

PAUL H. PROCTOR (#2657)
Assistant Attorney General
Utah Committee of Consumer Services
MARK L. SHURTLEFF (#4666)
Attorney General
160 East 300 South
P.O. Box 140857
Salt Lake City, Utah 84114-0857
Telephone (801) 366-0552

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order to Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization

DOCKET NO. 06-035-163

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

DOCKET NO. 07-035-04

**UTAH COMMITTEE OF
CONSUMER SERVICES'
MOTION FOR SUMMARY
JUDGEMENT**

The Utah Committee of Consumer Services moves the Utah Public Service Commission to issue a summary, final report and order that denies Rocky Mountain Power's request for relief in Docket No. 06-035-163, pertaining to loans made to Grid West, and Docket No. 07-035-04, pertaining to severance payments made to terminated employees. The parties have pre-filed all of the evidence each contends is relevant to

these dockets and from which the Commission can readily determine that there are no genuine issues of material fact. As a matter of law, the two petitions must be denied because their subject matter has been claimed and fully litigated, and rate revenues necessary to pay their costs have been fixed.

INTRODUCTION AND SUMMARY OF THE MOTION

Rocky Mountain Power seeks an opportunity to include in its revenue requirement for the next general rate case, (1) expenses related to PacifiCorp loans to a non-profit Washington corporation, Grid West, and (2) severance benefits voluntarily paid to terminated employees. The events that led to these expenses occurred prior to or during the proceedings in the utility's general rate case, Docket No. 06-035-21. All costs related to the events were incurred or actually expended prior to or during the period the utility selected as its test year. The utility calculated, forecast and estimated a total revenue requirement reflecting the expenses the utility would incur during the test year. The utility included expenses related to Grid West and to employee benefits, including severance benefits.

In a December 1, 2006 Report and Order, the Commission established the rates to be paid by Rocky Mountain's customers that the utility stipulated and agreed satisfied the revenue requirement. The utility testified that the stipulated rates allow the utility sufficient revenues to recover the reasonable cost of providing service in Utah. Based upon the admitted evidence, the Commission fixed the rates to be paid during the period when the rates are in effect and thereafter until the next general rate case. The Commission said: "The Commission concludes that [the Stipulation's] terms are just and

reasonable and it is just and reasonable in result. We conclude 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.” *Report and Order, December 1, 2006, Page 15.* [Emphasis added.] The proceedings and final order in Docket No. 06-035-21 require the Commission to deny Rocky Mountain’s petitions.

STATEMENT OF FACTS

The Commission has received extensive direct and rebuttal testimony and on October 22, 2007, the Commission will receive a third set of testimony. In this statement, the Committee will briefly summarize the facts common to each party’s testimony that are, the Committee contends, material to its motion and determinative of the law to be applied to the petitions and the relief they request. To state it again, Rocky Mountain is seeking an opportunity to include in the next general rate case, expenses actually incurred prior to December 11, 2006, for which rates had already been determined, or expenses the utility included or that are presumed included in the test year selected by the utility for the general rate case Docket No. 06-035-21. Therefore, the expenses are included in rates in effect after December 11, 2006.¹

All parties’ have offered evidence that the costs of participating in and loans made to Grid West, and management’s employee severance benefits policies originated from the usual and planned course of utility operations. For example, since 1987 or 1988,

¹ This motion is not intended to address the merits of Rocky Mountain’s claims in Docket No. 06-035-163 and Docket No. 07-035-04, or the prudence of the utility’s actions. However, the Committee reserves the right in this or any subsequent proceeding to litigate the issues presented by the claims.

PacifiCorp participated in the formation, management and activities of Grid West. PacifiCorp also participated in the decisions to create, reorganize and dissolve predecessors and successors to Grid West. *See Petition by Bonneville Power Authority, PacifiCorp and Idaho Power Company, Declaratory Order Providing Guidance Concerning Grid West Proposal, July 1, 2005, Docket No. EL05-106-000, 112 FERC 61,012, Background, Pages 3 to 11; Rebuttal Testimony of Jeffrey K. Larsen, lines 302 to 305.*² With respect to the payment of severance benefits, MidAmerican Energy Holdings Company filed supplemental testimony on April 5, 2006, adjusting PacifiCorp's requested revenue requirement for what was most certainly a deliberate, considered and planned workforce reduction intended to occur in the test year. *Supplemental Direct Testimony of Thomas B. Specketer, lines 51 to 56.*³

Employee benefits, and investments in regional transmission studies and coordination planning, are common programs within the control of management, result in expenses commonly recovered in general rate cases, are capable of being calculated and forecast with reasonable accuracy, and are known with certainty or readily foreseen. Rocky Mountain included some Grid West and some severance benefit expenses in its

² The loans made to Grid West date back to 2000. PacifiCorp knew with certainty the commercial terms of the loan agreements, and when and how the loans were to be paid. PacifiCorp or its counsel may very well have participated in negotiating and drafting the terms of payment.

³ Mr. Specketer's testimony was required by Commitment U.23 from the Stipulation in Docket 05-035-54, pertaining to MEHC's acquisition of PacifiCorp. The utility knew absolutely in November 2005 that Mr. Specketer's testimony was required. Given the complexity of the transaction, the detail and complexity of the rate case, and the reputation of the parties and counsel involved in both, there can be no question but that the scope of the workforce reduction was known or precisely estimated. That the utility did not fully adjust its test year revenue requirement to account for the full extent of its knowledge proves that the request for deferred accounting in Docket No. 07-035-04 is due to the utility's error or omission, and deferred accounting of the costs is not allowed.

revenue requirement forecast for the 06-035-21 general rate case test year. The utility's stated revenue requirement included accounts and categories that included Grid West and employee benefit costs. There was no third party or external event that in any manner affected the timing, purpose or amount of these expenses. No third party or external event prevented their inclusion in the general rate case filed on March 7, 2006. Rocky Mountain and PacifiCorp's management planned for and acted upon one-time, non-reoccurring, but usual events. The events were known or evident to the utility prior to or shortly after filing its general rate case, Docket No. 06-035-21, on March 7, 2006.

From the filing date, March 7, 2006, until the Commission's December 1, 2006 Report and Order, there were multiple opportunities to describe these events and their cost. *See Report and Order, December 1, 2006, Part I - Procedural History, Page 1 to 5.*⁴ The utility's revenue requirement was based upon a future test year, October 1, 2006 to September 30, 2007. PacifiCorp intended that the parties and the Commission rely upon its stated revenue requirement as an accurate forecast of the total cost of providing electric service during the rate effective period.

ARGUMENT

The Report and Order in Docket No. 06-035-21 is a final judgment upon Rocky Mountain's revenue requirement, including all Grid West expenses and employee severance benefits for which Rocky Mountain seeks a deferred accounting order.

⁴ For example, the load forecast for a single customer is separately stated even though it is included in the forecast of all retail loads for the purpose of the case. *See Report and Order, Page 6.*

The Commission's December 1, 2006 Report and Order in Docket No. 06-035-21, corresponds to a judgment that is the final consideration and determination of all matters expressly or implicitly submitted to the Commission, fixing the rights and liabilities of the parties. Utah Rule of Civil Procedure 54(c) states that a final judgment is to grant the relief to which a party is entitled, even if not requested in pleadings, so long as the judgment is supported by the evidence developed in the proceeding. As a matter of law, applicable to civil actions and regulated utility ratemaking, issues tried by express or implied consent, even those not raised in the pleadings, are properly considered, indeed must be so considered in order to award the full and final relief to which the parties are entitled. *Cowley v. Porter*, 2005 Utah App 518, ¶¶35 to 41; *U.R.Civ.P. 15(b)*; *U.R.Civ.P. 54(c)(1)*.

What this means to a utility in a general rate case is that the rates fixed by the Commission include any individual component of the total revenue requirement the utility is allowed to recover from its customers during the rate effective period and until the next general rate case. Expenses incurred prior to the test year, and expenses the utility forecasts it will incur in the test year, are finally determined and fixed upon entry of a final report and order. Expenses expressly or implicitly included in one test year may not be singled out and reassigned to another general rate case and new test year. *See Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d 1242, 1248 - 1249 (1980).

The fact that the December 1, 2006 Report and Order followed from a settlement is irrelevant to these fundamental legal precepts. In *Utah Department of Administrative*

Services v. Public Service Commission, 658 P.2d 601 (1983), the Court held: “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 provision considered in isolation.” 658 P.2d at 616 - 617. These precepts plainly appear in Utah Supreme Court opinions that forbid retroactive ratemaking to correct errors or missteps in the ratemaking process, including errors in forecasting or calculating an appropriate general rate, misprojections, inaccurate estimates, imprecise forecasting or mismanagement. *Utah Department of Business Regulation v. Public Service Commission*, 720 P.2d 420, 421, 424 (1986); *Salt Lake Citizens Congress v. Mountain States Telephone & Telegraph*, 846 P.2d 1245, 1251 (1992); *MCI Telecommunications corp. v. Public Service Commission*, 840 P.2d 765, 771 (1992), 776 (Zimmerman, J. concurring).

In particular, *Stewart v. Public Service Commission*, 885 P.2d 759 (1994), holds that a utility’s predicted costs and revenues declared for rate-making purposes are deemed accurate and are binding “even though the projections of expenses and revenues for the test year vary from actual experience.” 885 P.2d at 778, citing *Utah Department of Business Regulation v. Public Service Commission*, 720 P.2d at 420-421. The Court states:

None of our cases alludes to a constitutional basis for the rule against retroactive rate-making. In each case, the Court was concerned solely with applying sound rate-making principles in light of fairness to both ratepayers and shareholders. The core justification for the rule against retroactive rate-making is to give a degree of reliability and predictability to the inherently imprecise process of fixing rates. Advantages that may temporarily inure to the benefit of either ratepayers or investors

because of the inherent inexactitude in rate-making proceedings should even out in the long run. The rule also simplifies the rate-making process by precluding the constant reexamination of prior rate-making proceedings. To some extent, the rule provides benefits similar to those provided by the doctrine of res judicata, although that analogy cannot be pushed too far. 885 P.2d at 779.

The expectation must be and is that the revenue requirement to which Rocky Mountain agreed and which the Commission ordered it may collect, was both accurate and all-inclusive. Any uncertainty or ambiguity in Rocky Mountain's mind, or of their own doing, is of no consequence to final resolution in Docket No. 06-035-21 of **the opportunity and the claim** to recover expenses related to the investment in Grid West or employee severance benefits.

The December 1, 2006 Report and Order followed a settlement of Rocky Mountain's request for a general rate increase. The parties stipulated that, "As a result of the settlement negotiations, the Parties to this Stipulation have agreed to the revenue requirement, rate spread and other matters specified herein." *Stipulation, Part II Background, Paragraph 6*. It is irrelevant that in entering the settlement, different parties relied upon different test periods and adjustments in supporting the agreed upon \$115 million rate increase. *Stipulation, Part III, Terms of Stipulation, Paragraph 7*. The Commission's December 1, 2006 Report and Order is binding, complete and not subject to collateral attack.

CONCLUSION

Rocky Mountain's witness begins his testimony with a statement of Rocky Mountain's definition of deferred accounting. *Direct Testimony of Jeffrey K. Larsen, line 51 to 65*. In circumstances such as those presented in Docket No. 00-035-14, pertaining

to “extraordinary excess” purchased power costs due to the “catastrophic failure” of the Hunter I generating unit, Rocky Mountain’s assertions about the appropriate use of deferred accounting may be correct. In extraordinary and unforeseen circumstances (exceptional, unusual and singular events that exceed the usual in amount, degree, extent or size ⁵) the Commission has permitted the use of deferred accounting. *Docket No. 00-035-14, Report and Order, February 9, 2001*. The dockets now before the Commission involve common, controllable and foreseeable events that have been finally resolved by Commission order. The petitions must be summarily denied.

RESPECTFULLY SUBMITTED this 12th day of October 2007.

/s/ _____

Paul H. Proctor
Assistant Attorney General
Utah Committee of Consumer Services

⁵ See *Oxford English Dictionary, 2nd Edition 1989*.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served upon the following by e-mail October 12, 2007:

Michael Ginsberg
Patricia Schmid
ASSISTANT ATTORNEYS GENERAL
Division of Public Utilities
Heber M. Wells Building, 5th Floor
160 East 300 South
Salt Lake City, UT 84111
<mailto:mginsberg@utah.gov>
<mailto:pschmid@utah.gov>

Justin Lee Brown
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Justin.brown@pacificorp.com

Gary Dodge
Hatch James & Dodge
For US Magnesium and UAE
10 West Broadway
Salt Lake City, Utah 84101
<mailto:gdodge@hjdllaw.com>

Kevin Higgins
Energy Strategies
215 South State St., Suite 200
Salt Lake City, UT 84111
<mailto:khiggins@energystrat.com>

/s/ _____

Paul H. Proctor
Assistant Attorney General