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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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	Docket No. 07-035-93  POST-HEARING BRIEF FOR THE UTAH COMMITTEE OF CONSUMER SERVICES
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The Utah Committee of Consumer Services presents this brief to explain why the Committee's recommended adjustments must be made if Rocky Mountain Power's rates are to be just and reasonable. The Committee has been and will be mindful of the Commission's admonitions concerning its familiarity with the evidence, and of the request for brevity in written argument.

The evidence from which the Commission must base its decision on RMP's request is contained in voluminous pre-filed written testimony and exhibits, and the explanations and clarifications that may have come about in the course of five days of hearings. The Committee believes that by reviewing a few significant and disputed, central rate elements in light of long-standing ratemaking rules and

principles, it is apparent that RMP's application for a rate increase is excessive in its individual parts and unwarranted as a whole.

### **BURDEN OF PROOF**

In *Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d 1242 (Utah 1980), the Court plainly defined the burden that a public utility must bear in any case for rate relief:

In the regulation of public utilities by governmental authority, a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the commission, the commission staff, or any interested party or protestant; to prove the contrary. A utility has the burden of proof to demonstrate its proposed increase in rates and charges is just and reasonable. The company must support its application by way of substantial evidence, and the mere filing of schedules and testimony in support of a rate increase is insufficient to sustain the burden. Rate making is not an adversary proceeding in which the applicant needs only to present a prima facie case to be entitled to relief. A state regulatory commission, whose powers have been invoked to fix a reasonable rate, is entitled to know and before it can act advisedly must be informed of all relevant facts. Otherwise, the hands of the regulatory body could be tied in such fashion it could not effectively determine whether a proposed rate was justified. In accordance with the mandate of Section 54-7-12(2) (" . . . On such hearing the commission shall establish the rates . . . which it shall find to be just and reasonable.") there must be substantial evidence to support the essential findings in a rate order. ". . . Whether there is any substantial evidence to support a finding of fact made by the Commission is a judicial question and may be determined by this court . . ." *Id.* at 1246-1246, footnotes omitted.

## NET POWER COSTS

The Court held in *Utah Department of Business Regulation v. Public Service Commission* that the utility did not meet its burden of proof because of the unreliability of both methods employed and results obtained by the utility to support its request for rate relief. The evidence RMP has presented in this case is similarly unreliable. For example, RMP attempted to shore up its net power cost revenue requirement by departing from the calendar year 2008 test period and its filed case, including actual First Quarter 2008 net power costs without also disclosing the revenues associated with sales and without normalizing those costs. *Falkenberg Sur-rebuttal* Line 83 – 167, 346 – 357. The opinion in *Utah Department of Business Regulation v. Public Service Commission* recognizes that in adjusting rates there must be “substantial evidence concerning every significant element in the rate making components (expense or investment) which is claimed by the applicant as the basis to justify a rate adjustment.” *Id.* at 1250. Adjusting both the expense and revenue sides of the rate equation is a condition precedent to just and reasonable rates. *Id.* at 1248.

In another example, RMP compared the Committee’s net power cost calculated using RMP’s GRID model with the higher actual costs for the 12 months ended March 30, 2008, including some \$30 million in market purchases in the most expensive time of the year caused by the delayed availability of the Lake Side Plant. RMP suggests that this comparison established that the Committee’s

net power cost adjustments lacked empirical proof. *Duvall Rebuttal Line 64 – 83, 132 - 138.* However, removing the \$30 million in non-recurring costs reduces the actual costs to a level less than the Committee is recommending in this case. *Falkenberg Sur-rebuttal Line 75 – 81, Table 1.*

In another example, RMP represents that it accepts in whole or in part, the Committee's adjustments related to the GRID model commitment logic and ramping, among other adjustments recommended by other parties. *Duval Rebuttal Line 27 – 83, 187 – 205, 238 – 241.* However, RMP's \$1,044 million net power cost request is calculated by using the same GRID model commitment logic that RMP agreed was erroneous, along with other incorrect costs and assumptions that RMP implies that it corrected in its modeling. *Falkenberg Sur-rebuttal Line 478 – 489.*<sup>1</sup>

Another flaw in GRID is that it schedules planned outages that do not reflect the past four years of actual scheduling practices. RMP's response to this criticism was to adjust its planned outages for the purposes of the rate case that is inconsistent with the actual maintenance schedule used. *Falkenberg, Sur-rebuttal, Line 539 – 549.* The consequence to rates is that the net power cost forecast is based upon imprudent practices that artificially increase costs. *Falkenberg, Sur-rebuttal, Line 559 – 568.*

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<sup>1</sup> The Committee's adjustments were made to RMP's filed case as adjusted. Mr. Duvall's final words on what case RMP was proposing appear on Line 32 – 34, 59 – 65, 859 - 866 of his rebuttal. RMP proposed Alternative 1 in the joint issues matrix filed before the hearing and in all but the last version of the post-hearing matrix. After circulating what appeared to be a final version, RMP inserted Alternative 2 as its proposal. In fact, Alternative 2 is based upon the same erroneous assumptions and does not correct the flaws in the model.

## TEST PERIOD

Use of a fully forecast test period rather than historically based, presents a different set of problems that must be addressed before a just and reasonable rate may be set. As the Commission stated in Docket No. 04-035-42,

For many years our general practice has been to rely on historical test periods without out-of-period adjustments. A major concern with out-of-period adjustments is the possible bias and lack of complete information about offsetting adjustments. Additional concerns discussed in the order in Docket No. 92-049-05 include the Company's unequalled access to financial and accounting information and the shifting of risks to ratepayers of the uncertain future as management action may offset the effects of regulatory adjustments. Our concerns with future test periods include the diminished economic examination and accountability, replacement of actual results of operations data with difficult-to-analyze projections, ability of parties to effectively analyze the Company's forecasts, dampening of the efficiency incentive of regulatory lag, playing to the Company's strength from control of critical information and shifting of the risks of the future to ratepayers. *Order Approving Test Period Stipulation, October 20, 2004.*

In approving the use of a forecast test period, the Commission said:

Ideally, the test period should balance the utility's investment, revenues and expenses so that all elements of the rate case are matched on the same level of operations. ... Some of the factors that need to be considered in selecting a test period include the general level of inflation, changes in the utility's investment, revenues or expenses, changes in utility services, availability and accuracy of data to the parties, ability to synchronize the utility's investment, revenues and expenses, whether the utility is in a cost increasing or cost declining status, incentives to efficient management and operation and the length of time the new rates are expected to be in effect. *Id.*

But the rate-making principles established by the Court in *Utah Department of Business Regulation v. Public Service Commission* do not change with the type of

test period used. The Court's criticism of evidence based upon a mismatched, moving test period applies to RMP's evidence in this docket.

RMP's rate relief request does not comply with the Commission's February 14, 2008 Order on Test Period. RMP first attributes the under-recovery of net power costs to the use of partial or full historical test years, as well as the failure of its GRID model to capture "all actual costs by assuming optimal system operation with some, but not all, of the constraints that the Company faces on a real-time basis." *Duvall Rebuttal, Line 114 – 118*. RMP then asserts that it should be permitted to update its revenue requirement with the most recent forward price curve because "[T]he test year decision has increased the regulatory lag the Company faces in a time of steadily increasing power costs." *Duvall Rebuttal, Line 208 – 210*. However, RMP does not also update the matching revenues or cost impacts, either greater or lesser that are required when a utility modifies the test year components in this case changing forward price curves from September 2007 to March 2008. As the Court stated in *Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d at 1248:

The test period results are adjusted to allow for reasonably anticipated changes in revenues, expenses, or other conditions in order that the test-period results of operations will be as nearly representative of future conditions as possible. The commission may adjust all figures, revenue, expense, and investment for anticipated changes, but it may not adjust one side or part of the equation without adjusting the other; unless there is a finding the particular expense is extraordinary. In other words, there is no basis for adjusting a test year figure in the absence of a finding the increased revenues expected in the future (adjusted to reflect new customers)

will not be sufficient to offset the investment and other increased investment and expenses.

As Mr. Falkenberg points out, RMP made no corrections or updates to GRID at the time the Commission issued its test period order, despite the Commission's invitation to do so. *Falkenberg, Sur-rebuttal, Line 991 – 994.* RMP then used a new price forecast but ignored related inputs that would reduce its net power costs. For example, RMP refused to provide revised GRID inputs for other adjustments impacted by the new forecast. *Falkenberg, Sur-rebuttal, Line 1044 – 1051.* This is not the only example of adding costs not in the original filing. RMP added \$3.2 million to net power costs by claiming to have inadvertently omitted electric swaps and indexed gas transactions, stating that no one challenged the transactions that were disclosed. *Duvall Rebuttal, Line 226 – 231.* Mr. Falkenberg points out that this is not a correction, but the addition of new costs. *Falkenberg, Sur-rebuttal, Line 984 – 989.*<sup>2</sup>

In Exhibit 4.4 to his direct testimony, Mr. Falkenberg identifies 19 different adjustments that must be made to elements of the net power cost, in order to determine the true impact of updated forward price curves. *Transcript Page 535, Line 16 – 25 to Page 536, Line 1 – 13.* Similarly, accurate comparisons of the 2008 test period to actual results in a new base period, the 12 months ending March 31, 2008, requires a number of changes to GRID. *Falkenberg Sur-rebuttal, Line 184 – 219, and Sur-rebuttal Table 2 at Page 8.*

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<sup>2</sup> Justifying rate increases because no one objects was expressly rejected by the Court in *Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d at 1245, when the dissenting Commissioner's analysis was upheld as correct.

The consequences of RMP's contrived calculations of net power costs is made apparent by comparing Mr. Duvall's rebuttal exhibit *GND-1R-RR* to RMP's response to the Commission's Data Request No. 1. RMP accepts certain adjustments recommended by the Committee and the Division of Public Utilities, provided that symmetrical adjustments are also made, particularly the forward price curve. *GND-1R-RR* purports to make these adjustments. *Duvall Rebuttal, Line 188 – 204*. The Committee and Division's accepted adjustments total \$7.763 million (*Falkenberg Sur-rebuttal, Line 997 – 1027, and cited direct testimony exhibits; see Falkenberg Testimony Summary Illustrative Exhibit*). In Alternative 2 of *GND-1R-RR*, RMP's "New Information and Mar-08 Official Price Curves" adds \$2.476 million by using the forward price curve. However, Alternative 2 appears to have symmetrically adjusted the Committee and Division's adjustments to \$0.00. RMP's response to Commission DR 1, states the forward price curve increases the net power costs by \$7.359 million. RMP's net power cost appears to be the result of applying the holding in *Utah Department of Business Regulation v. Public Service Commission* only selectively to increase rates.

The Commission selected the 2008 test period because it best reflects the conditions that RMP will encounter during the period when the rates will be in effect. RMP's presumption that it need not comply with the Commission order because for a number of years it has not recovered its actual net power costs, ignores the meaning of the Commission's orders in prior general rate increase requests. *Stewart v. Public Service Commission*, 885 P.2d 759 (1994), holds that a

utility's predicted costs and revenues declared for rate-making purposes are deemed accurate and are binding "even though the projections of expenses and revenues for the test year vary from actual experience." 885 P.2d at 778, citing *Utah Department of Business Regulation v. Public Service Commission*, 720 P.2d 420, 424 (Utah 1986). And in *MCI Telecommunications Corporation v. Utah Public Service Commission*, 840 P.2d 765, 772 (Utah 1992), the Court stated: "We emphasize that the exception for unforeseeable and extraordinary events cannot be invoked simply because a utility experiences expenses that are greater or revenues that are less than those projected in the general rate proceeding."

That RMP refused to straightforwardly address the conditions the company is likely to face is apparent in the approach its witness took to methods for calculating rate of return. Using the Capital Asset Pricing Model, Dr. Hadaway calculated a rate of return between 9.8 to 10.6%. *Transcript May 20, 2008, Page 51, Line 12*. Dr. Hadaway abandoned the CAPM to avoid the impact of market turmoil in short-term Treasury rates. *Transcript May 20, 2008, Page 52, Line 6 - 18*. His recommended rate was between 10.4 and 11.3%. *Transcript May 20, 2008, Page 33, Line 25*. The effect of uncertain and changing economic conditions upon forecasts of revenues, expenses and investments was a reason for the Commission to shorten the test period. Unhappy with the test period order, RMP introduced new adjustments or different forecasts to avoid the test period, or to increase the requested rate of return, abandoned models that consider the very economic conditions that will affect rates.

## PROPERTY TAXES

For many of the most contentious revenue requirement claims, RMP selects extraordinary and unbalanced sums, or the highest number within a range, calculated by often confusing methods and irregular data. An example of such a tortuous calculation can be seen in *Duvall Rebuttal, Line 65 – 80*. RMP attempts to justify its request by combining the net power cost it requested in Docket No. 06-035-21 for eight months of 2008, with the net power cost requested in this docket for four months of 2008, compared to a projection of 2008 net power costs, and compared to actual 2007 net power costs, and net power costs determined in Oregon.

Another such example of data manipulation is RMP's presentation of property taxes. RMP's forecast of test period property taxes is a speculative amount for which there is no rational basis. RMP justifies the amount by projecting increased assessments while ignoring the balance of other components to the property tax equation. Rather than plainly examining and demonstrating the basis for the projection, RMP creates a table that uses data reported to FERC rather than data from property assessment and tax records from the taxing authority. Omitted from the table is the amount of property taxes that are, or certainly should be, the beginning point for forecasting into the test period. *Ross Rebuttal, Line 97 – 99*.

RMP's table on Page 5 of Mr. Ross's rebuttal is not the "form of economic and statistical analyses and comparisons" upon which this Commission may rely

in determining just and reasonable rates. *See Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d at 1247 (citation omitted). The table is truncated into a “bald assertion” to justify a 15% increase in property taxes to be included in rates. *See Id.* By analyzing the taxes actually paid, the Committee provides substantial evidence that is available for analysis by the Commission. *DeRonne Sur-rebuttal*, Line 656 – 688.<sup>3</sup>

### **CASH WORKING CAPITAL**

RMP’s stance on including interest expenses in the cash working capital calculation is based not on evidence but on cyclic adherence to a conclusion that is contrary to Utah law and unsupportable given the evolution of utility rate regulation in the past 26 years. The quoted part of the Commission order in Docket No. 93-057-01, referring to Docket No. 82-035-13, does not relieve RMP of the heavy burden to support by substantial evidence “every significant element in the rate making components (expense or investment) which is claimed by the applicant as the basis to justify a rate adjustment.” *Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d at 1250. Furthermore, rate making is not an adversary proceeding demanding compliance with technical rules of evidence that define a prima facie case, the shifting of the burden of proof and the burden of persuasion. *Id.* at 1245-1246. The requirement that a rate

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<sup>3</sup> RMP’s projected generation overhaul expense is subject to similar criticism in that RMP seeks to recover more in rates than RMP intends to spend in the test period. *DeRonne Direct*, Line 677 – 692; *DeRonne Sur-rebuttal*, Line 248 – 286. So too, the Commission may not rely upon RMP’s 2008 medical cost forecast because it selectively relies upon only the first six months of 2007. Examining the actual annual 2007 costs establishes that the forecast exceeds the actual by \$8,079,550. *Schultz Sur-rebuttal*, Line 432 – 445.

adjustment be supported by substantial evidence requires that the Commission consider not only RMP's evidence, but also competent, credible evidence presented by others. *See WWC Holding Co. v. Public Service Commission*, 2002 UT 23 ¶ 8, ¶¶ 15-16.

The Committee's evidence in this case in fact is based upon an analysis of the very components of and rationale for cash working capital that the Commission outlined on pages 27 to 32 in the Report and Order in Docket 82-035-13. The Commission recognizes that the objective for determining the cash working capital allowance is to permit a fair return invested in utility operations. The Commission notes that simplified methods for determining working capital allowances, particularly for large utilities, had been replaced by the more complex but accurate lead-lag method. Accordingly, the Commission determined that the timing of receipts of revenue and payment of expenses is to be measured by a proper lead-lag study. The Commission discussed the fact that in certain cases, the utility receives revenue based upon certain expenses that will not be paid until a later date certain, and the possibility of earning a "return on a return." The Commission concludes that only uncompensated investments should be included in the working capital allowance for ratemaking purposes. Nothing in the Commission's Docket No. 82-035-13 Report and Order forecloses ongoing scrutiny of RMP's cash working capital allowance.<sup>4</sup>

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<sup>4</sup> For example, the Commission specifically directed the Company to demonstrate its prudent management of the Accounts Receivable Other component, and required the Division to monitor the account because of

The Committee's position and evidence pertaining to this issue, appears in the findings and reasoning of the Arizona Corporation Commission in Docket No. E-01345A-05-0816, *In the Matter of the Application of Arizona Public Service Company*. The Commission held in Decision No. 69663, June 28, 2007:

APS has not shown why the Commission should change its long-standing policy of including interest expense in the calculation of cash working capital. Although interest expense is a non-operating expense, the ratemaking formula provides for the recovery of the periodic payments to debt holders, and the evidence shows that the Company has use of these funds for an extended period of time before payments are required to be made. We will continue to include interest expense in the cash working capital calculation. *Page 10, Line 2 – 7.*

The Commission relies upon its Staff's position:

Staff believes that the Commission should continue to include interest expense in the calculation of cash working capital. Interest expense is the result of the Company's debt obligations and the Company must make periodic cash payments in known amounts to the debt holders. Because ratepayers pay for service on a monthly basis while the periodic cash payments are made on a quarterly or semi-annual basis, Staff believes that fairness requires the lead-lag study to recognize the Company's use of these funds for the extended period of time between their collection from ratepayers and the Company's payment of interest to the debt holders. In response to the Company's argument that if interest expense is included then equity should also be included, Staff stated that if the lead-lag study were expanded to include the payment of dividends, the result would be an even smaller rate base, not a larger one. Staff believes that including only interest expense is consistent with all Commission decisions on this issue for at least the last twenty years, is conservative and should be upheld. *Page 9, Line 14-25.*

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concerns that ratepayers were inappropriately paying a return on the account. *Docket No. 82-035-13 Report and Order, Page 31-32.*

## CONCLUSION

The few specific revenue requirement components addressed in this brief are not the only areas the Committee has addressed in testimony recommending adjustments. The Committee's evidence and adjustments directly address RMP's excessive or incorrectly calculated projections. RMP's monopoly position imposes upon it a "consequent duty to operate in such manner as to give to the customers the most favorable rate reasonably possible," a duty reflected in the statutory "just and reasonable" requirement. *Utah Department of Administrative Services v. Public Service Commission*, 658 P.2d 601, 618 (Utah 1983); accord, *Committee of Consumer Services v. Public Service Commission*, 2003 UT 29 ¶15. Within this context, the Commission should view RMP's evidence in this case with some skepticism. "The utility is truly the gatekeeper to information concerning what has happened, what is happening and what the utility anticipates can happen as its management continues pursuit of its business plans." *Order, January 3, 2008, In the Matter of Rocky Mountain Power Application for Accounting Orders, Docket Nos. 06-035-163, 07-035-04, 07-035-14, Page 19.*

RMP has not provided the Commission with the quality or scope of evidence that is substantial and upon which the Commission may rely to set just and reasonable rates. Only by accepting the Committee's adjustments does the evidence accurately reflect the costs of service that RMP may be reasonably expected to encounter in 2008. Only with the Committee's adjustments will the

significant elements in the ratemaking components be supported by substantial evidence.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of June 2008.

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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	Docket No. 07-035-93  CERTIFICATE OF SERVICE FOR POST-HEARING BRIEF
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On June 19, 2008, a copy of the Utah Committee of Consumer Services' Post Hearing Brief was served upon the following by electronic mail.

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DATED this 19<sup>th</sup> day of June 2008.

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