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BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Application of Rocky Mountain Power for Authority to Revise Rates in Tariff Schedule 98, Renewable Energy Credits Balancing Account, by Crediting Revenues of Approximately $4.0 Million.	Docket No. 12-035-68 **UIEC'S COMMENTS ON THE DIVISION OF PUBLIC UTILITIES' INITIAL COMMENTS AND ROCKY MOUNTAIN POWER'S APPLICATION**

Pursuant to the Scheduling Order and Notice of Additional Scheduling Conference ("Schedule") issued by the Utah Public Service Commission ("PSC" or the "Commission") in this matter, on April 27, 2012, the Division of Public Utilities ("DPU" or the "Division") filed its initial comments on the application of Rocky Mountain Power ("RMP" or the "Company") to revise the rates of its Schedule 98 for the renewable energy credit ("REC") balancing account ("Application"). All other parties were to file their comments, if any, on May 10, 2012. The group of Utah Industrial Energy Consumers ("UIEC") hereby submits its comments.

INTRODUCTION

This proposed rate adjustment raises serious due process issues. The REC balancing account ("RBA") was created as a result of a settlement stipulation. *See* Settlement Stipulation at ¶ 61 , Docket Nos. 10-035-124, 09-035-15, 10-035-14, 11-035-46, 11-035-47 (July 28, 2011)

("Stipulation"). The Stipulation establishes a filing date for an annual RBA true-up, but there is no requirement or agreement that a resulting rate adjustment be made by any date certain. *See id.* ¶¶ 61-65. The Stipulation says nothing about waiving all the procedural and substantive due process rights of the parties who entered into it. Yet, implementing the proposed rate adjustment at this time[1] as proposed by the Company, the Division, and the Office of Consumer Services ("OCS" or the "Office") is a direct violation of UIEC's, among others', procedural and substantive due process rights.

The Schedule has provided parties an opportunity to file comments on both the Company's Application and the Division's initial comments. Less than fourteen days were provided for parties to comment on the Division's initial comments but no testimony is to be filed. Based on this and nothing more, the Commission is prepared to order an increase in rates. This is hardly a sufficient basis for a finding of just and reasonable rates.

According to the Schedule, the Division intends to file its final audit report by September 14, 2012, a Friday. "Following the distribution of this report, the Commission will hold another scheduling conference to determine what, if any, further process is required prior to the interim rate changes established in this docket becoming final on about October 12, 2012." Schedule at 2.

Therefore, at the time the subsequent scheduling conference is to be held, the record will contain the Company's Application, an initial and final report from the Division, and one set of comments from any interested parties filed on this May 10. No evidence will exist except for the Company's unchallenged testimony filed with its Application. That suggests that the Company's

[1] Several parties have referred to this as an "interim rate." An interim rate is a rate that is in-between general rate cases, which is not the case here. The Utah legislature and courts have defined what an interim rate is and under what circumstances it is allowed. Utah Code Ann. § 54-7-12(4). This is not applicable here. This rate adjustment is a temporary rate increase, based on no evidence, and is proposed to be awarded to the Company until later when after the Division's final recommendation, the Commission may order a true-up, also with no evidence.

Application and Division's two reports will essentially be the bases for any "rate changes established in this docket."

Furthermore, the Commission has already set the scheduling conference to be held before the rate adjustment is to be trued-up to the Division's final report. That scheduling conference is set for September 18, 2012, which is the Tuesday following the Friday that the DPU expects to file its final audit report. This is only four days, including a weekend, after parties will have seen the Division's final audit report. In addition, this date allows only three-and-one-half weeks prior to the anticipated date that the REC surcharge will be trued-up to the Division's final report.

This REC adjustment means an increase of approximately 3.4% in rates to Schedule 9 customers and approximately 2.8% to Schedule 8 customers.[2] Though UIEC does not have the numbers for the other classes, the increase is probably similar for them.

This means that during the year 2012, PacifiCorp has proposed a 17.9%[3] rate increase for Schedule 9 customers and a 14.3%[4] increase for Schedule 8 customers. At least 5% of this increase is going to be authorized without the Commission taking any testimony or evidence and without the parties being given the opportunity to investigate and provide evidence on the prudence of these increases. Furthermore, the issues of prudence in this case are similar to the issues of imprudent management that is of concern in the concurrent general rate case, Docket No. 11-035-124.

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[2] The settlement of the prior general rate case, Docket No. 10-035-124, and other outstanding dockets resulted in a credit to Schedule 9's rates of 3.7% and a credit to Schedule 8's rates of 3.1%. This adjustment proposes to reduce that credit to 0.3% for both Schedules, which is effectively a rate increase.

[3] The proposed general rate increase is 12.5%, the proposed EBA increase is 2%, and the REC adjustment is 3.4%.

[4] The proposed general rate increase is 9.5%, the proposed EBA increase is 2%, and the REC adjustment is 2.8%.

Accordingly, UIEC finds it imperative to make these comments at this time so as to raise some issues that it believes should be considered by the Division in conducting its final audit and by the Commission in issuing any rate adjustments.

COMMENTS

Mr. Roger Swenson testified in Docket No. 10-035-124 that because Utah does not have a mandatory renewable portfolio standard ("RPS"), RECs and renewable resources do not need to be held or used to serve Utah customers. *See* Prefiled Direct Testimony of Roger Swenson at 2, Docket No. 10-035-124 (May 26, 2011), Ex. A. Therefore, as Mr. Swenson suggests, "[u]tilities that have existing and growing renewable portfolio[] requirements will pay far in excess of the replacement cost of energy for them." *Id.* This suggests that the Company should have been attempting to sell even more renewable energy and for longer terms to capture higher prices. *Id.* However, when the REC balancing account was established giving ratepayers 100% credit for the value of all RECs sold, the Company lost any incentive to maximize the value of the asset it held -- millions of banked and unused RECs, both bundled and unbundled. *See* Statement of US Magnesium LLC Regarding Revenue Requirement Settlement Stipulation Issues and Witness at 2 (Aug. 1, 2011), attached as Exhibit B.

PacifiCorp admits it does not place any value on the RECs it holds or banks until the time of sale. *See* Ex. C attached. During the course of discovery in Docket No. 10-035-124, UIEC inquired of the Company as to (1) the quantity of RECs sold and retained by the Company for January 2008 through December 2010, and (2) the amount of energy for January 2008 through December 2010 produced by PacifiCorp or acquired by PacifiCorp under contract where PacifiCorp claimed to own the RECs. A copy of these data requests is attached as Exhibit D.

PacifiCorp provided one response[5] for both inquiries. This response provided all the RECs owned at any time by the Company. The information was provided under the confidentiality agreement in that case, but gave indications that the Company might be hoarding RECs.

UIEC subsequently filed an Application for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment. *See* Application for Deferred Accounting Order for REC Revenue, Docket No. 11-035-46, Ex. E. UIEC requested that the Commission enter a deferred accounting order for the Company's REC revenue during 2009 and prior to February 22, 2010, that was in excess of the REC value utilized in Utah rates. *Id.* at 6. That matter was settled with the Stipulation. While the circumstances suggesting the Company might be hoarding RECs were called out in the UIEC's application for deferred accounting order, no relief for hoarding RECs was requested. *Id.* at ¶ 11, p. 6.

During the short period of time allotted for discovery and comment in the instant proceeding, UIEC asked similar questions to obtain these undisclosed banked and unused RECs, which the Company has held without imputing any value. Even though UIEC has executed the applicable confidentiality agreement, the Company now refuses to provide any of the historic information on these assets even though UIEC has been given the information in the past. UIEC's requests and the Company's responses are attached as Exhibit F.

UIEC believes that the Company may have been imprudent in not optimizing the value of its REC assets and that the rate payers have subsequently been harmed. The Company failed to actively manage the asset and sell the RECs when prices were high and now prices have fallen. Therefore, a price and revenue that could have been had for selling at least some portion of those

[5] This information had been sought in 2010 by UIEC in Docket Nos. 10-035-14, the REC deferral case, and 10-035-89, the second major plant addition case, which relied on RECs as part of the settlement. But, after several meetings, the Company refused to provide the information. Then finally, in Docket No. 10-035-124, after several delays, UIEC was finally able to obtain the information.

RECs should be imputed to them now. UIEC attempted to obtain this information to enable it to impute a value to the RECs that RMP has held over this long period of time.[6] The Company has also refused to provide this information. *See* Ex. G.

Because UIEC in good faith signed a confidentiality agreement in Docket No. 10-035-124 promising not to use the confidential information learned in that docket in any other proceeding, *see* R746-100-16.1.b, and because the Company refuses to be forthcoming in the current proceeding, and given the very short time during which discovery was to be conducted in this matter before comments are to be filed, UIEC is unable to provide to the Commission at this time the information demonstrating the tremendous quantity of RECs held by the Company and the long period over which they have been held. Nor is UIEC able to provide a value that it believes should be imputed to these banked RECs to offset the rate change proposed by the Company.

The UIEC understands that the change in the REC surcharge recommended by the Division and the Office is to be temporary after the hearing May 14 and before October 12. UIEC understands that this surcharge will be subject to adjustment and refund after the Division completes its final audit. However, in addition to ignoring basic due process rights, this ignores the intergenerational inequity that arises when ratepayers who are receiving the utility's services are not closely matched to those that are paying for the utility's services.

It also ignores the harm to the public interest that arises when rates are raised, even if temporarily, under unjust and unreasonable circumstances. It ignores the sales that cannot be made because prices become too high, job-hires that cannot take place because expenses are too

[6] There is also the question of what value the Company imputed to the RECs associated with renewable energy when it made the decision to invest in renewable resources. It is unclear what value the Company used when it was making the decision of whether to invest.

high, as well as businesses that may fail because the increase in power costs eliminates their thin profit margin.

Nevertheless, the economics of delay may be more harmful. Therefore, the UIEC recommends that the Commission order the Division to investigate (a) whether the Company was imprudent in its management of RECs by failing to actively manage the banked RECs and sell them when prices were high and before prices fell; (b) if so, what portion of the banked RECs should have been sold at a higher price; (c) what value should be imputed to those RECs; and (d) when a carrying charge should start accruing on those RECs.

DATED this 10th day of May, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May 2012, I caused to be e-mailed, a true and correct copy of the foregoing **UIEC'S Comments on the Division of Public Utilities' Initial Comments and Rocky Mountain Power's Application** to:

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