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Date: February 5, 2009

Subject: Comments of the Committee of Consumer Services in the matter of the verified application of Rocky Mountain Power for approval of significant energy resource decision and for certificate of public convenience and necessity. Docket No. 08-035-95.

NON-CONFIDENTIAL VERSION (Redacted information is highlighted)

On December 3, 2008, Rocky Mountain Power (Company) filed a verified application (Application) for approval of a significant energy resource decision in connection with its acquisition of a 607 MW natural gas fired power plant to be constructed adjacent to the Lake Side 1 facility, in Vineyard, Utah. On December 24 the Public Service Commission (Commission) issued a scheduling order establishing February 5, 2009 as the deadline for parties other than Rocky Mountain Power to file testimony or comments. The Committee of Consumer Services (Committee) presents its concerns and recommendations within these comments. Representatives for the Committee will be available at the Commission's upcoming hearing on this matter to respond to questions from the Commission and other parties.

Committee Policy Considerations

The key policy consideration underlying the Committee's analysis is the assessment of risk to consumers. First and foremost, the Committee is acutely aware of the significant capacity deficits projected for 2012 and beyond. It is critical to assess the fundamental risks and costs associated with ensuring that the Company obtains adequate cost-effective resources to serve its consumers growing load requirements in this time of tightening capacity in the West and the apparent narrowing of resource options in this era of policy uncertainty. The Committee has been consistently concerned about the Company's over-reliance on the market and questioned its policies that resulted in delays in acquiring new resources. This current request must be analyzed as an opportunity to acquire resources in an environment of increasing concerns regarding resource adequacy. However, the Committee also assessed the risks associated with acquiring this particular resource. We are concerned that this proposal inappropriately shifts risk to customers through the Company's request for approval of the various [confidential]. We also analyzed other factors such as the implications of acquiring a high priced resource at a time when commodity prices are falling, and the likelihood and consequences of the resource not coming on-line by July 1, 2012. Our specific assessment of these issues will be presented later in this document.

Committee Review of the Project

Utah Code Ann. § 54-17-302(5) provides:

Unless the commission determines that additional time to analyze a significant energy resource decision is warranted and is in the public interest, within 120 days of the day on which the affected electrical utility files a request for approval, the commission shall:

- (a) approve the significant energy resource decision;
- (b) approve the significant energy resource decision subject to conditions imposed by the commission; or
- (c) disapprove the significant energy resource decision.

Based on the statute the Commission would have until April 2, 2009 to render its decision. However, the Company requested that the Commission approve the acquisition of Lake Side 2 and grant the CCN by February 27, 2009, in order to achieve substantial completion of the project by July 1, 2012. Recognizing that the Company faces a significant resource deficit the Committee agreed to use its best efforts to complete its analysis within the accelerated schedule. The limited amount of time did not allow for a complete and thorough analysis and therefore much of our determination relies on the Independent Evaluators' (IE) Reports. We intend to re-evaluate our position after reviewing the testimony and comments of the IE, the Division and other parties.

Committee staff has reviewed the Application, testimony and associated exhibits and discovery, with particular attention paid to the IE reports filed throughout the course of the RFP process. From this review, the Committee developed recommendations that are limited to policy issues

pertaining to the rate impact for consumers from the approval of the Agreement.

In summary, the Committee's assessment is that the resource appears to be the most reasonable option of the bids received in the 2012 RFP from the overall perspective of cost and impact on the Company's total portfolio of resources over the life of the plant. However, the Committee notes that it is a high cost resource. The Committee is also concerned about the likelihood of the completion date and the potential interaction between this resource and the ongoing 2008 all-source RFP. These concerns are discussed below.

Resource Cost

The Utah IE found that “[Confidential]”¹ The Oregon IE stated “[B]ased on (a) the evidence we provided in the IE’s Final Closing Report, (b) our monitoring of the negotiation process with the short listed bidders and (c) our review of the final contract with the winning bidder, we believe PacifiCorp has shown that it has chosen the best possible deal from the 2012 RFP.”²

The Committee does not dispute that Lake Side 2 is the most appropriate resource choice from the 2012 RFP. It must be noted, however, that this is an expensive resource.

Company witness Stephan Bird indicates that the [Confidential]. In a January 5, 2009 technical conference parties were informed that the cost of [Confidential]. This amount was not included in the cost-effectiveness analysis that resulted in the selection of Lake Side 2. [Confidential]

The Committee’s view is that we should review the request in the framework of analyzing whether this resource is the preferred option, considering cost and risk, available in the timeframe to meet the identified need. Therefore, we think it would be an inappropriate gamble to “wait and see” if prices go down. Yet in this case, given the uncertainty that the proposed resource will be available in the 2012 timeframe, and given that other bids exist for a closely subsequent timeframe, to the extent possible we should consider the potential for alternative resources.

Substantial Completion Date

In order for Summit and the EPC to guarantee substantial completion of the Project by July 1, 2012, the Agreement requires the Company to issue the LTNP by March 2, 2009 and the FNTF by June 1, 2009. The Company has indicated that it will not issue the LTNP prior to Commission approval of its Application. The issuance of the FNTF hinges on the approval of certain required permits including the air permit.

The Company is extremely cautious when discussing the [Confidential]. For example:

1 Final Report of the Utah Independent Evaluator PacifiCorp 2012 Base Load Request for Proposals Confidential Version January 12, 2009, page 9.

2 Comments on PacifiCorp’s Request for Acknowledgment of the Revised 2012 RFP Final Short List. Presented to the Oregon Public Utility Commission By Boston Pacific Company, Inc. and Accion Group as the Oregon Independent Evaluator, public version, page 2.

- Page 8 of the Company’s Notification, December 3, 2008 reads:
“[Confidential].”
- [Confidential].”
- Confidential testimony of Stephan Bird at page 20 lines 386-389 and lines 400-401:
“[Confidential].”
- The Company’s response to data request CCS 2.8 reads:
“The Company believes that there is a greater than 80% probability that the permit will be received between July and September 1, 2009. This estimate is based on PacifiCorp’s past experience in permitting projects of this type.”

These statements strongly suggest that the July 1, 2012 substantial completion date for the project will not be met. [Confidential]. Further, if the resource is chosen but not online on time, the ratepayers also face the risk of high market energy prices as resource capacity tightens throughout the west and the risk of energy shortages resulting in un-served load and potential blackouts. Additionally, the Company proposes to further shift risk to ratepayers by requesting pre-approval of [Confidential]. This is discussed further in a later section.

Potential Alternative Resources: 2008 All Source RFP

The Company has now received bids in the 2008 All Source RFP³. It would be useful to know the relative performance of the bids in the 2008 RFP, particularly those that can be online in 2013. This will be important in assessing how much risk to attribute to the potential for a delayed online date. For example, if there are several well-priced options for a 2013 online in the 2008 RFP, that increases the risks associated with pursuing Lake Side 2 given its unlikelihood of being online by 2012. On the other hand, if the bids in the 2008 RFP are not lower than Lake Side 2, the risk of pursuing Lake Side 2 is greatly diminished.

However, we do believe that the Company should make every effort to expedite the 2008 RFP evaluation, selection and negotiation process both to inform the Lake Side 2 decision and to ensure that there is movement toward getting the RFP process on a schedule other than just in time or worse yet, not quite in time. The Commission must encourage as much information as possible, and as soon as possible, about alternative resources to be included in this evaluation.

Ultimately, as mentioned above, the Committee believes it may be unwise speculation in light of the significant deficit facing the Company to forego Lake Side 2 in the hopes that the 2008 RFP will present less costly options. However, if information becomes available that shows Lake Side 2 was not the best option available to the Company, it would certainly undermine the resource selection and warrant a re-examination of how the resource selection process has been

³ The Committee has not seen those bids although we have reviewed a high level summary of resource options. The Company has also not yet performed a full analysis of the bids to determine if there are potentially better resources than Lake Side 2 (considering cost and risk) that may be acquired from the 2008 RFP

established⁴.

[Confidential] Payments

While the Committee does not take issue with the IEs' assessments that acquisition of this resource is in the public interest and is the "best possible deal from the 2012 RFP", separate consideration must be given to the potential [Confidential].

The IE has pointed out in Footnote 50 on page 65 of the January 12, 2009 Final Report:

[Confidential].

[Confidential].

When it requested an accelerated schedule for the resource approval, Rocky Mountain Power explained that based on the terms of the agreement with the developer and engineering, procurement and construction contractor, it must provide a limited notice to proceed by March 2, 2009 in order for Lake Side 2 to be operational by July 1, 2012. In its December 24, 2008 Scheduling Order the Commission stated:

The Commission finds it unfortunate the Company has not adequately prepared for the vetting of its resource decision as envisioned in Utah Code § 54-17-302. This is the first time the Commission will be reviewing the full process of the Energy Resource Procurement Act, i.e., solicitation process followed by a request for approval of a selected resource, and the Commission is challenged by the indifference given to the public process for review and recommendations regarding the Company's resource decision. Notwithstanding these challenges, this Commission is reticent to create any regulatory stumbling blocks given that the resource deficit expected in 2012, by all accounts, is substantial. Therefore, the Commission will not alter the proposed schedule if it can produce an adequate review and analysis of the Company's request. Although the Commission will make a good faith effort to provide a timely order as requested, it cannot commit to a certain date at this point; that, to a great extent, will be dependent on the evidence and analysis presented in this case.

The Committee too is concerned that the need for haste is the Company's doing and therefore asserts that any [Confidential] that may be attributed to the haste should not be recovered on the basis of this application that presumes ratepayers should always pay. This application does not provide all the necessary information regarding cause and responsibility leading to any of these [Confidential]. Since events and circumstances that may trigger [Confidential] are at the present ambiguous, speculative or simply unknown and unknowable, prominently whether an air permit will be granted, the Commission may not under these circumstances approve at this time any recovery of the [Confidential] and certainly not assign liability to ratepayers.

⁴ In fact, the Committee believes such an examination is already warranted. The RFP process has not produced a significant improvement in the Company's "just in time" applications for new resources.

Company Requests Commission Approval

The Company requests that the Commission approve its significant energy resource decision to construct Lake Side 2, a combined cycle combustion turbine generating plant and issue a certificate of convenience and necessity. The Company through its Application asks the Commission to issue an order, if possible by February 27, 2009:

- a) Approving Rocky Mountain Power's construction and operation of Lake Side 2 in accordance with the terms and conditions of the Agreement and the LTP.
 - The Committee notes that the Company's request includes certain [Confidential]
- b) Finding the total projected costs for construction of Lake Side 2 consistent with the total projected costs provided in the Confidential Testimony.
- c) Acknowledging the prudence of the Company incurring certain costs after issuing the LNTP but prior to issuing the FNTP.
 - The Committee notes that this request is asking for pre-approval of [Confidential]
- d) Granting a certificate of public convenience and necessity to Rocky Mountain Power authorizing the construction and operation of Lake Side 2.
- e) Granting such other authorizations and approvals as may be necessary.
- f) Granting such other relief as is deemed just and reasonable in the public interest.

Commission approval of the Company's request in its entirety would not only pre-approve the construction costs associated with the construction of Lake Side 2 but would also give pre-approval of the [Confidential].

Committee Response

The Committee recognizes the significant resource deficit facing PacifiCorp and its customers and the need to acquire resources. Based on our limited analysis and the Reports of the IEs we support the Company's acquisition of Lake Side 2, and a pre-approval of the appropriate level of costs ([Confidential]). The Committee does not believe that we have access to all of the materials that may have been reviewed by the IE and the Division and will re-evaluate and possibly refine our position after reviewing their testimony, and that of other parties, in this Docket. We emphasize that it is important that the Commission appropriately considers the likelihood of this resource achieving its planned online date, as well as the initial results of the 2008 RFP and are hopeful that the IE, Division, and/or the Company will be in a position to provide appropriate input on these issues.

The Committee opposes the request for pre-approval of the potential [Confidential]. The Company must not be allowed to shift 100% of the risk attendant to this resource (and the contract the Company itself negotiated) to customers. We are also concerned that guaranteed recovery of all costs removes the Company's incentive to make every effort to achieve the July 2012 on-line date. If the Company wants to recover [Confidential], a more reasonable solution would be to require that they file a separate application if and when these [Confidential] are actually incurred. Although we don't know precisely what events have led to the situation in

which we now find ourselves, it appears that the primary reason is the Company's delays throughout the process. These additional [Confidential] should be dealt with separately on an as needed basis through a full regulatory process to determine the cause and who should be responsible for payment. It would be inappropriate and unreasonable to make customers solely responsible for these [Confidential] without a thorough understanding and record of the events that have culminated in the compressed timeline that may ultimately result in [Confidential].

Committee Recommendations

Although this resource appears to be the most reasonable option resulting from the available options in the 2012 RFP it carries with it certain risks. Accordingly, the Committee makes the following recommendations to protect rate payers and mitigate those risks.

The Committee recommends the Commission:

- 1) Approve Rocky Mountain Power's application for construction and operation of Lake Side 2;
- 2) Grant a certificate of public convenience and necessity to Rocky Mountain Power authorizing the construction and operation of Lake Side 2; and
- 3) Deny pre-approval of the [Confidential].
- 4) If the Company wants to recover any [Confidential], require that they file a separate request if and when these [Confidential] are incurred. Require that if such a request is made, it includes a complete and thorough treatment of the factors that led to the triggers of the [Confidential] (e.g. delays in the process and/or external factors and events).

Our recommendation for approval of Lake Side 2 is influenced by the Reports from the IEs. Given the accelerated schedule for analyzing this highly complex transaction and assessing ratepayer impacts, the Committee must be allowed to elaborate upon or refine its recommendation after its review of testimony and comments provided by the IE, Division and other parties.