

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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| Application of Rocky Mountain Power for Approval of Solicitation Process for Solar Photovoltaic and Thermal Resources | <u>DOCKET NO. 18-035-47</u> <u>ORDER APPROVING RFP</u> |
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ISSUED: March 11, 2019

BACKGROUND

On December 28, 2018, pursuant to Utah Code Ann. § 54-17-807 and Utah Administrative Code R746-450, PacifiCorp filed an Application for Approval of Solicitation Process (“Application”) with the Public Service Commission of Utah (“PSC”). The Application requests approval of its 2019 Renewable Resource Utah Request for Proposals solicitation process (“2019R RFP”). Under this 2019R RFP, PacifiCorp is seeking up to approximately 205,000 MWh per year, for up to 25 years, of new solar photovoltaic, wind, or geothermal resources that can achieve commercial operation between June 30, 2020 and December 31, 2021.¹

On January 15, 2019, the PSC held a scheduling conference² and, on January 16, 2019, issued a Scheduling Order.

The Utah Association of Energy Users (“UAE”), Utah Clean Energy (“UCE”), the Sustainable Power Group, LLC (“sPower”), Western Resource Advocates (“WRA”), Salt Lake City Corporation (“SLC”), and VK Clean Energy Partners LLP (“VK Clean Energy”) petitioned for and were granted intervenor status. On February 28, 2019, the Interwest Energy Alliance

¹ On February 7, 2019, PacifiCorp filed a corrected Exhibit RMP_(MT-1C) replacing Exhibit RMP_(MT-1) and on February 8, 2019, PacifiCorp filed its 2019R RFP Purchased Power Agreement, which should be included in Exhibit RMP_(MT-1C) as Appendix E-2, and was inadvertently omitted from PacifiCorp’s Application.

² See Notice of Scheduling Conference, issued January 9, 2019.

(“Interwest”), Renewable Energy Coalition (“REC”), and Northwest and Intermountain Power Producers Coalition (“NIPPC”) petitioned for intervenor status.

The Division of Public Utilities (“DPU”), Interwest, VK Clean Energy, and UAE/sPower (jointly) filed comments. PacifiCorp, the DPU, NIPPC/REC (jointly), and UAE/sPower (jointly) filed reply comments.

POSITIONS OF THE PARTIES

The DPU recommends approval of the 2019R RFP if certain conditions are met. Specifically it recommends: 1) all appendices should be named to match their title and/or description in the 2019R RFP so that parties can ensure all appendices/attachments are present; 2) PacifiCorp should provide descriptions and explanations in the 2019R RFP corresponding to Rule R746-450-3(1)(d); and 3) the requirement that bidders submit a build-transfer agreement (“BTA”) option as part of their bid should be made optional, and PacifiCorp should make more explicit that the selection of a resource is based solely on the power purchase agreement (“PPA”) bid. In its reply comments, the DPU explains it does not support allowing all participants in the 2019R RFP process the ability to buy projects under the 2019R RFP BTA submissions. The DPU also recognizes the difficulties posed by the interconnection requirements, given the 2019R RFP deadlines, and believes PacifiCorp Transmission’s interconnection queue process needs improving. However, the DPU concludes this docket is not the place for that improvement, as PacifiCorp Transmission’s connection requirements are an Open Access Transmission Tariff (“OATT”) matter and are primarily regulated under the Federal Energy Regulatory Commission’s (“FERC”) jurisdiction.

Interwest filed comments supporting the intent of the Application and requesting the PSC order modifications to the 2019R RFP relating to the transmission/interconnection requirements.

VK Clean Energy's comments identified areas of concern with the 2019R RFP relating to transmission and interconnection requirements and with the overall evaluation process. It recommends the PSC should: 1) require PacifiCorp to employ a PSC-approved Independent Evaluator to oversee the process and ensure its transparency; 2) audit PacifiCorp's process and require PacifiCorp to report on its evaluation of all bids received; 3) require PacifiCorp to identify with specificity the reasons for the rejection of each bid; 4) require PacifiCorp to provide bidders with detail as to any bases for the rejection of their bids, and wherever possible, an opportunity to cure any deficiencies within a timely manner; 5) require PacifiCorp to remove certain unfair criteria from its minimum eligibility requirements; and 6) require PacifiCorp to report on all instances where the bidder who has not met interconnection and transmission requirements, but has asked PacifiCorp to timely perform the necessary studies.

UAE/sPower object to: 1) the requirement bidders must submit both a BTA and a PPA to participate; 2) the requirement bidders must have no ongoing litigation with PacifiCorp; 3) various interconnection and transmission issues and requirements; 4) issues related to a level playing field; 5) the treatment of sensitive data; 6) the level of sole discretion PacifiCorp has built into the 2019R RFP process; 7) the resource size restrictions; 8) tax and accounting implications; and 9) the lack of information concerning the discount rate and rate of return PacifiCorp will use in evaluating the 2019R RFP. In reply comments, UAE/sPower request the PSC set a technical conference as soon as practicable to allow interested customers, bidders, regulators, and PacifiCorp to discuss and explore potential improvements to the 2019R RFP in

an effort to level the playing field, as required by statute, and to allow a better understanding of the inherent trade-offs between timing constraints and responsive bids.

NIPPC/REC support the underlying concerns raised, and recommendations provided by Interwest, UAE/sPower, and VK Clean Energy with regard to interconnection and transmission and agree they should be addressed by the PSC.

In its reply comments, PacifiCorp identifies the modifications it made to the 2019R RFP to address some of the concerns of the DPU, Interwest, VK Clean Energy, and UAE/sPower. PacifiCorp also identifies the remaining areas of disagreement providing its reasoning for rejecting further modifications to the 2019R RFP. Further, PacifiCorp: 1) revised the naming convention of the appendices as suggested by the DPU; 2) discussed why the ability of the resource to provide grid services such as frequency regulation, spinning reserves, and/or ramp control is not considered as evaluation criteria in the revised 2019R RFP; 3) added language to the description of how PPA and BTA evaluations would be performed. PacifiCorp also identified instances where the PSC previously approved the same, or functionally similar, language included in the 2019R RFP to which some parties object and where specific criteria were determined by the customers requesting the 2019R RFP. PacifiCorp then addressed the remaining areas of concern raised by parties explaining why it was rejecting the requested modifications.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Our decision in this docket is governed by the Energy Resource Procurement Act (“Act”), Utah Code Ann. § 54-17-807(6)(b). This section requires that when ruling on PacifiCorp’s request for approval of its solicitation process, we must determine whether:

“the solicitation and evaluation processes to be used will create a level playing field in which the qualified utility and other bidders can compete fairly, including with respect to interconnection and transmission requirements imposed on bidders by the solicitation within the control of the [PSC] and the qualified utility, excluding its federally regulated transmission function, and will otherwise serve the public interest.”³

As allowed by the Act, the 2019R RFP is designed to acquire resources to serve specific customers rather than PacifiCorp’s regular general system customers. The costs associated with acquiring or operating the resulting resource will not be comingled with PacifiCorp’s rate base or other costs, but will remain separate and distinct. The resource will be dedicated to serving the specific customers who will be responsible to pay all of its associated costs. As such, PacifiCorp and these customers have latitude to design the 2019R RFP differently than would be the case in a request for proposals for a resource to serve PacifiCorp’s regular general system customers.

For the majority of the unresolved issues raised by parties, PacifiCorp points to the fact that the specific customers have requested, or are in accord with, certain aspects of the 2019R RFP. Further, PacifiCorp notes much of the language in question has already been approved by the PSC in previous requests for proposals. PacifiCorp asserts that the specific customers directed it, or agreed to: 1) only consider Utah resources; 2) put a cap on the project size; 3) set a strict time limit for the in service date; 4) exercise broad sole discretion decisions to obtain qualifying bids; and 5) require a BTA submission. PacifiCorp also points to the PSC’s prior approval of disputed language regarding confidentiality, sole discretion, and no litigation. We find these explanations to be reasonable and generally allowed by the governing law. What

³ Utah Code Ann. § 54-17-807(6)(b).

remains unresolved are statutory questions surrounding a level playing field, fair competition, and the public interest.

With respect to the level playing field and fair competition aspects, we conclude that in the absence of PacifiCorp providing a bid, the law's requirements for fair competition and a level playing field apply to the equal treatment of the bidders. While the restrictions included in the 2019R RFP may preclude some bidders and ultimately impact the costs of the winning bid, the choices made by the specific customers and PacifiCorp will apply equally to all bidders who decide to participate in the 2019R RFP. Therefore we conclude the 2019R RFP meets the level playing field and fair competition standards.

According to Utah Code Ann. § 54-17-807(7)(b)(iv), we must still determine whether any acquisition of an energy resource from the 2019R RFP is in the public interest. We find that the public interest will be protected through the requirement that no costs associated with the acquisition or operation of the resulting resource may be passed on to PacifiCorp's general system ratepayers. Any risk associated with the costs of acquisition and operation must be completely assumed by the specific customers and PacifiCorp's shareholders to be in the public interest. PacifiCorp's ownership of the resulting resource must be accounted for outside its normal utility accounts, and the full costs of acquisition and operation must be solely recovered either from the specific customers or PacifiCorp's non-utility funds. Considering those statutory protections, we conclude that the 2019R RFP is in the public interest.

Based on the record presented, we conclude that PacifiCorp's solicitation process complies with the Act and with our rules.

ADDITIONAL REQUESTS OF THE PARTIES

Parties request other modifications to the 2019R RFP beyond those accepted by PacifiCorp that we do not find warrant either denial of the 2019R RFP or additional suggested modifications. For example, UAE/sPower request assurances that required transmission interconnection studies are timely completed by PacifiCorp Transmission. As we do not have jurisdiction over PacifiCorp's OATT, we decline to opine on this issue.

Because we have approved the 2019R RFP, we deny UAE/sPower's request for a technical conference.

ORDER

We approve PacifiCorp's proposed 2019R RFP as filed on December 28, 2018, and later modified in PacifiCorp's February 28, 2019 reply comments.

DATED at Salt Lake City, Utah, March 11, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#306978

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this 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 does not grant a request for review or rehearing within 20 days after the filing of the request, 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 §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on March 11, 2019, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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