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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. 10-035-124

**UIEC'S REQUEST FOR
CLARIFICATION AND EXPEDITED
TREATMENT**

The Utah Industrial Energy Consumers (“UIEC”) request clarification of the instructive interim order recently issued by the Utah Public Service Commission (“Commission”) in the above-referenced docket. Due to the impending date to file revenue requirement testimony, and the impact of the interim order on that testimony, UIEC also requests expedited treatment for its request. In support, UIEC states as follows:

1. On May 12, 2011, the Commission issued an interim order “[t]o ensure an adequate and timely record is developed in this case.” Order at 1, Docket No. 10-035-124 (May 12, 2011). This order affects the substance of revenue requirement testimony, which is due May 26, 2011.

2. The Commission has first requested “to aid in the orderly consideration of potential proposed net power cost adjustments in this matter” that the following requirements be met in the testimony:

[P]arties are to provide at least the following:

1. GRID scenario;
2. net power cost report;
3. net power cost report of the revised scenario;
4. net power cost study spreadsheet showing the impacts of the revised scenario;
5. an explanation of the calculations involved in the adjustment with sufficient supporting work papers that Commission staff could replicate the adjustment;
6. a list of the specific fields and/or files within the GRID model which are changed, and the specific manner in which they were changed (for example any and all input files);
7. all standard or related export files;
8. relevant work papers and supporting documents with all formulas intact for the adjustment;
9. a summary exhibit listing each proposed adjustment, the net effect of each adjustment, and their combined effect, on the net power costs requested by the Company in this case and a reference to the spreadsheets noted above.

Order at 1-2.

3. First, the focus of these requirements is of concern to UIEC. Rocky Mountain Power (“RMP” or the “Company”) has the burden of proof in presenting its case. *Utah Dep’t of Bus. Regulation v. Public Serv. Comm’n*, 614 P.2d 1242, 1245–46 (Utah 1980) (ruling: “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.”). This means that RMP bears the burden to demonstrate that its forecasts are accurate and will produce just and reasonable rates.

4. These requirements requested by the Commission appear to assume that the GRID model is completely accurate and that if the right inputs are used, the right outputs will be reached. These requirements, therefore, appear to focus only on the situations where an incorrect value was used as an input, however, they appear to ignore the many other problems with the GRID model and do not provide a way to demonstrate these other problems. They also appear to ignore the Company’s burden of proof to demonstrate that how its GRID model modeled certain situations and how the Company chose to model certain situations within GRID was, in fact, the way that would produce just and reasonable rates.

5. In many cases, there is a logical failing in GRID and the Company has tried a “workaround” rather than to fix the logic. For example, in the Company’s last general rate case, Docket No. 09-035-23, the Office of Consumer Services (“Office”) pointed out that “without user-supplied workarounds, referred to as screens, GRID frequently fails to develop the least cost sequence of start-ups and shut-downs for gas-fired resources.” Order on Rev. Req’t & Cost of Serv. at 27, Docket No. 09-035-23 (Feb. 18, 2010). To address this error in logic, the Company has developed a workaround. *Id.* However, the Company’s workaround did “not eliminate uneconomic generation in GRID and introduce[d] new problems.” *Id.* Thus, as “an interim solution to be used and, if possible, improved upon until the GRID logic error itself can be

fixed,” the Office proposed a different workaround, which the Company accepted and the Commission ordered. *Id.* at 28-29.

6. Similarly, in this case there are workarounds or screens implemented by the Company that do not actually eliminate the problem in the GRID logic and, in fact, may cause other problems. The Commission’s requirements do not appear to recognize this and do not provide a way to demonstrate this.

7. In addition, in many instances there is a modeling operator “error”—RMP has made a conscious decision to model something a particular way regardless of how that something occurs in the real world. The Commission’s requirements do not appear to recognize this problem or provide a way to demonstrate this problem where it occurs.

8. The practical effect under these circumstances appears to grant RMP a presumption that the GRID model is accurate if only the correct inputs are used. This is a presumption to which RMP is not entitled.

9. Furthermore, in this case, the Commission acts as a finder of fact. The requirements listed above that the Commission has requested be included in testimony appear to indicate that the Commission intends to engage in independent off-the-record fact finding. When a finder of fact “engages in off-the-record fact gathering, he essentially has become a witness in the case.” *Lillie v. United States of America*, 953 F.2d 1188, 1191 (10th Cir. 1992). If the Commission views exactly what the parties have seen, then there is no question as to what is on the record. However, here, based on the requirements set forth above, it appears that the Commission will be doing its own investigation outside the view of the parties. The parties will have no way of knowing exactly what the Commission looks at, or how the Commission

manipulates the model or data, or whether it is done correctly. This will improperly expose the Commission to factual evidence not part of the record. *See Clicks Billiards Inc. v. Sixshooters Inc.*, 251 F.3d 1252, 1267 (9th Cir. 2001).

10. UIEC suggests that perhaps a better approach would be for the Commission to rely on the testimony in the case and then to request the Company to prepare a compliance filing implementing the adjustments the Commission believes will result in just and reasonable rates. The Company can make that filing so that it is transparent to all the parties and regulators and can be verified by all the parties and regulators. If an unintended consequence is discovered, it can be corrected thereafter. This also reduces the burden on all parties.

11. Finally, with respect to the specific requirements listed above, UIEC is not clear as to what is meant in item 4—“net power cost study spreadsheet showing the impacts of the revised scenario.” If a line-by-line comparison of each NPC study compared to the last is what is meant, this is extremely burdensome, especially given the fact that parties only received notice two weeks before testimony is due.

CONCLUSION

Based on the foregoing, therefore, UIEC requests that the Commission withdraw its requirements quoted above in paragraph 2 of this brief, issue its revenue requirement order with its adjustments, and then ask the Company to file a compliance filing, re-running the model with the Commission’s ordered adjustments. That will avoid the Commission being exposed to evidence not part of the record, give all parties the opportunity to review the results in a transparent manner, and allow the parties to avoid preparing the burdensome additional supporting information.

Alternatively, if the Commission prefers to go forward with these additional requirements, UIEC requests that what is meant by this item 4 be further explained. If UIEC's initial interpretation is correct, UIEC also requests that the Commission reconsider its request or give additional time to produce this information.

Due to the impending testimony filing deadline, UIEC requests that the Commission address this request for clarification expeditiously.

DATED this 16th day of May, 2011.

/s/ Vicki M. Baldwin

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CERTIFICATE OF SERVICE

(Docket No. 10-035-124)

I hereby certify that on this 16th day of May 2011, I caused to be emailed, a true and correct copy of the foregoing **UIEC'S REQUEST FOR CLARIFICATION AND EXPEDITED TREATMENT** to:

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