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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of:</p> <p>THE VOLUNTARY REQUEST OF ROCKY MOUNTAIN POWER FOR APPROVAL OF RESOURCE DECISION TO CONSTRUCT SELECTIVE CATALYTIC REDUCTION SYSTEMS ON JIM BRIDGER UNITS 3 AND 4</p>	<p>Docket No. 12-035-92</p> <p>UTAH DIVISION OF PUBLIC UTILITIES' INITIAL COMMENTS CONCERNING EPA'S EXPECTED MARCH 29, 2013 PROPOSED RULE ON THE WYOMING REGIONAL HAZE STATE IMPLEMENTATION PLAN</p>
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Consistent with the schedule ordered by the Commission at the March 7, 2013 hearing in the above referenced docket, the Utah Division of Public Utilities ("Division") hereby submits its initial comments ("Division's Initial Comments") concerning the effect of the Environmental Protection Agency's ("EPA") expected March 29, 2013 proposed rule on the Wyoming Regional Haze State Implementation Plan ("Proposed Rule"). The Division has modified some of its recommended conditions for approval and continues to recommend others. The Division continues to recommend conditional approval of Rocky Mountain Power's ("Company") voluntary request for approval of its resource

decision pursuant to Utah Code Ann. § 54-17-401 et seq. (“Application”) to construct selective catalytic reduction systems on Jim Bridger Units 3 and 4 (“SCR Project”). The EPA’s inaction on the date anticipated does not mandate disapproval of the Application.¹

Introduction

Perhaps not unexpectedly, the EPA did not issue its Proposed Rule on March 29, 2013. Instead, prior to that date, on March 25, 2013, the EPA and certain other parties before the U.S. District Court for the District of Colorado in WildEarth Guardians v. Jackson filed a stipulation (“Stipulation”) to extend the date to issue the Proposed Rule from March 29, 2013 to May 23, 2013 (“Proposed Rule Extension”).² The Division’s Initial Comments address the effect of the Proposed Rule Extension upon this Utah docket.

The Division Continues to Recommend the Application’s Conditional Approval, as Modified.

After examining the effect of the Proposed Rule Extension upon this docket, the Division has modified some of its previously submitted recommended conditions.³ As explained further below, the Division has stricken its previously submitted Condition 1 and has changed its previously submitted Conditions 2 and 3. Previously submitted

¹The Company remains obligated to meet its commitments in Wyoming, and the Wyoming Department of Environmental Quality did not grant the Company’s request to change the Wyoming deadline. See Supplemental Exhibits to the Surrebuttal Testimony of Cathy S. Woollums Exhibits CSW-4SR and CSW-5SR, admitted at hearing, see Confidential Transcript at page 130.

² See Civil Action No. 1:11-cv-0001-CJA-MEH (Consolidated with 11-cv-00743-CMA-MEH).

³ The conditions are set forth in Division Witness Matthew Croft’s Surrebuttal Testimony at lines 21-53.

Conditions 4 and 5 are unchanged.⁴With the changes to Conditions 1, 2, and 3 and the continued inclusion of Conditions 4 and 5, the Division continues to support conditional approval of the Application as being in the public interest.

As filed, Condition 1 stated:

The Commission's approval should be conditioned upon a review of the impacts of the EPA's emission limit re-proposal anticipated to be released on March 29, 2013 (Re-proposal). The Company should be required to provide a cost impact analysis of meeting whatever requirements are included in that Re-proposal approximately one week following the Re-proposal. Intervening parties should then be afforded the opportunity to comment on the cost impacts approximately one week after the Company submits its cost impact analysis. Assuming that the PVR(d) remains favorable to the SCR investment, this first condition would be satisfied.⁵

In light of the Proposed Rule Extension, the Division has determined that its previously submitted Condition 1 is no longer appropriate. Condition 1 was premised on the notion that there could be a meaningful review of the SCR Projects in light of the Proposed Rule prior to contract execution. Due to the Stipulation discussed above, no such meaningful review is possible. Therefore, the Division has stricken Condition 1 in its entirety.

Deleting Condition 1, however, does not give the Company free rein for cost recovery on the SCR Project if it is approved as recommended by the Division. Utah Code Ann. § 54-17-401 et. seq addresses cost recovery in light of new information or

⁴The numbers have been conformed to reflect the deletion of previously submitted Condition 1, but there have been no changes to the text.

⁵ Surrebuttal Testimony, Matthew Croft, lines 21-28 (emphasis added).

changed circumstances occurring after preapproval.⁶The Company itself has recognized that it has this obligation.⁷The EPA's action, when it is finally taken, may constitute new information or changed circumstances requiring the Company to reassess implementation of the SCR Project if it receives Commission approval.

The Division also has modified its second previously submitted condition. The Division has deleted the last sentence which read, "If the EPA Re-Proposal results in a revised PVRR(d), and that revision remains favorable to the SCR, such revised costs should be aligned with the final EPC contract."⁸Removing this sentence from Condition 2 is supported by the same reasons supporting striking Condition 1. The Division has also changed the reference from the "second condition" to the "first condition."⁹

Finally, the Division has modified its third previously submitted condition. Because the EPA did not issue its Proposed Rule as expected on March 29, 2013 and it is possible that the new deadline established by the Stipulation may change or may not be met, the Division has stricken a portion of the last sentence in Condition 3. The Division has stricken the language that read, "as may be included in the EPA's forthcoming March 29, 2013 Re-proposal."¹⁰ The Division has replaced the stricken language with, "other later deadlines as may be included in the EPA's Re-proposal."

⁶Statutes address disallowance of approved costs under some circumstances, and permit but do not require an energy utility to seek Commission review and determination after a change in circumstances or project cost. See Utah Code Ann. §§ 54-17-403(2) and (3), and 54-17-404. Because there is not yet a ReProposal, the Division is offering no comment on whether or not such a Re-proposal would constitute new or changed circumstances.

⁷ See Surrebuttal Testimony, Chad A. Teply, lines 19-22.

⁸See Surrebuttal Testimony, Matthew Croft, lines 33-35.

⁹ See Surrebuttal Testimony, Matthew Croft, line 32.

¹⁰ Surrebuttal Testimony, Matthew Croft, line 41.

Rate payer protections originally recommended by the Division in its previously filed Condition 3 remain. The Division conditions approval “upon rate payer protections being included in the signed EPC contract or in the alternative, through other Company commitments.”¹¹ It is possible that the Proposed Rule Extension could affect and effect some of these rate payer protections. Additionally, such contract provisions could be particularly important even after the EPA issues its final rule regarding the Wyoming State Implementation Plan if subsequent federal regulatory changes should occur. For example, federal action requiring unattainable emissions standards at Bridger would make continuing with the SCR Project imprudent and contract provisions should be negotiated to prudently handle similar possibilities. These rate payer protection provisions must be negotiated between the Company and its contractor. They cannot be defined by regulators at this point.

Conclusion

Therefore, the Division recommends that the Application be approved with the following conditions:

- 1) The Commission’s approval should be conditioned upon a review of the Company’s fully executed engineering, procurement, and construction (EPC) contract. Assuming the final costs negotiated (including escalation, if any) in the EPC contract are aligned with the costs currently filed in the Company Application in this case, this first condition would be satisfied.¹²
- 2) The Commission’s approval should be conditioned upon rate payer protections being included in the signed EPC contract or in the alternative, through other Company commitments. Specifically, rate payers should be held exempt from any non-

¹¹ Surrebuttal Testimony, Matthew Croft, lines 36-38.

¹² Surrebuttal Testimony, Matthew Croft, lines 29-35, and as modified herein.

compliance costs imposed by Wyoming or the EPA due to the Company or contractor's failure to meet the December 31, 2015 and December 31, 2016 emission limit deadlines or other later deadlines as may be included in the EPA's Re-proposal.¹³

3) Any deviation between the SCR costs included in this case and the costs included in a future general rate case or major plant addition case should be explained by the Company. Such explanations should be provided with the Company's general rate case or major plant addition case application.¹⁴

4) The Commission's approval should be an approval of the decision to construct the SCR systems, not a pre-approval of whatever costs may be incurred under the SCR systems project. Actual SCR system costs or forecasted SCR system costs proposed to be included in a future general rate case or major plant addition case test year should be open for prudence review. For example, should imprudent Company actions during construction result in an increase in costs for a given component of the project, such costs should not be recovered from ratepayers regardless of whether the total project costs are less than or more than the costs included in this (Docket 12-035-92) case.¹⁵

Dated this 5th day of April, 2013.

Respectfully submitted,

/s/Patricia E. Schmid
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¹³ Surrebuttal Testimony, Matthew Croft, lines 36-41, and as modified herein.

¹⁴ Surrebuttal Testimony, Matthew Croft, lines 42-45.

¹⁵ Surrebuttal Testimony, Matthew Croft, lines 46-53 (emphasis in the original).

CERTIFICATE OF SERVICE

I hereby certify that on this 5TH day of April, 2013, a true copy of the Division's Initial Comments was sent via E-mail to the following in Docket No. 12-035-92.

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