

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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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
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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
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In the Matter of the Application of Rocky Mountain Power for an Accounting Order for Costs related to the Flooding of the Powerdale Hydro Facility) DOCKET NO. 07-035-14
) REPORT AND ORDER
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ISSUED: January 3, 2008

SYNOPSIS

The Commission grants the request for an accounting order for Powerdale costs and denies the requests for an accounting order for Grid West loan expenses and an accounting order for employee severance costs.

By The Commission:

A hearing was held on October 30, 2007, to hear evidence and argument on whether the Commission should approve three accounting applications to defer costs for: 1) unrecoverable loans made to the regional transmission organization Grid West, 2) certain severance costs associated with the reduction in workforce related to the acquisition of PacifiCorp by MidAmerican Energy Holdings Company (“MEHC”), and 3) costs related to the flooding of the six megawatt Powerdale Hydro-Generation Facility (“Powerdale Plant”).

At hearing, Gregory Monson, of the law firm Stoel Rives LLP, appeared on behalf of PacifiCorp, doing business in Utah as Rocky Mountain Power (“Company”). Assistant Attorney General Patricia Schmid appeared on behalf of the Utah Division of Public Utilities (“Division”). Assistant Attorney General Paul Proctor appeared on behalf of the Utah Committee of Consumer Services (“Committee”). Gary Dodge, of the law firm Hatch, James & Dodge, appeared on behalf of the Utah Association of Energy Users (“UAE”).

PROCEDURAL HISTORY

On December 20, 2006, the Company filed an Application for a Deferred Accounting Order to defer the costs of loans made to the regional transmission organization Grid West, which are unlikely to be repaid to the Company. The Company estimates Utah’s share of these costs to be approximately \$1.1 million. On December 21, 2006, the Commission issued an action request to the Division for review of the Grid West application.

On January 25, 2007, the Company filed an Application for Accounting Order to defer certain costs pertaining to severance payments associated with the reduction in workforce related to the acquisition of the Company by MEHC undertaken in Docket No. 06-035-21 (“2006 Rate Case”). On January 26, 2007, the Commission issued an action request to the Division for review of the employee severance costs application.

On February 7, 2007, the Division filed two separate memoranda indicating, respectively, that the Grid West and employee severance costs applications may not meet the Division’s criteria for deferred accounting. In addition to requesting a scheduling conference to

address the issues, the Division recommended the Commission notify all interveners in the 2006 Rate Case of these matters and schedule both dockets contemporaneously as the issues are similar.

On February 13, 2007, the Commission issued a Notice of Scheduling Conference to be held on February 20, 2007, to address the Grid West and employee severance costs applications. On February 22, 2007, the Commission issued a Scheduling Order setting the procedural schedule for these dockets including a technical conference on April 13, 2007.

On February 26 and March 2, 2007, respectively, the Company filed a Motion for Protective Order and Request for Expedited Treatment and a Supplement to Motion for Protective Order and Request for Expedited Treatment, both of which address the employee severance costs application. On March 5, 2007, the Commission issued the requested Protective Order.

On November 6, 2006, a flood and debris flow on the Hood River severely damaged the Company's Powerdale Plant. On March 22, 2007, the Company filed an application requesting an order permitting transfer of the undepreciated plant investment to other accounts, authorizing the creation of a regulatory asset for estimated decommissioning expenses and designating an amortization period. On March 26, 2007, the Commission issued an action request to the Division for review of the Powerdale application.

On April 2, 2007, the Division filed comments specifying items it would like addressed during the April 13, 2007, Technical Conference on the Grid West and employee severance costs applications. On April 27, 2007, the Commission issued a Scheduling Order for

the Grid West, employee severance costs, and Powerdale applications. In this Order the Commission scheduled a technical conference on these matters for May 8, 2007, and outlined other procedural issues. On May 4, 2007, the Company filed a Statement of Position on Its Pending Applications for Deferred Accounting Treatment in support of the Grid West, employee severance costs, and Powerdale applications. Among other things, the Company's positions pertaining to the three applications were discussed during the May 8, 2007, technical conference.

On May 9, 2007, the Commission issued a Notice of Settlement Conference scheduled for June 28, 2007, for the Grid West, employee severance costs, and Powerdale applications. On May 25, 2007, the Division filed its preliminary review of the Powerdale application. On June 29, 2007, the Commission issued a Notice of Scheduling Conference to be held on July 22, 2007, addressing the Grid West, employee severance costs, and Powerdale applications.

On July 10, 2007, UAE filed its Petition to Intervene of Utah Association of Energy Users in Dockets 06-035-163, 07-035-04, and 07-035-14. In response, the Commission issued its Order Granting Intervention on July 31, 2007.

On July 16, 2007, the Commission issued another Scheduling Order setting the final procedural schedule to address the Grid West, employee severance costs, and Powerdale applications. In accordance with this Scheduling Order, on August 8, 2007, direct testimony was filed by Jeff Larsen, Vice President of Regulation, for the Company. On September 10, 2007, direct testimony was filed by: David Thompson, Technical Consultant for the Division, on behalf of the Division; Donna Deronne, Certified Public Accountant and Senior Regulatory

Analyst at Larkin & Associates, PLLC, on behalf of the Committee; and Kevin Higgins, Principal at Energy Strategies, LLC, on behalf of UAE. On September 11, 2007, direct testimony was filed by Cheryl Murray, Utility Analyst for the Committee, on behalf of the Committee. On October 1, 2007, rebuttal testimony was filed by Jeff Larsen on behalf of the Company and Donna Deronne on behalf of the Committee; and on October 22, 2007, surrebuttal testimony was filed by David Thompson on behalf of the Division, Donna Deronne on behalf of the Committee, and Kevin Higgins on behalf of UAE.

On October 12, 2007, the Committee filed a Motion for Summary Judgement and the Division filed a Motion for Summary Judgement, both requesting the Commission issue a summary final report and order denying the Company's requests for relief in Dockets 06-035-163 pertaining to the Grid West application, and 07-035-04, pertaining to employee severance costs application. In response to these filings, on October 29, 2007, the Company filed an Opposition to Motions for Summary Judgement requesting the Commission to deny the Committee's and Division's motions. On the same day, Utah Industrial Energy Consumers ("UIEC") filed a Petition of the Utah Industrial Energy Consumers for Permission to File Brief and Brief in Support of Motions for Summary Judgment requesting the Commission grant the Summary Judgment Motions of the Committee and the Division and deny the Company's request for deferral of Grid West and employee severance costs.

Pursuant to public notice, a hearing was held on October 30, 2007, on these matters during which parties presented testimony and the Commission questioned parties on various aspects of the Grid West, employee severance costs, and Powerdale applications.

POSITIONS OF THE PARTIES

The Company argues deferred accounting treatment for the Grid West, employee severance costs and Powerdale applications is appropriate and consistent with standard utility practice. The Company testifies the purpose of deferred accounting is to maintain stable utility rates and allow an opportunity for the recovery of prudently incurred costs in providing utility service.

Deferred accounting entails the creation of a regulatory asset. The Company refers to the Uniform System of Accounts (“USOA”) definition for regulatory assets and liabilities and relies on Financial Accounting Standards Board Statement No. 71 Accounting for Effects of Certain Types of Regulation (“FAS 71”) which recognizes a regulated company may have the rationale or the requirement to capitalize certain costs, while generally accepted accounting principles may require the cost to be accounted for as an expense. The Company testifies FAS 71 provides for deferring costs that would otherwise be charged to expense if it is probable those specific deferred costs are subject to recovery in future revenues.

In the Company’s view of deferred accounting, the expense must be incurred due to an extraordinary event rather than be extraordinary with respect to its amount or magnitude. This, the Company states, means an event or transaction must be unusual in nature and be abnormally different from the ordinary and typical activities of the Company and which would not reasonably be expected to recur in the foreseeable future. These criteria for deferred accounting, the Company maintains, are the same whether the extraordinary expense is incurred during a rate case test period or outside a rate case test period. Further, the Company testifies an

order for deferred accounting is not a ratemaking decision; a deferred accounting order only affords the utility the opportunity to present the cost for recovery in a future rate case.

The Company argues its deferred accounting requests do not violate the rule against retroactive ratemaking because that rule only applies to a rate setting proceeding in which the utility is attempting to recover past expenses or in which it is being required to refund past revenue contemplated in setting rates in the prior proceeding. The rule against retroactive ratemaking is not applicable to deferred accounting, the Company argues, because the very purpose of allowing a deferred expense is to provide an opportunity for the future recovery of an expense that was not considered in the prior rate proceeding. The Company also argues the deferred accounting requests do not violate the “stay out” provision contained in the settlement stipulation approved in the 2006 Rate Case because the provision does not preclude the Company from making such requests.

The Company requests deferred accounting treatment for the Grid West loan default so that it may account for the costs in a manner that better reflects the ongoing operations of the utility, and preserve an opportunity to request recovery of these costs in a subsequent rate setting proceeding. The Company testifies it did not include the Grid West loan write-off in the 2006 Rate Case because notification of its default was not received until April 2006, which was after the March 2006 filing date and therefore too late to be included in the revenue requirement.

Similarly, the Company requests authorization to defer costs pertaining to certain severance payments in order to match the benefits and costs of the severance program and to provide the Company an opportunity to recover its prudently incurred costs. According to the

Company, 270 employees have been terminated resulting in \$40 million in annual labor cost savings. Severance costs for these employees are about \$46 million, of which only \$6.4 million was known by the Company and included in its revenue requirement filing in the 2006 Rate Case. The remaining severance costs of \$39 million have been incurred subsequent to that filing, and were not considered as part of that revenue requirement filing. Utah's share of the total \$46 million is about \$18 million. This includes Utah's share, \$2.7 million, of the \$6.4 million the Company included in its 2006 Rate Case filing. Because the 2006 Rate Case resulted in a stipulation that did not address the Company's requested amortization of the \$2.7 million there was no Commission order authorizing deferral of these employee severance costs or establishing the amortization period. The Company plans to amortize these costs from October 1, 2006, and therefore argues including this amount will not result in double counting of the amount included in its 2006 Rate Case filing.

In the Powerdale application, the Company argues it costs \$1.6 million less to retire, rather than repair and operate, the plant prior to its current decommissioning date of April 1, 2010. Without deferred accounting treatment, the Company argues it will have to write off its undepreciated plant investment as a period expense, as opposed to spreading the investment over a period of time. If approved, Powerdale decommissioning costs will be accounted for as follows: 1) An additional liability of approximately \$6.3 million will be recognized on the Company's books reflecting the Company's best estimate of the total costs to be incurred in complying with FERC's Removal Order in light of the Powerdale Plant flood; 2) the \$6.3 million expense associated with the recognition of the liability will be deferred as a regulatory

asset in FERC account 182.2, rather than being recognized as a current period expense; and 3) as decommissioning occurs, the costs will be accounted for as a reduction in cash and a corresponding offsetting reduction in the decommissioning liability.

The Division recommends the Grid West and employee severance costs applications be denied. The Division argues these requests do not meet the Division's guidelines for deferred accounting. The Division's guidelines are that deferred accounting treatment should be allowed for events determined by the Commission on a case by case basis to meet one of the following circumstances: 1) Events that are both unforeseen and extraordinary; or 2) events that provide a future net benefit for ratepayers. The Division defines "unforeseen" as an event where the impacts could not be anticipated in the ratemaking process and defines "extraordinary" as an event that is specific, unusual, unique, infrequent, material, not ongoing, and not a part of normal operations. For events that provide a future net benefit for ratepayers, the event must be specific and material, and accounting for it must match revenues and expenses and provides intergenerational equity. The Division suggests materiality begin with the FERC definition of materiality for an extraordinary item as approximately five percent of income, computed before extraordinary items; costs below this level should be justified by the applicant.

The Division argues the Grid West loan default is neither extraordinary, unforeseen, material, nor provides future benefit for ratepayers. The Division believes the Company had knowledge of the Grid West situation and had adequate time to have either included it in the 2006 Rate Case application or raised it during the proceedings of that rate case.

The Division testifies the total default is less than one percent of utility net operating income and the yearly amortization amount has no material significance to PacifiCorp's rate of return.

The Division recommends deferred accounting for the employee severance costs of \$6.4 million included in the 2006 Rate Case be denied because these costs were part of the stipulated settlement. Any additional employee severance costs not addressed in the settlement stipulation should also be denied deferred accounting treatment because they could have been foreseen and included in the 2006 Rate Case. The Division believes that if deferred costs were not contemplated but should have been contemplated, or were not predicted but should have been predicted in a future test-year filing, returning to the prior period to correct the misstep is retroactive ratemaking. Further, the Division testifies, the Company has control and the best information of what is included or not included in the rate case filing (including whether costs should be deferred) for revenue requirement.

The Division supports the Company's Powerdale application because this request meets the Division's guidelines; the event was unforeseen and extraordinary, costs are likely material and rate recovery is likely. The Division agrees that a regulatory asset in Account 182.2 could be established consisting of the original book value of the asset in Account 101, decreased by the actual accumulated provision for depreciation from Account 108. Insurance proceeds, if any, should also offset the net cost and net salvage should also be considered.

Finally, the Division recommends the Commission clarify its policy on deferred accounting treatment especially when rate setting is based on a future test period and frequent rate case filings occur.

The Committee recommends the Commission deny the Grid West application and deny deferred accounting treatment for employee severance costs which were not included in the 2006 Rate Case settlement. As basic criteria, the Committee believes events that are unforeseen, extraordinary and material may qualify for deferred accounting. The Committee argues the Grid West loan default was not unforeseen or extraordinary and the amount is immaterial. The employee severance costs above the amounts included in the 2006 Rate Case settlement may be material but were not unforeseen and must be characterized as a missed forecast within the context of the 2006 Rate Case test period; however, the Committee does not oppose the Company's request to continue to amortize approximately \$2.7 million in employee severance costs considered by parties and matched with associated labor expense savings in the 2006 Rate Case. The Committee testifies the Grid West and employee severance costs applications do not meet the criteria for the establishment of a regulatory asset, as articulated in FAS 71; this criteria states future revenue at least equal to the amount being deferred must be probable and the future revenue must be tied specifically to the item being deferred as an asset. Further, the Committee argues, the Company's requests for deferred accounting treatment in these two cases are untimely and there are mitigating factors to offset some of these costs. Should the Commission decide to establish a regulatory liability for employee severance costs, the Committee recommends the Commission also establish a regulatory liability account for the annual labor cost savings stemming from the severance program.

The Committee considers the flooding of the Powerdale Plant to be an extraordinary event of sufficient magnitude to qualify for regulatory asset treatment of the

unrecovered investment and decommissioning costs. However, the Committee recommends the Company not be permitted to begin recovering the costs from ratepayers until they are actually incurred and after the potential offsets are known. Until the next rate case, the Committee recommends amortization be based on applying the four and two tenths percent annual depreciation rate currently factored into rates to the gross Powerdale Pant balance. If the Commission determines the amortization period in this case, the Committee concurs with the Division's recommended three to five years.

UAE recommends the Commission only approve a deferred accounting order for which future recovery in rates is probable and after careful scrutiny from a policy perspective to address single-issue ratemaking, retroactive ratemaking, future test periods and selection bias.

UAE opposes deferred accounting for Grid West costs because these expenses were known when the last rate case was settled and were incurred prior to the end of the test period proposed by the utility. UAE opposes deferred accounting for employee severance costs that are: 1) Associated with backfilled positions as they are unlikely to create significant cost savings; 2) executive severance expense which should be borne exclusively by shareholders; and 3) new non-executive severance expense because they occurred before or during the projected test period in the 2006 Rate Case, they reflect mis-projections of severance costs and savings, and the savings resulting from the additional severance are not considered. UAE does not oppose deferred accounting treatment, starting October 1, 2006, for non-executive severance expense included in the 2006 Rate Case. Both the costs and the savings of this severance package were considered in the 2006 Rate Case settlement and are thus presumably reflected in current rates.

UAE also supports cost recovery for Utah's share of the Powerdale decommissioning costs starting in 2010 but argues there is no need for a regulatory asset at this time. A regulatory asset commensurate with Utah's share of the undepreciated investment in the Powerdale Plant would be appropriate but the Company has not provided the amount of Utah's share of the costs under the embedded cost differential adjustment of the Multi-state Process Revised Protocol.

Should the Commission permit deferred accounting treatment for severance costs, UAE recommends it also establish a regulatory liability equal to the amount of the reduction in monthly labor expense attributable to the severance program. To the extent the Commission provides long-term incentives for aggressive cost-savings, a three year amortization could be adopted for new non-executive severance expense, net of backfilled positions, but without any interest on the regulatory asset until the start of the rate effective period following the next rate case.

DISCUSSION, FINDINGS AND CONCLUSIONS

Application for the accounting orders sought in these dockets is driven by the Commission's authority to prescribe the accounts and accounting practices Utah utilities are to use and follow. Utility accounting practices serve to assist utilities and the Commission to carry out their responsibilities and obligations found in Title 54 of the Utah Code. Accounting for regulatory purposes may be different from accounting for financial reporting purposes; cross-distinctions are recognized on either side in recognition of the different purposes and goals each pursues. Regulatory accounting is a tool to arrive at the regulatory objective of just and

reasonable rates. In setting rates, there is a general, underlying desire to attempt to match costs with benefits that may arise from the cost incurrence. Testimony from the parties recognizes the relationship between the accounting orders sought by the Company and the ratemaking process and principles.

In these dockets, the Company seeks accounting orders whereby its incurrence of certain costs or expenses could be accounted for in a manner whereby the utility may have an opportunity to recover them in future rates. For the Grid West loan costs and employee severance costs, the accounting orders sought by the Company would enable the recovery of past costs, fully incurred prior to the time period when rates would be set that could provide revenues to cover those costs. Distinction can be made for the Powerdale accounting order as it would encompass future costs, relative to when the accounting order may be issued, that would be incurred through the earlier-than-anticipated decommissioning of that facility. The issues raised through the requested accounting orders can be appreciated in this quote from *Utah Department of Business Regulation v. Utah Public Service Commission*, 720 P.2d 420 (Utah 1986)(EBA Case):

“Following lengthy hearings, utility rates are fixed prospectively by the PSC. In determining an appropriate rate, the PSC considers the utility’s historical income and cost data, as well as predictions of future costs and revenues, and arrives at a rate which is projected as being adequate to cover costs and give the utility’s shareholders a fair return on equity. To provide utilities with some incentive to operate efficiently, they are generally not permitted to adjust their rates retroactively to compensate for unanticipated costs or unrealized revenues. This process places both the utility and the consumers at risk that the rate-making procedures have not accurately

predicted costs and revenues.” *Id.* The general preclusion of adjusting rates on account of past costs or revenues is referred to as the rule against retroactive ratemaking. We disagree with the Company’s position on how much ratemaking concepts and principles apply to the accounting orders sought in its applications.

While the rule against retroactive ratemaking generally precludes the ratemaking process from being influenced when actual costs or revenues deviate from their estimates made in prior ratemaking proceedings (what the *EBA* Case calls “missteps made in the ratemaking process”), exceptions to the rule are recognized. In *MCI Telecommunications Corporation v. Utah Public Service Commission*, 840 P.2d 765 (Utah 1992)(*MCI* Case), the Utah Supreme Court concluded that an exception to the rule against retroactive ratemaking exists where future rates can be influenced by “unforeseeable and extraordinary” changes in expenses or revenues. “A number of courts have recognized the exception for unforeseeable and extraordinary increases in a utility’s expenses. Increased expenses from natural disasters, such as extreme weather conditions, and other extraordinary events are the typical bases for the exception. . . . The extraordinary and unforeseeable nature of the expenses recognized under the exception differentiates them from expenses inaccurately estimated because of a misstep in the rate-making process, such as the inability to predict precisely, or from mismanagement. An increase or decrease in expenses that is unforeseeable at the time of a rate-making proceeding cannot, by hypothesis, be taken into account in fixing just and reasonable rates. Furthermore, because the increase or decrease must

have an extraordinary effect on the utility's earnings, the increase or decrease will necessarily be outside the normal ranges of variance that occurs in projecting future expenses." *Id.*, 840 P.2d at 771.

The rule against retroactive ratemaking, exceptions to the rule and their underlying rationales have application in considering whether an accounting order should be issued. Authorizing certain expenses to be accounted for through an accounting order does not "pre-approve" them for inclusion in the determination of a utility's revenue requirement in some future ratemaking proceeding. They are still subject to analysis and adjustment at the time a revenue requirement determination is to be made. In a future ratemaking proceeding, the Commission could ultimately conclude that they will not be included at all in making a revenue requirement determination upon which rates would be set. Although the Commission has the ability to completely disallow expenses in a future ratemaking proceeding, accounting standards do indicate that a utility may account for or keep track of expenses past their incurrence if there is a probability of future recovery. If future recovery is not likely, no accounting order need issue as generally accepted accounting practices would not have the utility account for them for treatment in some future period, but would effectively require them to be expensed in the periods in which they are incurred.

We agree with the parties' positions that granting an accounting order for any of the expenses addressed in the applications filed in these dockets is not a dispositive determination of final treatment in future ratemaking proceedings. We conclude, however, that authorization of an accounting order for a particular expense is an indication, if but an early tentative one, that

there is a likelihood that the particular expense can be included in a future revenue requirement determination. Thus, ratemaking rules and principles have application and may be given greater weight than accounting rules and principles in considering whether to issue an accounting order.

The parties are unanimous, in concept, to authorize the requested deferred accounting for certain expenses associated with the Powerdale Plant. This is not surprising as the driving event underlying the request is the flooding and resulting damage to and destruction of the facilities located at the site. A flood is one of the types of natural disasters usually given when discussing exceptions to the rule against retroactive ratemaking. This is the type of event likely to cause unforeseeable and extraordinary changes in expenses and it is the type of event justifying issuance of an accounting order. In one sense, the expenses that will be incurred relating to the Powerdale Plant are not unusual or unexpected. However, the need for a change in the accounting for Powerdale expenses is not that the expenses have changed, but that the intervention of the flood has changed the timing of when decommissioning will occur, its appropriate allocation or amortization through accounting periods and the appropriate accounting accounts to use due to the change in the plant's status.

There is disagreement and uncertainty among the parties on some of the specific details relating to the accounting of the Powerdale Plant's expenses. The Division, the Committee, and UAE critique a number of specific points in the Company's request, including: the final amortization period to be used, when amortization should start, whether the net book value is correct in light of prior known information, the need for creation of a regulatory asset now for estimated decommissioning costs that will be incurred in the future, treatment of other

costs and revenues relating to the plant (e.g., insurance proceeds, transferred equipment and real property, property taxes, etc.), and other items associated with the plant and its changed life and operation.

Based on the existing record, we do not resolve these specific disputes. As previously noted, what revenues and expenses and what amounts the utility records are subject for review and possible adjustment in the future, prior to their inclusion in a revenue requirement determination. Commission resolution of the parties' specific disputes can occur in some future proceeding where more and clearer evidence can be provided, whether continuing in Docket 07-035-14 or a future ratemaking proceeding. At this point we approve the Company's requested accounting for the Powerdale Plant, noting that our approval allows a change in accounting which is subject to future review and adjustment. We set a tentative three-year amortization period, beginning January 1, 2007.

In deciding whether to issue accounting orders, we will also take into consideration the time when the utility becomes aware of events or circumstances and when related expenses occur in relation to the timing of past and future ratemaking proceedings. Timing can be a weighty consideration, for the *EBA Case* states, "We emphasize that the exception for unforeseeable and extraordinary events cannot be invoked simply because a utility experiences expenses that are greater or revenues that are less than those projected in the general rate proceeding." *Id.*, 840 P.2d at 772. We recognize the difficulty faced by participants in a ratemaking proceeding to determine the appropriate test year and its concomitant levels of expenses and revenues. Test years may be based on past events and historical information, but

may also make accommodation for occurring and future events. Events or circumstances may be known or capable of relatively certain prediction, but quantifying or estimating their financial affects (impact on costs and/or revenues) may be extremely difficult. To slightly modify a regulatory term of art, they may be known but are not measurable. Hence, we conclude the ratemaking principle that recognizes possible exceptions for unforeseen and extraordinary events also includes exception for events which may be known or foreseeable, but whose impact upon the revenues or expenses of the utility are unforeseeable and extraordinary or whose actual manifestations vary from their projections in an unforeseeable and extraordinary way.

Unlike a future flood, Grid West loan defaults and accelerated employee terminations were known to the Company (they had occurred or were occurring) at the time of its last ratemaking proceeding. Opposition is made to the Company's request for accounting orders for these expenses on a number of fronts. From an accounting perspective, Grid West's defaulted loan expenses are characterized as too small a magnitude for deferred accounting in Utah and the request reflects a selection bias as the Company has failed to match the expenses it wishes to carry forward with reductions in expenses. Employee severance expenses are similarly critiqued as a selection bias or a mismatch between accounting for costs but ignoring accompanying benefits or reductions in costs. Selection bias is but one manifestation incident to the flow of, or access to, information concerning a utility's operations. The utility is truly the gatekeeper to information concerning what has happened, what is happening and what the utility anticipates can happen as its management continues pursuit of its business plans. With respect to Grid West loan expenses and employee severance expenses, the Company was aware of them and their existence

was known during the Company's last general rate case. However, when the Company prepared its test-year expenses, it did not include provision for Grid West expenses or the extent of employee severance expenses for which it now seeks accounting orders. Failure to include costs or the inclusion of costs at different levels in a past rate case appears to draw closer to Company missteps in the ratemaking process rather than unforeseen and extraordinary occurrences.

Our resolution of the dispute is influenced by the circumstances regarding the resolution of the Company's last general rate case. In the 2006 Rate Case, parties presented a stipulation resolving their disputes about calculation of the revenue requirement that should be used in setting rates. The revenue requirement stipulation, however, was not one wherein parties agreed upon the specific expenses and revenues and their corresponding levels or amounts upon which they had agreed would total the proposed revenue requirement. They agreed solely on an overall, total revenue requirement resolution, each party arriving at the agreed upon total revenue requirement through summation of the differing values they may have considered for the Company's expenses each party thought would be recovered through the future rates to be set in that docket. Such a 'black box' resolution is a means to resolve contentious issues concerning what expenses, and their corresponding amounts, should be included in arriving at a revenue requirement upon which future rates will be set. A black box compromise resolution, however, by definition, precludes a party from referring to revenue requirement expense evidence and a Commission expense dispute resolution to claim that a particular expense was or was not included and, if claimed to be included, the precise amount of the expense which is said to have been included. The parties' stipulation also included a stay out provision, an agreement which

precluded the Company from submitting another rate change or ratemaking request for a designated period of time. We view such stay out agreements as representing the parties' view and understanding that their agreement will provide the utility with an appropriate level of revenues to recover expenses.

Under these circumstances, we do not believe it a fair ratemaking process consistent with ratemaking principles to allow a participant in a ratemaking case to support and advocate approval of a non-detailed revenue requirement compromise, but later appear before the Commission and essentially claim that a specific expense or revenue, of which it was aware, was not included in the compromises leading to the revenue requirement stipulation. We conclude that it is reasonable to require any party who wishes to segregate a known expense or revenue from a pending ratemaking case and from the evaluations of a compromised revenue requirement, to specifically identify those expenses or revenues which have been or are intended to be taken off the table and are not part of the compromises in the current ratemaking proceeding, but intended to be reserved for future ratemaking consideration.

We place the burden on a utility to adequately explain why a known expense, that had occurred or was occurring during its last rate case, was not adequately treated in the stipulated revenue requirement used in its prior unappealed rate case. We believe such a requirement serves two purposes. First, it helps parties and the Commission understand what has and has not been compromised in the negotiations leading to the stipulation. It avoids future contentions over what may or may not have been included and resolved through the stipulants' black box. Second, it helps evaluate the benefits and detriments attendant to a stay out provision.

We treat a party's agreement to a revenue requirement as evidence of the party's position the rates effective during the stay out period will adequately cover the variances in expenses and revenues during the stay out period, absent an unforeseeable and extraordinary occurrence. In light of the Company's support of the stipulation for a compromised revenue requirement in the 2006 Rate Case, we conclude that the Company has failed to justify authorization of accounting orders for Grid West loan expenses and employee severance expenses.

As noted, requiring identification of a known expense or revenue reduces future disputes. It avoids disputes regarding whether an omission or a variance in an expense or revenue is part of the attendant difficulty in accurately predicting a test-year level of an expense or revenue (a misstep in the ratemaking process) or whether it is an omission or a variance arising from an unforeseeable and extraordinary event for which retroactive ratemaking exceptions could apply. Employee severance expenses are an appropriate example for this point. The Company could have identified and explained why its employee severance expenses were unusually difficult to project, even though it had the ability to calculate and include approximately \$2.7 million of these expenses in its test-year revenue requirement calculations. It could have clearly indicated that it expected to have future accounting and ratemaking adjustment for levels that varied from its test-year calculations. Other parties to the 2006 Rate Case would then not have been led to believe that the revenue requirement compromise negotiations and stipulation placed vagary in the post-2006 Rate Case level of employee severance expenses as an *EBA-Case* type of misstep in the ratemaking process. There would also have been no belief the Company's agreement to a stay out period meant it viewed the revenue requirement was adequate to recover

its expenses incurred prior to and during the stay out period. We conclude that Grid West defaulted loan expenses and employee severance expenses were not unforeseeable and extraordinary. The Company failed to inform the other parties, during the negotiations of their stipulation during the last rate case, that it intended to hold these known expenses outside of the compromises made in the stipulation negotiations. The Company also failed to inform the Commission that these expenses were also reserved when the Company's representatives supported and advocated Commission approval of the revenue requirement compromise in the 2006 Rate Case. We will not grant the Company's requested accounting order for Grid West defaulted loan expenses, nor grant the Company's request for an accounting order for employee severance expenses.

ORDER

Based upon our discussion and conclusions made herein, we enter the following Order:

1. We grant Pacificorp's request for an accounting order for the Powerdale Plant, consistent with our discussion herein.
2. We deny Pacificorp's request for an accounting order for employee severance expenses.
3. We deny Pacificorp's request for an accounting order for Grid West loan expenses.

Agency Review and Judicial Appeal

Pursuant to Utah Code 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30

days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 3rd day of January, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#55668