

Gary A. Dodge, #0897  
HATCH, JAMES & DODGE  
10 West Broadway, Suite 400  
Salt Lake City, UT 84101  
Telephone: 801-363-6363  
Facsimile: 801-363-6666  
Attorneys for UAE

---

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

**In the Matter of the Request of ROCKY MOUNTAIN POWER for Waiver of Solicitation Process and for Approval of Significant Energy Resource Decision**

**DOCKET NO. 08-035-35**

**THE UTAH ASSOCIATION OF ENERGY USERS' INITIAL COMMENTS ON AND SUPPORT OF ROCKY MOUNTAIN POWER'S REQUEST FOR APPROVAL OF A SIGNIFICANT ENERGY RESOURCE DECISION**

---

The Utah Association of Energy Users (UAE) hereby submits its initial comments on the request of Rocky Mountain Power (RMP) in this docket for approval of its Significant Energy Resource Decision to acquire the Chehalis Plant ("Approval Request"). Based on a limited review of material supplied by RMP in this docket, UAE supports the Approval Request, subject to the comments and conditions discussed below.

**UAE's Reliance on Others.** UAE has reviewed some of the information provided by RMP in this docket, but it has not conducted a thorough analysis of the proposed acquisition nor attempted to verify in the market that the pricing and other terms of the Chehalis acquisition are consistent with or superior to prices and terms available for other natural gas resources that may be available in 2008. Nor has UAE attempted a thorough net present value comparison of the

Chehalis acquisition in 2008 as opposed to the acquisition of another natural gas resource in the future. UAE believes that the pricing and terms of the proposed Chehalis transaction would compare favorably under such analyses. However, UAE is relying heavily on analyses that it believes are being performed by the Independent Evaluator (IE), the Division of Public Utilities (DPU) and/or the Committee of Consumer Services (CCS). UAE reserves the right to review the analyses and conclusions reached by these parties in this docket and to modify its recommendation as appropriate in light of any such analyses and conclusions.

**Confidentiality Concerns.** RMP requested and the Commission ordered that virtually all business aspects of the proposed Chehalis transaction will remain confidential throughout this proceeding. While there may be valid business concerns for this broad request of confidentiality in this specific case, UAE is concerned that such confidentiality restrictions may limit the ability of some entities to provide critical and relevant information to the Commission. For example, competitive market participants likely have the best information on whether the pricing for this 2008 natural gas resource is competitive when compared to other potential gas resources available in 2008. Yet, the confidentiality requirements effectively prevent those competitive market participants from knowing the pricing terms prior to approval and thus limit their incentive or ability to provide relevant information to the Commission.

UAE considered recommending that the Commission decline to either approve or disapprove the acquisition under the Energy Resource Procurement Act (“Act”), Utah Code § 54-17-101, et seq., thus allowing RMP to acquire the resource but deferring prudence review to a

future rate case. However, the Act may not offer the Commission such flexibility.<sup>1</sup> For example, the Act appears to require the Company to separately justify both a request for a waiver of the solicitation requirement and a waiver of the approval requirement. Utah Code § 54-17-501. RMP has represented that it had a good faith basis under the Act for requesting a waiver of the solicitation requirement, but not for a waiver of the approval requirement. When approval is requested under the Act, it appears that the Commission's options may be limited to approval of the acquisition, disapproval of the acquisition (in which case RMP probably could not, and in any event likely would not, complete the acquisition), or approval of the acquisition with conditions. Utah Code § 54-17-302(5). UAE does not want the Chehalis acquisition to be disapproved. Based on its limited review of the proposal, UAE supports the acquisition. Moreover, while UAE supports reasonable conditions to the Commission's approval, it has not been able to formulate conditions that would effectively address UAE's concern that confidentiality restrictions might interfere with the kind of thorough, open, public analysis appropriate for resource pre-approval.

UAE believes that the Act should offer additional discretion for the Commission to decline to approve or disapprove a significant energy resource decision in advance if the solicitation requirements have been waived and if timing issues, information constraints, confidentiality requirements or other aspects of the proceeding may interfere with the type of

---

<sup>1</sup> These comments do not address the apparent position of the Committee of Consumer Services that the existing language of the Act precludes approval of a Significant Energy Resource Decision if the Commission has waived the solicitation requirements.

thorough, open, public process appropriate for pre-approval of a Significant Energy Resource Decision under the Act. Under such circumstances, the Commission should be able to analyze the resource under traditional after-the-fact prudence review procedures. Unfortunately, such discretion may not exist under the Act as currently written. RMP has committed to work with UAE and others in an effort to amend the Act to include this type of discretion. Based on that commitment, UAE supports approval of the Chehalis acquisition, subject to reasonable conditions as discussed below.

**Proposed Conditions.** In its comments supporting RMP's request for a waiver of the solicitation requirements in this docket, UAE listed certain assumptions upon which its support of the waiver request were based. The Commission's order granting a waiver of the solicitation process correctly noted that these and other assumptions and comments were more properly addressed to the approval phase of this docket. UAE respectfully asks the Commission to approve RMP's Significant Energy Resource Decision to acquire the Chehalis plant pursuant to Utah Code § 54-17-302 (5), subject to reasonable conditions, including the following:

1. Reasonable conditions proposed or requested by the IE, DPU or CCS (or others) should be included in the Commission approval order.
2. The approval order should be expressly conditioned on the substantial accuracy of the information provided by RMP, the absence of any material information that RMP has failed to disclose, the absence of any encouragement, facilitation or collusion by RMP to evade the requirements of the Act, or the failure of RMP to adequately disclose in its previous RFPs the

availability of transmission and other assets or resources that RMP intends to utilize in delivering the output of the Chehalis Plant into RMP's service territory.

**Conclusion.** UAE is generally supportive of RMP's request for approval under the Act of its Significant Energy Resource Decision to acquire the Chehalis plant. It appears that the pricing and other terms of the proposed acquisition are reasonable when compared to the costs incurred in constructing recent RMP natural gas plants and the projected costs of future natural gas plants proposed in response to the outstanding RFP. Moreover, it appears that the acquisition will permanently eliminate the need for one of the east-side natural gas plants contemplated in the IRP. For those reasons, subject to the discussions and conditions reflected above, UAE supports Commission approval of the Chehalis acquisition.

Respectfully submitted this 20<sup>th</sup> day of June, 2008.

Hatch, James & Dodge

---

Gary A. Dodge,  
Attorneys for the UAE

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 20<sup>th</sup> day of June, 2008, to the following:

Mark C. Moench  
Daniel Solander  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, Utah 84111  
Telephone No. (801) 220-4014  
Facsimile No. (801) 220-3299  
mark.moench@pacificorp.com  
daniel.solander@pacificorp.com  
Attorneys for Rocky Mountain Power

Michael Ginsberg  
Patricia Schmid  
ASSISTANT ATTORNEY GENERAL  
500 Heber M. Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
mginsberg@utah.gov  
pschmid@utah.gov  
Attorneys for Division of Public Utilities

Paul Proctor  
ASSISTANT ATTORNEY GENERAL  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84111  
pproctor@utah.gov  
Attorneys for Committee of Consumer  
Services

Steven S. Michel  
Western Resource Advocates  
2025 Senda de Andres  
Santa Fe, NM 87501  
smichel@westernresources.org

Penny Anderson  
Western Resource Advocates  
2260 Baseline Rd., Ste. 200  
Boulder, CO 80302  
penny@westernresources.org

Sarah Wright  
Executive Director  
Utah Clean Energy  
1014 2nd Avenue  
Salt Lake City, UT 84103  
sarah@utahcleanenergy.org

---