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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

MICHELE BECK
Director

To: The Public Service Commission of Utah

From: The Office of Consumer Services
Michele Beck, Director
Cheryl Murray, Utility Analyst

Date: February 4, 2013

Subject: Docket No. 12-035-92; In the Matter of the Voluntary Request of Rocky Mountain Power for Approval of Resource Decision to Construct Selective Catalytic Reduction Systems on Jim Bridger Units 3 and 4

Background

On January 4, 2013 the Sierra Club submitted to the Public Service Commission (Commission) a motion for a stay or continuance of the Jim Bridger proceeding (Docket No. 12-035-92). The basis for the motion is a December 13, 2012 Order to Modify Consent Decree from the United States District Court for the District of Colorado allowing the Environmental Protection Agency (EPA) to delay issuing its final Best Available Retrofit Technology (BART) determination for the Jim Bridger plants. On January 29, 2013 the Commission issued a Notice of Pre-Hearing Conference (Notice) to be held on February 6, 2013. By this Notice the Commission affords parties the opportunity to present arguments at the Technical Conference or to file written comments by Monday, February 4, 2013. The Office of Consumer Services (Office) offers the following comments.

Discussion

Following the Sierra Club filing its Motion to Stay, Rocky Mountain Power (Company) filed a Memorandum in Opposition to Sierra Club's Motion for a Stay or Continuance Pending Final Action and Utah Association of Energy Users (UAE) filed its Memorandum in Partial Support of Motion for Continuance. In its Notice the Commission states it will take arguments or written comments of the positions expressed in these three filings.

Positions Identified in Filings

- 1) Sierra Club asserts that the Commission and parties should assume that the EPA's March 29, 2013 rule will differ substantially from the prior draft rule. Therefore, this proceeding should be stayed or continued pending EPA's final BART determination.
- 2) On January 7, 2013, Rocky Mountain Power filed a memorandum opposing the Motion to Stay. The Company states that Wyoming law requires the construction of the SCRs on the Jim Bridger units and the Wyoming deadlines can only be met if construction starts in the Spring of 2013, without incurring potential significant increases in the cost of construction.
- 3) The Utah Association of Energy Users on January 18, 2013 filed a memorandum in partial support of the Motion to Stay. UAE recommends that the Commission not issue a final order in this docket until after parties have had an opportunity to review and submit pertinent information to the Commission regarding EPA's proposed BART determination to be issued on March 29, 2013.

Office Response

At the time of the Company's request for voluntary approval a final EPA BART decision for the Jim Bridger units was expected by mid-October 2012. Under that timeline the Commission would have known the EPA's requirements for the units which would have added more certainty as to the need and timing of the projects the Company plans to undertake. However, the new March 29, 2013 deadline increases the potential risk to ratepayers of any pre-approval that could be granted by the Commission, since it will be uncertain as to whether the Company's current plan will comply with the EPA requirements and if the current deadline will be maintained. Commission approval of the Company's Voluntary Request for Resource Decision will make Utah ratepayers responsible for those costs regardless of the outcome of the EPA decision.

The Company asserts that Wyoming law requires the construction of the SCRs and deadlines for compliance are attached to each unit. It would be helpful to understand why the Company is not requesting a postponement of those deadlines from the Wyoming Department of Environmental Quality until more certainty is obtained from the EPA.

The Office supports the UAE recommendation that the Commission not issue a final order in this docket until after the EPA issues its proposed BART determination on March 29, 2013. We agree that parties should be given an opportunity to review the EPA's BART determination and then submit pertinent information for the Commission's consideration in this matter before a final order is issued. However, as stated in our direct testimony the Company has not yet provided adequate analysis to support its request. Unless and until the Company provides such supporting evidence, whether the EPA has issued its determination or not, the Commission will not have adequate support to determine that the request is in the public interest. The Office asserts that the uncertainty created by the EPA will impact the Company's ability to present adequate evidence at this time.