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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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**In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations, Consisting of a General Rate Increase of Approximately \$161.2 Million Per Year, and for Approval of a New Large Load Surcharge,** )

**Docket No. 07-035-93**

**Post Hearing Statement**

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Comes now, the UIEC, a group of industrial customers whose names appear on the record, and pursuant to the invitation of the Utah Public Service Commission (“Commission”), submit this Post-Hearing Statement as to the Test Year Hearing.

**I. THE PURPOSE OF DETERMINING A TEST YEAR.**

1. Introduction. Rocky Mountain Power (“RMP” or the “Company”) has filed an application for a rate increase, projecting its operations through June 2009. Under the Utah statutes, RMP could have filed a case using an historical test year with known and measurable changes, a mid-year period (mixed), or a test period extending out twenty months. It has chosen the most aggressive option. UAE and UIEC have advocated that the Commission select a test

period nearer in time. The Committee of Consumer Services (“Committee”) and the Division of Public Utilities (“DPU”) declare they can make adjustments to the test year period proposed by RMP and will propose adequate remedies, albeit they have not disclosed what those remedies might be. The Committee advocates that the Commission promptly select whatever period it is going to use to determine just and reasonable rates.

UIEC and UAE argue that the test year to be selected should be a mid-period test year because of the uncertainty relating to the forecasts of load growth and other costs, the significant cost caused by errors in the forecasting, and the absence of adequate remedies for such errors.

2. Significance of a Test Year Determination. The determination of a test year, other than the test year filed by RMP, can and will reduce the issues in this case by reducing the amount of data that must be examined. That will, in and of itself, shorten the process for preparing and presenting the case.

In addition, the Test Year Hearing illustrates that there will be considerable disagreement about the magnitude of the Company’s load in the out-lying months if the proposed test year is chosen, which will further complicate the proceeding.

Alternatively, the Commission could decide to use an historic year with known and measurable changes if it is sufficiently uncertain about forecasts for any period.

3. Uncertain Future. Based on the record in this proceeding, we believe the Commission is compelled to select a test year extending no further than June 2008. The testimony in this case is fairly clear. The economy of Utah, and indeed the entire country, began to change in mid-2007. That change appears to be downward in terms of new home construction

and new connections, and other indicators (Lemmon Testimony, p. 4). The consequence of the downturn leaves the future uncertain and projections unreliable.<sup>1</sup>

The Company relies on a forecast that has a data collection period ending in April of 2007. That forecast is based on the assumption that the rate of growth will not change in the future (Rife Testimony, p. 8); a statement that may have been true in April, but is not true today. The Company forecasts a rate of growth of 6% in retail sales through the end of its proposed test year – an average of 3% per year. (Rife Testimony, pp. 7-8) The DPU witness Zenger reported in her pre-filed direct testimony that the population in Utah will grow 1.7% for 2007-2008 based on estimates from the Governor's Office. However, during the hearing, she reported more recent information whereby the Governor had updated his views of growth. Neither Zenger's original forecast nor her updated forecast in the hearing are as high as the levels forecasted by RMP. It appears that neither witness Zenger nor witness Rife looked at the most recently available data, which shows significant declines in housing starts and new connections, as well as increased unemployment. While they concede there are indicators that the economy is slowing, and they concede there are rumors of a recession, neither took these facts into consideration in their analyses and forecasts. Thus, their forecasts missed what impacts might arise from the current credit crisis, the sub-prime turmoil, and other current events. In short, the Company's forecast and the DPU's forecast has little chance of presenting reliable information on which the Commission can design rates for the future.

The Company and the DPU contend there will be plant additions during the test period, which may go uncompensated unless the prospective period proposed by the Company is used.

<sup>1</sup> The attached article from The Salt Lake Tribune, February 13, 2008, of which the Commission can take Administrative Notice, illustrates this point. (See Attachment A.)

The plant addition cited by witness Zenger in her testimony is most telling of the changing circumstances. She argues the IGCC plant in Wyoming is an illustration of the kind of plant and the kind of costs the Company will incur during the test period, requiring the use and consideration of the proposed future test period. (Zenger Testimony, p. 10.) What she did not note and did not correct in subsequent testimony is that the IGCC plant has now been put on indefinite hold, as have Mid-American's nuclear undertakings, and the IPP expansion has been cancelled.

To counter this situation, the Company proposes a novel way of bringing the plant into the rate base, contending that by averaging the plant into rates the customer is somehow protected. That is nonsense. Under such a scenario, the customer begins to pay for the plant before the plant is used and useful. Averaging is just a clever attempt to try to avoid the rule requiring that a plant be used and useful before it be included into the rate base, and exposes the customers to the harms identified by witness Higgins, which arise when a plant is delayed. (Higgins Testimony, pp. 11-12).

## **II. THE COMMISSION'S DUTY.**

Much has been said and many arguments have been made about the obligation of the Commission to determine a test year that best fits the circumstances that will exist during the rate effective period, but limited discussion has been had about the other duties of the Commission, which duties have not been modified by the Utah Legislature in enactment of the test year statute.

The Commission must still ensure that rates are based on assets that are used and useful and make a determination that rates are just and reasonable based upon "evidence." Given the

changes in the circumstances that began to occur in mid-2007 with respect to load and load growth and the uncertainty with respect to the plant additions prospectively proposed by the Company, the use of a test period ending June 2009 may well lead the Commission into error in this proceeding. The Commission's duty cannot be satisfied using the information forecasted by the Company as supplemented by the DPU. The forecasts are now wrong, and were, when made, based on speculation that they would not change from a period of expansion.

### **III. REMEDIES.**

The Company is protected when it brings on a new plant because it capitalizes the cost of that plant, including the carrying costs, and begins to amortize or depreciate the carrying costs after the plant becomes used and useful. If the Company is allowed to average costs into rate base before the plant has become operational, the customers suffer. They pay for plants that are not in service and the Company collects AFDA. The harm to the customers is significant.

With respect to fuel costs, the Company has testified that all their fuel costs are hedged even through the test period of 2009. (Lasich Testimony, p. 13). Thus, the fuel costs will be what the fuel costs are regardless of what test period is chosen. There are no base-load plants now proposed during the proposed future test period because the IGCC plant, nuclear plants, and IPP plant additions have been canceled or delayed. Wind does not add capacity, it is simply a substitute for energy.<sup>2</sup>

As the Test Year Hearing concluded, the debate began regarding the relative resilience to the looming recession of the State of Utah compared to the State of Oregon. That question

<sup>2</sup> We query whether bringing on wind with the fuel costs already hedged is of any benefit to the ratepayers. It would only be beneficial if the hedged fuel positions can be disposed of profitably. More will no doubt be said on that issue in the general rate case.

looms, as witness Higgins pointed out, because the allocation factors as between the two states allocate to the State of Utah significant dollars on the assumption that the State of Utah will grow faster than the State of Oregon. That assumption proved not to be true in the last general rate case, as illustrated by his testimony and exhibits. We have no indication and have no way of knowing from the testimony filed in this case to date if, during the period 2007 to 2008 and 2008 to 2009, Oregon and the other states in PacifiCorp's territory will grow at the same rate or at a lesser rate than the State of Utah. To the extent that Utah declines at a faster rate than those states, or those states grow at a faster rate than does Utah, the costs that will be allocated to Utah as a result of the proposed test year are costs that should not be so allocated. There is no way that exists in Utah law, to our knowledge, for the ratepayers to recover from this misallocation of costs as between states. As the Commission has determined in the past, the doctrine of retroactive ratemaking would preclude a "trueup" from mistakes that occur as a result of reaching out and using forecasted information that proves to be erroneous.

The same would be true with respect to unit costs that are determined wholly within the state. If fuel costs are overstated by the use of fuel-cost estimates for the out-lying years that are higher than actuals because of the forecast of increasing use of higher-cost fuels, there is no way for ratepayers to recover that money. Ratepayers might be protected from paying for plants before they become used and useful with some kind of phase-in of rate adjustments relating to significant plant additions, but that alone does not protect ratepayers from the other harms that are probable if a forecasted rate period is used. Furthermore, the partial remedies would create administrative and regulatory burdens and provide incomplete relief.

#### IV. CONCLUSION.

Based on the foregoing, the UIEC urge the Commission to decide that the appropriate test year in this proceeding is a period ending no later than June of 2008. The Commission must decide that the data beyond that period is sufficiently uncertain, given the current circumstances (the possibility of looming recession), to make the information unreliable and of unclear quality. Further, the UIEC point-out that there is no available remedy for the errors that might occur from the use of erroneous information. There is no way of knowing what the assumptions are, especially the inter-jurisdictional allocation. We do not even know what we do not know.

There may be circumstances where a future test year may be appropriate. But where significant economic changes have occurred and a potential recession looms on the horizon, these are not those circumstances.

Respectfully submitted this \_\_13th\_\_ day of February, 2008.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of February, 2008, I caused to be e-mailed and/or mailed, first class, postage prepaid, a true and correct copy of the foregoing POST HEARING STATEMENT to:

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