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March 6, 2018

VIA ELECTRONIC FILE

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, Utah 84114

Attention: Gary Widerburg
Commission Secretary

Re: Docket No. 17-035-40: **Application for Approval of a Significant Energy Resource Decision and Voluntary Request for Approval of Resource Decision**, Notice issued by Public Service Commission of Utah, February 27, 2018.

Dear Mr. Widerburg,

The purpose of this letter is to express Rocky Mountain Power's ("Company") concern over the Notice ("Notice") issued by the Public Service Commission of Utah ("Commission") February 27, 2018 regarding access to the highly confidential version of the Independent Evaluator Report dated February 2018 ("HC IE Report"). In particular, the Notice states that the Independent Evaluator, Merrimack Energy Group, Inc., filed the HC IE Report in this docket and in Docket No. 17-035-23, and that any party desiring a copy must file a request with the Commission, including certification that the party will comply with the confidentiality requirements under applicable confidentiality rules – the same treatment required for information that is designated "confidential." The Notice then states that any party opposing a specific request for the HC IE Report must file its opposition and associated rationale no later than two business days from the date of the request. Shortly after the Notice was issued, the Utah Association of Energy Users ("UAE") filed a request for a copy of the HC IE Report ("UAE's Request").

On February 16, 2018, the Company filed a cover letter, its second supplemental direct testimony on the results of the 2017 Renewable Request for Proposals ("2017R RFP") updating its final shortlist, along with a motion seeking a waiver to deviate from certain formatting requirements pertaining to highly confidential information supporting the filing. In the cover letter, the Company indicated:

[c]ertain exhibits included in this filing contain highly confidential information, consisting of bid information, analysis and modeling that relies on bid information, and reports provided by the independent evaluators that rely on and refer to bid information. In accordance with Utah Admin. Code R746-1-601(2)(a)(i), the Company has engaged with the parties regarding the treatment of highly confidential information. Based on those discussions and on the Company's representations regarding the content of the information to be designated as highly confidential, ***the parties do not dispute the [] highly confidential designation and the Company and parties have reached mutually agreeable protections for access to the highly confidential information.*** Emphasis added.

This was reiterated in the Company's motion where the Company stated "[a] waiver of the Formatting Rules would cause no harm to the parties in this case. Consistent with Utah Admin. Code § R746-1-601(2)(a)(i), the Company engaged the parties *and reached mutual agreement on access to the highly confidential information.*"¹

Utah Admin. Code § R746-1-601(2)(a)(i) allows the Company to negotiate mutually agreeable protections for information that is designated "highly confidential." If parties are unable to negotiate an agreement, subsection 601(2)(a)(ii) is triggered and the Company must petition the Commission for an order granting additional protective measures, describing the justification for and reasonableness of the request. In this case, the Company reached an agreement with parties about the designation of and access to highly confidential information; therefore, subsection 601(2)(a)(ii) was not triggered and it was not necessary to petition the Commission for an order granting additional protective measures. However, the Notice effectively ignored the mutual agreement by offering the HC IE Report to Parties, so long as they agree to abide by its confidentiality rules, and placing the burden on the Company to oppose any such request.

The Notice is problematic in several respects. It ignores the Commission's own rules by failing to consider that certain information may warrant additional protective measures beyond parties' agreement to abide by applicable confidentiality rules which is the standard for information designated as "confidential."

Second, the Notice ignores the fact that the Company had already established, and the Parties agreed, that the HC IE Report and the underlying bid information warrant additional protective measures – beyond parties' agreement to abide by confidentiality rules. By simply asking Parties to agree to abide by confidentiality rules to gain access to the HC IE Report, the Notice is treating the HC IE Report and any underlying bid information the same as "confidential" information. The HC IE Report and the underlying bid information is not just confidential.

Third, the Notice ignores the fact that the Company and each individual Party reached individual agreement regarding how each could access highly confidential information. The Notice

¹ Rocky Mountain Power's Motion to Deviate from Utah Admin. Code R746-1-601(2)(d)(i), (ii) and (iii), and R746-1-203(1)(c), Docket No. 07-035-40.

essentially revoked these agreements and is now requiring the re-negotiation of both the designation of and access to highly confidential information.²

The HC IE Report and underlying bid information are highly confidential because they contain bid information, bidder information, cost positions of one bid relative to another bid, evaluation of specific bids and aggregations of bid information from which specific bid selections can be determined. Because contracts with winning bidders have yet to be negotiated, the comparative information must be held very close to the vest. The restrictions the Company negotiated with the Parties are necessary to: a) protect bidder proprietary and commercially sensitive project and pricing information; b) protect the Company's bargaining leverage with selected bidders; c) protect the public from higher than necessary prices or from less optimal contractual terms from winning bidders; and d) protect the integrity of the competitive bid process itself.

Bidders have invested significant capital in their sites or options – in obtaining pricing and various different structures and other aspects of the projects they bid into the 2017R RFP. Bidders who were not selected in the 2017R RFP may have other opportunities in subsequent near-term solicitations. The Commission must protect this information from disclosure to protect their individual proprietary information and development investments.

The Company may need to negotiate contracts with bidders selected to the final shortlist. It is important that these shortlisted bidders not obtain any information about how their bids compare with one another – to avoid the possibility that bidders will raise their prices or hold out for less than optimal contractual terms during negotiations. For example, if a bidder knows how much margin or headroom is available between its bid and the next best bid, either in price or other contractual terms, the bidder may increase its price during contract negotiations, to the detriment of the Company and ultimately its customers. Thus access to bid pricing and bid evaluation information must be strictly limited. Even if the final shortlist includes Company benchmarks, Company benchmarks may be part of third party contracts and it is important that these third-party counterparties not obtain any information that could be used by them to find ways to raise or change their pricing or other contractual terms.

If bid information is revealed, it can adversely impact the overall fairness of the bid process. The public is best protected by keeping the HC IE Report and all bid information highly confidential, to force bidders to “sharpen their pencils” and to prevent formal or informal bidder collusion now and in the future.

Finally, in past dockets the Company treated the highly confidential information including bids and bid summaries as it is treating it here. Intervenors have historically been able to access the highly confidential information at Company premises without affecting their ability to develop their cases. The Company acknowledges it has provided access to the Office of Consumer Services (the “Office”) and the Division of Public Utilities (the “Division”) by providing pink

² The Company acknowledges that the agreement with UAE was that UAE's witness would initially review all highly confidential information at Company premises, with the understanding that Rocky Mountain Power and UAE would negotiate additional access to highly confidential information at a later date, if UAE's expert determined it would need it to support its testimony.

discs and requesting the discs be destroyed upon completion of the case. However, the Office and the Division are in a different position from other parties. The Office and the Division are charged by law with advocating the broad public interest and will never participate in competitive solicitations on behalf of any competitor. Nonetheless, the Company is providing full access to the highly confidential information to all intervenors, with the exception of bidder intervenors, at Company premises. Limiting the number of persons who can access the information outside of Company premises serves to minimize the risk of unintentional disclosure. The Company's proposal strikes the appropriate balance between a) providing regulatory disclosure of the highly confidential information to mostly all parties to ensure a fair selection process, in particular considering the IE was hired by the Commission to participate and evaluate the process, including having unfettered access to the highly confidential information for the very purpose of ensuring transparency and fairness; and b) the need to protect the bid process from taint.

For the foregoing reasons, the Company respectfully requests the Commission deny UAE's request for a copy of the HC IE Report and issue a protective order confirming the protections the Company had already negotiated with Parties before the Notice was issued.

Sincerely,



Yvonne R. Hogle
Assistant General Counsel
Rocky Mountain Power

cc: R. Jeff Richards
Joelle R. Steward
Jana Saba

CERTIFICATE OF SERVICE

Docket No. 17-035-40

I hereby certify that on March 6, 2018, a true and correct copy of the foregoing was served by electronic mail delivery to the following:

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