program at issue in this docket, i.e. the Communities' Program.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The Act authorizes the PSC to approve the creation of a community renewable energy program, which means a program “that allows a qualified utility to provide electric service from one or more clean energy resources to a participating customer within a participating community.”¹¹ As the Act requires, the PSC has made rules to govern “a competitive solicitation process for the acquisition of clean assets acquired by the qualified utility for purposes of th[e] [A]ct.”¹² These rules currently provide “one set of requirements for solicitation and acquisition of solar resources and a second set of requirements for ... non-solar resources.”¹³

The PSC may authorize a party to deviate from any specific rule provided the moving party demonstrates “that the rule imposes a hardship that outweighs the benefit(s) of the rule.”¹⁴

¹¹ Utah Code § 54-17-902(5).

¹² *Id* at § 54-17-908; *see also* Utah Admin. Code R746-314 (enumerating rules that govern community renewable energy programs).

¹³ Application at 5; *compare* Utah Admin. Code R746-314-402(4) *with* R746-314-402(5).

¹⁴ Utah Admin. Code R746-1-109.

Here, RMP has testified that the distinction between solar and non-solar renewable resources, under Utah Admin. Code R746-314-402, was previously constructive and necessary owing to federal tax regulations. RMP further represents federal regulations have since changed such that requiring a separate solicitation process for solar resources is no longer necessary and now serves only as an unnecessary and undue burden. No party disagrees.

Based on the evidence in the record, the PSC finds RMP has met its burden and shown that by requiring separate solicitation processes for solar and non-solar renewable resources, the Program RFP Rule imposes a hardship that outweighs any benefits associated with it.

The PSC observes that RMP represented in its reply comments that “the rest of R746-314 is applicable to the [P]rogram ... and [RMP] filed a Motion to Deviate only from R746-314-402(4).”¹⁵ RMP’s Proposed RFP Rule, however, purports to govern both solicitation and “acquisition of a renewable energy asset pursuant to a Program Solicitation,” containing subsections addressing “Application for Approval of Program Solicitation” and “Application for Approval of Program Resources.”¹⁶ The presiding officer sought to clarify RMP’s intended effect of the Proposed RFP Rule at hearing, inquiring whether granting the waiver alone would be sufficient. RMP expressed a

¹⁵ RMP’s Reply Comments at 4.

¹⁶ Application, Ex. A at 1-4.

preference to both grant the waiver and “incorporate the proposed sets of rules for the solicitation just for clarity’s sake.”¹⁷

Based on our findings and conclusions above, the PSC grants RMP’s request to waive the requirements of Utah Admin. Code R746-314-402(4). The PSC further approves the process outlined in RMP’s Proposed RFP Rule but expressly limits such approval to the specific solicitation process RMP seeks to implement through its instant Application. This approval does not constitute a waiver of any otherwise applicable provisions of administrative rule, regardless of whether such provisions are consistent with RMP’s Proposed RFP Rule. In other words, the PSC’s approval of RMP’s Proposed RFP Rule does not constitute a waiver of any administrative rule outside Utah Admin. Code R746-314-402(4). If RMP believes additional waivers are necessary to effectuate the solicitation or implementation of the Program, RMP may file a motion to deviate, specifying the particular provision(s) for which it seeks a waiver and explaining why the waiver is appropriate or necessary.

With respect to the Application, all available evidence indicates RMP developed its proposed URC RFP in consultation with the Agency consistent with Utah Admin. Code R746-314-402(5). Based on our review of the URC RFP, parties’ comments and testimony, and the absence of any opposition, the PSC finds the URC RFP will allow for fair competition among all bidders and is consistent with applicable statutes and

¹⁷ Hr’g Tr. at 29:22-24.

rules (given the waiver we grant here). The PSC further finds approval of the URC RFP to be reasonable and in the public interest.

Accordingly, the Application is granted and the URC RFP is approved.

ORDER

The PSC grants RMP's Application and approves the URC RFP. Additionally, the PSC grants RMP's Motion and requested waiver with the qualifications discussed in this Order.

DATED at Salt Lake City, Utah, May 13, 2025.

/s/ Michael J. Hammer
Presiding Officer

Approved and confirmed May 13, 2025, as the Order of the Public Service Commission of Utah.

/s/ Jerry D. Fenn, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#339764

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 written 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 May 13, 2025, 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)
Katherine Smith (katherine.smith@pacificorp.com)
Max Backlund (max.backlund@pacificorp.com)
Rocky Mountain Power

Phillip J. Russell (prussell@jdrslaw.com)
JAMES DODGE RUSSELL & STEPHENS, P.C.
Attorneys for the Community Renewable Energy Agency

Luke Cartin (luke.cartin@parkcity.org)
Park City
Dan Dugan (dan.dugan@slc.gov)
Salt Lake City
Kevin Higgins (khiggins@energystrat.com)
Energy Strategies, LLC
Emily Quinton (equinton@summitcountyutah.gov)
Summit County
Christopher Thomas (christopher.thomas@slc.gov)
Salt Lake City
Community Renewable Energy Agency

Patricia Schmid (pschmid@agutah.gov)
Patrick Grecu (pgrecu@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

/s/ Melissa R. Paschal
Administrative Assistant