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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

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Date: November 15, 2010

Subject: Office of Consumer Services' Comments on the Application of Rocky Mountain Power for Approval of an Electric Service Agreement between Rocky Mountain Power and Praxair, Inc. Docket No. 10-035-115.

Redacted

1 Background

On October 18, 2010, Rocky Mountain Power (Company or RMP) filed for Public Service Commission (Commission) approval of a one year Electric Service Agreement (ESA) between Rocky Mountain Power and Praxair, Inc. (Praxair). The current ESA expires on December 31, 2010. The new ESA would begin on January 1, 2011 and terminate on December 31, 2011. On October 28[1], 2010 the Company filed a corrected ESA and a document titled "Explanation of Certain Contract Issues Related to the Master Electric Service Agreement between Rocky Mountain Power and Praxair, Inc. Dated October 18, 2010".

2 Issues

The Office has carefully reviewed the ESA and the Application for approval as filed by the Company. The ESA lays out the terms and conditions for RMP providing service as well

[1] The document indicates it was filed on October 27, 2010 but the email containing the filing was sent October 28, 2010.

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as the rates[2] Praxair will pay during the contract term. The terms of the contract establish that the terms and rates of service for Praxair will be the same as for Confidential. Thus the sole purpose of having a special contract is to grant Praxair a Confidential. There is no other explanation.

2.1 Special Contract Treatment

The Company provides four assertions as justification for special contract treatment for Praxair: 1) the Company has historically entered into a special contract with Praxair; 2) Praxair is a supplier of gas products that is located adjacent to Kennecott Utah Copper, LLC (Kennecott); Kennecott is the largest off-taker of product from Praxair; 3) Kennecott could physically supply Praxair's electrical needs from Kennecott generation facilities with relative ease; and 4) due to Praxair's unique commercial relationship to Kennecott, Praxair has been considered a special contract customer.

We will address each of these "justifications".

1) Certainly the fact that Praxair has historically been a special contract customer cannot be reason enough to continue special contract treatment. If no circumstances have changed then at the very least the reasoning and justification that originally resulted in the special contract should be provided so that the Commission has some evidence upon which it may grant the application. Regardless of whether Praxair's circumstances have changed, the context in which the contract is being operated has certainly changed. Other important considerations such as electricity markets, available resources and public policy must be taken into account. The Office recommends that the Commission explicitly state that prior special contract treatment is not acceptable as justification of future special contract treatment for any customer.

2) Praxair's location adjacent to Kennecott and Kennecott being the largest off-taker of product from Praxair does not justify special contract treatment for Praxair. Proximity between two RMP customers cannot justify non-tariff rate treatment.

3) Kennecott's ability to physically supply Praxair's electrical needs from its generation may have some merit as a reason to allow Praxair to operate under a special contract. However, unless the Commission has rules or guidelines in place that allow any customer with the physical ability to take service from another entity to enter into a special contract with Rocky Mountain Power the Company should provide evidence as to what the loss of Praxair would actually mean to other Utah customers of Rocky Mountain Power. In times past, special contracts were found to be in the public interest as long as the contract covered the incremental costs associated with serving the customer and made some contribution to fixed costs. Other customers were found to be better off by the partial contribution to fixed costs in comparison to having that customer leave the system. However, in today's circumstances of continued growth and new resource needs, such an evaluation would not be appropriate. The PacifiCorp system is facing significant deficits. If one customer leaves the system, other customers may end up better off if it frees up existing resources without

[2] Exhibit 1 of the ESA.

> imposing other types of costs. This fundamental change in the operating circumstances of the Company particularly requires that special contracts be scrutinized and required to provide justification for any special price benefits.

Praxair's commercial relationship to Kennecott seems to correspond to issue two above. Neither proximity nor commercial relationship between two RMP customers are reasons to justify non-tariff treatment.

The Office reiterates its objections from the last Praxair ESA[3] that no justification has been provided for Praxair to be considered a special contract customer. The Commission should require the Company to utilize predictable criteria for determining when customers should be subject to regular tariff rates and when circumstances warrant special contract provisions and/or rate provisions. Absent such criteria, this type of contract cannot be found to result in just and reasonable rates. The current contract simply provides Praxair a Confidential in the impact from rate increases in exchange for no identifiable benefit to the Company or other ratepayers. Just and reasonable rates would require some level of benefit in exchange for other customers paying a little extra to fund the Confidential for Praxair. Praxair should be treated as a Schedule 9 customer and subject to the same requirements and rates as any other similarly situated customer.

2.2 Price Adjustment.

The charges identified in Exhibit 1 of the ESA are fixed for the term of the agreement. However, the contract provides for adjustments so that the charges equal Commission approved Confidential. This would include, but not be limited to, adjustments made for any power cost adjustment mechanism, deferred accounting major plant addition case, single item rate case, general rate case or other filing by Rocky Mountain Power. Rate adjustments will not be Confidential[4] but will become Confidential.

The Company quotes from the Commission Order approving the 2010 ESA agreement between the Company and Praxair:

"The Company and Praxair shall ensure that for future ESAs, the interval between the approved changes in the pricing terms of the Schedule 9, and the changes in the pricing terms of future ESAs shall be no more than 90 days apart."[5]

The Company justifies the Confidential by stating it is less than the 90 day lag in that Order and it allows Praxair some gradualism since some prior agreements allowed a 365 day lag.

The Office recognizes that the Confidential in this ESA is an improvement over prior agreements and within the "no more than 90 days" indicated in the Commission's last Praxair Order. However, that does not negate the fundamental problem with this ESA; there remains no evidence that Praxair should be anything other than a Schedule 9 tariff

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[3] Docket No. 09-035-101.

[4] Typically all customer classes will experience rate increases Confidential.

[5] December 10, 2009 Commission Order in Docket No. 09-035-101, page 3.

customer. In particular, there is no evidence or analysis that justifies the Confidential based upon utility ratemaking principles.

3 Recommendations

The Office recommends that the Commission deny the ESA due to the lack of evidence supporting the need for a special contract and require that Praxair be served under Rocky Mountain Power's Schedule 9.

However, if the ESA is to be approved the Office recommends:

1) that the Commission require any future request for a special contract between Rocky Mountain Power and Praxair include justification for the contract with the application;
2) that the Commission's approval order in this docket specifically state that prior special contract treatment will not be considered justification for any future agreements; and
3) the Commission should require the Company to utilize predictable criteria for determining when customers should be subject to regular tariffed rates and when circumstances warrant special contract provisions and/or rate provisions.