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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. 08-035-38

**UAE INTERVENTION GROUP'S
REPLY MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
DETERMINATION THAT ROCKY
MOUNTAIN POWER'S
APPLICATION AND SCHEDULES
ARE INCOMPLETE AND
INADEQUATE**

The UAE Intervention Group (UAE) files this memorandum in reply to the "Response" filed herein by Rocky Mountain Power (RMP) and in support of UAE'S motion for a determination that the Application and Schedules in this docket are inadequate and incomplete.

RMP's Response is a broad-ranging response to various motions filed by various parties. The UAE Motion seeks only one finding -- that RMP's Application and Schedules in this docket are not yet adequate or complete. RMP's Response does not and cannot refute the simple reality that its Application and Schedules as filed are incomplete. RMP's Application and Schedules do

not specify the “rate increases” proposed by the utility as required by Utah Code § 54-7-12. Nor do they identify the specific agency actions requested. The Schedules do not incorporate the effects of the recent Commission Order in Docket 07-035-93. The Schedules as filed cannot lawfully go into effect 240 days after filing.

In those portions of the RMP Response relevant to UAE’s Motion, RMP argues that (i) its incomplete application is authorized by past Commission practice, (ii) its incomplete application satisfies Utah statutory requirements and will be cured by a supplemental filing to be made in the future and (iii) the test period statute and test period ruling support acceptance of its incomplete application. Each of these arguments is incorrect or irrelevant.

1. Failure of parties to contest potentially incomplete applications in the past is irrelevant.

RMP’s primary argument in response to the UAE Motion is that it is a “common and accepted practice” for the utility to update or change its position during the course of a rate case. This argument is unavailing. RMP admits that no party has ever challenged an application as incomplete in the past. The issue has thus never been brought before the Commission or the courts for resolution. Failure of parties to challenge incomplete applications in the past is hardly grounds for rejecting challenges in this docket, and RMP has cited no authority that supports such a proposition.

RMP suggests in vain that the lack of previous challenges somehow results in a “long-settled position” or “fundamental policy” that cannot be changed without rulemaking. Such is clearly not the case. The Commission has never adopted a policy or position because the issue has never been litigated. The cases cited by RMP apply only when the Commission “reverse[s] its long-settled

position” or “announce[s] a fundamental policy change.” *Williams v. Pub. Serv. Comm’n*, 720 P.2d 773, 777 (Utah 1986). The Commission cannot reverse a long-settled position that has never been settled or announce a change in a policy that has never been adopted.

2. The Commission has inherent power to determine the adequacy and completeness of a rate case application and accompanying schedules.

It is axiomatic that an application for a rate increase and its accompanying schedules must be sufficient and complete and that the Commission has inherent authority to determine if they are so. Moreover, there is an express statutory requirement that schedules be “appropriate.” Utah Code Ann. § 54-7-12(2)(a). It is not relevant whether the Commission has previously been asked to rule upon the completeness or adequacy of an application or schedules. UAE is expressly asking for such a ruling in this case.

The completeness or adequacy of an application for a rate increase and accompanying schedules can properly be viewed on a continuum. At one end of this continuum is a fully-supported application with ample supporting testimony, complete schedules, specific calculations as to the rate increases and impacts requested, descriptions of all models, methodologies and projections used and specific explanations of any requested changes from prior practice and all relevant Commission orders. At the other end of this continuum is an application that fails to specify the precise requested rate increases or impacts, lacks adequate supporting testimony, fails to explain calculations, models and projections, and fails to explain all of the requested changes from prior practice and relevant Commission orders.

UAE respectfully submits that the Application and Schedules filed by RMP in this docket fall closer to the “deficient” end of this continuum. They fail to specify the specific “rate increases”

proposed by the utility as contemplated by Utah Code § 54-7-12. They do not reflect the effects of the recent Commission order in Docket 07-035-93 and thus do not identify the specific agency actions requested in comparison to Docket 07-035-93 results. They do not include Schedules that can properly or lawfully take effect 240 days after filing.

Utah statutes and Commission rules provide indications of the types of things that should be considered in determining where on this “completeness and adequacy” continuum the Application and Schedules in this docket fall. For example, Utah Code § 54-3-3 requires the filing of new schedules “stating plainly the change or changes to be made in the schedule or schedules then in force.” The need for this level of specificity is particularly critical in light of the fact that the new schedules automatically take effect absent a Commission order after 240 days. Utah Code § 54-7-12(3)(c). The obvious intent of this requirement is to provide regulators and customers with notice of the specific changes being proposed by the utility. Such notice is not imparted by proposed schedules that fail to specify the proposed changes from those in effect at the time the new rates are to be evaluated. Simply stated, when the utility knows that an impending Commission order will resolve disputed issues involving projections, allocations, amortizations, etc., a new rate case filing is not and cannot properly be considered complete until the effects of the impending order are incorporated into the filing. Only then will a rate case filing provide meaningful notice to customers and regulators as contemplated by Utah statutes and fundamental due process.

Another statutory reference is the requirement that the amount of the “proposed rate increase” must be specified. Utah Code Ann. §§ 54-7-12(2)(a), (b), (c), 12(3), 12(3)(v). RMP argues that its Application and Schedules satisfy this requirement in comparison to rates in effect when the Application was filed. That comparison is not meaningful. When a Commission ruling in a previous

rate case is impending, logic and common sense dictate that the “rate increase” referenced by the statutes is the increase from rates that will be in effect when the request for another rate increase is analyzed. Otherwise, the comparison serves no useful purpose, fails to provide meaningful notice to customers and fails to provide intervenors with sufficient time within the short statutory 240-day window to do a meaningful evaluation of the new rate increase request.

Similarly, the Utah Administrative Procedures Act requires that RMP’s Application identify the specific agency actions requested. Utah Code § 63G-4-201(3)(a). The Application in this Docket fails to appraise the Commission or the parties of the specific changes from the status quo requested by RMP because it fails to incorporate or explain the rates, methodologies, amortizations, projections and allocations approved by the Commission in Docket 07-035-93, nor the specific changes to the same proposed by RMP in this Docket.

Commission rules also support the logical and intuitive requirement that a proposed rate increase and accompanying schedules should identify any changes from the relevant tariffs and schedules -- those in effect when the request for a new rate increase is to be considered. For example, Rule R746-405-2.A.3, Utah Admin. Code, requires preliminary statements noting any proposed increase, decrease or change. Similarly, Rule R746-405-2.D.3, Utah Admin. Code, requires the filing of an advice letter specifying any proposed increase, decrease, or more or less restrictive condition. A customer or regulator will search the Application and Schedules filed in this docket in vain for any indication of the proposed changes from the rates currently in effect. Showing proposed changes from the old rates in effect before the recent rate case Order was issued serves no useful purpose.

A critical factor in determining the adequacy of Schedules is the 240-day element of Utah Code § 54-7-12(3)(c). Because the schedules filed by RMP do not incorporate the Commission's resolution of the contested issues in Docket 07-035-93, RMP admits that they should not take effect in 240 days absent Commission Order. (Response at 29-30). The Schedules are thus clearly not yet complete or adequate.

It is telling that RMP admits that, at some unspecified date in the future, it must file "updates" or a "supplemental filing" to reflect the recent rate case Order, and that the rates that should go into effect after 240 days under Utah Code § 54-7-12(3)(c) are the updated or supplemental Schedules. (Response at 29-30). This admission is conclusive evidence that the Application and Schedules as filed are inadequate and incomplete.

3. Neither the test period statute nor the Commission's test period order in the last case supports RMP's position.

RMP seeks refuge in the Utah statute governing test periods and in the Commission's test period order in the last rate case. Neither supports RMP's argument that its Application and Schedules should be accepted as complete and adequate.

RMP argues that the test period statute, Utah Code § 54-4-4(3)(a), reflects a legislative intent to reduce the effects of regulatory lag. That claim is unsupported and contested. More importantly, however, it is irrelevant to UAE's Motion. There is certainly nothing in the test period statute or its legislative history that suggests that the Commission should accept incomplete rate case applications or inadequate schedules. RMP similarly points to this Commission's test period order in Docket 07-035-93 and the acknowledgment reflected therein that "more frequent rates cases may be necessary to ensure just and reasonable rates." This acknowledgment, which was also acknowledged and

anticipated by UAE in recommending the test period adopted by the Commission in that case, does not condone incomplete rate case applications or inadequate schedules. While the frequency of rate cases may increase as a result of using the appropriate test period, the applications and schedules must nevertheless be complete and adequate.

Simply stated, the issue is not whether RMP may commence a new rate case while an old rate case remains unresolved. The issue is rather what information must be included in an adequate application for increased rates and the accompanying schedules. The application and schedules are not complete or adequate until, at a minimum, the specific requested rate increase has been identified, all requested changes from relevant Commission orders have been specified, and the Schedules are sufficiently complete that they could, without update, supplementation or change, properly and lawfully take effect 240 days later in the absence of a Commission Order to the contrary.

Conclusion

RMP's Application and Schedules do not incorporate the impacts of the Commission's recent revenue requirement Order in Docket 07-035-93 and cannot properly take effect without a material update. As a matter of Utah law, RMP's Schedules should be found to be inappropriate and incomplete until that update has been filed.

Dated this 8th day of September, 2008.

HATCH, JAMES & DODGE

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 8th day of September, 2008, to the following:

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