

F. ROBERT REEDER (2710)
WILLIAM J. EVANS (5276)
VICKI M. BALDWIN (8532)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
Attorneys for UIEC, an Intervention Group

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky
Mountain Power for the Approval of its
Proposed Energy Cost Adjustment
Mechanism

**THE UIEC SCOPE OF ISSUES
LIST AND RECOMMENDATIONS**

Docket No. 09-035-15

By Scheduling Order issued April 22, 2009, the Commission directed that, by Tuesday, May 26, 2009, the parties file a Scope of Issues List and Recommendations. The UIEC respectfully submits its Scope of Issues List and Recommendations.

1. Necessity. Is there a need for an ECAM in 2009? Particularly, what facts and circumstances have occurred since May of 1990, when the Company asked for the Commission's authority to abandon its energy balancing account tariff, that support implementation of an ECAM now? The testimony advanced by the Company suggests as a justification a volatility in the price of natural gas and purchased power and that the weather producing wind and hydro flows is unpredictable. Those facts existed in May of 1990. The Company has produced no evidence that those facts did not exist at that time. The question is whether the impact of those events has changed sufficiently since that time to require reevaluation of the decision made in the 1990s. The Company's application as filed offers no such proof. Furthermore, in light of its

natural gas hedged position at over 90%, the Company has provided no justification for why an ECAM is necessary given the hedging practices it uses.

Recommendation. After the intervenors have conducted discovery regarding the basis of the Company's contention that an ECAM is necessary now, and after the intervenors have had the opportunity to prepare and present rebuttal testimony, the Commission may determine that an ECAM, made subject to the determination of any other questions that may also arise, is necessary at this time. Or, the Commission may decide it has insufficient information or justification to proceed at this time and deny the Company's application. If the Commission determines that an ECAM is necessary at this time, the minimum filing requirements, which are addressed in part below, and process to be followed for energy cost recovery filings must be determined. Once those have been addressed, the Commission should order the Company to re-file a complete application.

2. Burden of Proof. The recently passed §54-7-13.5 provides that an energy balancing account shall not alter Rocky Mountain Power's burden of proof. Under Utah law, the Company has a heavy burden to prove it is entitled to rate relief. *Utah Dep't of Bus. Regulation v. Utah Pub. Serv. Comm'n*, 614 P.2d 1242, 1245, 1246 (Utah 1980). Its application must be supported by substantial evidence. *Id.* Not only has the Company failed to file an adequate application for its request for an ECAM, but a standard must be set for what constitutes a complete application for recovery under any ECAM that may be adopted. Also, a process must be put in place to ensure that the burden of proof remains with Rocky Mountain Power and does not somehow get transferred to the intervenors after a prima facie case has been made.

Recommendation. Currently, the Commission is establishing rules for what constitutes a complete application for rate relief in a general rate case and in a single-item rate case. The UIEC recommend that the same rules be applicable to what constitutes a complete application for rate relief under any ECAM that may be adopted. The UIEC also recommend that a rulemaking be opened to establish a proceeding process to ensure the burden of proof remains on the utility.

3. Cost to State Regulators. Can the State regulators afford at this time to assume the policing obligation for Rocky Mountain's energy costs? Today, Rocky Mountain has market forces to incent it in most cases to behave responsibly regarding the purchase of fuel and power. Rocky Mountain stands to profit on energy sales that are between rate cases if it can control its costs and accurately perform its forecasts. An ECAM would eliminate the power of the market to discipline the purchasing behavior of Rocky Mountain, and would also eliminate any incentives to optimize purchases. This market discipline would need to be replaced by regulation oversight. What would be the cost to the State of Utah and its taxpayers of staffing-up the Commission, Division of Public Utilities ("Division"), and Office of the Consumer Advocate ("OCA") to the level necessary to assume the policing of energy purchases? Is that funding available?

Recommendation. The Division and the OCA ought to provide some indication of the additional staff that would be required to assume the policing function, including monitoring, auditing, and rate case review, of an ECAM, whether it be the one proposed by Rocky Mountain or another.

4. What is included. Rocky Mountain has proposed an ECAM that would track the amounts booked in the following FERC accounts:

a. Account 447- Sales for resale, excluding on-system wholesale sales and other revenues that are not modeled in GRID.

b. Account 501 – Fuel, steam generation; excluding fuel handling, startup fuel/gas, diesel fuel, residual disposal and other costs that are not modeled in GRID.

c. Account 503 – Steam from other sources.

d. Account 547 – Fuel, other generation.

e. Account 555 – Purchased power, excluding BPA residential exchange credit pass-through if applicable.

f. Account 565 – Transmission of electricity by others.

Also, the Company appears to propose continuing to use GRID to determine the base net power costs (“NPC”) and possibly the actual NPC. Is this the proper methodology, especially given the current questions surrounding GRID?

The Company’s proposal also appears to be too inclusive and lacking in detail. There is insufficient explanation given to how natural gas prices would be included and how the variable commodity and fixed pipeline costs associated with natural gas would be handled.

Similarly, the Company’s proposal is lacking in detail on how it proposes to treat natural gas hedges; in particular, the fixed for variable swaps and the losses that are attendant to the Company’s current gas hedging practices.

The Company’s proposal lacks detail in justifying why anything more than economy power purchases should be included in its ECAM account. It appears from the Application that

long-term purchases, which include capacity costs, are to be included. The capacity costs must be determined and deducted to avoid duplication of recovery.

The Company also fails to explain how, if at all, renewables, given the absence of a Utah mandate to purchase renewables, should be integrated into the mechanism.

Also missing are descriptions of the “quantity” measuring issues. To avoid forcing ratepayers to underwrite the availability of thermal and renewable generation units, sales volumes, and weather, all of which seem to be inappropriate risks to be imposed on ratepayers, the quantity determination with respect to purchases of fuel and purchased power must be made. Who gets the benefit of growth? The ratepayers should get that benefit. Also, what should be used as a basis for the fuel costs, historic or forecasted. The Company appears to be suggesting that they should be based on a forecast. Why should the Company get the benefit of using an ECAM to make-up for its bad forecasts?

Recommendation. Before the Commission even begins to evaluate the Company’s application for an ECAM at this time, the Company should be required, before its application can be considered complete, to make a filing addressing these issues, and justifying its proposed solutions as compared to the other alternatives.

5. Productivity Mechanism. What productivity measures should be employed? Relieving the Company of the discipline of the market when making fuel and purchase power cost adjustments should not rely entirely on the ability of the regulators to police the purchases through prudence disallowances. There ought to be some incentive for the Company to behave prudently and to improve the productivity of its facilities. There are several productivity mechanisms available to be used.

Recommendation. Before its application can be considered complete, the Company should be required to identify the productivity mechanisms available and propose which mechanism(s) it believes best fits the circumstances extant in the Rocky Mountain service territory that fairly balance the desired price stability with least-cost rates.

6. Rate Design. In today's market, much effort is being devoted to developing a "smart grid" and incenting customers to use the correct amount of electricity for their needs. Those incentives are generally communicated through price signals for the power. Performing annual averaging of cents-per-kilowatt hour for purchased power costs destroys any price signal benefits that might have been achieved. Therefore, an allocation scheme needs to be developed to minimize the distortion in price signals that occurs from averaged energy rates. Some writers have suggested that the accounting for what costs are allowed in an energy balancing account should include multiple "buckets" to track on-peak and off-peak costs and seasonal variation costs so that the cost causers face the costs caused by their undisciplined consumption habits.

Recommendation. The Company should be directed to file a proposed cost allocation schedule that would capture, to the maximum extent practicable, costs at the time incurred and assess those costs against the user of the resource at the time the costs were incurred to avoid the distortion of price signals.

7. Capital Costs. Some writers argue that the introduction of an ECAM will improve the creditworthiness of an utility and decrease its capital costs. The question, therefore, should be: what reduction from the current rate of return approved by the Commission should be made if the Commission chooses to go forward with an ECAM.

Recommendation. Before its application can be considered complete, the Company should be required to provide a recommended reduction from the current rate of return or justify why it believes no such reduction should be applied.

8. Carrying Cost. The fuel and purchase power amount deferred for recovery may include a burden of carrying costs. How should that carrying cost be established and adjusted for tax benefits?

Recommendation. Before its application can be considered complete, the Company should be required to include in its filing its recommendations to the Commission regarding this issue.

9. Review Period. Should the deferred accounts be charged monthly, or some other period? Should there be an annual prudence review and true-up, or some other period? Should rates be considered temporary until they have gone through the prudence review and true-up? When are they considered final so as to trigger judicial review?

Recommendation. Before its application can be considered complete, the Company should be required to include in its filing recommendations to the Commission regarding this issue.

CONCLUSION

This first step in addressing Rocky Mountain Power's application for an ECAM is to answer the question of necessity. It is only if the Company meets its burden of proof that an ECAM is necessary at this time, that any additional issues need be addressed at this time. If it is determined that an ECAM is necessary, the UIEC recommend that the Commission establish the minimum requirements that a filing requesting an ECAM should contain so that the critical

questions addressed above, as well as those identified by other parties, will be answered up front with adequate transparency. Those filing requirements should also address what information must be included at a minimum each time the Company thereafter files for recovery of energy costs. Simultaneous with determining filing requirements, the UIEC recommend that the Commission open a rulemaking to determine the process to be followed for energy cost recovery filings so that the statutory requirement that the Company be held to a stringent burden of proof always be maintained.

DATED this 26th day of May, 2009.

/s/ Vicki M. Baldwin

F. ROBERT REEDER
WILLIAM J. EVANS
VICKI M. BALDWIN
PARSONS BEHLE & LATIMER
Attorneys for UIEC, an Intervention Group

CERTIFICATE OF SERVICE

(Docket No. 09-035-15)

I hereby certify that on this 26th day of May 2009, I caused to be e-mailed, a true and correct copy of the foregoing **THE UIEC SCOPE OF ISSUES**

LIST AND RECOMMENDATIONS to:

Ginsberg
Patricia Schmidt
ASSISTANT ATTORNEYS GENERAL
500 Heber Wells Building
160 East 300 South
Salt Lake City, UT 84111
mginsberg@utah.gov
pschmid@utah.gov

William Powell
Phil Powlick
Dennis Miller
DIVISION OF PUBLIC UTILITIES
500 Heber Wells Building
160 East 300 South, 4th Floor
Salt Lake City, UT 84111
wpowell@utah.gov
dennismiller@utah.gov
Philippowlick@utah.gov

Gary Dodge
HATCH JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101
gdodge@hjdllaw.com

Michele Beck
Executive Director
COMMITTEE OF CONSUMER
SERVICES
500 Heber Wells Building
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111
mbeck@utah.gov

Paul Proctor
ASSISTANT ATTORNEYS
GENERAL
500 Heber Wells Building
160 East 300 South
Salt Lake City, UT 84111
pproctor@utah.gov

Cheryl Murray
Dan Gimble
UTAH COMMITTEE OF CONSUMER
SERVICES
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111
cmurray@utah.gov
dgimble@utah.gov

Yvonne R. Hogle
Daniel Solander
Jeff Larsen
Mark Moench
Senior Counsel
ROCKY MOUNTAIN POWER
201 South Main Street, Suite
2300
Salt Lake City, UT 84111
yvonne.hogle@pacificorp.com
daniel.solander@pacificorp.com
jeff.larsen@pacificorp.com
mark.moench@pacificorp.com
datarequest@pacificorp.com

David L. Taylor
Manager – Utah Regulatory
Affairs
ROCKY MOUNTAIN POWER
201 South Main St., Suite 2300
Salt Lake City, UT 84111
Dave.Taylor@PacifiCorp.com

Kevin Higgins
Neal Townsend
ENERGY STRATEGIES
39 Market Street, Ste 200
Salt Lake City, UT 84101
khiggins@energystrat.com
ntownsend@energystrat.com

Holly Rachel Smith, Esq.
Russell W. Ray, PLLC
6212-A Old Franconia Road
Alexandria, VA 22310
holly@raysmithlaw.com

Ryan W. Kelly
Kelly & Bramwell, P.C.
11576 So. State Street Blds.203
Draper, UT 84020
ryan@kellybramwell.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716-0550
Stephen.chriss@wal-mart.com

/s/ Colette V. Dubois