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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Alternative Cost Recovery for Major Plant Additions of the Populus to Ben Lomond Transmission Line And the Dunlap I Wind Project	)	DOCKET NO. 10-035-89 **RESPONSE TO UIEC'S MOTION TO DEFER RECOVERY OF THE MAJOR PLANT ADDITION COSTS**

Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or "Company"), pursuant to Utah Administrative Code R746-100-3.H, hereby responds to the Utah Industrial Energy Consumers ("UIEC") Motion to Defer Recovery of the Major Plant Addition Costs ("UIEC Motion").

BACKGROUND

1. On February 1, 2010, pursuant to Utah Code Ann. § 54-7-13.4, Rocky Mountain Power filed with the Public Service Commission of Utah ("Commission") an application in Docket No. 10-035-13 ("MPA I Docket") for alternative cost recovery for major plant additions related to the Ben Lomond to Terminal transmission line and the Dave Johnston 3 environmental improvement projects ("MPA I Application").

2. In the MPA I Application, Rocky Mountain Power requested that the Commission allow the Company to defer the rate increase related to the Ben Lomond and Dave Johnston improvement projects until approximately January 1, 2011.

3. The parties in the MPA I Docket agreed to settle said docket for the amount of $30.8 million pursuant to a stipulation, which the Commission approved pursuant to its Report and Order, dated June 15, 2010 ("Order").

4. Pursuant to the Order, the Commission approved the deferral sought by Rocky Mountain Power and ordered that "[t]he Company is to record monthly in a deferred account, the amount of $2,566,667 as a Utah-specific regulatory asset beginning July 1, 2010" and that "[t]he Company is to include a carrying charge at 0.695 percent per month" ("MPA Deferred Balance"). Order, at page 6.

5. On August 3, 2010, pursuant to Utah Code Ann. § 54-7-13.4, Rocky Mountain Power filed with the Commission an application in Docket 10-035-89 ("MPA II Docket") for alternative cost recovery for major plant additions related to the Populus to Ben Lomond transmission line and the Dunlap I wind project ("MPA II Application").

6. In the MPA II Application, Rocky Mountain Power requested authorization to recover costs through customer rates beginning on or about January 1,

2011, in the amount of approximately $69.8 million in revenue requirement, comprised of (1) $39.0 million for the major plant additions related to the Populus to Ben Lomond transmission line and the Dunlap I wind project; and (2) consistent with the Order in the MPA I Application, $30.8 million for the major plant additions related to the Ben Lomond to Terminal transmission line and the Dave Johnston 3 environmental improvement projects.

7. In addition, in the MPA II Application, Rocky Mountain Power noted that it intended to stop deferring the MPA Deferred Balance on or about December 31, 2010, at which time, said balance will have grown to approximately $15.7 million. Consistent with its request in the MPA I Application, Rocky Mountain Power also noted that it intended to begin collection of the MPA Deferred Balance and on-going carrying charges beginning January 1, 2011.

ARGUMENT

A. GRANTING UIEC'S MOTION WOULD NULLIFY THE MAJOR PLANT ADDITIONS STATUTE AND RULES.

1. The Legislature Did Not Intend the MPA Statute To Be A General Rate Case Statute.

UIEC asks the Commission to bifurcate this case into two phases; first, a revenue requirement phase and then, a second cost of service, rate spread and design phase. This is an attempt to turn the major plant addition process into a general rate case process, which would circumvent the legislative intent and plain meaning of Utah Code Ann. § 54-7-13.4 ("MPA Statute") and UT ADC R746-700-30 ("MPA Rules", together with the MPA Statute, to be referred to as "MPA Requirements"). The Utah Legislature did not enact the MPA Statute to provide for cost recovery of plant additions in general rate

cases. Rather, the Legislature intended to create an alternative cost recovery process for major plant additions. Section 54-7-13.4(2) states, in relevant part:

> (2) A gas corporation or an electrical corporation may file with the Commission a complete filing for cost recovery of a major plant addition if the commission has, in accordance with Section 54-7-12, ***entered a final order in a general rate case proceeding of the gas corporation or electrical corporation within 18 months of the projected in-service date of a major plant addition***.

Utah Code Ann. § 54-7-13.4(2) (2009) (emphasis added).

In other words, a final order in a general rate case is presumed by the statute, making another general rate case proceeding unnecessary and superfluous. The requirement that a final order be entered within 18 months ensures that data upon which ratemaking decisions have been based and that is not required as part of the major plant addition application, has been subject to review by the Commission and intervenors within a reasonable period from the filing of the major plant addition application.

Rule 746-700-30, the other part of the MPA Requirements, lists the minimum filing requirements for major plant addition applications. Nowhere does that rule require a new cost of service study,[1] which UIEC recommends be required in this case. Indeed, the sufficiency of the Company's cost of service information is demonstrated by the fact that UIEC did not challenge the completeness of the Company's MPA II Application within the 14 day statutory time period allowed for parties to challenge such applications.

2. **The UIEC Motion Is Inconsistent.**

Even assuming the Legislature had intended to include cost of service methodology issues as part of the MPA Requirements, it is not clear what UIEC's

[1] In contrast, Rule 746-700-21 titled "Cost of Service and Rate Design Information for a General Rate Case Application for an Electrical Corporation or a Gas Corporation", which is part of the minimum filing requirements for general rate cases, includes a requirement for corporations to file a Utah cost of service study.

position is. On the one hand UIEC advocates for bifurcation of the case into two separate phases, while on the other, it advocates against implementing cost of service/rate spread/rate design findings in the MPA II Docket. UIEC recommends, instead, that such implementation take place only at the conclusion of the next general rate case.

3. The Intent of the MPA Statute Is to Give the Commission Substantial Discretion Regarding Timing of the Rate Increase.

The intent of the Utah Legislature when it passed the MPA Statute is clear. It states, in relevant part:

> (5) If the commission approves or approves with conditions cost recovery of a major plant addition, the commission shall do ***one*** or ***all of the following****:*
>
> (a) … authorize the gas corporation or electrical corporation to defer the state's share of the net revenue requirement impacts of the major plant addition for recovery in general rate cases; ***or***
>
> (b) adjust rates ***or*** otherwise establish a collection method for the state's share of the net revenue requirement impacts that will apply to the appropriate billing components.
>
> (6) (a) …
>
> (b) The deferral described in this section shall terminate upon a final commission order that provides for recovery in rates of all or any part of the net revenue requirement impacts of the major plant addition.

Utah Code Ann. § 54-7-13.4 (2009) (emphasis added).

The MPA Statute expressly provides the Commission with substantial discretion to determine when the rate increase will take place. The Commission can defer the State's share of the net revenue requirement impact of the Major Plant Addition for recovery in subsequent general rate cases. In addition, under Section (5)(b) of the MPA Statute, the Commission has additional discretion to establish a collection method that is different than recovery in subsequent general rate cases. The clear, unambiguous

language of subpart (5)(b) of the MPA Statute allows the Commission to "adjust rates", *or* "otherwise establish a collection mechanism."

Contrary to UIEC's narrow interpretation of the MPA Statute, Sections (5)(a) and (b) do not preclude the Commission from authorizing a deferral to be collected in cases other than in general rate cases. If that were the case, the Legislature would not have included the second part of Section (5)(b) as an option for the Commission.

UIEC's narrow reading of the MPA Statute would also defeat the very purpose for which this statute was enacted. The MPA Statute was enacted to encourage utilities like Rocky Mountain Power to make capital investments without incurring the usual regulatory lag associated with adjusting rates in the next general rate case, a protracted process.

According to UIEC's interpretation, electrical corporations must either collect the major plant addition rate increases at the conclusion of a major plant addition case or they must wait until the next general rate case to collect them. Taken to its logical extreme, this interpretation of the MPA Statute would, when an electric utility has no plans to file a general rate case in the near future, result in a deferral of the continually growing balances owed for major plant additions plus carrying charges for an indefinite period of time. In addition, reading Subsection (6)(b) in conjunction with (5)(a) and (5)(b) further supports the Company's interpretation of the MPA Statute. The Legislature did not intend the deferral described in Section (5)(a) above to end upon recovery solely in general rate cases. Section (6)(b) mandates that such deferral terminate upon a final commission order that provides for recovery in "rates," not upon an order that provides for recovery in "general rate cases". The Legislature was careful to ensure that deferrals

under the MPA Statute did not continue indefinitely. The Commission should deny UIEC's Motion because it is based on a narrow and erroneous interpretation of the MPA Statute.

B. APPROVING UIEC'S MOTION WOULD HARM RATEPAYERS UNNECESSARILY.

If the Commission were to approve UIEC's Motion, the MPA Deferred Balance from the MPA I Docket will grow to approximately $39.2 million, including carrying charges, through mid-September 2010. If the Company's requested amount in the MPA II Application is granted and similarly deferred, the related deferred balance would grow to an additional $28.5 million by mid-September 2010. The total deferred amount for both the MPA I Docket and the MPA II Docket would equal approximately $67.8 million. This amount would be *in addition to* the approximately $69.8 million ongoing revenue requirement associated with the major plant addition projects related to both the MPA I Docket and the MPA II Docket. If UIEC's Motion is approved, the Company would collect the foregoing amounts at the same time that it would collect the rates that become effective related to, and at the conclusion of, the next general rate case. Over this future collection period, the uncollected deferred balance would continue to accrue additional carrying charges until the full balance is collected from customers. Commissioner Campbell alluded to this concern in the MPA I Docket hearing when he asked "why don't we put it in rates now" … "why are we deferring it and then we'll have more than whatever the percent increase is because we have a deferral to put on top of that." Tr., MPA I Docket hearing, p.18. Further deferring the amounts that UIEC is asking the Commission to defer until September 2011 would harm ratepayers unnecessarily and would not be in their best interests.

In contrast, by implementing the rate increase related to the MPA I Docket and the MPA II Docket at the conclusion of the MPA II Docket, the increase in customer rates will be significantly lower and customers would pay two gradual rate increases as opposed to one very significant increase in September 2011. With the Company's proposal, the Company will begin to recover the $69.8 million in total revenue requirement associated with both major plant addition projects effective January 1, 2011, and customers will simultaneously begin to pay for the MPA Deferred Balance of approximately $15.7 million rather than the $67.8 million that would be deferred if the Commission grants UIEC's Motion.

Finally, in granting UIEC's Motion, the Commission would create additional intergenerational subsidization. In other words, the costs of the Company's major plant addition investments would not be paid by the customers who caused them. Continuing to push the collection of the costs from the MPA I Docket and the MPA II Docket to a future date does not properly allocate investment to the cost causer. Future customers will be harmed because they will be paying costs for the benefit of current customers, those who caused such costs to be incurred. For these reasons, the Commission should deny UIEC's Motion.

C. DELAYING THE COLLECTION OF THE AMOUNTS RELATED TO THE MPA I DOCKET AND THE MPA II DOCKET FOR A POSSIBILITY THAT THE COMMISSION WILL ISSUE AN ORDER AS A RESULT OF THE DIVISION REPORT CIRCUMVENTS THE MPA STATUTE.

The report ("Division Report") that will include the results of the work group examination related to load research methods and associated issues, peak hour load forecasting methods at the interjurisdictional and class levels; and the consistency of

allocation factors between the JAM and class models ("Cost of Service Methodology Issues") will be available to the Commission in the next general rate case. UIEC's protests, that the resources expended in the work groups will have all been a waste of resources if the Commission allows the Company to recover its costs at the conclusion of the MPA II Docket, are unfounded.

In addition, UIEC prematurely assumes that the Commission will issue an order requiring the Company to take action as a result of the Division Report. Rocky Mountain Power acknowledges that the 2009 GRC Order (defined below) mandated that parties form work groups to examine Cost of Service Methodology Issues. Nevertheless, it is entirely possible that these issues will have been clarified or resolved in the workgroups, and that the Division Report will recommend that the Commission do nothing with respect to them. Even if the Division Report contains recommendations for changes to be implemented, there is no guarantee that the Commission will issue an order as a result of such recommendations. Accordingly, delaying the collection of the amounts related to the MPA I Docket and the MPA II Docket in the event that the Commission *may* order the Company to change its Cost of Service Methodologies, is unjustifiable and circumvents the purpose of the MPA Statute.

In addition, while UIEC had concerns about the Company's Cost of Service Study in the 2009 general rate case, the Commission gave some weight to the study to support its findings in the cost of service/rate spread phase of the case.

In the rate case, UIEC argued that the study was so unreliable that the only solution to determine rate spread, was to apply a uniform percentage change to all customer classes. The Commission rejected UIEC's recommendation and instead

concluded that "a non-uniform spread of revenues is supported by the record."[2] While UIEC may not agree with the outcome of these issues in the 2009 general rate case, this is not the appropriate docket to re-litigate them. For these reasons, the Commission should deny UIEC's Motion.

D. THE COMPANY WILL BE HARMED IF THE COMMISSION ORDERS DEFERRAL OF THE AMOUNTS RELATED TO THE MPA I DOCKET AND THE MPA II DOCKET UNTIL THE CONCLUSION OF THE NEXT GENERAL RATE CASE.

Contrary to UIEC's position, not having access to much needed cash flow would harm any business; and it would be particularly harmful for a utility in the midst of a major capital build cycle like the one the Company is currently undertaking. In 2009, the Company spent approximately $2.3 billion on capital expenditures while it only generated approximately $1.5 billion of net cash from operating activities. In the current economic market, access to capital is critical. Utilities like Rocky Mountain Power must have support from the regulatory bodies to foster stable revenues, earnings and cash flow. Maintaining liquidity levels, credit standing and financial health is critical for Rocky Mountain Power. Granting UIEC's Motion would be harmful to Rocky Mountain Power and, therefore, the Commission should deny UIEC's Motion.

E. THE COMMISSION SHOULD APPLY THE LAW TO THE FACTS OF THIS CASE.

UIEC argues that it would be "unfair" for the Commission to allow the Company to recover amounts authorized for recovery in the MPA II Docket. In fact, just the

[2] Report and Order On Revenue Requirement, Cost of Service and Spread of Rates, Docket No. 09-035-23, February 18, 2010, p.135 ("2009 GRC Order"). Notably, the cost of service information filed in this docket incorporates the few adjustments the Commission ordered the Company to make in the cost of service portion of the 2009 GRC Order.

opposite is true. The Commission should apply the law based on the facts of this case. Assuming the Company meets its burden of showing that the Company's costs were prudent, and if the Company requests that the Commission authorize it to collect the costs of the major plant additions related to the MPA II Docket at the conclusion of the MPA II Docket, the Commission should allow the Company to recover amounts authorized for recovery in the MPA II Docket, pursuant to the MPA Statute. What would be most "unfair" is for the Commission to ignore the facts and the law and for Rocky Mountain Power to incur the Major Plant Addition costs in reliance upon recovery of costs under the MPA Statute and then be denied recovery as intended by that statute. For the foregoing reasons, UIEC's Motion should be denied.

F. UIEC EITHER DID NOT READ THE COMPANY'S APPLICATION AND TESTIMONY CAREFULLY OR WILLFULLY MISREPRESENTS THAT THE COMPANY'S MPA II APPLICATION LACKS INFORMATION NECESSARY FOR THE COMMISSION TO SUPPORT ITS FINDINGS IN THE MPA II DOCKET.

The UIEC Motion states that the Company failed to file sufficient information in the MPA II Application to determine " … (1) the means of collecting the regulatory asset from customers; (2) the date collection will begin; (3) the period of time over which recovery will take place; (4) the allocation of the deferred balance recovery among Utah customers and customer classes; (5) the structure of the collection mechanism; whether in base rates or in a surcharge; (6) the rate design of the collection mechanism; or (7) the billing determinants." If UIEC has not done so already, the Company invites UIEC to read Mr. Bill Griffith's full testimony including exhibits. In his testimony including Rate Spread and Rate Design Calculations (First and Second Major Plant) - Schedule 40, as Exhibit RMP__ (WRG-1); Rate Spread and Rate Design Calculations – Schedule 97

(First Major Plant Deferral), as Exhibit RMP ___ (WRG-2); Schedule 40 and Schedule 97 Tariff Pages, as Exhibit RMP ___ (WRG-3); and Development of Proposed Rates, as Exhibit RMP __ (WRG-4), Mr. Griffith answers all of the questions that UIEC claims are not addressed in the MPA II Application. The Company provides all of the necessary data and support for the Commission to make a determination as to (1) through (7) above which UIEC either mistakenly or willfully misrepresents are missing from the MPA II Application. As further evidence that the MPA II Application was "complete," the Company notes that the Division of Public Utilities reviewed the application and recommended that it " … be accepted as a complete filing as contained in the Commission's rule 746-700-30", in its Memorandum to the Commission, dated August 12, 2010.

CONCLUSION

Based on the foregoing, the Company respectfully requests that the Commission deny UIEC's Motion.

DATED: September 9, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 9th day of September, 2010, on the following:

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