- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Rocky Mountain Power Application 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 DECISION ON UIEC'S MOTION TO DEFER RECOVERY OF MAJOR PLANT ADDITION COSTS

ISSUED: October 13, 2010

By The Commission:

This matter is before the Commission on the motion of Utah Industrial Energy Consumers ("UIEC") to defer recovery in rates of certain major plant addition costs.

BACKGROUND

In the application giving rise to this docket, PacifiCorp, a public utility doing business in Utah as Rocky Mountain Power ("RMP" or "Company") requests approval to recover in rates the costs of its Populus to Ben Lomond transmission line project and Dunlap I wind project. The Company brings its application pursuant to Utah Code Ann. § 54-7-13.4, the "Alternative cost recovery of major plant addition – Procedure" ("MPA Statute"), enacted in 2009. The MPA Statute establishes a procedure for cost recovery of single-project utility plant additions whose costs exceed one percent of rate base. The MPA Statute terms such projects "major plant additions" ("MPA"). The cost recovery procedure it authorizes is an alternative to the general rate case process.

In conjunction with alternative cost recovery for its Populus to Ben Lomond and Dunlap I projects, the Company requests authority to begin on January 1, 2011, recovery in rates of various MPA costs, including Populus to Ben Lomond and Dunlap I project costs. These

costs fall into three basic categories: (1) $30.8 million in annual revenue requirement approved by Commission Report & Order dated June 15, 2010[1] ("MPA I" costs), (2) the accrued balance of deferred MPA I costs, as of December 31, 2010, totaling about $15.7 million and the associated ongoing carrying charges, and (3) $39.0 million in annual revenue requirement associated with the Populus to Ben Lomond and Dunlap I projects ("MPA II" costs).

Because recovery in rates of MPA I costs has been deferred, UIEC contends subsection (5)(a) of the MPA Statute restricts the Commission to order recovery in rates of these costs only in future general rate cases. UIEC also maintains rate recovery of approved MPA II costs should be deferred. This deferral would last until the Company's next general rate case or at least until the recommendations of various work groups convened to improve Company cost-of-service studies are made and implemented in a new study.[2] UIEC asserts litigating now recovery in rates of any approved MPA II costs, before the filing and vetting of a new cost-of-service study, will waste valuable regulatory resources. The Utah Association of Energy Users ("UAE") supports these arguments. UAE also argues any recovery of MPA costs authorized before the next general rate case should reflect updated billing determinants to avoid potential cost over-recovery.[3]

The Company responds asserting the Utah Legislature in passing the MPA Statute intended to give the Commission substantial discretion to determine when MPA-related rate

[1] This revenue requirement is associated with the Ben Lomond to Terminal transmission line project and the Dave Johnston Generation Unit 3 emissions control measure project. In accordance with a settlement stipulation, the June 15, 2010 order approving MPA cost recovery for these projects deferred recovery in rates indefinitely, beginning July 1, 2010.
[2] See UIEC's Motion pp. 3-4.
[3] See footnote 4.

increases occur. The Company also disputes UIEC's claim that a new cost-of-service study is needed before the Commission orders recovery in rates of MPA costs. The Company contends UIEC's position would nullify the MPA statute and turn the MPA process into a general rate case. The Company reasons the time constraints for filing an MPA application ensure the data upon which ratemaking must rely have been subject to reasonable scrutiny in a recent general rate case. Finally, the Company maintains UIEC has overlooked or ignored the elements of its application that present the appropriate data to enable the Commission to adjust rates.[4]

The Division of Public Utilities ("Division") interprets the MPA Statute as affording the Commission broad rate setting discretion. Relying in part on subsection (6)(b) of the MPA Statute, the Division contends the Commission may terminate the monthly deferral of MPA I costs upon issuing a final order commencing recovery of prospective MPA I costs in new rates, for example at year end as the Company requests. As to the amount already deferred as of the final order, the Division is less certain, stating recovery "possibly" needs to await the next general rate case.[5]

The Division expresses concern about the impact on customers of the cumulative effect of the deferrals UIEC proposes, as well as the attendant carrying costs. From the Division's broad consumer perspective, the principle of gradualism favors placing the bulk of the MPA rate increases into effect on January 1, 2011, so as not to combine them with potential

[4] The Division, on August 12, 2010, recommended the Commission accept the Company's application as a complete filing under R.746-700-30. Neither UIEC nor any other party objected to this recommendation. UIEC's allegations in this area go to the weight of the Company's evidence. They should be asserted during the evidentiary hearing, if UIEC intends the Commission to consider them. The Commission likewise invites UAE to present its recommendations on billing determinants at that time.

[5] Response of the Division, pp. 4, 8.

increases in the next general rate case. While the Utah Office of Consumer Services ("Office") makes no specific recommendation concerning the disposition of UIEC's motion, it is also concerned the accumulating carrying charges on deferred costs may unduly burden future customers.

ANALYSIS

The Company's application affords the Commission its first opportunity to consider recovery in rates of MPA costs under the MPA Statute. Subsection (5) describes the Commission's rate setting powers with respect to MPA costs as follows:

> (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**:
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> (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]

This statutory language presents the Commission with four basic options in cases where it approves recovery in rates of MPA costs: (1) defer the net revenue requirement impacts for recovery in a general rate case; (2) adjust rates to recover the net revenue requirement impacts; (3) establish another form of collection method for the net revenue requirement impacts; and (4) all of the foregoing. Additionally, subsection (6)(b) of the MPA Statute provides guidance on how these options may operate together: "(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."

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[6] U. C. A. § 54-7-13.4(5) (emphasis added).

Applying this language to the recovery of prospective MPA I costs in rates, the Commission concludes recovery in rates may begin on January 1, 2011, as the Company has requested, or at such other time as the Commission by final order provides for recovery in rates of all or any part of MPA I costs. In effect, this combination of deferral followed by a rate adjustment is a form of collection method encompassing all of the authorized options described in subsection (5) of the MPA Statute. Use of the options in combination is explicitly permitted in that subsection: "…the commission shall do one **or all** of the following…."[7] Indeed, with respect to MPA II costs, UIEC suggests the Commission follow this very pattern of initial cost recovery deferral followed by subsequent rate changes, outside of a general rate case, to implement recovery in rates.[8]

The Commission's power to end the deferral outside of a general rate case is not only explicit in the word "all" in subsection (5), it is underscored by subsection (6)(b) of the MPA Statute, quoted above, describing how the Commission may terminate a deferral. As the Division notes in its response to the UIEC motion, subsection 6(b) expressly contemplates deferral of cost recovery followed by subsequent termination of the deferral at the time recovery in rates is ordered. Importantly, subsection (6)(b) does not restrict recovery of deferred costs to only general rate cases. Indeed, reading subsection (5)(a) as requiring all deferrals to be terminated by a general rate case order would render subsection (6)(b) largely superfluous.

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[7] See U.C.A. § 54-7-13.4(5) (emphasis added).

[8] See UIEC's Motion, pp. 3-4 where UIEC suggests recovery in rates of any approved MPA II costs be deferred, "until either (a) the next general rate case; or (b) after the work groups have issued their reports, the Commission has issued an order on those reports, the Company has prepared a cost-of-service study in accordance with such order, and the parties have been given an opportunity to conduct discovery on that study."

Consequently, the Commission is not bound to continue deferral of MPA I costs for recovery in rates until the Company's next general rate case, as UIEC claims.

It is noteworthy that initial deferral of cost recovery followed by an order ending the deferral and commencing recovery in rates is consistent with the straightforward language of the settlement stipulation the Commission accepted in approving MPA I costs. In its Report and Order issued on June 15, 2010, in Docket No. 10-035-13, the Commission entered an order on MPA I cost recovery within 150 days after the Company's complete filing, as required under MPA Statute subsection 4(a)(iii)(B). This order approved a settlement stipulation providing in pertinent part:

> d. The Commission's order should direct the Company to record monthly the amount of $2,566,667 on the books of the Company as a Utah-specific regulatory asset beginning … July 1, 2010 … and ending on the last day of the month (or prorated for a portion of such month) when rates are adjusted to begin collecting the deferred balance from customers; and
> e. The Commission's order should authorize the Company to record a carrying charge of 0.695 percent per month … to be added to and become part of the unrecovered regulatory asset balance each month. [9]

Nothing in this language suggests any parties to the settlement believed future recovery in rates of the stipulated MPA I costs could only occur in a general rate case.

UAE acknowledges the Commission's authority under MPA Statute subsection (5) "to use a combination of deferral and collection" but claims both actions would have been required within the 150 day window for Commission action on cost recovery specified in subsection (4)(iii)(B).[10] In one sense, this is exactly what the Commission did in approving, within the 150 day window, the settlement stipulation which deferred cost recovery for an

[9] Report and Order, Docket No. 10-035-13, issued June 15, 2010, p.11 (Appendix).
[10] UAE's Memorandum in Reply to RMP and DPU Responses, pp. 2- 3.

unspecified duration, until the Commission adjusts rates to implement recovery. It is also important to note, however, that the 150 day window within which the Commission must approve MPA costs is not present in subsections (5) or (6) which describe how the Commission may accomplish recovery in rates of approved MPA costs. Contrary to UAE's position, the option available to the Commission under subsection (5) to both defer recovery of approved MPA costs **and** adjust rates to effect recovery necessarily implies Commission discretion to adjust rates over the course of time, as the public interest in just and reasonable rates dictates. MPA Statute subsection (6)(b) -- which delineates this very process of deferral terminated by a subsequent order to recover MPA cost in rates -- underscores this point and, in practical terms, would be meaningless under UAE's interpretation.[11] Furthermore, as already mentioned, UIEC itself suggests the Commission apply this very approach to effectuate recovery in rates of MPA II costs by requesting the Commission defer recovery in rates of any approved MPA II costs until new cost-of-service studies are prepared and reviewed.[12] These activities could not under any reasonable scenario take place within 150 days of the Company's MPA II filing nor does UIEC claim they need to under the MPA Statute.

Finally, Commission authority to end the deferral of recovery in rates of MPA I approved costs is also established in Utah Code Ann. § 54-7-14.5:

> **Rescission or amendment of orders or decisions.**
>
> (1) The commission may, at any time after providing an affected utility notice and an opportunity to be heard, rescind, alter, or amend any order or decision made by the commission.

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[11] U.C.A. § 54-7-13.4(6)(b) empowers the Commission to terminate a deferral by a final order that provides for recovery in rates of all or any part of the previously-approved MPA net revenue requirement impacts,

[12] See UIEC Motion, pp. 3-4.

> (2) An order rescinding, altering, or amending an original commission order or decision shall have the same effect on the public utility as the original order or decision.

Accordingly, it is clearly within the Commission's power to terminate the deferral as of January 1, 2011, as the Company requests, and at the same time to begin recovery of prospective MPA I costs. Moreover, as discussed below, such action may well be in the public interest to maintain gradualism and avoid unnecessarily large future rate changes.

UIEC's motion seeks deferral not only of prospective MPA I costs but also the continuing deferral of MPA I costs already accrued. UIEC argues all MPA I costs, including those accrued as of a Commission final order ending the MPA I cost deferral, must be recovered in future general rate cases. In making this argument UIEC again points to subsection (5)(a) which describes the Commission's option: "to defer the state's share of the net revenue requirement impacts of the major plant addition for recovery in general rate cases…." While the Commission acknowledges this option may be used in this instance, for the reasons presented above, the Commission is not confined to this course. The Commission's authority to employ "one or all" of the options described in subsections (5)(a) and (5)(b) extends to "collection method[s]" that could include deferral followed by terminating the deferral prior to the Company's next general rate case, and simultaneously changing rates to recover both the prospective costs and the accumulated deferred costs.

The extent of recovery of MPA II costs is yet to be determined. UIEC acknowledges the Commission's authority to order recovery in rates of MPA II costs when (and to the extent) they are approved. Despite this fact, UIEC urges the Commission to decide now

that any approved MPA II costs be deferred for recovery until the Company's future general rate case, expected to change rates in about September 2011. Alternatively, as previously discussed, UIEC suggests recovery in rates should await the results of future cost-of-service studies. Due to the pendency of work group reports on a variety of cost-of-service issues arising out of the Company's last general rate case decision, UIEC argues it would be inefficient to adjust rates in this docket to recover MPA II costs.[13] UIEC maintains rate recovery should await the work group reports and the parties' examination of the resultant, improved cost-of-service study the Company presumably will produce either in its next general rate case or some other filing.

UIEC's argument overlooks a fundamental premise of the MPA Statute. Its procedures are only available to a utility if the utility has received a final general rate case order within 18 months of the projected in-service date of the MPA. This requirement assures the cost-of-service and other data necessary to evaluate project costs, savings, and benefits, and to spread the revenue requirement among customer classes and adjust rates are reasonably fresh and are aligned in the context of a test period. If a new cost-of-service study is required now as UIEC claims, the MPA process would be at risk of becoming a general rate case, instead of an alternative ratemaking procedure, frustrating its purpose. This conclusion is supported by the Commission's rule implementing the MPA Statute and defining a complete MPA filing.[14] While this rule addresses all pertinent MPA project-specific impacts on utility operations, it does not

[13] Currently, at Commission direction, the Division has convened a variety of work groups to evaluate elements of the Company's cost-of-service methodology. Final reports are due November 30, 2010.
[14] See Utah Admin. Code R746-700-30.

require updated cost-of-service data.[15] Rather, the spread of revenue requirement among customer classes is intended to be implemented with reference to the same data used to set just and reasonable rates in the applicant's most recent general rate case. The rate changes ordered to facilitate MPA cost recovery remain in effect until adjusted by a final order in a subsequent general rate case, reflecting the results of a new revenue requirement spread supported by an updated cost-of-service study.[16]

The MPA alternate ratemaking process is efficient in its reliance on the revenue requirement spread inherent in the Company's most recent general rate case final order. It could lose this efficiency were the procedure to require re-examination of cost-of-service studies and customer class allocation methods, or preparation of new ones. As the Division notes, the Commission, in the Company's most recent general rate case, decided how to spread the rate increase and set just and reasonable rates, despite certain noteworthy reservations about the Company's studies. In the interim, while work groups address cost-of-service issues and the Company prepares and presents a new general rate case filing, the data and class allocation methods relied on in the Company's most recent general rate case should be the basis for any MPA-related rate recovery. This approach is consistent with the MPA Statute, efficiency and fairness. Accordingly, the pendency of the work group reports does not justify deferring recovery in rates of approved MPA costs.

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[15] This rule requires the utility to provide, among other things: "7. Any and all documents and analyses that address the plant addition's projected costs, savings and benefits and demonstrate how and when the utility's ratepayers will see a net benefit from the plant addition and quantify the net benefit."

[16] Such studies are a mandatory component of a complete general rate case filing. See Utah Admin Code R746-700-21.

In fact, the Division presents compelling reasons to implement MPA rate recovery as soon as reasonably possible and not wait for the Company's general rate case. Assuming the requested MPA II costs are approved for recovery, the Division calculates that by September 2011, when the Company's next general rate case order likely would be issued, UIEC's proposed MPA I and MPA II deferrals would approximate $64.6 million. This deferred revenue requirement would then need to be amortized in rates over some period of time while carrying costs continued to accrue. Assuming an amortization period of from one to three years, the Division calculates the carrying costs alone to range from nearly $5 million to over $10 million. The rate impact of the amortization of the deferral and carrying costs would occur at the same time the ongoing MPA I and MPA II annual revenue requirements, potentially totaling about $69.8million, would be reflected in rates.[17] Furthermore, these substantial increases would occur simultaneous with any additional rate increases the Company justifies in its next general rate case.

While UIEC argues the Company will not be harmed by its requested deferrals, it fails to consider adequately the potentially adverse effects of its proposals on ratepayers. These adverse effects, however, are persuasively illustrated by the Division and are also raised, to a limited extent, by the Office. The Commission finds in the comments of these consumer advocates strong rationale to use the discretion afforded by the MPA Statute to avoid burdening future ratepayers with a large deferred revenue requirement. As the Division observes, the principle of gradualism warrants action in the near term to place approved MPA costs into rates.

[17] This amount would include the $30.8 million previously approved in MPA I and whatever portion of the $39.0 million is ordered in relation to MPA II, for a potential annual revenue requirement impact of $69.8 million.

Doing so would avoid a substantial build up of un-recovered revenue requirement as well as significant carrying costs. Accordingly, consistent with the Company's request, prospective MPA I revenue requirement and any approved MPA II revenue requirement should begin to be recovered in rates on January 1, 2011, or as soon thereafter as practicable.

RULING

In light of the foregoing analysis, UIEC's motion to defer recovery of MPA costs is denied. The specific methods for recovering in rates the approved MPA I and MPA II costs (including then-existing deferred account accruals) will be described in the Commission's final order.

DATED at Salt Lake City, Utah, this 13th day of October, 2010.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#69115