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To: The Public Service Commission of Utah
From: The Office of Consumer Services
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Copies To: Parties of Record
Date: May 26, 2009
Subject: Initial Scope of Issues List and Recommendations regarding Rocky Mountain Power's Proposed Energy Cost Adjustment Mechanism, Docket No. 09-035-15

Introduction

The April 22, 2009 Scheduling Order requests that the parties submit a "scope of issues list and recommendations" in anticipation of the June 2, 2009 technical conference. The June 2nd technical conference is intended "to discuss scope of issues and recommendations regarding mechanism to use." The issues and recommendations identified by the Utah Office of Consumer Services must be considered preliminary pending a more detailed determination by the Commission of the substantive issues that the Commission intends to consider. While the Commission has asked all parties to submit for discussion at the technical conference, issues and recommendations pertaining to cost adjustment mechanisms, the Office is responding only to Rocky Mountain's request for agency action. The Office does not understand this Docket to be a general Commission inquiry or investigation. The Office also requests that the Commission definitively determine the procedure that the Commission intends to follow. The Office requests that these determinations follow the June 2, 2009 technical conference.

Preliminary Comments

The Office contends that the Commission may only approve a cost adjustment mechanism if existing ratemaking practices that are available to or used by the utility, for example financial energy hedging, forecast test periods, weather normalization, and major capital additions and resource procurement rate inclusion mechanisms, are proven to be inadequate and incapable of adjusting rates to varying loads, costs, revenues and market conditions. The Commission must also be satisfied that any cost adjustment mechanism will result in rates that can readily be tested against the same just and reasonable standard by which a rate set in a general rate case is determined. If and only if these threshold issues are met, then the regulatory proceeding would need to consider design and implementation issues.

The Company has not substantively addressed the major threshold issues supporting whether there is a need for a cost adjustment mechanism. Neither has it substantively addressed any of the design or implementation issues. Because of these deficiencies, the Commission should dismiss the Company's current filing.

Scope of Issues

The Office has identified the following scope of issues that would need to be examined prior to Commission approval of any ECAM. This list reflects our analysis to date, but is not meant to be exhaustive. However, because of the deficiencies of the current filing, the Office is not advocating that the Commission move forward with the issues analysis but rather should dismiss the application.

Threshold Issues

1. Is an ECAM necessary? Are the risks identified by the Company truly uncontrollable by existing mechanisms and is the cause of the risk outside of the Company's control or a result of previous Company actions?

The Company has asserted that an ECAM is necessary to deal with the risks associated with uncertain costs. What must be demonstrated is that these risks are actually outside of management's control, specifically given existing mechanisms such as hedging strategies. Also, the mere existence of risks outside of management control should not be sufficient for an ECAM. For example, do these risks arise as long term consequences from previous resource acquisition decisions (or lack thereof)? Therefore, the underlying cause of the risks must also be determined.

2. Would an ECAM result appropriate levels of risk to ratepayers and appropriate incentives to the Company?

The Company has asserted that the costs associated with the ECAM have symmetrical risks. This assertion must be demonstrated and supported with evidence. In particular, prior to acceptance of an ECAM, its potential impact on future operational decisions must be considered. For example, what would be the impact on system operations, resource

planning and procurement and type and level of wholesale transactions? Fundamentally, it must be demonstrated that the ECAM will not detract from the principles of providing power at the least cost, considering risk and other factors. An ECAM cannot lead to the Company minimizing costs including in base rates as opposed to minimizing all costs.

3. Is an ECAM workable from the perspective of a practical consideration of the regulatory resources in the state of Utah and the oversight of an ECAM that would be necessary to ensure just and reasonable rates?

The Company has not provided any documentation of the types and volume of documents that would be involved in a proper review of an ECAM. The regulatory burden of this type of filing could be significant and the expertise required may or may not exist within the existing agency personnel. Before pursuing an ECAM, it should be demonstrated that the mechanism itself passes a cost-benefit analysis and that it provides enough value to the utility and its consumers to justify the associated regulatory burden.

Design Issues

1. Burden of Proof

First and foremost, any ECAM design must make clear that the burden of proof remains with the Company. From a practical standpoint, this may not be an easy design element to ensure. With an ECAM, regulatory agencies and other intervenors will likely be reviewing a much greater volume of documents. The practical implication is a greater burden on regulatory agencies and intervenors to review and identify any potential problems. However, this cannot be accompanied by any shift of the legal standard of burden of proof.

2. Interaction with Other Models

Any ECAM design must be compatible with the other models used by the Company (e.g. JAM, GRID, Revised Protocol) in determining Utah revenue requirement in general rates. The interaction of these models must be transparent and user friendly.

3. Determination of Problem to be solved (i.e. which cost elements to include)

Before the specific design elements can be addressed, the Commission must first identify what specific problem is being solved. If the threshold determination has been met that an ECAM is necessary, workable and in the public interest, then the next question would be to identify what cost elements would properly be included in such a mechanism. The definition of appropriate costs will differ based upon the assessment of what problems require remedy. It could be limited to fuel costs or as expansive as that proposed by the Company. Whatever costs are ultimately considered must be properly supported by evidence as appropriate for an adjustment mechanism.

4. Examination whether other mechanisms better accomplish goals

The presumption should not be that an ECAM is a proper solution before addressing other mechanisms such as sharing bands and other adjustment mechanism designs.

5. Appropriate Carrying Charge and Interest Rate

If an ECAM is found to be necessary and the preferred mechanism, the Commission must pay close attention to what should be the appropriate interest rate and overall carrying charges used.

6. Appropriate rate spread & allocation (including special contracts)

Any ECAM design must specifically address how the costs are allocated to the various rate classes, including special contracts) and rate components.

7. Triggers

Another design element that should be considered is the concept of one or more market or operational element that would trigger the use of an adjustment mechanism. For example, the Commission could find that on average the price volatility is within acceptable levels of forecast prices but if it exceeds a predetermined level then an adjustment mechanism would be automatically implemented.

8. Requirement for Baseline Achievement before Implementation

Consideration should also be made for requiring that a certain baseline be achieved prior to the inclusion of cost elements in any adjustment mechanism. For example, one requirement could be Commission approval of a general hedging strategy prior to the inclusion of any costs that are covered by hedging strategy. Another requirement could be the requirement that market reliance does not exceed a certain percentage before the inclusion of any short-term market costs.

Implementation Issues

1. Timing and requirements for adjustments and review

Any ECAM must specify how often it will be updated, what information will be required to be included in the filing for ongoing adjustments and what the process for review will entail.

2. Appropriate adjustment to ROE

Before implementation of an ECAM, the Commission must determine what adjustment to the Company's allowed rate of return would appropriately reflect the lower level of risk associated with the ECAM.

3. Interface with rate design

Before any ECAM is implemented, the manner in which it interfaces with rate design and is adjusted on an ongoing basis must be determined.

4. Examination potential appropriateness of a pilot program

Before full implantation of any ECAM, the Commission should consider whether a pilot program would provide benefit to the regulators and ultimately the consumers. A pilot would identify any potential problems with other models and integration with existing rate design. It would also provide analysis regarding the actual variability of included cost elements.

Recommendations

The Company has not addressed any of these issues adequately enough to be considered sufficient. The bulk of its very short filing addresses only administrative matters associated with its request for an ECAM. Because of these legal deficiencies, the Office recommends that the Commission dismiss the Company's petition. If the Commission declines to dismiss the case at this time, the Office requests that the Commission establish a schedule for making and hearing motions to dismiss prior to any further actions.

If not dismissed, the Commission should require the Company to refile its case providing substantial supporting evidence upon each of the threshold issues that an ECAM is necessary, workable and in the public interest. In addition, the Company's testimony should specifically address the design and implementation issues, providing evidence that its proposal is the preferred solution to any problems that need remedy.

The Office strongly recommends that the Commission should not structure this docket as a collaborative process. We have considered these issues in the past and recognize that the parties simply have different views – views that will not be reconciled through any workgroup or task force. Rather, the process should move forward in a formal manner with testimony and hearing, preferably addressing the issues in phases. The Office suggests the following phases.

- First, existing mechanisms such as hedging practices should be evaluated to determine whether they provide an adequate remedy for the variations in load, costs and the market upon which the application is based.

- Second, if any insufficiencies are found in the existing processes, then the Commission should examine limited design elements of an ECAM (or other mechanism) to remedy the insufficiencies.
- Third, the specific implementation elements should be addressed to ensure just and reasonable rates are the final outcome.

As noted earlier the scope of issues will be addressed at a June 2nd technical conference. No doubt parties will propose many differing and conflicting views of cost adjustment mechanisms, including that no mechanism is necessary or proper, or as the Office contends, that Rocky Mountain's application is legally insufficient. The next scheduling conference should not be held immediately following a technical conference in which such input is provided. In order to allow the Commission adequate time to define the issues to be considered and process to be followed in this Docket, the Office requests that the scheduling conference following the technical conference be postponed until such time as the Commission has made the requested determinations including potential dismissal or a clearly identified scope of issues.