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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 Application for Review and Clarification of the Commission's Order Regarding 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 Code Ann. § 54-7-15 and Utah Administrative Code R746-100-11, hereby responds to the Utah Industrial Energy Consumers ("UIEC") Application for Review and Clarification of the Public Service Commission of Utah's ("Commission") Order Regarding UIEC's Motion to Defer Recovery of the Major Plant Addition Costs ("Application for Review").

ARGUMENT

A. UIEC SEEKS CLARIFICATION OF ISSUES ADEQUATELY ADDRESSED BY THE COMMISSION.

In its Application for Review, UIEC seeks clarification of the Commission's Order, dated October 13, 2010, on UIEC's Motion to Defer Recovery of the Major Plant Addition Costs ("Order"). UIEC contends that the Commission's statement that "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" conflicts with its statement that "the specific methods for recovering in rates the approved MPA I and MPA II costs . . . will be described in the Commission's final order."[1] UIEC argues that these two statements, in conjunction with the Scheduling Order, issued on September 15, 2010, providing hearing dates on cost of service and rate design issues, creates confusion.

Utah Code Ann. § 54-7-13.4(4)(a)(iii)(B) requires the Commission to issue an order on cost recovery by December 31, 2010, which is 150 days from the complete filing date. Utah Code Ann. § 54-7-13.4(6)(a) provides that the collection of the state's share of the net revenue requirement impacts of a major plant addition shall commence upon the later of the in-service date of the major plant addition or the day on which the commission order is issued approving the collection amount. Consequently, the two

[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").

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").

statements with which UIEC takes issue clearly provide that the Commission will issue its order on cost recovery, and all other issues, in a final order to be issued by December 31, 2010.

In its September 15, 2010 Scheduling Order, the Commission noted that if a hearing date of December 13, 2010, is required to complete hearings in this Docket, the Commission will, on December 6, 2010, entertain recommendations from the parties concerning compliance with Utah Code Ann. § 54-7-13.4(4)(a)(iii)(B). Therefore, there is no reasonable basis for UIEC's claim of "confusion."

As it stands now, on January 1, 2011, the Company may begin collecting attendant adjustments in the revenue requirement as reflected in rates. The timing of the order and its implementation is dictated by statute and further clarification is not required.

B. THE COMMISSION'S ORDER IS IN ACCORDANCE WITH LAW AND UIEC'S APPLICATION FOR REVIEW SHOULD BE DENIED.

In its Application for Review, UIEC sets forth five points in which it believes the Commission's Order "suffers from errors in law" and essentially restates the arguments submitted in its Motion to Defer. This Commission has rejected these same arguments. The Order is in accordance with law. UIEC has no basis for its Application for Review and it should therefore be denied.

1. The Commission Correctly Interpreted Subsection (6)(b) in Conjunction with Subsection (5).

In its Application for Review, UIEC recycles its argument that the Company cannot recover the MPA I deferred amounts until its next general rate case. UIEC again argues that the plain language of Utah Code Ann. § 54-7-13.4(5) requires that if there is a deferral, it must be recovered in a general rate case. In its Order, however, the

Commission held that it 'is not bound to continue deferral of MPA I costs for recovery until the Company's next general rate case, as UIEC claims." Order, p. 6.

In its Application for Review, UIEC disputes this holding and contends that the Commission erred in its interpretation of subsection (6)(b) in conjunction with subsection (5), which provide 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) …
>
> (c) 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 Legislature did not intend the deferral described in subsection (5)(a) above to end only upon the entry of an order in a general rate case. Rather, subsection (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 limited exclusively to "general rate cases". The Legislature was careful to ensure that deferrals under the MPA Statute did not continue for unnecessarily long periods of deferral. UIEC's narrow interpretation is therefore inconsistent with both the language and intent of the MPA Statute.

After reviewing the parties' positions, the Commission ruled that "the combination of deferral followed by a rate adjustment is a form of collection method encompassing all of the authorized options described in subsection (5)." It further ruled that 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." Order, p. 5.

2. **The Rules of Statutory Construction Support the Commission's Order.**

In its Application for Review, UIEC further contends that the Commission's interpretation of subsection (5) and 6(b) is incorrect, based upon the statutory precept that a statute of general authority does not supersede as statute of specific authority. UIEC attacks the Commission's conclusion that its authority to end deferral of recovery in rates of MPA I approved costs is also established by Utah Code Ann. § 54-7-14.5, which grants the Commission general authority to "rescind, alter, or amend any order or decision." UIEC argues that this authority, which the Commission cites only as additional support, is limited by the language in Utah Code Ann. § 54-7-13.4. UIEC's argument, however, misses the point that the clear statutory language of Utah Code Ann. §54-7-13.4 expressly provides the necessary authority to end deferral upon a final commission order that provides for recovery in rates, whether entered in a general rate case or another docketed proceeding.

Moreover, UIEC ignores the equally important statutory precept granting effect to unambiguous statutory language. The rules governing statutory construction are well established:

> If the statute is clear and unambiguous, there is no implicit grant of discretion possible because there is no interpretation required by the agency. The agency simply applies the statute according to its plain language

Ferro v. Utah Dept. of Commerce, Div. of Occupational & Prof'l Licensing, 828 P.2d 507, 510 (Utah Ct. App. 1992).

The plain language of subsection (6)(b) mandates that the 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." To interpret this provision as UIEC suggests does not give effect to the legislative intent unambiguously expressed in the language of the statute. *Horton v. Royal Order of Sun*, 821 P.2d 1167, 1168 (Utah 1991) ("The general rule of statutory construction is that where the statutory language is plain and unambiguous, we do not look beyond the language's plain meaning to divine legislative intent.").

Additionally, the Commission's interpretation of subsection (5) and (6)(b) adheres to the plain language of subsection (5), "[i]f the commission approves or approves with conditions cost recovery of a major plant addition, the commission shall do ***one*** or ***all of the following***." (emphasis added). Use of the option to defer followed by a rate adjustment is explicitly permitted by the plain reading of this subsection. Thus, UIEC's argument is without merit.

Both of these arguments, that the Commission has erred in its interpretation of Utah Code Ann. § 54-7-13.4 and that the general authority granted by Utah Code Ann. § 54-7-14.5 is limited by the specific language of Utah Code Ann. § 54-7-13.4, are merely a regurgitation of UIEC's previously rejected argument in its Motion to Defer. The Commission should again reject UIEC's erroneous arguments.

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

UIEC further argues that the Commission's Order appears to assume discretion not provided by the Utah Legislature. UIEC claims that the Commission relied upon the language in the settlement stipulation in Docket No. 10-035-13, the MPA I stipulation, to support its assertion that it "has discretion to adjust rates over the course of time, as the public interest in just and reasonable rates dictates." Order, p. 5.

The Commission references the MPA I stipulation for the proposition 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." Order, p. 6. If the parties wish to confine recovery of deferral to a general rate case, they should have contracted for such provision in the stipulation. As the Commission concluded, the straightforward language of the settlement stipulation does not limit recovery to a general rate case.

By contrast, the Commission relies upon the language of the Utah Code Ann. § 54-7-13.4(5) and (6) for the conclusion that is has discretion regarding the timing of the rate increase: "[T]he 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." Order, p. 7. (emphasis in original). The Commission further notes that subsection 6(b), "which delineates this very process of deferral terminated by a subsequent order to recover MPA costs" underscores the discretion afforded by the statutory scheme. Order, p. 7. The Commission correctly

concluded that the language of the MPA statute provides the Commission substantial discretion regarding timing of the rate increase. The Commission did not, as UIEC contends, rely upon language of the MPA I stipulation to support its discretion. UIEC's argument in this regard does not provide a basis for rehearing and should be rejected.

4. **Deferring Recovery is Not in the Best Interest of the Ratepayers.**

UIEC further claims that just and reasonable rates require the use of facts now available and knowable to the Commission. UIEC contends that there is more recent information including twelve (12) months of data from its new data sample method that is now available to set rates. UIEC further claims that rate recovery should await the work group reports and review of a potentially revised cost-of-service study. UIEC is merely recycling its previous argument that implementing allocation for recovery without incorporating this information is a flawed approach. UIEC Motion to Defer, p. 7.

The Commission rejected this argument, noting that it "overlooks a fundamental premise of the MPA statute." Order, p. 9. The MPA statute is only available to a utility if the Commission has "entered a final order in a general rate case proceeding of the . . . electric corporation within 18 months of the projected in-service date of the major plant addition." Utah Code Ann. § 54-7-13.4(2). This requirement ensures that the necessary data to evaluate a utility's MPA application and to determine the appropriate rate recovery is "reasonably fresh and . . . aligned in the context of the test period." Order, p. 9. To require the "use of facts that are available and knowable to the Commission" as UIEC suggests, transforms the MPA process into a general rate case, "frustrating its purpose." Order, p. 9. The efficiency and fairness of the MPA process would be stymied should the Company be required to re-litigate its previous rate case.

As noted in its Order, the Commission decided how to spread the rate increase and set just and reasonable rates in the Company's last general rate case. Order, p. 10. Accordingly, the data relied upon by the Company in its last general rate case serves as the basis for its MPA related recovery. *See* Order of Clarification, issued Oct. 21, 2010. (The phrase "the data and class allocation methods" . . . refers to the revenue requirement spread approved by the Commission in PacifiCorp's most recent general rate case decision."). 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.

5. **UIEC's Argument Concerning Application of the Appropriate Billing Components is Irrelevant to its Motion to Defer**

Finally, UIEC contends that Utah Code Ann. § 54-7-13.4(5)(b)[2] requires that any adjustment of rates to effect recovery be applied to appropriate billing components. According to UIEC, in most cases the occurrence of a general rate case within 18 months of filing for recovery of major plant addition costs will not result in appropriate billing components. Thus, UIEC contends, the legislature intended deferral to ensure, where appropriate billing components are unknown or uncertain, recovery will be completed in a general rate case. Specifically, UIEC argues that because Rocky Mountain Power did not use updated billing components appropriate for the updated test period to calculate projected net revenue requirement impacts, adjusting rates in January 2011 is contrary to subsection (5)(b).

[2] Subsection (5)(b) provides the Commission authority to "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."

This argument is not relevant to the Motion to Defer and is more appropriately addressed by the parties at the hearing on cost of service and rate design issues in this matter scheduled for December 6 or 13, 2010. By its Order on Motion to Defer, the Commission does not seek to rule on revenue requirement impacts, the adjustment of rates and/or the collection method. The issue in this matter is the deferral of MPA I costs until Rocky Mountain Power's next general rate case. UIEC's conclusory statements about the appropriate billing components are premature and do not serve as a basis for rehearing.

CONCLUSION

Based on the foregoing, the Company respectfully requests that the Commission deny UIEC's Application for Review.

DATED: November 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 November, 2010, on the following:

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