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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 MOTION CHALLENGING COMPLETENESS OF FILING AND PROPOSED TEST YEAR**

In accordance with the provisions of Utah Code Ann. § 54-7-12(2)(b)(ii) and R746-100-3.H. of the Utah Administrative Code, UIEC, hereby moves the Utah Public Service Commission ("Commission") to find that the Application filed by Rocky Mountain Power ("RMP" or the "Company") on January 24, 2011, in this matter is not complete as filed, and that the test year for this case should be the calendar year ending December 31, 2011, instead of that proposed by the Company.

INTRODUCTION

It is time to bring some accountability back into the general rate case process. The Company insists on extreme future test years even though its forecasting has been abysmal. In this case, the Company demonstrates in its own testimony that its filing fails to meet its burden of proof and that the test year reaches too far. Adequate information to support the burden of

proof for a future test year cannot be met with promises of future amendments. The Company's application attends to form over substance and should be found materially incomplete. Changing the test year to calendar 2011 may help with some of these insufficiencies to some extent, but an updated filing is what is truly necessary.

ARGUMENT

I. THE COMPANY'S FILING IS MATERIALLY INCOMPLETE.

Under Utah law: "A public utility that files for a general rate increase or general rate decrease shall file a complete filing with the commission setting forth the proposed rate increase or decrease." Utah Code Ann. § 54-7-12(2)(a). A complete filing is "an application filed by a public utility that substantially complies with minimum filing requirements established by the commission, by rule, for a general rate increase or decrease." *Id.* § 54-7-12(1)(b)(i). The Commission's regulations for complete filings are set forth in R746-700-1 to -51 of the Utah Administrative Code. Nevertheless, nothing in these statutes and rules changes the utility's burden of proof.

The Utah Supreme Court has ruled:

> 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.

Utah Dep't of Bus. Regulation v. Public Serv. Comm'n, 614 P.2d 1242, 1245–46 (Utah 1980) (internal citations omitted). The Company is avoiding its burden in presenting its application with promises to update later. *See, e.g.*, McDougal Test. at 21, 22; Duvall Test. at 6, 7, 28.

As the Commission has noted on a number of occasions, a utility is the "sole source for access to or knowledge concerning its business plans, past, present and future," and "has 'unequaled access to the financial and accounting information' relating to its operations." Order on Motions to Dismiss or Address 240-Day Time Period at 13, Docket No. 08-035-38 (Sept. 23, 2008) (hereinafter "Order on Incompleteness"). Therefore,

> There is concern about informational parity arising from the utility's control of access to, the flow of, the type of and the adequacy of the information made available to those outside of the utility. These include concerns about informational access affecting the balancing of inherent conflicts of interests between the utility and others, as the utility pursues what it believes is in its best interests and duties to its owners and other parties' need for information as they pursue what they believe is in their best interests and fulfil [sic] their responsibilities and duties.

Id. at 13–14; *see also id*. at 21 (noting that "practice before the Commission effectively causes a rate change proponent to file its case-in-chief as the initiatory pleading").

In this case, UIEC does not argue that the technical requirements of rule R746-700-1, *et seq.*, have not been met. It is instead the adequacy of the substance of the material filed in conformance to those rules that is challenged. The Company has so overreached in its test year request that some of the costs and expenses are unknowable. This is a clear sign the test period is too far out.

For example,[1] RMP witness Duvall makes note of several purchased power contracts that are set to expire. These are just mentioned, and there is no discussion of how, when and with what RMP plans to replace this capacity. There is a complete lack of explanation of the basis for the assumptions of no payments to Kennecott for Generation Incentive and no payments to MagCorp on page 2 of Exhibit GND-1; and the assumptions for zero payments to ExxonMobil, Kennecott, Tesoro and US Magnesium for QF purchases shown on page 3 of Exhibit GND-1. These values go to zero without any explanation whatsoever in the testimony of why the change in assumption from 2011 data to 2012 data has been incorporated in the modeling. With respect to the renewable energy contracts, the California Public Utilities Commission approved the $50 price cap through the end of 2013. Nevertheless, in the absence of renegotiated contracts at the higher rates RMP has been receiving, the Company's filing includes the unreasonably low average price rejected in the 2009 general rate case. Furthermore, the Company failed to follow the directions given by the Commission in the 2009 rate case order pertaining to the issue of whether and how the heat rate curves of the thermal units should be adjusted for the impact of unit deratings.

Another insufficiency that also demonstrates the major problem with the test year is the anticipated change in the level of BPA wheeling charges beginning in October 2011. This circumstance also argues in favor of a 2011 test year since the months that would contain new BPA estimates would be only three, as opposed to nine months in the case of RMP's proposed test year.

Another problem is the Federal Energy Regulatory Commission ("FERC") transmission

1 It currently appears that the requirements of R746-700-23.C.8.t may have been omitted. We are investigating the extent of this omission.

rate case that RMP plans to file by not later than June 1, 2011 (Duvall testimony, page 28). RMP has not made any attempt whatsoever to include in this filing any estimate of the higher credits that would be produced by recognizing these materially higher costs in calculating the FERC transmission service rates and ancillary service rates for purposes of establishing a credit to retail ratepayers.

It is true that the Commission's procedural rules do allow for amendment. *See* Utah Admin. Code R746-100-3.D. However, as the Commission has noted before:

> Amendment is allowed, but on the condition that there is no prejudice or disadvantage to other participants. . . . A primary consideration in whether amendment may be allowed is whether the opposing side would be prejudiced in not having adequate time to deal with the matters brought through the amendments.

Order on Incompleteness at 19 (citing *Bekins Bar V Ranch v. Huth*, 664 P.2d 455 (Utah 1983); *Ringwood v. Foreign Auto Works, Inc.*, 786 P.2d 1350 (Utah Ct. App.)); *see also id*. at 21 (noting that "Fairness and advantage/disadvantage are considered for an amendment's impact on the parties' participation in our adjudicative proceedings, and also upon the activities or acts which the Commission itself must accomplish (our interests) and the public interest").

In this case, the Company is making a mockery of the Commission's rules on amendments and supplements by reaching out so far, but then promising to amend when and if the data becomes known. The significance of the deficiencies noted above is such that allowing amendments or forcing the information to be brought to light during discovery will cause extreme prejudice and disadvantage to the parties other than the Company. The information is such that even when and if provided, extensive analysis will be required to determine the impact of each. Based on the timing of availability, the parties will be hard pressed to perform the

required analysis within the statutory period in order to adequately prepare testimony and prepare for hearing. Yet, without such analysis, a determination of just and reasonable rates will be impossible. Accordingly, UIEC requests that the Commission make a determination that the insufficiencies set forth above are material and that the 240-day period be suspended and not restarted until such information and associated analyses are provided.

II. THE TEST YEAR SHOULD BE THE CALENDAR YEAR 2011 AND NOT THE TEST YEAR PROPOSED BY THE COMPANY.

Utah law provides:

> (3)(a) If in the commission's determination of just and reasonable rates the commission uses a test period, the comm8ission shall select a test period that, on the basis of evidence, the commission finds best reflect the conditions that a public utility will encounter during the period when the rates will be in effect.
>
> (b) In establishing the test period determined in Subsection (3)(a), the commission may use:
>
> (i) a future test period tha is determined on the basis of projected data not exceeding 20 months from the date a proposed rate incrdase or decrease is filed with the commission under Section 54-7-12;
>
> (ii) a test period that is:
>
> (A) determined on the basis of historice data; and
>
> (B) adjusted for known and measurable changes; or
>
> (iii) a test period that is determined on the basis of a combination of:
>
> (A) future projections; and
>
> (B) historic data.
>
> (c) If pursuant to this Subsection (3), the commission establishes a test period that is not determined exclusively on the basis of future projections, in determining just and reasonable rates the

> commission shall consider changes outside the test period that:
>
> (i) occur during a time period that is close in time to the test period;
>
> (ii) are known in nature; and
>
> (iii) are measurable in amount.

Utah Code Ann. § 54-4-4(3). Legislative history demonstrates that the intent of § 54-4-4(3), "is to have the Public Service Commission select a test period for setting utility rates ***based on the best evidence presented*** to the Public Service Commission without any presumption for or against either a historical or a future test period." Senate Journal, Feb. 19, 2003, Day 30, page 515, Intent Language to S.B. 61 (emphasis added).

Thus, the best test period should be based on the best available evidence, which necessarily means the most reliable information available. Nevertheless, the Commission must also include in its test period evaluation, which period will provide the best assurance that rates are just and reasonable and based on assets that are used and useful. "It is only to the extent the facilities developed are used and useful to the consumer that they are included in the rate base." *Committee of Consumer Servs. v. Public Serv. Comm'n*, 595 P.2d 871, 874 (Utah 1979).

As the Commission has previously noted, participants engaged in utility general rate cases face a number of daunting realities, including:

> [T]he increasing complexity of electricity markets; the increasing complexity of electric utility operations; the increasing complexity to harmonize and the potential for conflicts arising from multi-state utility operations and varying statutory provisions and policy goals of the different state; the increased number of factors which are to be considered and interrelated in arriving at decisions in regulating utilities, in setting a revenue requirement, and in designing rates which are all required to be just and reasonable; the increasing complexity and sophistication of tools and analysis applied to

> evaluate past expenses, revenues and rate design and to arrive at or project future ones; and the absolute magnitude and the relative magnitude of the sums arising from difference in the evaluation of existing and future electric utility operations. The difficulty in dealing with these aspects of today's utility regulation, . . . is heightened through the use of a means, itself, intended to address some of these aspects—a projected test year.

Order on Motion for Approval of Test Period at 4–5, Docket No. 08-035-38 (Oct. 30, 2008).

Important policy concerns that are implicated by future test periods include:

> [D]iminished 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 at 4–5, Docket No. 04-035-42 (Oct. 20, 2004).

As the Commission has further noted regarding test year:

> 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. Each case needs to be considered on its own merits and the test period selected should be the most appropriate for that case. . . . 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. at 4. Application of these factors in this case demonstrates that the calendar year of 2011 should be preferred to the Company's proposal of the twelve-month period ending June 30, 2012.

With respect to the general level of inflation, Mr. McDougal admits at page 10 of his testimony that this is not a major driver in this case. The second criteria is change in utility investment, revenues and expenses. RMP recognizes that it has had the ability, through the MPA statute and two Commission orders since the last general rate case, to incorporate hundreds of millions of dollars of investment fully into the rates currently charged to customers. As to the third factor, no changes in the utility services are anticipated, so this is really not a factor.

The next factor is availability and accuracy of data to parties. As detailed previously in this pleading, there are major voids in the supporting data, and in fact many important issues are not even addressed.

With respect to synchronization of investment, revenues and expenses, it is noted that rates from this case are expected to become effective (absent a new tolling of the clock) on or about September 21, 2011. This is within the period of a 2011 test year, and certainly indicates that a 2011 test year would provide sufficiently current revenues, expenses and rate base without engaging in excessive speculation as to the level of investments, expenses and revenues out into the first six months of 2012. As to the matter of whether the utility is in a cost increasing or a cost declining status, Mr. McDougal admits at page 14 that this is not an issue.

With respect to incentives to efficient management and operation, rather than address the merits of regulatory lag, Mr. McDougal, in his testimony changes the subject and says the argument is dubious when a rate increase is sought to recover the cost of new investments. If that were the only issue, what would be the point of a rate case? It is not as if the argument is about basing the rates on price levels that are many months old when the rates go into effect, rather it is a case of whether it is more realistic to have a test year that ends three months after

the rates become effective, or nine months after the rates become effective.

As to the last factor, the length of time new rates are expected to be in effect, even RMP admits it has not made any decision on the length of time new rates are expected to be in effect. Thus, this is not a factor that the Commission needs to consider in this instance.

The Commission should balance the need for a forecasted test period with the uncertainty of forecasting out to June 2012. To render greater confidence in the matching of costs and revenues, and to provide more appropriate balancing of Company and ratepayer interests, UIEC recommends forecasting a period nearer in time. That period is the calendar year of 2011.

CONCLUSION

Based on the foregoing, UIEC requests that the Commission order (a) a test year period of the twelve-months ending December 31, 2011; (b) that the deficiencies of the Company's filing are material and the filing is incomplete; (c) the Company to update its filing for a 2011 calendar-year test period and include information to alleviate the deficiencies enumerated herein; and (d) restart the 240-day clock to begin once this updated filing is made.

DATED this 7th day of February, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February 2011, I caused to be e-mailed, a true and correct copy of the foregoing **UIEC'S MOTION CHALLENGING COMPLETENESS OF FILING AND PROPOSED TEST YEAR** to:

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