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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 Populous to Ben Lomond Transmission Line and the Dunlap I Wind Project.	DOCKET NO. 10-035-89 **APPLICATION FOR REVIEW AND CLARIFICATION OF THE COMMISSION'S ORDER REGARDING UIEC'S MOTION TO DEFER RECOVERY OF THE MAJOR PLANT ADDITION COSTS**

Pursuant to Utah Code § 54-7-15, the group of intervenors collectively known as the Utah Industrial Energy Consumers ("UIEC"), respectfully submit this Application for Review and Clarification of the Order issued by the Utah Public Service Commission ("Commission") regarding UIEC's Motion to Defer Recovery of the Major Plant Addition Costs requested by Rocky Mountain Power ("RMP") in this case.

DISCUSSION

I. UIEC REQUESTS CLARIFICATION OF THE INTENT OF THE COMMISSION'S ORDER.

In its Order, at page 12, the Commission states: [P]rospective 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." Thereafter, in its Ruling the

Commission states: "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." These two statements appear to be in conflict.

The first statement could be interpreted to mean that all that need be determined in this case is the amount of recovery. However, the second statement could be interpreted to imply that all issues are open for determination. When read together, it is unclear whether the timing and rate spread are decided or left open for argument.

This confusion is not relieved by the Commission's response to the Division of Public Utilities' ("Division") request for clarification. The Division also asked for clarification regarding two statements of the Commission's Order. First, the Division indicated that the statement: "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" might be interpreted to mean that the spread in the MPA case should follow exactly what which was ordered in the rat case. Next, the Division pointed out that the statement "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" could be interpreted to mean that it is the methods and data that should be used to determine the spread, which may differ from the revenue requirement spread approved by the Commission in the most recent general rate case. In its responsive order, the Commission indicated that the phrase "data and class allocation methods relied on in the Company's most recent general rate case," should be interpreted as the revenue requirement spread approved in PacifiCorp's most recent general rate case decision.

The UIEC believes that this result, in conjunction with the statements on page 12 of the Order denying UIEC's motion and the schedule in this case, create confusion as to the course of

this case. The schedule provides for hearing dates on cost of service and rate design issues, which would assume that testimony is to be presented on these issues. To better understand the issues that the Commission expects to address in this proceeding, UIEC respectfully asks clarification as to whether it is the Commission's intent that the rate spread and cost of service issues be identical to that already determined by the last general rate case, and whether it is already determined that all rate recovery will begin January 1, 2011.

II. UIEC REQUESTS REVIEW FOR ERRORS OF LAW.

To preserve its rights for appeal, UIEC sets forth below five (5) points in which it believes the Commission Order suffers from errors of law.

A. A Statute of General Authority Does Not Supersede a Statute of Specific Authority.

The general grant of authority found in § 54-7-14.5 does not supersede the specific authority granted in § 54-7-13.4. *See* Order at 7–8. Instead, a general grant of authority such as that found in § 54-7-14.5 is limited by a further specific grant of authority such as that found in § 54-7-13.4. *See Dairy Prod. Servs., Inc. v. City of Wellsville*, 13 P.3d 581, 589 (Utah 2000). Therefore, while the Commission has been granted the general authority to "rescind, alter, or amend any order or decision," that authority has been limited to some extent in the case of major plant additions where a deferral has been ordered pursuant to Utah Code § 54-7-13.4(5).

B. The Error of the Commission's Interpretation of Subsection (6)(b) in Conjunction with Subsection (5).

The plain language of the statute provides that if the Commission approves cost recovery, or approves it with conditions, one ***or all*** of the following actions must be taken: (1) defer for recovery in general rate cases, subject to a carrying charge;[1] or (2) adjust rates or otherwise

[1] The statute very clearly states that the deferral of the net revenue for recovery in a general rate case is only subject to subsection (6)(c)—that is, a carrying charge.

establish a collection method. The language is very plain and clear—if there is a deferral, it must be recovered in a general rate case.[2]

This allows the Commission different options: (a) at the end of the 150 days, issue an order deferring the total amount for recovery in a general rate case; or, (b) at the end of the 150 days, issue an order making an adjustment to the rates or setting up some other collection method; or (c) at the end of the 150 days, issue an order deferring a part for recovery in a general rate case, adjusting rates for some part, and setting up some other collection method for another part. But, if the Commission makes any deferral of any amount, that amount can only be collected in a general rate case.

The word "all" in the statute should not be construed to mean that the Commission may reconsider and rescind a prior order. The MPA I order fell under option (a)—at the end of the 150-days, the Commission issued an order deferring the total amount for recovery in a general rate case.

Also, reading subsection (6)(b) as the Commission has in its Order fails to construe the parts of the statute in connection with every other part so as to produce a harmonious whole. It destroys subsection (5)(a) and makes it superfluous. The Commission's discretion does not permit arbitrarily ending deferral at any time. That time is prescribed by the statute.

Subsection (6)(b) should be read in harmony with the other parts and with subsection (6)(a). Subsection (6)(a) provides when a deferral is to start. Subsection (6)(b) provides when a deferral is to end. The deferral described in this section is a deferral for recovery to a general rate case. It cannot continue past the date the final order providing for recovery is issued. This means that the Company cannot continue to defer in a regulatory asset the amounts authorized

[2] This refers only to the MPA I costs that have already been deferred.

past a general rate case order. The regulatory asset that was created by the deferral order becomes, after the general rate case, a rate base asset. For accounting and other purposes, these are two separate things and the statute makes it clear that the regulatory asset ends once it is put into rates in the general rate case.

C. The Commission's Order Appears to Assume Discretion not Provided by the Utah Legislature.

On page 6 of its Order, the Commission quotes its deferral order and indicates that "[n]othing 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." This appears to be uses as support for the Commission's later assertion on page 7 that it has "discretion to adjust rates over the course of time, as the public interest in just and reasonable rates dictates." The UIEC respectfully disagrees.

First, the language of the stipulation was very carefully prepared so as not to indicate any time for recovery other than that which is provided by statute—in a general rate case. Because the statute provides for when the recovery of a deferral can be made, there was no reason to state a time in the stipulation. No party made the argument the Commission's inference implies and the Commission has not indicated that it has any evidence to support its assumption. The Commission should make no assumptions that modify or amend the language of the stipulation, especially ones that are contrary to the language of the statute. To do so would be arbitrary and capricious.

Furthermore,

> "It is well established that the Commission ***has no inherent regulatory powers other than those expressly granted or clearly implied by statute***." . . . "When a specific power is conferred by statute upon a . . . commission with limited powers, the ***powers are limited to such as are specifically mentioned***." . . . "Accordingly, to ensure that the administrative powers of the [Commission] are

> not overextended, any reasonable doubt of the existence of any power ***must be resolved against the exercise thereof***."

Heber Light & Power Co. v. Utah Pub. Serv. Comm'n, 231 P.3d 1203, 1208 (Utah 2010) (internal citations omitted) (emphasis added) (ruling that Utah Public Service Commission acted beyond its limited grant of statutory authority).

The language of the statute should not be interpreted to "imply" that the Commission has discretion to adjust rates over the course of time, as stated on page 7 of the Order. The statute provides that at the end of the 150 days, the Commission can issue an order deferring a part for recovery in a general rate case, adjusting rates for some other part, and/or setting up some other collection method for some other part. But, this must be done within the initial order issued within the 150 days. In MPA I, the Commission only ordered deferral, which according to the statute, must be recovered in a general rate case.

D. <u>The Specific Statutory Requirement of Application to the Appropriate Billing Components Have Been Rendered Meaningless.</u>

Pursuant to § 54-7-13.4(5):

> [T]he 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***.

(Emphasis added.) The Commission's interpretation appears to ignore the element that rates must be applied to the appropriate billing components.

In some cases, the occurrence of a general rate case within 18 months of filing for recovery of major plant addition costs might result in appropriate billing components. However,

in most cases it will not. That is specifically why the deferral to the general rate case was provided as an option. The deferral ensures that in a case where the appropriate billing components are unknown or uncertain; no longer fresh; or not aligned in the context of an appropriate test period, recovery will be completed in a general rate case. Otherwise, subsection (5)(a) is rendered largely superfluous.

In this case RMP used an updated test period to calculate projected net revenue requirement impacts, but RMP did not use updated billing components appropriate for that test period. To adjust rates as of January 1, 2011, is thus directly contrary to the statutory directive that the rates be applied to the appropriate billing components.

E. Just and Reasonable Rates Require the Use of Facts that Are Available and Knowable to the Commission.

The Commission acknowledges that even though it decided rate spread and set just and reasonable rates, it had "noteworthy reservations about the Company's studies." Order at 10. The Commission set the rates in that rate case based on the information available. However, there is much more recent information now available. The Company admits that twelve (12) months of data from its new sample method for use in setting rates has been available since December 2009. It has also admitted that the most recent twelve (12) month period for which sample data has been validated and is available for use is the twelve months ended June 2010. It used a different test period to calculate projected net revenue but did not update the billing components. In addition, the work groups have made substantial progress in uncovering significant problems with the Company's studies and determining workable solutions.

To ignore this data when it is available and knowable means that just and reasonable rates cannot be achieved.

CONCLUSION

Based on the foregoing, UIEC respectfully requests clarification on the apparently conflicting statements on pages 10 and 12 of the Order. UIEC also requests that the Commission review and reconsider its Order for what UIEC believes are errors of law.

RESPECTFULLY submitted this 25th day of October, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October 2010, I caused to be e-mailed, a true and correct copy of the foregoing **APPLICATION FOR REVIEW AND CLARIFICATION OF THE COMMISSION'S ORDER REGARDING UIEC'S MOTION TO DEFER RECOVERY OF THE MAJOR PLANT ADDITION COSTS** in Docket No. 10-035-89 to:

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