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Division of Public Utilities

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MEMORANDUM

To: Utah Public Service Commission

From: Division of Public Utilities

Philip J. Powlick, Director
Artie Powell, Manager, Energy Section
Charles Peterson, Technical Consultant
Doug Wheelwright, Utility Analyst

Subject: In the Matter of Rocky Mountain Power for Approval of an Electric Service Agreement between Rocky Mountain Power and Praxair, Inc.
Docket No. 09-035-101

Date: October 29, 2009

RECOMMENDATION: Approval with conditions on future contracts

The Division recommends that that Commission approve the Electric Service Agreement between Rocky Mountain Power and Praxair, Inc. The Division recommends that the parties be directed to include provisions in future contracts to include a shorter lag between rate adjustments and for the impact of adjustments for major plant additions under UCA 54-7-13.4.

BACKGROUND

On or about October 22, 2009, Rocky Mountain Power (RMP, or Company), a division of PacifiCorp, filed a proposed electric service agreement (ESA) for Commission approval between it and Praxair, Inc. (Praxair). This ESA is a modification of the existing ESA that expires on December 31, 2009. The existing ESA was approved by the Commission July 7, 2005 in Docket No. 05-035-23. A hearing before the Commission on this contract is expected to be held November 4, 2009.

ANALYSIS

Praxair, Inc. (NYSE:PX) is a global, Fortune 300 company that supplies atmospheric, process and specialty gases, high-performance coatings, and related services and technologies to a wide diversity of customers. The Company has over 27,000 employees and operations in more than 30 countries. The ESA in this docket concerns Praxair's facility located adjacent to the Kennecott Copper facility and provides oxygen to the Kennecott smelter. The operation and power needs for Praxair are directly related to the needs of Kennecott. For this reason, Praxair's ESA is negotiated with the intent that it will run parallel to Kennecott's ESA (see Docket No. 09-035-59).

A master electric service agreement between Rocky Mountain Power and Praxair dated October 15, 2009 was filed with the Commission on October 22, 2009. The agreement outlines the terms, pricing, and conditions under which Rocky Mountain Power would continue to provide power to the Praxair facility. This is a one year agreement for Rocky Mountain Power to provide 45,000 kW. The rates identified in Exhibit 1 of the agreement are the same as the Commission approved rates for Schedule 9 customers and represents an approximate 9% increase from the current Praxair agreement. The short maturity is due to the uncertain economic conditions and potential legislation for green house gas emissions.

This is a firm, fixed-price agreement and, except for specified exceptions, rates will not change during the contract year. Section 5 of the agreement allows for price adjustments if there is a Commission order for an Energy Cost Adjustment Mechanism (ECAM), Demand Side Management Surcharge (DSM), or Greenhouse Gas Emissions to all Schedule 9 customers. Changes to this contract would be concurrent with the effective date of Commission orders for Schedule 9 customers. Other changes in Schedule 9 rates will not affect the rates under the ESA. For example, if Schedule 9 rates change as a result of the Commission's final order in Docket No. 09-035-23, the Company's current rate case, the rates under the ESA will not change.

DISCUSSION

The Division has two concerns with the Praxair ESA. First, as with other electric service agreements, this ESA provides that rates may change due to changes in Schedule 9 rates but only with a lag of up to 11 months; rates may only be changed beginning in the January following a Schedule 9 change. For example, if Schedule 9 rates change as a result of the Commission's order in the current rate case, the first opportunity for rates to adjust, or update, will be January 1, 2011. While the point is somewhat mitigated because this is a one-year contract expiring December 31, 2010, the Division is concerned with the potential lag between changes in Schedule 9 rates and the rate built into this contract. The Division believes that the rate stability and predictability, that Praxair desires can be met with a shorter lag period. As with Kennecott, the Division recommends that, in the future, the contracts should adjust prices within 90 days of adjustments to Schedule 9 rates, or whatever rates the future ESAs may be tracking.

Second, while this ESA provides for the potential impacts of an ECAM, DSM surcharges, or Green House Gas legislation on Schedule 9 rates, the ESA does not provide for the potential impacts from one-item rate cases as provided in UCA 54-7-13.4 "Alternative Cost Recovery from Major Plant Addition." The Division believes that future ESAs should contain provisions for changes that may result from one-item rate cases and recommends that the Commission direct the parties to include such a provision in future contracts.

CONCLUSIONS AND RECOMMENDATIONS

Although the proposed ESA allows for certain changes to its rates, it is uncertain if there will be changes in Schedule 9 rates prior to the maturity of this contract. However, even in the absence of these potential external changes, tying the rates directly to the current Schedule 9 rates represents a significant increase in rates (approximately 9%) for Praxair. Based upon the above outlined analysis, the Division recommends Commission approval of the proposed contract between Praxair and Rocky Mountain Power. The contract terms and pricing appear to be just, reasonable, and in the public interest.

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