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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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	Docket No. 12-035-92 **BRIEF OF WESTERN RESOURCE ADVOCATES** March 27, 2013

COMES NOW Western Resource Advocates, pursuant to the Commission's order following the hearing held in this matter on April 7, 2013, and hereby submits this Brief asking that the Commission deny Rocky Mountain Power's Voluntary Request for Approval of its Selective Catalytic Reduction Systems on Jim Bridger Units 3 and 4.

Introduction

Pursuant to Utah Code Ann. § 54-17-402, PacifiCorp d/b/a Rocky Mountain Power (hereinafter PacifiCorp or Company), seeks preapproval for pollution control expenditures it intends to make at its Jim Bridger plant located in Sweetwater County, Wyoming. PacifiCorp proposes to install selective catalytic reduction (SCR)controls on Units 3 and 4 to limit NOx emissions. The Company contends that these controls are necessary to allow the units to operate beyond 2015 and 2016. According to PacifiCorp, these controls are necessary for those

facilitiesto be in compliance with regional haze rules under the Clean Air Act.PacifiCorp compared its proposed SCR alternative with plant closures and natural gas conversions, and claims that installing SCR on Bridger Units 3 and 4 is the least-cost, risk-adjusted method of complying with the requirements of the Environmental Protection Agency's (EPA) Regional Haze Rule.The Company did not examineany alternative combining plant closure/conversion of one unit and less expensive controls on the second.

Western Resource Advocates (WRA) opposes PacifiCorp's request for two primary reasons. First,PacifiCorp failed to sufficiently demonstrate that its proposed pollution controls are the least-cost, least-risk option available to the Company. Not only was the Company's analysis flawed, but much of itsevidence was not submitted in time for it to be sufficiently and reliably considered.Second, PacifiCorp failed to examine a viable and potentially lower-cost, environmentallysuperior alternative. This, among other things, raises serious imprudence issues, and because the prior approval requested would bar any future prudence inquiry, the Company's application should be denied.

1) <u>PacifiCorphas failed to demonstrate that its proposed pollution controls are the least-cost, least-risk option available to the Company.</u>

PacifiCorp's filing of direct testimony was flawed and insufficient as every non-company party agreed. Not until it filed rebuttal testimony did the Company submit useful evidence, but that evidence was still flawed and too late – a moving target that could not adequately be considered in the timeframe available.

a) The Company's direct case was insufficient.

As WRA witness Kelly testified, PacifiCorp did not establish the economic case for installing its proposed SCR pollution-control system.The Company's analysis was flawed.While in some modeling scenarios performed by the Company, SCR was least-cost, in otherscenarios

conversion to natural gas was least-cost. PacifiCorp's modeling, however, overstated the economic case for SCR because issues surrounding the size and availability of generation units and extent and timing of mining reclamation costs were not reasonably modeled.Nor did the Company adequately capture the uncertainty associated with the costs of future environmental upgradesand greenhouse gas regulation or evaluate the possible benefits of avoided transmission and water use. Kelly Direct testimony. Significantly, the Company did not attempt to rectify these issues in its substantially revised modeling submitted at the rebuttal stage of the case. Kelly Surrebuttal testimony.

Two of the most sensitive assumptions the Company wrongly considered were CO2 prices and gas prices. As witness Kelly testified, there is no reason to believe CO2 prices are declining as much as the Company assumed – and,given scientific imperatives,those price assumptions should be increasing. Kelly Surrebuttal at 13-17. Similarly, gas prices are declining, and PacifiCorp's gas price assumptions are high – which is important because very small changes to gas prices drive very significant changes to the analysis and outcomes. Today's low gas pricesare due to the long-term impacts of the shale gas availability throughout the West. Link at Tr. 114.

As WRA witness Tellinghuisen testified, PacifiCorp's analysis also failed to consider the two ways reduced water use at Bridger could benefit Utah: 1) if PacifiCorp sells or leases its water rights it would see revenues that could benefit rate-payers; and, 2) by holding excess water rights in a "no-use status," the water could remain in-stream and provide environmental benefits in the Green River. Tellinghuisen Direct testimony.

Simply put, at the conclusion of PacifiCorp's direct case, there was insufficient evidence to support the Company's application, as both the Office of Consumer Services (Office) and the

Division of Public Utilities(Division) confirmed. Evans at Tr.164; Murray at Tr. 182.And this insufficiency was not satisfied by the Company's rebuttal.

b) The Company's rebuttal case presented the Commission and parties with a "moving target" that was too late and still insufficient.

Not until the Company filed its rebuttal testimony in mid-February, just three-plus weeks before the hearings commenced, did the Office and Division accept the Company's position, and that was based upon the false premise that prudence and cost recovery issues would be preserved for a later docket.

In its rebuttal, PacifiCorpsubmitted a wholesale revision to its earlier submittal –designed to overcome the criticisms raised in response to its direct case. Teplyat Tr. 121.[1] This"new" case that PacifiCorp filed in Februarywas extensive and was not presented until after all parties had expended substantial resources addressing its flawed direct case, and in a timeframe which made comprehensive analysis impossible.[2]

Among the many revisions and changes to its base case that the Company made in its rebuttal were: 1) the capacity of the Wyodak generating station; 2) the dispatch of Gadsby and Currant Creek; 3) the System Optimizer modeling; 4) its mine reclamation cost assumptions; 4) its gas price assumptions; 5) its CO2 price assumptions; 6) its Bridger mine coal cost assumptions; and 7) its Bridger mine capital costs. Evans Surrebuttal at 3-4.These changes and updates literally swung hundreds of millions of dollars in the Company's PVRR analysis, Teply at Tr. 69, demonstrating the sensitivity of the outcomes to the underlying assumptions. Even with all these updates, however, the differential between installing SCR (PacifiCorp's preferred

[1]The Company had requested and had been granted more than a month's delay in the procedural schedule for filing rebuttal testimony.

[2]As anillustration of the extensive nature of the revision, the workpapers accompanying the rebuttal testimony of Ms. Cindy Cranedo not fit on a single CD. The workpapers consist of two volumes and includemore than 500 Excel files with multiple tabs.

alternative) and gas conversion of the units is only about 0.6% on a PVRR basis, Link at Tr. 121 – meaning the two alternatives are essentially equivalent from a cost perspective.

The Commission should not reward the Company's "moving target" litigation tactics by granting it the requested preapprovals. As many commissions have found, such "moving targets" should not be entertained:

> The commission was concerned that a utility wishing to update its figures would in essence be changing its test period and have an evolving, rolling test period constituting a moving target which commission staff and intervenors would have to try to reanalyze and recompute each time new figures were submitted. This process would make a mockery of reasoned regulation.

Re Gas Company of New Mexico, Case No. 1787, 56 P.U.R. 4th 601at 603-4, Oct. 26, 1983.[3]

> As the Commission has stated in other orders, the Commission is reluctant to chase a moving target by considering new evidence presented for the first time at the rehearing stage of Commission proceedings.

Re Public Service Co. of Okla., Cause Nos. PUD 200600134 & 200600335, Order No. 580871, Oklahoma Corp. Comm'n, December 6, 2010.

The problem in the present case is exactly what these commissions warned against. As the Office's witness Falkenberg testified in his Surrebuttal at page 2:

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[3]Also: "Staff recommends that, with respect to the timing of the information, the Commission should, while retaining its discretion over the process, make its evaluation based on December 2005 information. The December 2005 data constitutes, according to Staff, the best available evidence in this proceeding and that only through analyzing data as of a date certain can the Commission properly consider the propriety of AT&T Illinois' reclassification filing, ensure that the parties are not faced with a 'moving target,' and avoid the highly disruptive processes that ensue from a record that is constantly evolving." *Ill Commerce Comm'n. vs. Ill Bell Telephone Co.* 2006 WL 2797770 #06-0027, Aug. 30, 2006.

"WPSC testified that it has the right to present relevant evidence and the Commission should be establishing rates based on the most current and reliable information available. Although current information may be most relevant, it is a moving target. A trade-off exists between using the most current information available and processing the rate case efficiently. The concept of a representative test year is necessary to process major rate cases efficiently."*In re Wisconsin Public Service Corp.* 2003 WL 1900927, Wi.P.S.C. 2003, March 20, 2003.

"As noted in Decision No. C01-15, the parties cannot reasonably be expected to continue chasing, let alone hitting, a moving target. The Commission cannot procedurally allow any party to continuously shift positions to the detriment of other parties. All parties by constitution and statute are entitled to fair notice and a full and fair opportunity to meet the opposition. The last shift in theories by Public Service denied the other parties a full and fair opportunity to meet the construction allowance issue. To go forward would have been a denial of the due process rights of the parties."*In re Public Service Co. of Colorado,* 208 P.U.R.4th 322, March 15, 2001.

> It appears that the new SO Model results are substantially different as are all of the important cost components. Looking at the data, it appears all major cost categories have changed substantially. Lacking the opportunity to submit multiple rounds of discovery (as was the case with the initial filing), I could not realistically attempt to perform the same level of analysis that I undertook prior to filing direct testimony.

Even if the Commission considers the revised evidence, however, it still should not reach the conclusion that PacifiCorp's pollution-control proposal should be preapproved. The capacity of Bridger Units 3 & 4 was still overstated and forecast unit availability was not adjusted to conform with historical performance. Kelly Surrebuttal at 7-8. Mine reclamation was illogically assumed to begin in the gas conversion case *prior* to the installation of SCR. Kelly Surrebuttal at 9.The potential for avoided or delayed transmission was not incorporated into the analysis. Kelly Surrebuttal at 12-13. The Company did not model capital expenditures or operating expenses relating to future environmental regulations for Coal Combustion Residuals under Subtitle C, Effluent Guidelines, or increasingly stringent National Ambient Air Quality Standards. PacifiCorp responseto OCS 7.35, OCS 7.29, and OCS 1.12. And PacifiCorp's CO2 price forecasts did not provide a reasonable range and were inconsistent with past modeling efforts. Kelly Surrebuttal at 13-17. Finally, if EPA requires higher reductions of nitrogen oxide than included in PacifiCorp's retrofit plans, capacity could be further reduced and operation and maintenance costs over the life of the facility increased.KellySurrebuttal at 17-18.

The Company is also undervaluing the water used at Jim Bridger Units 3 and 4. By undervaluing the monetary and environmental benefits of this important, scarce natural resource, the Company reaches the conclusion that its impact on water resources does not affect its strategy for controlling pollution at Units 3 and 4 – a fundamentally flawed conclusion. TellinghuisenSurrebuttal testimony.

2) <u>Becausepreapprovalbars a future prudence inquiry, and becausePacifiCorp failed to examine a viable and potentially lower-cost, environmentallysuperior alternative, the Company's application should be denied.</u>

Utah statutes allow, but do not require, utilities like Rocky Mountain Power to seek prior approval for investments they undertake on behalf of customers. Similarly, Utah's statutes do not require that the Commission grant prior approval whenever requested. Utah Code Ann. § 54-17-402(6)(c).While the Commission is authorized to deny or condition its approval, any investments approved by the Commission must generally be accorded full cost recovery. This removes the risk to the utility and eliminates the ability of utility customers and others to challenge the prudence of the utility's investment. Utah Code Ann. § 54-17-403, Cost Recovery. Because of the very significant consequences for utility customers associated with prior approval of a project costing hundreds of millions of dollars, there should be a heavy burden on the utility to demonstrate the diligence, wisdom and prudence of its proposal.

Both the Division and the Office were not clear as to the prudence inquiry implications if the Company's request were granted. *See* Croft Surrebuttal at 4.Mr. Crisp, in particular, premised his recommendation on the assumption that prior approval would not establish the Company's prudence. Crisp Tr. at 170-173. The Office's witness Murray was uncertain what the Office's position would be if preapproval meant that prudence issues associated with PacifiCorp's actions prior to this proceeding could not be later considered. Murray Tr. at 182-183.In other words, because Utah's statutes establish the prudence of any preapproved projects,[4] a fundamental assumption underlying the Division's and Office's recommendations was potentially erroneous. If the Commission grants prior approval as the Company requests, prudence issues associated with any action up until the time of the order are forever off-limits.

[4] Utah Code Ann. §54-17-403, Cost Recovery, with exceptions for "misrepresentation" or "concealment."

It should also be recognized that notpreapproving a project simply reverts the regulatory process to traditional ratemaking where the utility seeks recovery for the prudent costs of its plant investment after it goes into service and is demonstrated to be used and useful. The Company's return on equity compensates it for the riskiness of this cost recovery protocol. *See e.g., Duquesne Light Co. v. Barasch*, 488 U.S. 299, 309-11, 109 S.Ct. 609 (1989).PacifiCorp witness Teply testified that regardless of whether the Commission granted preapproval, PacifiCorp would continue with the project,claiming that it is under a legal obligation to do so.TeplyTr. at 71-72.

Of particular importance in determining whether to grant prior approval in this expedited proceeding is the fact that the Company admittedly failed to investigate an obvious alternative that would likely be less costly, environmentally superior, and very promising in terms of EPA approval. This alternative, a gas-fired replacement of one of the facilities, along with significantly less expensive controls on the other, is identical to an outcome tentatively agreed to by EPA for the San Juan Generating Station in New Mexico – an agreement entered into just prior to the commencement of hearings in this Utah docket. WRA Cross Exhibit 1.

PacifiCorp witness Teply testified that the Company never explored the possibility of an alternative involving a conversion to natural gas of one unit and installation of the less expensive, and less effective, selective non-catalytic reduction (SNCR) control technology at the second unit. According to Mr. Teply, SNCR technology would be 7 to 10 times less expensive than the SCR technology the Company suggests. The Company neglected to explore this alternative because of its view that such a combination of features would not be compliant with the Clean Air Act. Teply Tr. at 55-56. WRA Cross Exhibit 1 disputes that contention and makes it clear that EPA would consider a conversion of one unit and a lesser control technology at a

second to be Clean Air Act compliant. WRA Cross Exhibit 1 depicts an EPA-State of New Mexico-PNM tentative agreement which was reached on February 15, 2013. Along with several less significant provisions, that Term Sheet provides that PNM will install SNCR technology on two units of the San Juan Generating Station, ¶1c,and retire the remaining two units by December 31, 2017. ¶1f. The two retired units would be replaced, at least in part, with a gas combustion turbine. ¶4.

If PacifiCorp proceeds to install SCR on the two Bridger units when a less expensive compliance path could be available to it, there is certainly a prudence issue associated with the project. The Commission would be remiss in preapproving a project that neglected to consider such an obvious alternative. In fact, to protect the public interest, WRA believes the Commission should instruct PacifiCorp to approach EPA and the State of Wyoming about exactly such an alternative compliance path.

Conclusion

WHEREFORE, for the foregoing reasons, Western Resource Advocates prays for a Commission Order denying Rocky Mountain Power's requested approval in this matter, and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,

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