

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION
OF ROCKY MOUNTAIN POWER FOR A
MODIFICATION OF AVOIDED COST
METHODOLOGY AND REDUCED
CONTRACT TERM OF PURPA POWER
PURCHASE AGREEMENTS

DOCKET NO. 20000-545-ET-18
(Record No. 15133)

**WYOMING INDUSTRIAL ENERGY CONSUMERS AND TWO RIVERS WIND,
LLC’S REPLY TO ROCKY MOUNTAIN POWER’S RESPONSE TO MOTION TO
COMPEL DISCOVERY RESPONSES FROM ROCKY MOUNTAIN POWER**

Pursuant to Section 13 of the Wyoming Public Service Commission’s (“Commission”) Uniform Rules for Contested Case Practice and Procedure,¹ the Wyoming Industrial Energy Consumers (“WIEC”) and Two Rivers Wind, LLC (“Two Rivers Wind”) (collectively, the “Moving Parties”), by and through their undersigned counsel, Holland & Hart LLP, hereby respectfully file this Reply in Support of Its Motion to Compel Discovery Responses from Rocky Mountain Power (“RMP”). RMP routinely “aggregates” data in response to discovery requests and is required to keep track of the information requested in the Revised Discovery Requests. For these reasons, RMP’s Response should be rejected, and the Moving Parties’ Motion granted.

RMP argues that data requests seeking an aggregate of information is an impermissible request for information that is not within RMP’s custody or control.² This argument should be rejected. If this were an acceptable reason for refusing to respond to discovery requests at the

¹ “Unless the hearing officer permits service at some other time, the moving party may serve a reply, if any, at least one day prior to the hearing on the motion or within 15 days after service of the response, whichever is earlier.”

² RMP Response at p. 4 (“This rule again limits the scope of interrogatories to requests that are within the scope of Rule 26(b), and makes clear that the responding party need only provide information to the extent it is in the responding party’s possession, custody, or control. WIEC/TRW’s requests, both the Initial Requests and Revised Requests, seek analysis and aggregations of information that the Company has never created, and that it is not obligated to create. The rule does not require responding parties to produce analyses that they do not have. The Commission should not compel the Company to create the analysis or aggregation of information as the Motion requests because that goes beyond what the Wyoming rules require.”).

Commission, discovery would be severely limited in Commission proceedings. Further, if aggregating the information in a single response to a discovery request is impermissible, intervenors would ask an individual data request for each project. This result is nonsensical. Indeed, RMP routinely aggregates data in response to discovery requests, and thus RMP does not even interpret the rules of discovery in the manner it now requests. Examples of similar data requests that RMP has responded to are attached as Exhibit A. RMP's argument that the Moving Parties' requests for interconnection study agreements execution dates and study completion dates somehow constitutes an improper request for an analysis that is not within its custody or control does not meet the "straight face" test.

RMP asserts that responding to the Revised Discovery Requests would be unduly burdensome because they request information back to 2015. However, the Federal Energy Regulatory Commission ("FERC") requires RMP to track the data requested. When RMP is unable to complete interconnection studies within the required time period, RMP is required notify the interconnection customer and provide an estimated completion date with an explanation of the reasons why additional time is required.³ These notifications are typically formal letters. Additionally, FERC Order 890⁴ requires RMP to:

post the following set of performance metrics on a quarterly basis:

- Process time from initial service request to offer of system impact study agreement pursuant to sections 17.5, 19.1 and 32.1 of the pro forma OATT
 - Number of new system impact study agreements delivered to transmission customers
 - Number of new system impact study agreements delivered to the transmission customer more than 30 days after the transmission customer submitted its request

³ RMP OATT at Section 42.4.

⁴ Order No. 890, 72 Fed Reg 12,266 at P 1310 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) *available at* <https://www.govinfo.gov/content/pkg/FR-2007-03-15/pdf/E7-3636.pdf>.

- Average time (days) from request submittal to change in request status
- Average time (days) from request submittal to delivery of system impact study agreement
- Number of new system impact study agreements executed
- System impact study processing time pursuant to sections 19.3 and 32.3 of the pro forma OATT
 - Number of system impact studies completed
 - Number of system impact studies completed more than 60 days after receipt of executed system impact study agreement
 - Average time (days) from receipt of executed system impact study agreement to date when completed system impact study made available to the transmission customer
 - Average cost of system impact studies completed during the period
- Service requests withdrawn from system impact study queue
 - Number of requests withdrawn from the system impact study queue
 - Number of system impact studies withdrawn more than 60 days after receipt of executed system impact study agreement
 - Average time (days) from receipt of executed system impact study agreement to date when request was withdrawn from the system impact study queue
- For all system impact studies completed more than 60 days after receipt of executed system impact study agreement, average number of days study was delayed due to transmission customer's actions (e.g., delays in providing needed data)
- Process time from completed system impact study to offer of facilities study pursuant to sections 19.4 and 32.4 of the pro forma OATT
 - Number of new facilities study agreements delivered to transmission customers
 - Number of new facilities study agreements delivered to transmission customers more than 30 days after the completion of the system impact study
 - Average time (days) from completion of system impact study to delivery of facilities study agreement
 - Number of new facilities study agreements executed

- Facilities study processing time pursuant to sections 19.4 and 32.4
 - Number of facilities studies completed
 - Number of facilities studies completed more than 60 days after receipt of executed facilities study agreement
 - Average time (days) from receipt of executed facilities study agreement to date when completed facilities study made available to the transmission customer
 - Average cost of facilities studies completed during the period
 - Average cost of recommended upgrades for facilities studies completed during the period
- Service requests withdrawn from facilities study queue
 - Number of requests withdrawn from the facilities study queue
 - Number of facilities studies withdrawn more than 60 days after receipt of executed facilities study agreement
 - Average time (days) from receipt of executed facilities study agreement to date when request was withdrawn from the facilities study queue
- For all facilities studies completed more than 60 days after receipt of executed facilities study agreement, average number of days study was delayed due to transmission customer's actions (e.g., delays in providing needed data)

RMP's current posting of this required information on its Open Access Same-Time Information System ("OASIS") goes back to 2016, and is attached hereto as Exhibit B. Thus, RMP does keep track of the data requested, in a different format than requested by the Moving Parties, and it is not unduly burdensome to respond to the Moving Parties Revised Data Requests. While RMP also complains that there have been 491 interconnection requests since 2015,⁵ RMP's responses to other intervenors' discovery requests undercuts this argument. *See* Exhibit A at RMP's Response to REC's 1.18, in which RMP creates a chart of aggregate data of approximately 400 projects.

⁵ RMP Response at p. 11.

RMP's Response to the Moving Parties' Motion to Compel is a thinly veiled attempt to preemptively limit the scope of the Moving Parties' testimony in this proceeding because it fears the interconnection study process becoming an issue in this proceeding. As the Moving Parties' Direct Testimony indicates,⁶ and as was communicated with RMP during the "meet and confer" efforts, the Moving Parties have made no proposals with respect to the interconnection process itself. RMP's fears are therefore unfounded; the Moving Parties are not seeking to "expand the scope" of this proceeding with the Revised Discovery Requests, as RMP imagines.⁷ The fact that the Revised Data Requests seek information relating to the length of time it takes projects to go through the interconnection process does not mean that the Moving Parties are putting the interconnection process itself at issue in this proceeding. RMP should not be permitted to use a discovery dispute as a means to obtain a preemptive order from this Commission on the scope of testimony in this proceeding. Where the scope of testimony arguably veers beyond the scope of a proceeding, that actual testimony should be presented to the Commission under a motion to strike, and the Commission should weigh the merits of that motion in light of the specific testimony presented. Regardless, the scope of this proceeding is not an issue that the Commission need consider now, as the Moving Parties do not seek to introduce the testimony that RMP imagines.

Finally, the Moving Parties have offered to enter into the necessary confidentiality arrangements to safeguard the proprietary information that could be provided in the discovery responses, including restricting the information to the Moving Parties' attorneys and experts. Such arrangements with RMP have been routinely made in the past, and should be sufficient here to address RMP's concerns.

⁶ Direct Testimony of Kevin C. Higgins at p. 11, line 5 through page 12, line 6.

⁷ RMP Response at p. 6 ("WIEC/TRW states that it only wishes to put the information offered by the Company "into a broader context," but WIEC/TRW does not explain that the broader context risks expanding the scope of this case to Wyoming's entire PURPA interconnection policy." (footnote omitted)).

Accordingly, the Moving Parties respectfully request that the Commission enter an order directing RMP to provide full and complete responses to Revised Discovery Requests within 10 calendar days as required by the February 19, 2019 Scheduling Order and permit the Moving Parties to address any issues raised by the discovery responses in their May 24, 2019 cross-answer testimony. Lastly, the Moving Parties respectfully request that the Commission allow the Moving Parties to issue any necessary follow up discovery requests on the discovery responses.

Respectfully submitted this 24th day of April, 2019.

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**ATTORNEYS FOR WIEC AND TWO RIVERS
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CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of April, 2019 the **WYOMING INDUSTRIAL ENERGY CONSUMERS AND TWO RIVERS WIND, LLC'S REPLY TO ROCKY MOUNTAIN'S RESPONSE TO MOTION TO COMPEL DISCOVERY RESPONSES FROM ROCKY MOUNTAIN POWER** was served via electronic mail or U.S. Mail, addressed to the following:

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