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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of the Utah Industrial Energy Consumers for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment

Docket No. 11-035-____

**APPLICATION FOR DEFERRED
ACCOUNTING ORDER FOR REC
REVENUE**

In accordance with the provisions of Utah Code Ann. § 54-4-1 and § 54-4-23, Holcim, Inc., Kennecott Utah Copper LLC, Kimberly-Clark Corp., Malt-O-Meal, Praxair, Inc., Proctor & Gamble, Inc., Tesoro Refining and Marketing Co., and Western Zirconium (this group of electrical power customers will be referred to hereinafter, for convenience only, as the “Utah Industrial Energy Consumers” or “UIEC”), hereby file this Application for Deferred Accounting Order for REC Revenue (“Application”), requesting an order from the Utah Public Service Commission (“Commission”) requiring Rocky Mountain Power (“RMP” or the “Company”) to defer for later ratemaking treatment all revenues from 2009 recovered by RMP prior to February 22, 2010 (the date upon which the deferred order in Docket No. 10-035-14 took effect), in

connection with sales of Renewable Energy Credits/Certificates (“RECs”), in any form, that are in excess of the REC value utilized in Utah rates.

In support of this Application, UIEC alleges and represents as follows:

1. RMP is a division of PacifiCorp doing business in Utah and is a public utility subject to the jurisdiction of this Commission.

2. UIEC is a coalition of entities that have joined together for the purposes of having their common interests represented in this matter.

3. RECs can be sold in various states into compliance markets as well as into voluntary markets; Utah allocated capital costs of these renewable energy resources are fully recovered in the rates charged to Utah retail customers. Consequently, the full value of REC sales revenue apportioned to Utah should be credited to Utah customers as an offset against retail rates.

4. On information and belief, the revenue available to RMP in selling renewable attributes of renewable energy resources in 2009 was significantly greater, in a manner that was dramatic, unprecedented, unforeseeable, and extraordinary, than RMP disclosed in previous general rate cases

5. On information and belief, the extraordinary increase in the value of RECs was due, at least in material part, to orders of various regulatory authorities, including from the State of California, and legislation of other states, including from the State of Nevada.

6. On information and belief, RMP entered into contracts for the sale of RECs at prices significantly higher than prices projected or disclosed by RMP in previous rate cases.

7. RMP did not incorporate into the test years for its rate cases or disclose to the Commission in prior rate cases the extraordinary revenue it received for RECs in 2009.

8. In Docket No. 10-035-14, the Commission issued a deferral order effective February 22, 2010, and going forward, for deferral of RMP's REC revenues.

9. In the Commission's recent decision in Docket No. 09-035-15, granting RMP energy balance account ("EBA") treatment of certain fuel and purchased power expenses, the Commission ordered that REC revenues be treated separately in a general rate case proceeding or other appropriate filing. See Corrected Report & Order at 72, Docket No. 09-035-15 (March 3, 2011).

10. Though not completely transparent from the recent discovery received by UIEC in Utah Docket No. 10-035-124, the discovery demonstrates that for at least some period during 2009, RMP total company REC revenue prior to February 22, 2010, is in excess of \$50 million, which is considerably higher than the amount included in rates for that period.

11. Recent discovery in Utah Docket No. 10-035-124 also demonstrates that RMP has millions of RECs banked but not sold.

LEGAL PRINCIPLES

12. A "retroactive" rate adjustment is one that allows a utility to recoup from future rates "costs that were greater than projected" (MCI Telecomm. Corp. v. Pub. Serv. Comm'n, 840 P.2d 765, 770 (Utah 1992)), or "to order refunds of amounts collected by a public utility pursuant to . . . approved rates and prior to the effective date of a [C]ommission decision ordering a . . . rate reduction" S. Cal. Edison Co. v. Cal. Pub. Utils. Comm'n, 576 P.2d 945, 945-46 (Cal. 1978). The rule against retroactive ratemaking is not constitutionally mandated, but

it is a well-established Utah rule based on “sound ratemaking policies.” Stewart v. Utah Pub. Serv. Comm’n, 885 P.2d 759, 777 (Utah 1994). Nevertheless, there are exceptions to the rule recognized under Utah law. MCI, 840 P.2d at 771, 775.

13. An “unforeseeable” event is one such exception. This is an event which is “inherently unpredictable,” and which is not a result of “company mismanagement or imperfect forecasts.” Id. at 771. This type of exception is appropriate only when an event is sufficiently unpredictable that it would be impossible to account for its effect in a rate case, and only when the effects of the unforeseen event are so extraordinary such that they are beyond expectation and it would be unjust and inequitable not to adjust rates accordingly. Id.

14. Another recognized exception is for events or circumstances that may be known but not measurable at the time of a rate case, e.g., an event which may have been known or foreseeable, but whose impact upon the revenues of the utility were unforeseeable and extraordinary, or whose actual manifestations vary from the projections in an unforeseeable and extraordinary way. Report and Order, Utah PSC Dockets 06-035-163, 07-035-04, 07-035-14, at 19 (January 3, 2008).

15. The final exemption exists for the situation wherein a utility misleads or fails to disclose pertinent rate-making information. MCI, 840 P.2d 775. In that case, the utility “cannot invoke the rule against retroactive rate making to avoid refunding rates improperly collected.” Id. “The rule against retro active ratemaking was designed to ensure the integrity of the rate-making process, not to shelter a utility’s improperly obtained revenues.” Id.

16. With respect to the Company’s REC revenues that pre-date the Commission’s order approving a REC-revenue deferral account, each of these exceptions to the rule against

retroactive ratemaking likely apply. Here, the Company knowingly failed to disclose in prior rate cases information that was directly relevant. Because of this, the Commission should initiate a proceeding to investigate the true nature of the conditions surrounding these prior REC revenues, make a determination of whether the exceptions to the rule against retroactive ratemaking apply, and if so, order a rate adjustment so that the ratepayers can receive these improperly collected revenues.

17. The Commission has the authority to prescribe the accounts and accounting practices for Utah public utilities, including RMP.

18. To ensure just and reasonable rates for Utah ratepayers of RMP, UIEC submits that a deferred accounting order should be issued to require RMP to defer for future ratemaking treatment all REC revenue during 2009 and prior to February 22, 2010, the effective date of the Deferred Accounting Order granted in Docket No. 09-035-14, that is in excess of the REC value utilized in Utah rates.

19. In requesting the deferred accounting order in this case, UIEC is not requesting any final ratemaking determination as to the amount or ratemaking treatment of these REC revenues, but rather an accounting order to ensure that the REC revenue can be properly and fully considered and dealt with in a future ratemaking proceeding.

NOTICES

20. Notices to UIEC in this proceeding should be sent to the following:

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REQUEST FOR RELIEF

UIEC hereby respectfully requests that the Commission:

1. Enter a deferred accounting order pursuant to Utah Code Ann. § 54-4-23 ordering and directing RMP to defer as a regulatory liability all REC revenue during 2009 and prior to February 22, 2010, that is in excess of the REC value utilized in Utah rates until they can be recovered in a future ratemaking proceeding;
2. Set a scheduling conference in this docket to establish deadlines for submission of position statements, testimony and/or briefs, and a hearing, to the extent a hearing is necessary or appropriate; and
3. Grant such other and further relief as the Commission may determine to be appropriate.

DATED this 21st day of March, 2011.

/s/ Vicki M. Baldwin

F. Robert Reeder
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Attorneys for UIEC

CERTIFICATE OF SERVICE

(Docket No. Docket No. 11-035-___)

I hereby certify that on this 21st day of March 2011, I caused to be emailed, a true and correct copy of the foregoing **APPLICATION FOR DEFERRED ACCOUNTING ORDER FOR REVENUE** to:

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