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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
Cheryl Murray
Date: April 5, 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

At the time of the Company's request for voluntary approval of its resource decision a final Environmental Protection Agency (EPA) Best Available Retrofit Technology (BART) decision for Jim Bridger Units 3 and 4 was expected by mid-October 2012. Under that timeline the Commission would have known the EPA's requirements for the units at the time it issued its order in this docket. Such knowledge would have added more certainty as to the need and timing of the projects the Company plans to undertake. However, on December 13, 2012, the United States District Court for the District of Colorado issued an Order to Modify Consent Decree allowing the EPA to delay issuing its final BART determination for the Jim Bridger plants. In its order the court set the new deadline of March 29, 2013 for the EPA to sign a notice of re-proposed rulemaking and September 27, 2013 for a notice of final rulemaking. The Office and other parties asserted that the new timeline significantly increased 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 EPA 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.

At the conclusion of the March 7, 2013 hearing regarding the voluntary request of Rocky Mountain Power for approval of resource decision to construct selective catalytic reduction (SCR) systems on Jim Bridger Units 3 and 4, the Public Service Commission (Commission) invited parties and directed the Company to provide comments on an EPA

re-proposed rulemaking expected to be issued by March 29, 2013. Initial comments are to be filed by April 5 followed by reply comments on April 19, 2013. The Commission also directed the Company “to file as quickly as reasonably possible any communication from the EPA, any re-proposal or—any other action that the Company might be aware of.”¹

Discussion

Office Position

Throughout this case the Office has maintained that the Commission must eliminate as much uncertainty as possible and determine that the results provide clear benefits to ratepayers before granting pre-approval of any utility request under Utah Code Ann. § 54-17-402.

The Office has undertaken a full review of both the technical issues and the policy implications surrounding the Company’s request in order to determine positions that are in the best interest of the ratepayers we represent.

Technical issues such as modeling concerns, errors and required updates identified in our direct testimony had largely been resolved and/or corrected by the date of the hearing.² However, the Office’s position that modeling concerns have largely been resolved should not be mistaken as support for the Company’s proposal. As stated in the Office rebuttal and sur-rebuttal testimony, uncertainty regarding the EPA’s re-proposal remained as the issue of major importance and the basis on which the Office opposes the pre-approval requested by the Company. In an effort to mitigate that uncertainty the Office recommended that the Commission delay issuing an order in this case until the EPA issued its re-proposal on March 29, 2013 and parties had an opportunity to provide comments as to how it may affect the Company’s request for voluntary approval. Without knowing what the EPA will require regarding BART it is impossible to know if constructing SCRs will meet the EPA requirements and if SCR will be the least-cost alternative for meeting those requirements.

As noted above the Commission responded to the request of the Office and other parties by offering the opportunity to provide comments on the EPA’s re-proposal.

Current Status of EPA Re-proposal

On March 27, 2013, the Company provided, via electronic mail, a copy of Stipulation to Extend Deadlines in Consent Decree – Case 1:11-cv-00001-CMA-MEH, filed March 25, 2013 in the United States District Court for the District of Colorado. Under this new Stipulation:

¹ March 7, 2013, Reporters’ transcript at page 217.

² The Office notes that much of our ability to determine what the modeling concerns and errors were resulted from having access to and utilizing the Company’s GRID model.

“by May 23, 2013, EPA shall sign a notice of re-proposed rulemaking in which it proposes approval of a SIP, promulgation of a FIP, partial approval of a SIP and promulgation of a partial FIP, or approval of a SIP or promulgation of a FIP in the alternative, for the State of Wyoming, to meet the regional haze implementation plan requirements that were due by December 17, 2007, under 40 C.F.R. § 51.309(g). In its re-proposal, EPA will propose to determine, for each source subject to BART, the period of time for BART compliance that is as expeditious as practicable, as required by 42 U.S.C. § 7491.”

The Stipulation requires that EPA shall sign a notice of final rulemaking by November 21, 2013.

The Office envisioned that, while not adding complete certainty to the process, the EPA re-proposal expected to be filed March 29, 2013, would likely have been indicative of the direction the EPA intended to go (e.g. keeping the requirements the same, slightly more or less stringent, or making them significantly more stringent.) If the new requirements had been known today, as anticipated, minor changes could have been evaluated quickly and parties could have made recommendations for how to treat more major changes prior to a Commission order.

However, having a further extension of the re-proposal deadline exacerbates the uncertainty of whether the SCRs will be able to meet the requirements or will be the least-cost method of compliance. Now, the Commission will have to decide whether to rely on Company assertions that its plans are flexible enough to respond to potential differences in the EPA's re-proposal. The Office cautions against such action. Even if the Company is able to respond flexibly, it has not demonstrated that such a response would be the preferred or least-cost method of compliance. Even slightly more stringent requirements could result in modest modifications to the Company's plans and increases in operating costs significant enough to materially impact the analysis of alternatives. More stringent requirements would require a new analysis to determine the most effective way to meet those requirements and could result in the Company modifying its current plans significantly. This current level of uncertainty is not a situation in which granting pre-approval would be in the public interest.

Timeline Issues

The Office notes that issues regarding timeline have played a prominent role in this proceeding and warrant additional discussion.

The Company has stated that under the compliance agreement with Wyoming it must complete construction of the SCRs by December 31, 2015 and December 31, 2016 for Jim Bridger Units 3 and 4, respectively or they cannot continue to operate. These deadlines result from an agreement the Company voluntarily entered into with the

Wyoming Department of Environment Quality prior to knowing if the EPA would accept the proposed methods of compliance, e.g. adding SCRs to Jim Bridger Units 3 and 4.

The Office acknowledges that the correct timing and planning would help to minimize overall costs associated with upgrades. In surrebuttal testimony in this docket the Office stated:

“The Office believes that *if* [emphasis added] the SCRs as proposed are the least-cost option for compliance, then it would be in the public interest to maintain a timeline that facilitates this work being done during a scheduled outage.”³

The Office continues to believe that completing necessary work during a scheduled outage is usually the best course of action. However, the most relevant issue in this case is not the timeline but whether the SCRs as proposed would be the least-cost option for compliance.

The Office also asserts that the Division’s recommendation for conditional approval is rendered unworkable by the changes in the timing of the EPA’s re-proposal. The Division’s first condition required a review of the impacts of the EPA’s emission limit re-proposal anticipated to be released on March 29, 2013 and required the Company to provide a cost impact analysis of meeting requirements in the re-proposal. Whether or not the court approves the delay agreed to in the most current stipulation between the EPA and WildEarth Guardians the March 29, 2013 deadline for the EPA re-proposal has passed. Under the new timeline, the type of analysis envisioned in the Division’s first condition would not occur until after the Company has moved forward with its plans and expended significant funds. Thus, this first condition cannot be met on a meaningful timeline. The Office concurs that the cost impact analysis is an essential component of this case, without which the Commission cannot determine that the Company’s request is in the public interest. Thus, the changed circumstances require the Commission to deny the Company’s application.

In conclusion, while timeline questions have played a prominent role in this proceeding, they are not the evidence upon which the Commission should make a decision.

Office Recommendation

At issue before the Commission is the Company’s request for pre-approval of the costs associated with installing SCRs on units 3 and 4 of the Jim Bridger plant. Such pre-approval should only be granted if it is clearly demonstrated to provide ratepayer benefits as the least-cost option for compliance with the EPA’s regional haze implementation plan requirements. Due to the uncertainty associated with the delay in the EPA’s re-proposed

³ Surrebuttal testimony of Cheryl Murray, page 7, lines 143-146.

rulemaking, the Commission cannot determine that the Company's proposal is a preferred course of action and therefore should not approve the Company's application.

The Office recommends that the Commission deny the Company's voluntary request for approval of resource decision to construct selective catalytic reduction systems on Jim Bridger Units 3 and 4.