



JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah

Department of Commerce

Committee of Consumer Services

FRANCINE A. GIANI
Executive Director, Commerce

MICHELE BECK
Director, Committee of Consumer Services

COMMITTEE MEMBERS

Dee Jay Hammon, Chair
Franz Amussen
Kelly Casaday
Robert McMullin
Andrew Riggle
Betsy Wolf

To: Public Service Commission of Utah

From: The Committee of Consumer Services
Michele Beck, Director

Copies To: Division of Public Utilities
Philip Powlick, Director
Rocky Mountain Power
David Taylor, Utah Regulatory Affairs Manager
Mark Moench
Daniel Solander
Gregory Monson

Date: June 20, 2008

Subject: Comments of the Committee of Consumer Services 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.

NON-CONFIDENTIAL VERSION
(Confidential information has been redacted)

On April 1, 2008, Rocky Mountain Power (Company) filed a verified request for waiver of solicitation process and for approval of a significant energy resource decision in connection with its acquisition of a 500 MW natural gas fired power plant near Chehalis, WA. The PSC invited comments or testimony to be filed on June 18 – subsequently delayed to June 20. The Committee of Consumer Services (Committee) presents its position statement within these comments. The Committee will also have available at the Commission's upcoming hearing on this matter both staff and its consultant to respond to questions from the Commission and other parties.

Committee Policy Considerations

At the start of this process, the Committee expressed its concerns regarding the proper application of the Energy Resources Procurement Act in this instance of requesting a waiver from the RFP solicitation process yet pursuing the associated approval process and rate inclusion. These concerns were detailed in a legal pleading to the Commission. The Commission did not address these concerns at the time it waived compliance with the solicitation process. The Committee maintains the legal position previously presented to the Commission, but will not reiterate those points here.

Another key policy consideration at issue in this proceeding relates to the fundamental risks and costs associated with ensuring that the Company obtains adequate resources to serve its consumers in this time of significant growth, tightening capacity, and the apparent narrowing of resource options in this era of policy uncertainty. In the past, the Committee has criticized 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, we balance our concern for acquiring adequate resources with our concern for a respect of the process. It is only within the regulatory process that we have the opportunity to review the Company's decisions and advocate on behalf of the consumers we represent. While we do not promote undue administrative burden, the process is established to protect the consumers. Therefore, if the Commission wishes to also ensure that consumers are appropriately protected, they must also examine the process as a check that it serves its establish purpose.

Committee Review of the Project

Committee staff has reviewed the filing and associated exhibits and discovery, as well as retaining a consultant to provide his expert opinion on the matter. The consultant, Philip Hayet, prepared a confidential report to the Committee which is attached to these comments.

In summary, the resource appears to be a reasonable acquisition 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 not without risk. Some of the risk factors that we have identified include:

West Side Resource

(Confidential)

Bodington Report

(Confidential)

Other Issues

(Confidential)

Potential Ratemaking Treatment of the Project

The Company has not yet asked for the specific provision by which this acquisition would be included in rates. At such time that they do, we will ask the Commission to incorporate ratepayer protections in the ratemaking treatment to offset some of the remaining risks the Committee has identified.

In addition to the fundamental protections that would be provided from a complete and thorough review of all costs within the context of a general rate case, as the Committee advocates, other specific protections should be implemented if and when this resource is ultimately included in rates to balance some of the risks that accompany this acquisition. These ratepayer protections include:

- Customers should not bear the cost of paying for the (Confidential) in the event that the Company backs away from this deal. This resource was pursued outside of the normal process and the risks associated with the deal should be born by shareholders.
- Capital costs above (confidential) should not be included in rates, since this was the total upon which the economic evaluation was based. PacifiCorp should be limited to recover no more for capital improvement costs than the amount that PacifiCorp has included in its economic evaluation.
- For a period of at least 3 years, PacifiCorp should bear the cost of any serious (confidential) failure.
- For purposes of ratemaking, PacifiCorp should be required to use seasonal maximum capacity ratings without accounting for a (confidential) duration.
- Customers should be held harmless for any (confidential) issues that arise from issues related to the period prior to PacifiCorp acquiring the plant.
- The Company should be required to test to make sure that Chehalis is dispatched in the Company's ratemaking models such that no uneconomic generation occurs.

Also, within this docket the Company filed a request for deferred accounting treatment of certain costs. The Committee notes that the Company did not file any testimony supporting its request and would suggest that such testimony should be deemed necessary. Related to the deferred accounting request, the Division submitted a memo to the Commission asking for a procedural schedule. The Committee requests that the Commission clearly identify the process by which the deferred accounting part of the case will be evaluated.

Substantive Issues Related to Process

This is the first application of its kind. As such, the Committee is hopeful that it can provide certain “lessons learned” for potential future requests. In addition to the legal argument raised earlier, we have additional policy concerns about the process in general. It is not appropriate to utilize the approval process designed to accompany the RFP process in a proceeding where the competitive information obtained from an RFP is not available. Since the evidence and analysis must be created from start to finish, the process, as currently designed and followed, cannot be relied upon to ensure just and reasonable rates for consumers¹.

In this case, most parties had access to evidence from ongoing RFPs which would seem to make the acquisition of this resource an intuitively obvious choice. However, it took every available day of the analytical process to build the record, acquire the data and documents, and sort through the questions that arose along the way (some of which remain unresolved such as the potential risk factors we have previously listed). A process that didn’t work smoothly with a relatively straightforward offering cannot be relied upon to give adequate review for future resources which may have added levels of complexity.

If the Commission finds that it is allowable to utilize this approval process in the case of a waiver, it must put the Company on notice that it carries the burden of proof and must present a more fully developed record earlier in the process. Otherwise, just and reasonable rates cannot be assured.

Committee Recommendations

Although this resource appears to be a reasonable option from the perspective of overall cost and impact on the portfolio, it carries with it certain risks and has not met the requirement for approval under the Energy Resource Procurement Act. The threshold decisions concerning the amount of acquisition and operation costs; the used and usefulness of the plant as a system resource; the timing of the inclusion of costs into rates; and the prudence of the transaction should be addressed in a general rate case.

The Committee respectfully requests that the Commission rule on its earlier legal argument.

If this resource is either approved in this case or found to be a prudent resource in a subsequent rate case, the manner in which it is treated in rates should be determined in the appropriate rate case. If and when this resource is ultimately included in rates, ratepayer protections should be incorporated to balance some of the risks that accompany this acquisition. These ratepayer protections include:

¹ The Committee notes that it participated in a legislative effort that resulted in the shortening of the statutory review period from 180 days to 120 days. However, we would also note that this was done in the spirit of creating a more efficient RFP process, not to undermine public review of an acquisition done largely under a cloak of confidentiality.

- Customers should not bear the cost of paying for the (confidential) in the event that the Company backs away from this deal. This resource was pursued outside of the normal process and the risks associated with the deal should be born by shareholders.
- Capital costs above (confidential) should not be included in rates, since this was the total upon which the economic evaluation was based. PacifiCorp should be limited to recover no more for capital improvement costs than the amount that PacifiCorp has included in its economic evaluation.
- For a period of at least 3 years, PacifiCorp should bear the cost of any serious (confidential) failure.
- For purposes of ratemaking, PacifiCorp should be required to use seasonal maximum capacity ratings without accounting for a (confidential) duration.
- Customers should be held harmless for any (confidential) issues that arise from issues related to the period prior to PacifiCorp acquiring the plant.
- The Company should be required to test to make sure that Chehalis is dispatched in the Company's ratemaking models such that no uneconomic generation occurs.

Finally, the Committee recommends that the Commission clearly outlines the process by which the deferred accounting issue will be considered.