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August 6, 2018

***VIA ELECTRONIC FILING***

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

PacifiCorp d/b/a Rocky Mountain Power respectfully submits this response in opposition to Utah Association of Energy Users' Application for Reconsideration and Rehearing of Commission Order Issued June 22, 2018.

Rocky Mountain Power respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Application of Rocky Mountain Power for Approval of a Significant Energy Resource Decision and Voluntary Request for Approval of Resource Decision	Docket No. 17-035-40  <b>ROCKY MOUNTAIN POWER'S RESPONSE IN OPPOSITION TO UTAH ASSOCIATION OF ENERGY USERS' APPLICATION FOR RECONSIDERATION AND REHEARING OF COMMISSION ORDER ISSUED JUNE 22, 2018</b>
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PacifiCorp d/b/a Rocky Mountain Power (“RMP” or “Company”) respectfully submits this response in opposition to Utah Association of Energy Users’ (“UAE”) Application for Reconsideration and Rehearing of Commission Order Issued June 22, 2018 (“Motion”).

UAE’s Motion requests that the Public Service Commission (“Commission”) reconsider and/or grant rehearing of the Commission’s June 22, 2018 order (“Order”) approving RMP’s Application for Approval of a Significant Energy Resource Decision and Voluntary Request for Approval of Resource Decision (“Application”). UAE argues the Commission erred in two ways. Both arguments fail.

First, contrary to UAE’s claims, the solicitation process complied with the requirements of the Energy Resource Procurement Act (“Act”),<sup>1</sup> and UAE’s appeal did not explicitly or

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<sup>1</sup> Utah Code §§ 54-71-101 *et seq.*

implicitly stay the resource procurement process. Second, nothing in Utah law requires the Commission to speculate on possible future outcomes of UAE's appeal and address the potential impacts in its Order. UAE recycles arguments the Commission already rejected in the solicitation docket and arguments made at hearing in this case. For the same reasons the Commission previously rejected UAE's arguments, it should do so again here and deny the Motion.

**A. The Company's solicitation process complied with the Act and the Commission's solicitation approval order.**

UAE claims the Order must be vacated because whether the Commission properly approved RMP's solicitation process ("Solicitation") is a question now pending before the Utah Court of Appeals.<sup>2</sup> According to UAE, unless and until the court of appeals affirms the Commission's approval of the Solicitation, no energy resource decision may be approved, rendering the Order approving RMP's energy resource decision null and void.<sup>3</sup> UAE's argument is contrary to law.

First, the Commission made independent findings in the Order that the Solicitation satisfied the requirements of the Act and the Commission's rules implementing the Act.<sup>4</sup> The Commission specifically relied on expert testimony from the Independent Evaluator that the Solicitation "overall was undertaken in an effective and consistent manner, consistent with Utah statutes," and conformed to the Commission's rules.<sup>5</sup> Any alleged deficiency in the order approving the Solicitation was remedied by the Commission's findings in the Order that the Solicitation, as implemented, complied with the Act. Indeed, UAE primarily faults the Solicitation for not including solar resources, but the Commission made a specific finding in the

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<sup>2</sup> Motion at 2.

<sup>3</sup> *See id.* at 2-3.

<sup>4</sup> Order at 15 ("we find PacifiCorp conducted the solicitation *in accordance with applicable rules and statutes* and the process we approved for the 2017R RFP in the RFP Docket.") (emphasis added).

<sup>5</sup> Order at 14-15.

Order, supported by substantial evidence, that the “2017S RFP was modeled and analyzed in a way that provided results meaningfully similar to what would have occurred had the wind and solar resources bid into the same RFP.”<sup>6</sup>

Second, the Act requires that before the Commission approves a utility’s energy resource decision, the utility must first “conduct a solicitation process that *is approved by the commission.*”<sup>7</sup> The Act does not require, as UAE suggests, that the Commission’s approval of a solicitation process be affirmed by an appellate court before the Commission may approve a significant energy resource.<sup>8</sup> Here, the Commission approved RMP’s Solicitation, both initially and in response to UAE’s application for reconsideration and “no party [] introduced evidence showing PacifiCorp meaningfully deviated from the process [the Commission] approved or otherwise failed to comply with applicable law in executing the solicitation.”<sup>9</sup> No more is required under the Act for the Commission to approve RMP’s energy resource decision.<sup>10</sup> UAE’s motion for reconsideration here amounts to nothing more than a re-statement of its earlier, unsuccessful motion to reconsider the solicitation approval.

The mere fact that a party appeals an order approving the solicitation does not render a subsequent resource decision null and void or effectively stay the resource procurement process.<sup>11</sup> Indeed, implicit in UAE’s argument is a refutation of its own earlier arguments in the RFP docket that the two processes (solicitation and resource decision) are separate and independent. Arguing that one cannot be deemed completed without the other is not only contrary to the statute, it is contrary to UAE’s own arguments as well.

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<sup>6</sup> Order at 25.

<sup>7</sup> See Utah Code § 54-17-201(2)(a) (emphasis added); Mot. at 2.

<sup>8</sup> See generally Utah Code §§ 54-71-101 *et seq.*

<sup>9</sup> Order at 15.

<sup>10</sup> See Utah Code § 54-17-201(2)(a).

<sup>11</sup> Utah Code § 54-7-17(1) (“A petition for judicial review does not stay or suspend the operation of the order or decision of the commission”).

**B. The Commission does not need to account for speculative contingencies in its Order.**

UAE argues that it will be substantially prejudiced unless the Commission modifies its Order to state that, if the court of appeals reverses the Commission's decision approving the Solicitation, the Commission will vacate the Order.<sup>12</sup> UAE cites no authority requiring the Commission to address the effects of a hypothetical reversal of the order approving the Solicitation, and it would be premature for the Commission to include this in the Order.

The appropriate time for the Commission to address the impact of the court of appeals' decision is, naturally, after that decision is issued. Nothing prevents a party from raising, or the Commission from considering, the effect of the court of appeals' ruling regarding the Solicitation once that ruling has issued. Moreover, if the court of appeals finds the Commission erred in approving the Solicitation, it will likely remand the case to allow the Commission to make additional factual findings.<sup>13</sup> This is particularly true here because the resource procurement process relied on the solicitation order and the approval process has now concluded.

Further, UAE does not (and cannot) demonstrate how it will be substantially prejudiced if the Commission fails to specify in its current Order how a hypothetical reversal of the solicitation process will impact the resource decision approval.<sup>14</sup> Even if the court were to reverse the Commission's solicitation order without remand, UAE still cannot demonstrate how it would be harmed by such a reversal if the Order does not address this possibility. It makes no

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<sup>12</sup> Motion at 3.

<sup>13</sup> *McBride v. Motor Vehicle Div. of Utah State Tax Comm'n*, 1999 UT 9, ¶ 20, 977 P.2d 467 (“We emphasize that we remand this case to give the Commission the opportunity to apply the correct standard to the facts of this case. While we could easily make a final disposition of many issues that come before us, we must exercise judicial restraint to maintain the integrity of our judicial system.”); *see also, e.g., Mountain Fuel Supply Co. v. Public Serv. Comm'n*, 861 P.2d 414, 429 (Utah 1993) (“[T]he Commission should have the opportunity to explain why it settled on the 0.1% reduction before being forced to reopen the rate-making proceeding. We therefore remand so that the Commission may explain its reasoning and, if possible, make any findings.”). Thus, UAE's argument is not only premature but is also premised on a remote possibility.

<sup>14</sup> *See Mountain Fuel Supply Co. v. Pub. Serv. Comm'n of Utah*, 861 P.2d 414, 423 (Utah 1993) (“[T]he aggrieved party must be able to demonstrate how the agency's action has prejudiced it.”).

sense to ask the Commission to include in this Order all of the contingencies that could occur as a result of the appeal.

Based on its same concerns over the potential outcome of its appeal, UAE also argues that the Order must explicitly state that if the court of appeals overturns the solicitation order, then the Commission cannot approve either the wind or the transmission projects, even though the transmission project is not subject to a solicitation requirement.<sup>15</sup> UAE reasons that the transmission facilities and wind resources are inextricably connected and, thus, *must* be built together, or not at all.<sup>16</sup> Based on this, UAE asserts that it will be substantially prejudiced if the Commission does not “make clear” in its Order that the Combined Projects must be developed together. But UAE does not explain why the Commission is required, at this point in time, to make decisions based on the mere potential that the Commission’s Solicitation approval may be reversed. As stated above, the appropriate time to address any issues arising from a reversal of the Commission’s Solicitation decision is *if and when* a reversal occurs—not before.

The Act includes a process to address material changes in circumstances, which could be invoked if appropriate. *See* Utah Code § 54-17-403(2)(a); Utah Code § 54-17-304 (Company can return to Commission for order to proceed in response to change in circumstance); Utah Code § 54-17-404. The Company presented evidence that the transmission project will be necessary even without the wind projects.<sup>17</sup> Thus, while the wind and transmission projects are linked, there is an independent need for the transmission project which the Commission could consider on remand, when and if necessary. For all of these reasons, the Commission should decline to modify its Order to require that RMP construct the Combined Resources together, or not at all.

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<sup>15</sup> Motion at 4.

<sup>16</sup> Motion at 3.

<sup>17</sup> Order at 31-32.

**CONCLUSION**

For the foregoing reasons, the Commission should deny UAE's Motion.

DATED this 6<sup>th</sup> day of August, 2018.

ROCKY MOUNTAIN POWER



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**CERTIFICATE OF SERVICE**

Docket No. 17-035-40

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

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