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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power, a Division of PacificCorp, for a Deferred Accounting Order To Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization	Docket No. 06-035-163 Docket No. 07-035-04
In the Matter of the Application of Rocky Mountain Power for an Accounting Order to Defer the Costs Related to the MidAmerican Energy Holdings Company Transaction.	MOTION OF THE UTAH DIVISION OF PUBLIC UTILITIES FOR SUMMARY JUDGMENT

Pursuant to the Scheduling Order issued by the Utah Public Service Commission (Commission), the Utah Division of Public Utilities (Division) files this dispositive motion seeking summary judgment denying the relief requested in the above-reference applications.

I. INTRODUCTION

Rocky Mountain Power's above referenced filings seek to undo the 2006 rate case revenue settlement entered into by the parties and approved by the Commission. For reasons more fully explained below, the Commission should deny the request to defer

the costs of the loan to Grid West and the request to defer the costs related to the MidAmerican Energy Company Energy Holdings Company transaction.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

a. 2006 Rate Case

Using a future test period commencing October 1, 2006 and ending September 30, 2007, PacifiCorp, the predecessor to RMP which is hereinafter called the Company, filed on March 7, 2006, an application seeking a rate increase of $197.2 million.[1] Prior to filing the application, on February 22, 2006, the Company had filed and requested approval of a stipulation entitled Stipulation on Filing Requirements, Discovery, and Timing of Test Period Hearing.[2] Various other motions were filed prior to the application.[3] Following the filing of testimony and discovery, settlement discussions resulted in certain parties filing on July 26, 2006 a stipulation entitled Stipulation Regarding Revenue Requirement and Rate Spread (Revenue Stipulation).[4] Paragraph 7 of the Revenue Stipulation stated:

> The Parties agree that, under this Stipulation and upon Commission approval, customer rates should increase by $85 million on December 11, 2006, as shown on the schedule attached hereto as Exhibit 1 and by an additional $30 million on the date specified in paragraph 8. In order to accomplish the same, the Parties agree that PacifiCorp should be allowed to increase its annual Utah jurisdictional revenue requirement by $115 million effective on December 2006, subject to the rate credit specified in

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[1] In the Matter of the Application of PacifiCorp for Approval of its Proposed Electric Service Schedules and Electric Service Regulations, Docket No. 06-035-21, Report and Order dated December 1, 2006 (Rate Case Order), p.1. No request for rehearing or clarification was filed on the Rate Case Order, and it became a final order.

[2] Rate Case Order, p. 1.

[3] Id. at p. 2.

[4] Signing parties were PacifiCorp DBA Rocky Mountain Power, Utah Division of Public Utilities, Utah Committee of Consumer Services, Utah Industrial Energy Consumers, Federal Executive Agencies, UAE Intervention Group, AARP, Nucor, Utah Manufacturers Association, and Central Valley Water. Also in this docket, but not discussed here, were a Stipulation on Rate Design for Electric Service Schedules 6, 6A and 6B and a Stipulation on Rate Design for Electric Service Residential Schedule 1. See stipulations attached to Rate Case Order.

> paragraph 8. There is no overall agreement as to the test period or revenue requirement adjustments which led to the stipulated revenue requirement increases because different parties relied upon different test periods and adjustments in supporting the agreed upon $115 million increase.[5]

Also the Revenue Stipulation provided for a rate credit to customers,[6] as well as established that PacifiCorp "will not file another Utah general rate case before December 11, 2007 . . ."[7]

Testimony in support of approving the Revenue Stipulation was provided and "no party of record provide[d] testimony in opposition to the Revenue Stipulation."[8] The Revenue Stipulation was approved by the Commission.[9] The Commission concluded, "The Revenue Stipulation provides revenues sufficient to recover all costs of service including those associated with new generation, transmission and distribution facilities required to provide safe, reliable and reasonably-priced service to Utah customers."[10]

b. Grid West

In March, 2006, the Company filed to defer Grid West costs in other jurisdictions, but made no such filing in Utah. The Company filed a deferred accounting application in Oregon on March 23, 2006. The Company filed a deferred accounting application in Wyoming on March 24, 2006. The Company filed a deferred accounting application in Idaho on March 30, 2006.[11] On December 19, 2006, the Company filed its Application

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[5] Stipulation attached to Rate Case Order, paragraph 7.
[6] Id. at paragraph 8
[7] Id. at paragraph 12.
[8] Rate Case Order, p. 9. An intervenor did request that the Revenue Stipulation be rejected. Id. at 12. This argument was rejected by the Commission. Id. at 13-15.
[9] Id. at 15.
[10] Id.
[11] See Exhibit 1.2 to Direct Testimony of David T. Thompson, Docket No. 06-035-163, Docket No. 07-035-04, and Docket No. 07-035-14, filed September 30, 2007. These dates were not disputed by the Company. See, generally, the direct and rebuttal testimony of Jeff Larsen in the above referenced dockets.

for a Deferred Accounting Order to Defer the Cost of Loans Made to Grid West, Regional Transmission Organization. (Grid West Filing).[12]

c. Transition Costs

In mid July 2005, the Commission received the Application of MidAmerican Energy Holdings Company and PacifiCorp for an Order Authorizing MidAmerican Energy Holdings Company to Exercise Substantial Influence Over the Policies and Actions of PacifiCorp. Ultimately, a stipulation, and amendments thereto, were reached among many parties, and filed with the Commission for approval. On January 27, 2006, the Commission approved the acquisition of PacifiCorp by MidAmerican Energy Holdings Company, approving the stipulation; subsequent orders approved amendments to the stipulation.

On January 24, 2006, the Company submitted its Transition Cost filing. In paragraph 7 of the filing, the Company states, "Pursuant to Utah Code Ann. Section 54-4-23, Rocky Mountain Power proposes to defer all Transition Costs that exceed the amount that was submitted by the Company as part of its general rate case in Docket No. 06-035-21, which amount equals $2,698,316." (footnote omitted).[13] The omitted footnote references that the total amount of severance as of March 31, 2006 was $6,403,324, and provides the formula for calculating Utah's share of this amount which comes to $2,698,316.[14]

There are no material disputed facts.

[12] See Grid West Filing.
[13] Transition Cost Filing at p. 3.
[14] Id.

III. ARGUMENT

a. Allowing deferral treatment would violate ratemaking principles.

Granting the Company's applications requesting deferred accounting treatment for the Grid West and the Transition Costs would violate ratemaking principles. The Company chose to use a future test year, and should have included Grid West costs and Transition Costs because they were not unforeseeable and extraordinary. The Company chose to file its 2006 rate case with a future test period from October 1, 2006 and ending September 30, 2007. Use of a future test year involves looking at projected, or estimated, costs, expenses, and revenues.

Grid West costs were foreseeable and should have been included in the Company's 2006 rate case filing. The Committee's data request No. 1.27, in Docket No. 06-035-163, asked, "When was the Company first aware that Grid West would cease activities?" The Company responded:

> After two utilities had withdrawn from continued support and funding for Grid West in late 2005, the Company assisted in development of a streamlined business model for consideration of Grid West funders. In February and March 2006, the Company evaluated Grid West's proposal and its chances of success. It concluded that even if funders had sufficient interest and commitment to justify moving forward, it was unlikely that Grid West could support its loan burden if it were to implement the more limited services and market contemplated at that time. After several additional funders decided to withdraw, the Company determined that continued development efforts were no longer justified and therefore supported the Grid West Board of Directors' recommendations to dissolve.

Importantly, the Company's answer highlights several things. Grid West's support and funding changed in late 2005. The Company participated in developing the new Grid West model. The Company began evaluating that model for success in February 2006. The filing of the deferred accounting treatment requests for the Grid West costs in

Oregon, Wyoming and Idaho in such close proximity to the Utah rate case filing demonstrate that the Grid West issue was foreseen. In light of these facts provided by the Company itself, demonstrating that the Company had the opportunity to include these costs, it does not matter that Company witness Jeffery K. Larsen claims the Grid West costs were not included in the 2006 rate case.[15] Rate case lockdown, according to the Company itself, is on a case by case basis.[16] As set forth above, the events giving rise to the Grid West Filing were not unforeseen and extraordinary.

With regard to the Transition Costs, certain transition costs related to employee severance were included in the 2006 rate case.[17] The fact that more money became required for employee severance transition costs does not warrant deferred accounting treatment of those costs. As stated above, in the 2006 rate case, the Company chose to use the future test year, with its forward looking projections. Reducing employee numbers is a common occurrence after acquisitions, and large layoffs should not have been unforeseen here, particularly when about 250 jobs were eliminated when the Iowa-Illinois Gas and Electric Company and Midwest Resources Inc. merged to become MidAmerican Energy Company, an affiliate of RMP.[18] Therefore, events giving rise to the Transition Cost Filing were not unforeseen and extraordinary.

The Company's mistakes in estimating its future costs do not warrant the deferral treatment requested by the Company. There is a long line of Utah cases prohibiting, with limited exceptions, retroactive ratemaking; no exception is applicable here.[19] As

[15] See Direct Testimony of Jeffrey K. Larsen, page 13, lines 290-295 and Rebuttal Testimony of Jeffrey K. Larsen at p. 12, lines 254-262.
[16] Company Response to Division Data Request 2.24 in this docket.
[17] Transition Cost Filing at p. 3.
[18] Company News; Two Utilities Plan Merger in Iowa Deal, New York Times, July 28, 1994.
[19] See, e.g., Stewart v. Public Service Commission, 885 P.2d 759 (Utah 1994) and cases cited therein.

stated in Utah Department of Business Regulation v. Public Service Commission (the EBA case), " the bar on retroactive rate making has no exception for missteps made in the ratemaking process." [20] This statement is particularly applicable here because the Company was in charge of filing its rate case, including determining what costs to include. The EBA case noted that the ratemaking process:

> places both the utility and the customers at risk that the rate-making procedures have not accurately predicted costs and revenues. If the utility underestimates its costs or overestimates its revenues, the utility makes less money. By the same token, if a utility's revenues exceed expectations or if costs are below predictions, the utility keeps the excess. Overestimates and underestimates are then taken into account at the next general rate proceeding in an attempt to arrive at a just and reasonable future rate.[21]

Although the EBA case predated the legislature allowing the use of the future test year, the EBA case's comments on the ratemaking process remain valid today.

The costs associated with the Grid West Filing and the Transition Cost filing were not unforeseen and extraordinary. The general exception to retroactive ratemaking, unforeseen and extraordinary, do not apply here either, as discussed above. The requests for deferral treatment contained in the Grid West Filing and the Transition Cost Filing should be denied.

b. The Grid West Filing and the Transition Cost Filing Violate the Commission Approved 2006 Revenue Stipulation.

The 2006 Revenue Stipulation contained a provision stating that the Company would not file a general rate case until December 11, 2007. The requests for the deferral accounting orders in effect eviscerate that provision because they provide the Company an opportunity to request to recover costs incurred during the "stay out"

[20] 720 P.2d 420 (1986), rehearing denied, at 424.
[21] Id. at 420-21.

period that the Company argues were not included, or were not included accurately, in the Company's future test year projections.

The Court of Appeals for Indiana has looked at a situation similar to the situations currently before the Commission. In Northern Indiana Public Service Company v. Indiana Office of Utility Consumer Counselor, [22] the utility (NIPSCO) had reached a settlement, approved by the Commission, which "provided for recovery of specified expenses, but did not include any provision addressing expenses directly related to MISO [Midwest Independent Transmission System Operator]"[23] and also included a provision for revenue reductions providing credits to customers.[24] The commission-approved settlement included a "stay out" provision until July 13, 2006.[25] Specifically, the settlement provided that during the forty-nine month term – and any subsequent period until new base rates were established – the base rates established in 1987 could remain unchanged."[26] The settlement also stated that, "Except by agreement of the Parties, NIPSCO's Basic Rates and all tariffs, terms and conditions as of the date of the Settlement Agreement shall remain unchanged during the term."[27] However, before the end of the "stay out" period, the utility sought permission "to use a deferred accounting treatment for certain costs that it pays to Midwest Independent Transmission System Operator (MISO),"[28] which would allow it "to seek to recover these costs in a future

[22] 826 N.E.2d 112 (Indiana Ct. App. 2005).
[23] Id. at 116.
[24] Id. at 115.
[25] Id. at 115.
[26] Id.
[27] Id. quoting Appellant's Application.
[28] Id. at 115.

proceeding establishing new basic rates and charges after the end of a certain rate moratorium period."[29]

The Indiana Commission denied the request for deferral treatment, stating,

> If we were to approve NIPSCO's request to defer the Administrative Adder Costs, our action would result in the de-facto modification of the credits to be paid to customers [under the Settlement Agreement], as approval of NIPSCO's request would result in the opportunity for the future recovery of current dollars that have been shifted to the end of the Terms.
> As the Settlement Agreement contains a requirement for credits of $55 million a year to customers, it would be disingenuous and contrary to the terms of the agreement to defer $3.5 million a year in current dollars around the term of the freeze only to be waiting for customers at the end of the term.
> ...
> Part of NIPSCO's argument in favor of its petition is that it would be inconsistent for the Commission to encourage public utilities to join RTO's like the Midwest ISO, yet deny those public utilities the means of recovering the costs associated with such membership. We are not unsympathetic to this concern, and if NIPSCO had not voluntarily entered into a Settlement Agreement in which it agreed to freeze its rates, tariffs, terms and conditions, and issue customer credits, there would be no reason for us to treat NIPSCO's request in the Cause any differently than the way we have treated similar requests from other public utilities. However, NIPSCO chose to enter into the Settlement Agreement and agreed to its terms, which include a rate freeze.
> ...
> [A]pproval of this request would violate the terms of the Settlement Agreement by modifying its terms in such a way that would result in the creation of a rate freeze that delays recovery, rather than prohibits the recovery of costs during the Term.[30]

The Indiana Appellate court upheld the Commission's decision to deny deferral treatment, stating:

> Here, NIPSCO admitted that one of the justifications for its deferred accounting method is to avoid the immediate need for an otherwise unnecessary rate case. NIPSCO agreed not to commence a rate case during the settlement period, and thus the Commission was not presented with a choice between granting exceptional accounting treatment or precipitating a general rate proceeding. Hence, it can fairly be said that

[29] Id.
[30] Id. at 117 (emphasis added).

> NIPSCO's commitment not to file a rate case meaningfully distinguishes its request for deferred accounting from the circumstances of other utilities. That said, we conclude that the Commission properly rejected NIPSCO's request for its proposed deferred accounting method.[31]

Although the Company may try to distinguish this case due to differences in the settlement language, the principle that a "stay out" provision prohibits recovery during a certain period of time agreed to by the Company and approved by the Commission, remains valid, and the Grid West Filing and the Transition Cost Filing should be denied.

Furthermore, in Utah Department of Administrative Services v. Public Service Commission (Wexpro II),[32] the Utah Supreme Court stated, "A commission finding and conclusion on the overall fairness of a negotiated settlement agreement containing many provisions should not be open to after-the-fact selective sniping at the fairness of individual provisions considered in isolation."[33]

The Utah Commission approved the 2006 Revenue Stipulation as a whole, and that approval should not be compromised by after the fact modifications inconsistent with the Stipulation. The EBA case, the Wexpro II case, and the Indiana case discussed above support a judgment against the relief sought in the Grid West Filing and in the Transition Cost Filing.

IV. CONCLUSION

The Company's requests for deferral accounting treatment made in its Grid West Filing and in its Transition Cost Filing should be denied and a judgment against that relief ordered. There is no rationale for allowing the Company the opportunity to seek recovery of these costs in a future rate case under the facts here. The Company's use

[31] Id .at 120 (emphasis added).
[32] 658 P.2d 601 (Utah 1983).
[33] Id. at 616-17.

of the future test year, the foreseeable and ordinary nature of the costs, the prohibition on retroactive ratemaking, and similar cases support a judgment denying the deferral treatment requested by the Grid West and Transition Costs filings.

Respectfully submitted this ____ day of October 2007.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION OF THE UTAH DIVISION OF PUBLIC UTILITIES FOR SUMMARY JUDGMENT was served upon the following by e-mail October 12, 2007:

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