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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF ITS PROPOSED ENERGY COST ADJUSTMENT MECHANISM	**DOCKET NO. 09-035-15** **POST-HEARING BRIEF OF WAL-MART STORES, INC. AND SAM'S WEST, INC.**

Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively, "Walmart") hereby offers its post-hearing brief in the above-captioned matter. Walmart requests that the Commission reject Rocky Mountain Power's ("RMP's" or "the Company's") proposed Energy Cost Adjustment Mechanism ("ECAM") and condition the approval of any modified RMP ECAM on the appropriate reduction of RMP's return on equity ("ROE").

I. INTRODUCTION

The proposed ECAM is a rate mechanism designed to allow the Company to collect or credit the differences between the actual net power costs ("NPC") incurred to serve customers in Utah and the amount collected from customers in Utah through rates set in general rate cases. On a monthly basis, the Company proposes to compare the actual system NPC to the NPC embedded in rates from the most recent general rate case, and defer the differences in an energy balancing account pursuant to Utah Code Section 54-7-13.5. RMP proposes that an ECAM rate will be calculated annually to collect from or credit to customers the accumulated balance over the subsequent year.

Walmart is an intervenor in this proceeding. Walmart is a large retailer with more than 45 facilities in RMP's Utah service territory and these facilities include both store locations and distribution centers. Thus, Walmart is a large retail customer of RMP. Walmart is also a leader in energy efficiency and deployment of demand side management technology. Walmart sponsored the testimony and exhibits of Steve W. Chriss, Walmart's Manager of State Rate Proceedings in each phase of this proceeding.

On November 16, 2009, Walmart caused to be filed the Direct Testimony of Mr. Chriss. *See* Walmart Exhibit No. 1, Direct Phase I Testimony of Steve W. Chriss ("Walmart-1"). This testimony both evaluated the efficacy of the ECAM concept and critiqued RMP's proposed ECAM design as described in the Direct Testimony of Company Witnesses Duvall and Griffith. Walmart Witness Chriss testified that RMP's proposed ECAM design is not in the public interest and should be rejected by the Commission. On balance, the potential costs to ratepayers outweigh the potential benefits. The proposal as written, which allows RMP to continue to collect NPC in base rates as well as to annually true-up collection through a fuel clause, if adopted, would not result in a just and reasonable rate because there is no proposal to adjust the Company's rate of return to reflect the reduced NPC risk. In addition, the proposed ECAM denies customers the transparency in rates that is a major benefit of transitioning to a fuel clause. *See* Walmart-1 at p. 3, lines 7-16.

Witness Chriss outlined two major factors that this Commission should consider when evaluating RMP's ECAM proposal:

1. The extent to which the Company's approved rate of return can and should reflect the reduction in NPC risk and how this should benefit customers; and
2. Whether the ECAM design demonstrably improves the transparency of NPC rates, which would send price signals to customers to drive more informed customer consumption management decisions. *Id* at p. 14, lines 1-7.

On August 4, 2010, Walmart caused the Phase II Direct Testimony of Steve W. Chriss to be filed with the Commission. *See* Phase II Direct Testimony of Steve W. Chriss, entered into the evidentiary record on November 2 ("Walmart-2"). Witness Chriss reiterated that his previously filed testimony addressed RMPS's ECAM design and outlined his concerns regarding reflecting the reduction of NPC risk in the Company's rate of return and the proposed ECAM's potential lack of pricing transparency. Witness Chriss restated his recommendations and conclusions outlined above. *See* Walmart-2 at p. 2, lines 10-14.

I. ARGUMENT

A. THE COMMISSION SHOULD DENY RMP'S ECAM PROPOSAL BECAUSE IT WILL NOT DELIVER BENEFITS TO CUSTOMERS IN THE FORM OF IMPROVED PRICE SIGNALS AND INCREASED TRANSPARENCY IN RATES

Walmart advocates that rates be set based on the utility's cost of service. This produces equitable rates that reflect cost causation, send proper price signals, and minimize price distortions. *See* Walmart-1 at p. 4, lines 14-22. This principle can also be applied in support of fuel adjustment clauses, which if designed properly can offer customers benefits in the form of improved price signals, from which they can more efficiently manage their energy load. *Id*. Even RMP Witness McDermott states that the price of electricity reflecting the cost of production "promotes the right amount of consumption on the part of consumers." *See* Supplemental Direct Testimony of Karl A. McDermott at p. 14, line 304. Similarly, RMP Witness McDermott concludes that if NPCs are not accurately reflected in rates, customers do not see the true cost of serving them in rates. *See id* at page 18, lines 382-383. Walmart agrees that more transparent fuel rates can drive more informed energy consumption management decisions by customers that can benefit the individual customer and the utility system as a whole. *See* Walmart-1 at p. 5, lines 1-6.

The more frequently an ECAM is updated to reflect changes in fuel prices and other related costs, the more closely rates will reflect actual costs to serve. Therefore, Witness Chriss criticized RMP's ECAM design because the mechanism provides only for annual backwards-looking updates to the ECAM rate charged to customers. *See* Walmart-1, p. 9, line 2 to p. 10, line 22. RMP proposes this despite that its ECAM mechanism tracks actual costs on a monthly basis. As a result, RMP's ECAM proposal deprives customers of the timely price signals that are necessary for the ECAM to be of benefit to customers. It is Walmart's position that this flaw in RMP's ECAM design is fatal because RMP's current NPC rates represent a large portion of the total bill received by customers.

Witness Chriss further criticized RMP's proposed ECAM because the single annual adjustment only corrects past revenue collections and does not incorporate any forecast or projection of fuel prices. *See id* p. 9, line 2 to p. 10, line 22. A forward-looking mechanism would promote more price responsive demand and more efficient use of RMP's system. However, for example, RMP proposes to accumulate monthly deferral amounts that are only reflected in an annual adjustment to ECAM rates. As a result, customers will not only be deprived of the benefit of timely price signals resulting from changes in monthly costs, but they will be burdened with an ECAM rate for the next twelve months that is based on deferred amounts that do not include any forward-looking estimates. Any resulting price signals will be at best stale and may even produce rates that provide inaccurate and potentially counter-intuitive price signals that may potentially promote inefficient and wasteful use of public utility services. *Id* at p. 10, lines 6-16.

As Witness Chriss testified, the inclusion of more frequent and forward-looking NPC updates in RMP's proposed ECAM mechanism would allow RMP to potentially better match the Company's expenses and rates charged to customers and attempt to minimize the deferred amounts charged to customers. *Id* at p. 10, lines 19-21. Absent frequent and forward-looking NPC updates, RMP's ECAM, if adopted, would not provide sufficient customer benefit so as to warrant Commission approval. While several intervenors proposed modifications to RMP's proposed ECAM, such as sharing mechanisms[1] and load factor adjustments, none of these proposals remedy the problem that RMP's ECAM fails to deliver the customer benefits expected out of a fuel clause. .

B. IF THE COMMISSION APPROVES AN ECAM IN THIS CASE, THE COMPANY'S ROE SHOULD BE ADJUSTED TO REFLECT ITS REDUCED LEVEL OF RISK

RMP justifies its ECAM proposal on grounds that NPCs represent a large portion of the Company's total revenue requirement and those costs are subject to a high degree of volatility and unpredictability that is largely outside of the Company's control. *See* Direct Testimony of Gregory N. Duvall ("Duvall Direct") at p. 2, lines 37-39. Combined with the fact that the Company uses static test period data to set NPC, this places RMP "at risk" for recovering the NPC portion of its costs of serving customers which can result in volatility in earnings and cash flow. *See* Supplemental Direct Testimony of Bruce Williams at p. 5, lines 100-103. RMP's rate of return, as currently approved by the Commission, reflects the Company's current operational circumstances, which include this risk that the Company will not fully collect its actual NPC. *See* Walmart-1 at p. 7, lines 19-20. If RMP's ROE is not adjusted to reflect the reduction in NPC risk customers would be harmed because they would continue to compensate the Company for a phantom risk, which no

[1] In fact, some of the proposals may not be consistent with Utah Code Section 54-7-13.5(g) &(h), which require that excess revenues collected be refunded to, and actual costs in excess of revenues collected be collected from, customers.

longer exists. *Id* at p. 7, line 20 to p. 8, line 2. As a result, Witness Chriss recommends that the Commission consider whether the Company's approved ROE should be modified to reflect the reduction in risk, should the Commission adopt an ECAM.

RMP argues an ECAM would provide safeguards to customers, and provides an example of the existing potential for RMP to overcollect from customers. *See* Duvall Direct at pp. 4-5, lines 91-102. The reality is that the proposed ECAM, if adopted, would not safeguard customers from likely overcollection because the data shows otherwise. From 1990 through 2008, RMP has only over-recovered three times, and has not over-recovered NPC since 1997. *See* Walmart-1 at p. 8, lines 7-10 (*citations omitted*). Thus, RMP's proposed ECAM provides these "safeguard" benefits to RMP, not customers, and its ROE should be appropriately adjusted by the Commission in the event of an ECAM.

Evidence from the November 1-2, 2010 hearing supports this conclusion that with the approval of an ECAM, a reduction in ROE is appropriate. First, RMP's Witness Hadaway's evidence to the contrary should be discounted. Specifically, Witness Hadaway sponsored Exhibit SCH-1R, a summary table that shows the cost recovery mechanisms that "ROE comparable companies already have." Rather than safeguarding RMP's ROE from adjustment, the exhibit demonstrates that ROE's of RMP's ROE comparable companies have already been adjusted to reflect cost recovery mechanisms. *See* tr, v. 1 at p 153, line 15 to p. 158, line 10. In fact, Witness Hadaway's live testimony should convince the Commission to attribute little or no probative value to Exhibit SCH-1R:

> Mr. Dodge: Isn't that how you go around testifying? They should always leave the ROEs the same, no matter how they draw the risk?
>
> Witness Hadaway: That's entirely a mischaracterization of my testimony ... Now, you can go down the line and you can pick

different things for each company in different jurisdictions in the way they're treated. To do that in an ROE proceeding I don't think is at all justified, because you can always find one thing that goes one way and one that goes the other.

Mr. Dodge: But Dr. Hadaway, that's just what you did in your exhibit. You picked one issue, the ECAM and said they're all the same, therefore no reduction in ROE. And now you've said you shouldn't look at just one issue. What do we look at? . . . *See* tr v. 1 at p 161, lines 1-20.

Moreover, absent an ECAM mechanism, the potential to undercollect NPC poses a financial incentive for RMP to operate prudently. It was established during the November 1-2 hearing that this particular financial incentive to operate prudently would no longer exist if an ECAM were implemented:

Commissioner Campbell: So, independent of your analysis or your answer to Mr. Dodge's question as it relates to what you think is a stronger incentive. You are agreeing that with prudence itself, the prudence incentive itself remaining the same, that there is an elimination of an incentive we currently have in place that is not being replaced with anything under the Company's proposal?

Witness Duvall: That's correct . . . tr v. 1 at p. 137, lines 4-14.

The above evidence establishes that, if the Commission approves an ECAM, RMP would experience the elimination of a financial risk that currently acts as an incentive for the Company to prudently manage its NPC. This is yet another reason why any ECAM approval in this docket, or in the future, should be conditioned on a reduction to the Company's ROE in order to protect RMP's customers from unfair rates.

IV. CONCLUSION

Wal-Mart respectfully requests that this Commission carefully consider the testimony that Wal-Mart has sponsored in this proceeding. For all of the reasons stated herein, Walmart requests that the Commission reject RMP's proposed ECAM and condition the approval of any modified RMP ECAM on the appropriate reduction of RMP's ROE.

DATED this 16th day of December, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 16th day of December, 2010, to the following:

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