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Date: February 12, 2009

Subject: Reply 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.

PUBLIC VERSION – CONFIDENTIAL INFORMATION IS EXCISED

On December 3, 2008, Rocky Mountain Power filed a verified 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. The Committee of Consumer Services presented its concerns and recommendations with the Public Service Commission in a memo dated February 5th. The Division of Public Utilities and the Independent Evaluator, Merrimack Energy filed testimony on February 5th. The Utah Association of Energy Users filed testimony and a position statement also on February 5th.

The Committee has reviewed the other positions and testimony offered and presents its

additional concerns and updated recommendations within these reply comments.

General Observations

The Committee notes that most of the regulators' and interested parties' testimony and position statements related the same or similar concerns as the Committee raised in its initial comments. There appears to be consensus that the capacity from this resource is needed and that this resource is the least cost option arising from the 2012 RFP. Generally, parties recommend that the Commission conditionally approve this resource decision. There is also agreement that the current request, taken in full, improperly assigns to consumers the financial risk from delays, which Rocky Mountain Power acknowledges are likely. Therefore, at issue before the Commission, is what level of costs should be pre-approved and the reassignment of the risks of delay to Rocky Mountain Power.

Pre-Approval of Costs

The Committee initially commented that we had not addressed all of the details of the project and that we intended to elaborate upon or refine our recommendation after the review of testimony and comments provided by others.

The Division provided an examination of the costs of the Lake Side 2 project in the testimony of Douglas D. Wheelright. Mr. Wheelright [CONFIDENTIAL]

The Committee supports this recommendation.

Risks of Delay

In its initial comments, the Committee addressed at some length the risks associated with potential delay or cancellation of this project, which came in the form of [CONFIDENTIAL]. Division Witness Mr. Wheelright also explains this issue. (See lines 146-168.) Other parties also expressed concerns about the risks of delays.

In its Position Statement, the UAE stated:

UAE submits, however, that a number of other, somewhat related, issues are not properly before the Commission for approval and should not and cannot properly be considered to be subsumed in a Commission approval of RMP's acquisition of the Lakeside II resource. For example, this docket has not addressed, and the Commission's order should not approve, the timing or prudence of RMP's resource planning processes in general, the timing of the specific solicitation in this docket, delays and decisions made by RMP during the lengthy RFP process, the failure to conduct critical risk analyses, the failure to also pursue other available resources, or any other similar issues. All such issues are properly left for future prudence analysis and determination if and when they are raised by parties in future rate cases.

The Division also expressed concerns about the delays. For example, Dr. Brill stated "...big delays caused by lack of decision making capability should not be considered acceptable." (line 153-154) The Division's policy witness, William A. Powell, clearly stated that "the Division recommends that the Commission disallow recovery of any penalties or fees arising from delays in the project due to, but not limited to, a delay in obtaining necessary permits." (lines 35 – 37) Dr. Powell also states "The Division is concerned that these delays, and the formulation of the Company's application, unnecessarily shift significant risk to ratepayers." (lines 66 – 68) The Division's recommendation is for only a partial recovery of any costs arising from early termination and that fees and penalties associated from delays should be borne by the Company and its stakeholders.

Our recommendation was that the Commission should deny pre-approval of these [CONFIDENTIAL]. We also recommended that a request to recover any [CONFIDENTIAL], should require a separate request if and when these costs are incurred. Such a request should include a complete and thorough treatment of the factors that led to the triggers of such costs and should be adjudicated without any presumption for recovery because of the order in this Docket. We reiterate these recommendations.

Process Concerns

As a final note, the Committee would like to raise some concerns about the process itself. Much has been said about the delays and some of the substantive improvements that need to be made within the RFP, such as the treatment of credit issues. However, the Committee would like to speak to the regulatory process itself.

One of the primary concerns raised by parties in this case is the difficulty in balancing the obvious and significant need for additional capacity with the risks associated with this project, in particular the unlikelihood that it will be online by July 2012. Division witness, Thomas A. Brill, provided a detailed chart (see line 116 of his testimony) illustrating the extent to which the schedule became delayed part-way through the process and states: "Had the remainder of the 2012 RFP process performed close to the the [sic] anticipated schedule, we would not find ourselves in the situation we are in today necessitating an expedited review of the Company's application." Dr. Brill also testified that the Division conveyed their concern regarding schedule delays to the Company on several occasions. He did not indicate whether they also conveyed their concerns to the Commission or had communications on the subject with the IE.

The IE described its role in the process within its testimony (see pages 4 – 5). Within that description, the IE states: "In addition, it is the role of the IE to raise any concerns along the way, if necessary, to ensure the process stays on track to meet these objectives." One of the objectives referenced earlier in the testimony was "to ensure the competitive solicitation process ... is in the public interest ..." Certainly one of the public interest considerations would be to ensure the project timeline is maintained such that the resource will be available when it is needed. However, there is no record that the IE alerted the Commission to the severity of the risk of

delay.

Based on the testimony and reports presented in this case, it does not appear that the concerns of delay were raised to the Commission. The Committee believes that this issue of delay underscores the need to re-evaluate the process. Underlying the concern for delay are questions regarding the cause of delay. The Committee is not addressing cause or fault within these comments¹. We are simply suggesting that the process broke down along the way. Improving the transparency and clarifying the role of the IE could help to prevent the situation in which we now find ourselves, with an expedited review and a likelihood that the resource will not be online as scheduled.

The Committee began to be concerned about the lack of transparency in the process over a year ago when it became aware of IE reports to the Commission that were not noticed on the Commission website or elsewhere nor where they made available to participating parties. In fact, these documents were not immediately made available to the Committee even upon request, but rather required a tedious and lengthy process to determine proper treatment². The Committee believes that *all* documents related to the RFP process should be noticed and available to interested parties. If only confidential versions are available, then the notice should simply indicate that a confidential report had been filed³. Having no public record whatsoever of documents relevant to an ongoing regulatory matter obscures the process and does not serve the public interest.

Further, the Committee believes that the role of the IE should be clarified. If the IE is charged with monitoring the process to ensure that the public interest is being met, then the Commission should provide more specific guidance as to what types of events would require alerting the Commission. Also, the IE should communicate all of its information and insight within reports to the Commission that are filed *in advance* of the filing of testimony and comments by other parties. Not having access to some of the IE's conclusions until the time of filing, especially in an expedited case such as this one, disadvantages the analysis of all other parties.

The Commission must be clear about whose responsibility it is to monitor the timeline and what events trigger notification to the Commission and other parties to the case. The consequences of insufficient resource adequacy are too great to leave these issues unaddressed.

Recommendations

The Committee reiterates its concerns that although this resource appears to be the most reasonable option resulting from the available options in the 2012 RFP, it also carries significant

¹ Cause and responsibility of the delay should be addressed if and when the Company requests recovery of any costs incurred due to project delay or cancellation in a separate proceeding.

² There was confusion as to whether the Division or the Commission was the official "keeper" of the documents. There was also concern that this document was "highly sensitive", a designation that was not addressed in the Protective Order.

³ Further, the Commission's Protective Order, presumably issued at the beginning of a case, should address all potential levels of confidentiality and clearly spell out who has access to which types of documents as well as the process for obtaining such documents.

risk. Accordingly, the Committee reiterates its recommendations from its earlier comments with some clarifications and additions.

- 1) Approve Rocky Mountain Power's application for construction and operation of Lake Side 2;
- 2) Pre-approve only \$[CONFIDENTIAL] in construction and development costs (and associated sales taxes) and require additional information or explanation before ruling on the "Related Costs" also requested by the Company;
- 3) Grant a certificate of public convenience and necessity to Rocky Mountain Power authorizing the construction and operation of Lake Side 2;
- 4) Deny pre-approval of the [CONFIDENTIAL];
- 5) Direct requests to recover any penalties and/or excess costs be made in a separate filing 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) and that there is no presumption of recovery as may be found in the Energy Resource Procurement Act; and
- 6) Evaluate the regulatory reporting and responsibilities associated with the RFP process to better ensure that the public interest is met, in particular with respect to ensuring resource adequacy to meet the needs of Utah consumers.