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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Complaint 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	**Response of the Division of Public Utilities to the Rocky Mountain Power August 28, 2008 Filing Responding to Motions to Dismiss or to Restart the 240-Day Statutory Time Period** **Docket No. 08-035-38**

The following constitutes the response by the Division of Public Utilities (DPU) to Rocky Mountain Power's (RMP or the Company) response to a variety of motions including the Motion of the DPU to address the 240-day statutory time period for the Commission to make a decision in this Docket.

INTRODUCTION

After reviewing the Company's response to the various motions, the DPU continues to urge the Commission to require RMP to file amended schedules that would include the impact of the Commission's orders in Docket No. 07-035-93.[1] Only when those amended schedules are

[1] On August 11, 2008, the Commission issued its Report and Order on Revenue Requirement, and on August 21, 2008, the Commission issued its Erratum Report and Order on Revenue Requirement in Docket No. 07-35-93.

filed, does the DPU believe that the 240-day statutory time period for a decision should begin to run.

ARGUMENT

The Company's response to the motions to dismiss or restart the 240-day clock collapses all the filing parties into a category called "moving parties" and gives little attention to the main issue raised by the DPU. The DPU's main issue is not the effect of over-lapping test years, not the effect of res judicata, not the applicability of rules on retroactive ratemaking, but is instead the need for the Company to file amended schedules showing the impact of the Commission's August 11 and August 21, 2008 decisions in the last rate case. For both legal and practical reasons, the 240-day statutory time period for a decision should not begin to run until that filing takes place.[2] The DPU recommends the Commission:

a. Order the Company to re-file its schedules and exhibits reflecting the effect of the Commission's orders. This filing should include related testimony and updated MDRs as required;

b. Order the Company to include in this filing (1) a detailed list of which adjustments the Company is making in its amended filing and their effect, (2) a detailed list of which ordered adjustments the Company is requesting the Commission change, including the effect of the adjustment as Ordered by the Commission;

c. Order that only after these filings are made, does the 240-day statutory time period begin to run; and

d. Order that after the filings have been made and the 240-day clock has began to run, a test year hearing would be scheduled if needed or parties could file whatever motions they thought appropriate, including motions addressing the effect of the over-lapping test year in Docket No. 07-035-93 and this docket.

The absence of amended schedules places the burden to sort out the rate case and address practical auditing concerns on the parties rather then the Company. Indeed, without the

[2] The Company has indicated that it intends to make such a filing. It is not clear, however, if that filing will just be a response to a data request or if it will be formally filed with the Commission with testimony and exhibits and include an update of the MDRs.

Company incorporating the order in Docket No. 07-035-93 into this case, there is no defined starting place.

A number of the parties recognize the burden, placed mainly on the Division and Committee, in auditing the filed rate case without having the Company provide new schedules reflecting the Commission's orders in the last rate case. Although this burden may affect the DPU and CCS more, it affects all parties who intend to participate in the revenue requirement phase of this case.

In its response, the Company points to a number of past cases where a new rate case was filed prior to the revenue requirement decision in the previous case. The Company made an argument that since no objections were made to those filings parties are prohibited from making objections today. The Company also argues that the new rate case filed prior to a decision in the revenue requirement phase of the last case should not be an auditing problem to the parties. The Company even goes so far to say that if the Division has difficulty dealing with the situation with the greatly expanded staff and more powerful computers that they have today, one can only wonder how the Division carried out its responsibilities in the rate cases that occurred in the 70's to the mid-to-late 80s.[3] This cavalier comment by the Company about "staff" and "computers" avoids addressing the burdens placed on parties that the Company caused by failing to provide a complete filing incorporating the decisions in the last rate case. The Company seems to focus only on the dollar amount of the requested increase, and does not recognize the burden created by not having a complete filing from which to work.[4] Not considering net power costs or rate of

[3] See RMP Brief p. 27 footnote 7. RMP's unprecedented reaction to the Commission's Order set forth in RMP's September 3, 2008 press release just exacerbates the auditing problems of the parties in this rate case. The Company has announced potentially significant changes in expense levels than are currently included in the Docket No. 08-035-38 rate case. The Company should be required to file updated schedules showing the expected changes in expense levels from what has been currently filed in the Docket No. 08-035-38 rate case.

[4] On p. 29 of its Brief, the Company indicates that it intends to make a filing incorporating the prior rate case orders, but does not say when it will be made or what that filing will consist of. The Company in its testimony and again here seem to focus on the effect of the $36 million increase on the revenue requirement in this case rather then the

return, there were 24 contested adjustments from the prior rate case that may need to be reflected in this rate case. The Commission's Order was adverse to the Company on eight adjustments. A number of the adjustments included direction to the Company, presumably for the next rate case -- which is this case. Net power costs calculated through the GRID models creates more significant problems for review and analysis. There were 21 net power costs adjustments, of which 17 were contested. The Commission decision was either wholly or partially adverse to the Company on 14 of the 17 contested adjustments. The Commission's order also gave direction to the Company regarding alterations to the GRID model which presumably should occur in this rate case. The GRID model is complex and the Division must wait for the Company to incorporate all of the Commission's ordered changes from the last rate case, and then must still wait for the Company to provide the Division with an updated version of the GRID model before meaningful results can be obtained. The DPU considered this issue so significant that it submitted two affidavits to explain the difficulties created by not having the supplemental filing from the Company incorporating the impact of the last rate case. The Company failed to provide any meaningful response to those affidavits.

In addition to listing past rate cases which were filed before an order in the previous rate cases, the Company alleges that it is standard practice in a rate case for the Company and interveners to provide updated information. Since updating is standard rate making practice, the Company argues that the Commission cannot now change that practice and require the 240 day clock to restart due to the amended filing that the Company will make to conform this case with the PSC's orders in the last case.[5]

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effect of the numerous adjustments made by the Commission on the parties' ability to audit or on the revenue requirement schedules filed by the witnesses.

[5] Not only are updates required to incorporate the effects of the Order, but also test year updates are clearly required because of the announcement made by the Company in its recent press release in which it announces reductions in service.

However, the DPU sees significant practical and legal differences between the complete absence of complete information in the Company's initial filing in this docket as compared to updates to a complete initial filing as a rate case progresses.[6] The biggest difference is the Company's initial filing starts the 240-day clock. Updating the initial filing to reflect new information or changing positions generally does not justify an argument to restart the clock, particularly when motions to strike could address any disadvantage caused by the Company's new or updated information. However, in this case, restarting the clock is warranted because the initial filing is so deficient and incomplete. It is even now even more incomplete because of the recent announcement of the Company in its September 2, 2008 press release.

The Company's argument that what has happened in this rate case is standard practice and has occurred in the past is without merit. The DPU believes that most, if not all, of the electric cases cited by the Company in its attachment where the new rate case was filed before an order in the previous rate case occurred when the Company had an energy balancing account (EBA) which permitted essentially everything that is now recovered through GRID to be recovered in a separate proceeding similar to proceedings involving Questar Gas' 191 account. Furthermore, those cases can be distinguished from the case now before the Commission because the Company does not have an EBA and now serves in six states rather than three. As will be discussed in more detail later, the decisions cited by the Company all occurred prior to the decision by the Utah Supreme Court in the Salt Lake Citizens Congress case (the "Charitable Case")[7], which imposed an obligation on the company to file complete filings, and established rules on stare decisis. Finally, RMP does not claim that any party raised the issue of an incomplete filing as a basis for restarting the 240-day clock as has been done here. No ruling was

[6] Possibly in some circumstances the new information would be so fundamental that a party might argue that more time is needed and try and restart the clock.
[7] Salt Lake Citizens Congress v. Mountain States Telephone and Telegraph, 846 P.2d 1245 (Utah 1992).

pointed to by the Company that would prohibit a ruling by the Commission today other than to claim what is standard practice.

The Charitable Case, along with other decisions by the Utah Supreme Court, provides the Commission with the legal basis to restart the 240- day clock after the Company makes a filing incorporating the effect of the last Commission orders.

RMP seems to clearly acknowledge its obligations under the Charitable Case decided by the Utah Supreme Court to incorporate the effect of the decisions in the last rate case into this current case. RMP states it intends to "clearly identify any aspect of its Application that does not comply with an adjustment in the Revenue Requirement order on which it is asking the Commission to modify its position."[8] Moreover, in a number of places the Company states its clear intent to make a supplemental filing that would identify adjustments to its rate request or "specifically identify aspects of its request that differ with adjustments adopted in the Revenue Requirement Order."[9] The Company states that this filing will occur "as soon as reasonably possible."[10]

After filing its response on August 28, 2008 to motions related to the 240-day clock, the Company filed a Petition for Reconsideration of the Order in the last rate case. The Company's Petition for Reconsideration challenges the Commission's Order on numerous net power costs issues, the calculation of property tax, and the rate of return, as well as a variety of other issues, including test year.[11] The Commission should not allow the Petition for Reconsideration to relieve the Company of its obligation to file the current rate case in compliance with the Commission's order in the last rate case. Although the Company recognizes it has an obligation

[8] See footnote 9, and generally p. 31 in RMP's response.
[9] RMP response p. 30.
[10] RMP response p. 30.
[11] In the meantime, absent the Commission changing its decision, the Company is obligated to file in compliance with the Commission's orders in Docket No. 07-035-93 and if it wishes to be relieved of any of those obligations in the current rate case, the Company must request the Commission to alter its earlier decisions.

to make a supplemental, conforming filing in this rate case, it does not recognize that, as a result of that supplemental filing, the Commission has the authority to state that the supplemental filing restarts the 240-day clock. The DPU believes that the Commission has such authority.

It is well established that the utility has the burden of proof in a rate case. That burden includes providing all necessary information to the Commission allowing it to set just and reasonable rates. The most often cited case on burden of proof is Utah Department of Business Regulation Division of Public Utilities v. Public Service Commission (the "Wage Case").[12] That case provides insight into what is meant by burden of proof. The "mere filing of schedules and testimony in support of a rate increase is insufficient to sustain the burden."[13] The Utah Supreme Court goes on to say that:

> Ratemaking 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.[14]

The guidance provided by the Wage Case supports allowing the Commission to determine if in this case RMP's application provides sufficient information for the Commission to act. The ability to determine that insufficient information has been provided and that a supplemental filing is necessary surely gives the Commission the authority to put the burden of the clock on the utility rather than on the parties and the Commission.

The Utah Supreme Court in Mountain Fuel Supply Company v. Public Service Commission[15] provided more insight into what is meant by burden of proof. After citing the "Wage Case," the court indicated that it would be inconsistent with that burden to allow a utility to force the Commission to engage in the analysis of two rate making models when the utility

[12] 614 P.2d 1242 (Utah 1980).
[13] Id. At 1245-1246.
[14] Id. At 1246.
[15] 861 P.2d 414 (Utah 1992).

itself does not know what that analysis will show.[16] The Utah Supreme Court concluded that what Mountain Fuel wanted was "to prepare its case at the same time it presented it. The Commission acted well within its discretion in refusing to invest its time in such an endeavor."[17] Here Rocky Mountain Power is asking the parties and Commission to waste their time awaiting RMP's supplemental filing. As in the Mountain Fuel case, it is within the Commission discretion to refuse to invest its time into such an endeavor and instead to place the time burden on the utility.

Finally, the Charitable Case places the burden on the utility, not on the parties, to follow prior Commission orders; the burden is not on the parties to figure out if prior orders have been followed. RMP acknowledges the applicability of the Charitable Case in this rate case[18] and states the applicability of stare decisis is yet to be determined.[19] However, determining the applicability of adjustments from the last case to the current case cannot even begin until the Company makes its supplemental filing. It should not be up to the DPU or others to try to figure out which adjustments from the prior rate case the Company intends to apply in this case.

Additionally, statutes give the Commission discretion to determine whether a rate case filing is sufficient to start the 240- day clock. Utah Code Ann. § 54-7-12(2)(a) states that a rate increase begins when "appropriate schedules" are filed with the Commission setting forth the proposed rate increase or decrease. The 240-day statutory time period begins when the schedules are filed with the Commission. RMP interprets "schedules" to be "the tariff pages listing the rates that will be in effect if the proposed rate increase or decrease is approved."[20] The Company argues that this obligation is met by filing the tariff pages as exhibits. [21]

[16] Id. at 423.
[17] Id. at 423.
[18] RMP response p. 31.
[19] Id. at 31.
[20] RMP response p. 25.
[21] See WRG 2.

However, because of material omissions in their accounting exhibits those tariff sheets could not be placed in effect at the end of 240 days. For those tariff sheets to be effective, those tariff sheets must reflect the supplemental filing by the Company. Therefore, notice of the proposed rate increase that could actually go into effect cannot be provided to the public until after the supplemental filing by the Company occurs. As discussed earlier, this mere filing of the tariff sheets does not satisfy the Company's burden of proof. The Commission must have authority to determine if sufficient information has been provided by the Company in its schedules in order to start the 240-day clock. Otherwise, control over the process is handed over to RMP, which can start the 240-day clock by merely filing its tariff sheets. According to the Company, the mere filing of the tariff sheets is sufficient to start the 240-day clock and the Commission does not have discretion to determine if such a filing is sufficient. Under RMP's analysis, the Commission could not restart the clock or dismiss the application even if clearly incomplete tariff sheets were filed, but instead would have to leave the clock ticking even if RMP chose to file complete tariff sheets on day 239.

CONCLUSION

In conclusion, the Commission must take control over the process where insufficient information is provided for it to act. Until a supplemental filing is made incorporating the Commission's Orders in the last rate case, it cannot act. The burden of lost time is being placed on the parties rather then the Company that clearly has the burden to provide complete information to the Commission. The DPU urges the Commission to order the Company to file

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its supplemental schedules showing the impact of the Commission's Orders as rapidly as possible and only then should the clock start to run.

Respectfully submitted this _____ day of September 2008.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Response of the Division of Public Utilities to the Rocky Mountain August 28, 2008 Filing Responding to Motions to Dismiss or to Restart the 240-Day Statutory Time Period, in Docket No. 08-035-38 as sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on September _____, 2008:

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