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Division of Public Utilities

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ACTION REQUEST RESPONSE

To: Utah Public Service Commission

From: Division of Public Utilities
Chris Parker, Director
Energy Section
Artie Powell, Manager
Thomas Brill, Technical Consultant
Brenda Salter, Utility Analyst

Date: December 22, 2011

Re: Advice No. 11-13, Schedule 193 Rate Adjustment, Docket No. 11-035-T14.

RECOMMENDATION (Approval)

The Division of Public Utilities (Division) recommends that the Commission approve Rocky Mountain Power's proposed Demand Side Management (DSM) Schedule 193 surcharge reduction cost adjustment. The Division also recommends that the Commission deny the Petition for Suspension filed by Utah Clean Energy (et al.) on December 1, 2011.

ISSUE

In Compliance with the Commission Order of August 25, 2009 in Docket No. 09-035-T08, on November 1, 2011, the Company filed its 2012 DSM Semi-Annual Forecast, which contains an analysis of the DSM balancing account. On November 23, 2011, the Company filed tariff sheets for a proposed reduction to the Schedule 193 (DSM Surcharge) collection rate and requested an effective date of January 1, 2012. On December 1, 2011, the Commission issued an Action Request to the Division for a review of the Company's proposed DSM cost adjustment. In addition, on December 1, 2011, Utah Clean Energy (UCE), the Southwest Energy Efficiency

Project (SWEEP), and Western Resource Advocates (WRA) – the Petitioners – filed a Petition to Intervene and Petition for Suspension of Rocky Mountain Power's Proposed Adjustment to Schedule 193 (Petition for Suspension). Finally, on December 19, 2011, the Commission issued an order, Order Suspending Tariff Sheet Effective Date and Scheduling Hearing (Suspension Order), suspending the tariff reduction effective date. The Suspension Order also requested comments on the Petition for Suspension by December 23, 2011. This memorandum is in response to the Commission's Action Request as well as the Commission's request for comments on the Petition for Suspension.

DISCUSSION

On August 25, 2009, the Commission issued an order, Order Granting Approval of Phase I Stipulation (Phase I Order), in Docket No. 09-035-T08 approving a stipulation (Phase I Stipulation) among several parties including the Company, the Division, the Office of Consumer Services (Office), SWEEP, UCE, and WRA. The Phase I Stipulation required the Company to file semi-annually an analysis and forecast of the balancing account similar to that provided by the Company in Advice No. 09-08. Pointedly, the Phase I Stipulation also required that the account be in balance by the end of August 2011: “all Parties agree to support amortization over approximately 24 months of the current deferred DSM balance net of paragraph 9 impacts, ending approximately in August 2011.” (Phase I Stipulation at 9f) While the Phase I Stipulation amortized the under-collection over two years, the Commission's Phase I Order clearly stated that the original objective of setting a DSM tariff rider rate, Schedule 193, was to achieve a zero balance by the following year's analysis and evaluation:

In that docket [Docket No. 02-035-T12], we approved and ordered a process and attendant reporting which would set a DSM charge for customers based on the following factors: the balance in the Schedule 193 balancing account at the time the collection rate is being set, reviewed or adjusted; a forecast of the next year's expenses for Commission-approved DSM programs; and the current collection charge or rate. **The objective was to set Schedule 193 charges projected to result in a zero balance by the following annual review period.** (Phase I Order at 4-5, emphasis added)

In compliance with the Phase I Order, on November 1, 2011, the Company filed its most recent DSM Semi-Annual Forecast, which presented a forecast of DSM monthly revenues and expenditures through December 2012. This forecast showed that the account balance would result in an over-collection of approximately \$8.4 million by December 2011 and a total over-collection balance of \$18.1 million in December 2012.

In its memoranda of June 29 and December 2, in 2010, and June 9 and December 1, in 2011, the Division encouraged the Company to continue monitoring the deferred account balance. Previously, in its semi-annual DSM balance forecasts, the Company had identified that over-collection resulted from the Company's projection of both increased loads due to projected economic recovery and the rate increase resulting from the recently concluded 2010 general rate case. Over-collection was increasing due to both increasing revenues as well as a downward revision in forecasted expenditures.

On December 15, 2011, the Company filed a notice of intent to file a general rate case in Utah on or about February 15, 2012. (Docket No. 11-035-200) While the size of the rate case is unknown at this time, the Company recently filed a rate case in Wyoming requesting an annual increase of approximately \$63 million.¹ A comparable increase in Utah would mean further over-collections through the DSM tariff rider thus exacerbating the account balance if an adjustment is not made. Additionally, the Division notes that the Company will file its first Energy Balancing Account (EBA) amortization request in March 2012 with rates effective June 1, 2012. While the details of the EBA tariff are yet to be finalized, an under-collection in the EBA account could further contribute to over-collections in the DSM tariff rider. The Company is now appropriately treating the over-collection with a request for an adjustment to its surcharge collection rate.

On November 23, 2011, the Company filed with the Commission a proposal to reduce the DSM Surcharge collection rate. Given current rates, the DSM Surcharge will collect \$62.6 million during the twelve-month period ending December 2012. The Company seeks a reduction in the

¹ "Direct Testimony of Brian S. Dickman," Before the Public Service Commission of Wyoming, Docket No. 20000-405-ER-11, December 2011, p. 2.

Schedule 193 collection rate to instead collect \$41.5 million over the same time period. This is a reduction of \$21.1 million, or approximately 34 percent. The current DSM Surcharge collection rate is about 3.6 percent on customer bills, while the Company's proposal would reduce that rate to about 2.4 percent of customer bills. According to the Company, the Company's proposed DSM Surcharge collection rate is designed to maintain a reasonable account balance yet minimizing the number and magnitude of DSM Surcharge rate adjustments. The Company's forecast at the reduced rate indicates an account balance as of December 2012 of \$880,295. The Division's review of the Company's account balance analysis indicates that the forecasted budget does not include the costs associated with the energy storage demonstration project approved by the Commission on November 22, 2011 in Docket No. 11-035-140. Those costs are projected to be approximately \$625,000 and will further offset the Company's account balance forecast.

In its DSM Semi-Annual Forecast, filed a month ago in Docket No. 10-035-57, the Company indicated its intent to file an application to reduce the DSM Surcharge collection rate.

On December 1, 2011, the Petitioners – UCE, SWEEP, and WRA – filed a Petition for Suspension of the Company's proposed DSM Surcharge adjustment. The Petitioners sought to suspend the proposed January 1, 2012, effective date in order to investigate 1) the appropriateness of reducing the DSM surcharge collection rate; 2) how to increase cost-effective DSM savings and expenditures in 2012; and 3) to identify a schedule for analyzing and resolving DSM surcharge adjustment issues.

As previously noted, the Commission issued an order suspending the tariff effective date (Suspension Order). The Suspension Order also established dates for comments, reply comments and a hearing on December 23, 2011, and January 3 and 12, 2012, respectively. For the reasons discussed *herein*, the Division believes the Petitioners' motion to suspend the tariff effective date is untimely and largely lacks merit. Therefore, the Division recommends that the Commission deny the Petitioners' motion to suspend the tariff effective date and grant the Company's request effective as soon as practicable following the scheduled hearing.

The Division maintains that a suspension of the Surcharge adjustment is unnecessary for an investigation. Such an investigation of DSM programs as called for in the Petition for Suspension would, in the Division's opinion, take no less than six months, with another three to six months assumed for program approval and implementation. The Division maintains that if the Petition for Suspension is sustained, and followed by an investigation of DSM programs such as proposed, DSM implementation would be delayed until at least the fall of 2012 or perhaps the beginning of 2013. Based on prior ramp-up rates, significant participation in any new programs would likely stretch beyond 2013. Furthermore, in its order acknowledging the Company's 2012 DSM budget projections, the Commission, at the request of the Division, ordered the Company to file a report reconciling its forecasted capacity and energy savings for 2012 with the corresponding targets in the 2011 IRP Preferred Portfolio. While one may argue that the 2011 Preferred Portfolio undervalues DSM, this would only indicate further delays in implementing new DSM programs in 2012. In other words, additional expenditures in 2012 on any approved new DSM programs are likely to be insignificant. In the mean time, the over-collection would continue and, given the Company's pending rate case and EBA filings, would likely accelerate.

Furthermore, the Division believes that such an investigation is redundant. The DSM Advisory Group is charged with such a role, and the Petitioners participate in that forum. The Petitioners could have brought their concerns about a potential DSM surcharge reduction and additional investigations to the DSM Advisory Group. While the Petitioners are not bound to bring their concerns to the DSM Advisory Group prior to filing with the Commission, it is unfair to hold a justifiable rate reduction hostage to the Petitioners' failure to take advantage of a Commission-approved forum and procedures designed to address such issues.

The Division also believes that the Petitioners' request to suspend the tariff reduction is inconsistent with prior Commission orders and underlying regulatory principles of rate making. As previously discussed, the Division maintains that the Commission, through its order in Docket No. 02-035-T12 and reaffirmed in the order in Docket No. 09-035-T08, clearly indicated that the DSM surcharge was to be set so as to achieve a zero account balance on an annual basis and that the surcharge was intended to recover costs only for Commission-approved programs.

In other words, in the Division's view, the overriding objective or intent was for the DSM program and tariff rider to function as a pay-as-you-go scheme: the Company would collect or recover its DSM costs through the tariff rider at approximately the same time those costs were incurred. The Division argues that this pay-as-you-go scheme is consistent with the rate making principle "used and useful":

an asset should be "used and useful" in order to be included in the rate base for calculating regulated tariffs. The only criterion that is tested as "used and useful" is whether the assets are used in providing services and are useful to the ratepayers.²

While DSM has no physical or tangible property to include in rate base, the parallels for DSM to a physical asset under the used and useful concept are obvious. A positive DSM account balance for programs that are yet to be defined, approved, and implemented is not used to provide services to ratepayers and, thus, is not useful to ratepayers. Therefore, for this reason alone, the Commission should deny the Petitioners' request to suspend the DSM tariff rate reduction.

In summary, the Division would not recommend foregoing a surcharge reduction just to investigate DSM possibilities for a year. While the Division appreciates the concern for rate stability, possibly argued here by others as foregoing a rate reduction in order to avoid a future rate increase, the Division does not recommend rejecting a rate reduction as a means to study and investigate potential DSM.

CONCLUSION

The Division maintains that the Commission, in Orders for Docket Nos. 02-035-T12 and 09-035-T08, had previously directed that the DSM balance account is for Commission-approved programs on a "pay-as-you-go basis." While the Division appreciates the concern raised by the Petitioners for additional potential cost-effective DSM and rate stability, the Division argues that to grant the Petition for Suspension would not only contradict the Commission's previously

² Jonathan A Lesser and Leonardo R. Giacchino, *Fundamentals of Energy Regulation*, [Public Utilities Reports, Inc., Vienna, Virginia], 2007, p. 42.

stated objective but would also violate sound ratemaking principles. Therefore, the Division recommends that the Commission deny the Petitioners' request to suspend the tariff reduction effective date and approve the Company's proposed reduction in the DSM tariff rider.

With regards to the Petitioners' request for an investigation, the Division recommends that the Commission direct the Company to bring these issues, and related issues with both Schedule 192 and 193, as soon as practicable to the DSM Advisory Group.

CC: Michele Beck, OCS
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