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DEPARTMENT OF COMMERCE
Office of Consumer Services

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Director

To: The Public Service Commission of Utah
From: The Office of Consumer Services
Michele Beck
Cheryl Murray
Date: April 19, 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 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) provided for parties to file initial comments related to the EPA re-proposed rulemaking on April 5 and reply comments on April 19, 2013. On April 5, 2013, the Office of Consumer Services (Office) and other parties to this docket provided initial comments or post-hearing briefs regarding the Environmental Protection Agency (EPA) re-proposed rulemaking.

The concerns expressed in the Office's initial comments remain and are still relevant. These reply comments respond to Rocky Mountain Power's (Company) initial post-hearing brief relating to EPA action and initial comments of the Division of Public Utilities both of which were submitted on April 5, 2013.

Discussion

Office Position

The Office's position 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 remains unchanged. The Office has reviewed the initial comments and post-hearing brief filed on April 5, 2013, and nothing has been offered that persuades us that uncertainty is no longer a significant issue in this case.

Response to Rocky Mountain Power Initial Comments

1. EPA delay

Rocky Mountain Power goes to great length identifying and discussing the catalog of changing dates and delays associated with the EPA's proposed rulemaking. The most recent action (Stipulation to Extend Deadlines in Consent Decree) defers until May 23, 2013, the deadline for the EPA to sign a notice of re-proposed rulemaking.

In identifying the ongoing series of EPA delays, the Company's initial Brief supports the Office's assertion that at this time there is too much uncertainty for the Commission to determine that pre-approval of the Jim Bridger SCRs is in the public interest.

The Company claims that "...if states were required to wait on EPA to approve submitted SIPs before the SIPs were to become effective, air quality improvements deemed important by a state would forever be delayed". While the Company's claims that important state air quality improvements "would forever be delayed" are likely exaggerated, other states' preferences cannot be the basis for this Commission to make a finding of public interest for a utilities' action in Utah.

2. Need for SCR Project

The Company concedes there is uncertainty when it asserts "that the only uncertainty that exists is what the EPA's emission limits will be, **not** the technology to be used". In the same paragraph the Company states, "[M]oreover, while the ultimate EPA emission standards are unknown, there is no indication that the NOx standard will be set below 0.05 lb/mmBtu"¹. While admitting that emission standards are "unknown" the Company concludes that whatever emissions level the EPA ultimately requires SCR technology will be necessary. What the Company does not address is whether the SCR technology will remain the most cost effective option.

The Company maintains that if the EPA were to lower the emissions limit toward 0.05 lb/mmBtu, the change could be accommodated in the ongoing contract negotiations and ultimate SCR Project design. Since the Company has laid out its case of continual EPA delays and uncertainty as to when a final emissions limit may be set it is not clear how

¹ Rocky Mountain Power Post Hearing Brief relating to EPA Action, page 4.

this change in circumstances would be accommodated in the contract. Without knowing the terms of the final contract regarding any modifications that would ultimately be required to meet changed emissions limits the Commission is left with only Company assurances that the proposed technology and its contract negotiations will be adequate protection for Utah ratepayers. These assurances do not diminish the uncertainty regarding both the cost of meeting changed requirements and the appropriateness of the technology choice under more stringent requirements.

The Office takes no position on the Company's assertion that a lower emissions level can be accommodated within the SCR Project design. However, whether the Company's proposal can meet the potentially changing requirements is not the only criteria the Commission must consider in determining the public interest. The Company has not provided a cost benefit analysis to demonstrate that SCRs are the least cost alternative under changed circumstances. Absent evidence that SCRs are the most cost effective alternative under more stringent emissions requirements, the level of uncertainty regarding EPA requirements remains an insurmountable barrier to finding pre-approval would be in the public interest.

Utah Code Ann. § 54-17-402 should not be used to shift risk from the Company to the ratepayers. It should be used only in cases where the benefits have clearly been demonstrated so that the Company can pursue those benefits without associated regulatory risk.

In cases, such as this one, in which significant uncertainty prevents the Company's proposal from being clearly demonstrated as most cost effective, the Company should delay its decision or pursue cost recovery under the more standard regulatory mechanisms. Pre-approval is not required for the Company to act on its decision. If the Company is confident that moving forward with the SCRs is the best option, it also has the option to demonstrate the prudence of its decision in a rate recovery proceeding at the time the resource is used and useful.

Response to Division of Public Utilities

In testimony the Division recommended the Commission grant conditional approval of the Company's request and attached five conditions to approval. However, in initial comments the Division modifies that recommendation, striking Condition 1 stating it has determined Condition 1 is no longer appropriate given the EPA delay.²

The Division's stance offers little security for ratepayers who would be responsible for pre-approved costs. In initial comments the Office recognized the importance of the information the Division sought to obtain through Condition 1. "The Office concurs that the cost impact analysis is an essential component of this case, without which the

² Division of Public Utilities Initial Comments, page 3.

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."³ The Office stands by its assertion that the change in timing for the EPA's re-proposal renders unworkable the Division's recommendation for conditional approval. However, simply removing Condition 1 does not decrease the uncertainty related to the best course of action nor does it remove the necessity for the Commission to have evidence of the cost impact of the Company's decision. The appropriate course of action is not to grant approval rather than removing the condition for approval.

Office Recommendation

The Company requests that the Commission grant pre-approval of the costs associated with its decision to install SCRs on Jim Bridger Units 3 and 4. Pre-approval of any request under this Statute should only be granted when the benefits to ratepayers have been clearly demonstrated. In this case the uncertainty associated with the delay in the EPA's re-proposed rulemaking and the lack of cost-benefit analysis for the potential changed circumstances of new requirements makes it impossible for the Commission to determine that the Company's proposal is the preferred solution. Therefore the Company's application should not be approved.

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.

³ Office of Consumer Services Initial Comments, page 4.