MICHAEL L. GINSBERG (#4516)
PATRICIA E. SCHMID (#4908)
Assistant Attorneys General
Counsel for the DIVISION OF PUBLIC UTILITIES
MARK L. SHURTLEFF (#4666)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380

**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 Populous to Ben Lomond Transmission Line and the Dunlap I Wind Project | Response of the Division of Public Utilities to UIEC's Motion to Defer Recovery of Major Plant Addition Costs<br><br>**Docket No. 10-035-89** |

The following is the response by the Division of Public Utilities (Division or DPU) to the Motion to Defer Recovery of a Major Plant Addition Costs by the Utah Industrial Energy Consumers (UIEC) filed on August 25, 2010 (Motion). The Motion seeks to defer recovery of both amounts deferred in Docket No. 10-035-13, and the amount of major plant addition allocated to Utah in that docket until the next rate case, and (2) defer collection of any amount approved as a major plant addition in this docket to Rocky Mountain Power's (RMP or Company) next general rate case or until work groups have completed their tasks and a new cost-of-service study is filed and examined. The Company has indicated it expects to file its next general rate case in early 2011.

**INTRODUCTION**

On August 25, 2010, UIEC filed a Motion with the Commission to defer the costs associated with Docket No. 10-035-13 until the next general rate case. Costs sought to be

deferred include the $30.8 million allocated to Utah for the Ben Lomond to Terminal Transmission line and the emission control measures at the Dave Johnson Generation Plant. The amount also includes the $2,566,667 per month that is currently being deferred. That deferral began July 1, 2010 and is expected to be around $15 million by the end of this year. UIEC also proposes that the interest, 0.695% per month, that is being accrued on the deferral also be deferred until the next general rate case. UIEC calls these three amounts arising from the first single item rate case "MPA I." UIEC argues that Utah law requires that these three amounts can only be collected from customers in a general rate case. UIEC cites U.C.A. § 54-7-13.4(5), which with 54-7-13.4(6) provides:

> (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) subject to Subsection (6)(c), 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) Deferral or collection of the state's share of the net revenue requirement impacts of the major plant addition under this section shall commence upon the later of:
>
> (i) the day on which a commission order is issued approving the deferral or collection amount; or
>
> (ii) the in-service date of the major plant addition.
>
> (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.
>
> (c) If the commission authorizes deferral under Subsection (5)(a), the amount deferred shall accrue a carrying charge on the net revenue requirement impacts as determined by the commission.

In its Motion, UIEC also addressed deferring costs in this docket. UIEC has called this proceeding, Docket No. 10-035-89, "MPA II." It distinguished this proceeding from MPA I recognizing that, in this Docket, the Commission has the legal authority, if it wishes, to implement new rates at the end of this Docket and not to defer any of the costs to either the next

general rate case or when work groups on forecasting and cost of service are concluded. UIEC argues that the Commission should defer these costs to either the next general rate case or to when work groups are complete to avoid wasted resources and for fairness. In the Motion UIEC also claims that, because interest is charged, the Company will not be harmed by failing to place into rates the results of this case until some future date.

Except for the amount that will have been deferred from MPA I of approximately $15 million on the effective date of a decision in MPA II, the Division opposes a decision at this point to defer either the $30.8 million decision from MPA I or the decision that will occur in MPA II. The statute does not require continuing the deferral of the $30.8 million until a decision in the next general rate case. Further, the statute allows the Commission to end the continued deferral of $2,566,667 per month when the $30.8 million decision in MPA I is placed in rates. As for MPA II the Company should be permitted to put into evidence its support for the spread it proposes for MPA II and the $30.8 million of MPA I. The Division, UIEC, and other parties should be able to file their evidence as to whether a deferral should occur for MPA I and II or how those rate increases should be spread to customers. It is inappropriate, at this point, based on no evidence to summarily decide the outcome of these proceedings.

## I. U.C.A. § 54-7-13.4 DOES NOT REQUIRE CONTINUING THE DEFERAL OF THE $2,566,667 PER MONTH DEFERRAL BEYOND A FINAL COMMISSION DECISION PLACING INTO RATES THE $30.8 MILLION DECISION IN MPA I

UIEC argues that the Commission is required by law to continue the deferral approved in MPA I and to not include in rates the $30.8 million costs until the next general case is concluded. UIEC relies on U.C.A. § 54-7-13.4(5)(a) for its interpretation that, if the Commission defers the state's share of the major plant addition, then that amount can only be recovered in a general rate

case.[1] However, UIEC fails to cite U.C.A. § 54-7-13.4(6)(b), which makes it clear that the Commission can end the deferral "upon a final Commission order that provides for recovery in rates of all or any part of the net revenue impacts of the major plant addition." This section does not require that the deferral end in a general rate case, but allows the Commission the discretion to end the deferral at any time it issues a final order placing the state's share of the major plant addition into rates. Therefore, a plain and clear reading of the statute allows the Commission to place in rates the $30.8 million on January 1, 2011, ending the monthly deferral of $2,566,667 on the date that the $30.8 million increase is placed in rates. Only the amount that has already been deferred arguably needs to be held in abeyance until the next general rate case. This amount is approximately $15 million.

It is the DPU's position that the only amount that may be required to be deferred by the statute until the next general rate case is the amount that has already been deferred up until a final order places into rates the $30.8 million. DPU's interpretation provides meaning to U.C.A. § 54-7-13.4(6)(b). UIEC's interpretation, that both the amount deferred and the $30.8 million cost need to await the next general rate case, makes this section meaningless. Not only is this section not meaningless, but also it provides the Commission a logical opportunity to end a deferral, which, under UIEC's reading, could continue forever. The Commission needs the authority to end a deferral and end the accumulation of interest; otherwise, such a deferral could continue forever in the absence of a general rate case.

[1] U.C.A. § 54-7-13.4(5)(b) arguably gives the Commission discretion also to select any collection mechanism to collect the state's share of the major plant addition in addition to a deferral. This would mean that the Commission under this section is not restricted from also including a January 1, 2001 effective date for the amount that has been deferred up to that point. This, of course, is the Company's proposal.

## II. THE COMPANY AND THE PARTIES SHOULD BE ALLOWED TO PRESENT EVIDENCE TO SUPPORT A SPREAD OF THE REVENUE REQUIRMENT FROM MPA I AND MPA II IN THIS CASE

UIEC argues that all portions of MPA I and II should be deferred until the next general rate case, which is anticipated to be filed in 2011, and, under statutory mandates, would result in a decision by September 2011. UIEC's main argument is that, because a number of work groups on cost of service related issues are not scheduled to be completed until November 2010, that the results of those work groups could not be used to establish rates in either MPA I or II. These work groups came out of the last general rate case, Docket No. 09-035-23. In that Docket, the Commission did, despite the problems it recognized, find that the results of the various cost of service studies:

> indicate a somewhat similar set of results. We observe in all studies the residential class and small, large and over 1 mw general service classes all perform within or above a 10 percent band around the system average return. We observe in all studies the high voltage general service, irrigation classes and, in all but one study, traffic system signal classes performed below a 10 percent band around the system average return. We observe in all studies the street, area, and outdoor lighting performed significantly above the 10 percent band around the system average return.

See Order Docket No. 09-035-23 at pp. 134-135.

As a result the Commission did reach a decision on how to spread the rate increase of the last case and did set just and reasonable rates. The Company and other parties should have the opportunity to file testimony on how the rate increases coming out of MPA I and MPA II should be spread. At the end of the day, after the evidence is in, the Commission may well decide to defer the rate increase until the next general rate case, but that decision should not be made based on the bald assertion that, because certain work groups are meeting, that just and reasonable rates cannot be set. Work groups and task forces seem to always be meeting, particularly on issues

surrounding cost of service studies. Business cannot stop because of the presence of a work group that may or may not solve an underlying problem that it was created to investigate. Nor, is there any assurance that, if the workgroups come up with a solution, it will be implemented for the next general rate case.

## III. THE IMPACT OF A DEFERRAL OF MPA I AND MPA II WILL HAVE A MATERIAL IMPACT ON RATEPAYERS

UIEC argues that the Company will not be harmed by deferring MPA I and MPA II until the next general rate case because interest will be accumulated on the balances. Absent a cash flow issue that may affect the Company by not collecting a significant revenue requirement, that assertion may be correct. However, UIEC did not discuss or calculate the impact on customers that would result from an additional deferral of MPA I and deferral of MPA II rate increases until September 2011. To implement both of the rate increases at the same time as the rate increase from a new rates case would present a substantial one time one time burden on customers.

Just from the perspective of gradualism it is better to place some of the rate increases into effect on January 1st rather than waiting until September 2011 and hitting ratepayers with a single large rate increase. Under the Company's proposal, ratepayers would be subject to two smaller rate increases. A more important impact on ratepayers is the significant amount of deferral that would accumulate by waiting until September 2011 and the significant amount of interest that ratepayers would have to pay by waiting until September 2011 to deal with MPA I, MPA II, and the amounts that will have been deferred.

Attachment 1 is the DPU's calculation of the impact of UIEC's proposal to continue to defer MPA I and to defer MPA II. The DPU calculates that by September 2011 the total amount that will have been deferred will be approximately $64.6 million. In September, under UIEC's

proposal, the MPA I and MPA II rate increases would be put in effect and a decision would need to be made on how long to amortize the $64.6 million. For purposes of calculating the revenue requirement to ratepayers under UIEC's proposal, the DPU assumed the deferral balances would be amortized over 1, 2, or 3 years. If the Commission adopted UIEC's position, and the deferral balances were amortized over 12 months, ratepayers would pay an additional $4.8 million in accrued interest; if the amortization were over 24 months, the additional interest ratepayers would pay would be approximately $7.6 million; and, if the amortization of the $64 million were over 36 months, the additional interest would be approximately $10.5 million. Obviously, if the Commission believed it had to defer the MPA I amount of approximately $15 million into the next general rate case (as discussed above), the interest accumulated would be less. In either case this amount is not insignificant. It should give the Commission pause before it prohibits parties from putting on evidence on how MPA I and MPA II should be placed in rates.

In response to UIEC Data Request 1.54, the Company also provides an estimate of the revenue impact of deferring MPA I and MPA II to the next general rate case. The Company's response is attached as Attachment 2. The Company's response shows a deferral of approximately $67.8 million which is slightly larger then the DPU's calculation of $64.6 million. The difference arises from the difference in assumptions: the Company assumed a rate effective date of the next general rate case of September 15, while the Division assumed a rate effective date of September 1. The Company's analysis also assumed the deferrals are evenly spread throughout the month, while the Division assumed the deferral occurs on the first day of the month. Despite these differences, the August 2011 balances of the two methods are similar and, therefore, the accrued interest that would be added by a 1, 2, or 3 year amortization would be similar.

Ultimately, the Commission may decide to defer these increases, but the Commission should not make that decision today, particularly when the impact on customers is significant.

**CONCLUSION**

For the reasons stated above, the DPU opposes the Motion of UIEC related to now deferring collection of MPA I amounts, deferring collection of MPA II costs until the conclusion of a general rate case or completion of work by the work groups, and in particular opposes not allowing parties to put into evidence how the rate increases associated with MPA I and MPA II should be handled. Except possibly for the amounts already deferred out of MPA I of approximately $15 million, nothing in the statute prohibits the Commission from placing into rates the entire increase of MPA I and MPA II and ending any future deferrals.

Respectfully submitted this _____ day of September, 2010.

_____

Michael Ginsberg
Patricia Schmid
Attorneys for the Division of Public Utilities

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the Response of the Division of Public Utilities to UIEC's Motion to Defer Recovery of Major Plant Addition Costs was sent by electronic mail to the following on September _____, 2010:

Paul H. Proctor
Assistant Attorney General
160 E. 300 S., Fifth Floor
P. O. Box 140857
Salt Lake City, UT 84114-0857
pproctor@utah.gov

Gary Dodge
Hatch James & Dodge
10 West Broadway, Suite 400
Salt Lake City, UT 84101
gdodge@hjdlaw.com

Dennis Miller
William Powell
Philip Powlick
Division of Public Utilities
160 E. 300 S., Fourth Floor
P. O. Box 146751
Salt Lake City, UT 84114-6751
dennismiller@utah.gov
wpowell@utah.gov
philippowlick@utah.gov

Kevin Higgins
Neal Townsend
Energy Strategies
39 Market Street, Suite 200
Salt Lake City, UT 84101
khiggins@energystrat.com
ntownsend@energystrat.com

CherylMurray
Dan Gimble
Michele Beck
Committee of Consumer Services
160 E. 300 S., 2nd Floor
Salt Lake City, UT 84114-6751
cmurray@utah.gov
dgimble@utah.gov
mbeck@utah.gov

Michele Beck
Executive Director
Committee of Consumer Services
Heber Wells Building
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111
mbeck@utah.gov

David L. Taylor
Yvonne R. Hogle
Daniel Solander
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, UT 84111
dave.taylor@pacifcorp.com
yvonne.hogle@pacificorp.com
daniel.solander@pacificorp.com
datarequest@pacificorp.com

F. Robert Reeder
Vicki Baldwin
Parsons Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
P. O. Box 45898
Salt Lake City, UT 84145-0898
FRReeder@parsonsbehle.com
VBaldwin@parsonsbehle.com

_____