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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority To Increase its Retail Electric Utility Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations, Consisting of a General Rate Increase of Approximately \$161.2 Million Per Year, and for Approval of a New Large Load Surcharge)))
))	DOCKET NO. 07-035-93
))	OPPOSITION
)))

OPPOSITION TO REQUEST FOR HEARING ON TEST YEAR

Pursuant to R746-100-4(D), Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or the “Company”), hereby opposes the UAE Intervention Group’s request for hearing to determine the appropriate test period to be used for purposes of this general rate case that was filed November 14, 2007 because it is premature, unsupported by applicable Utah law and Commission rules, and not an efficient use of administrative resources.

Rocky Mountain Power also hereby expresses its support for the Utah Division of Public Utilities' ("Division") notice and statement regarding test year issues with respect to the Division's implication that a determination of a test year is premature.

Procedural Background

1. Rocky Mountain Power filed an application for a general rate increase December 17, 2007, requesting, among other things, approval of an increase in its retail electric utility service rates in Utah, consisting of an annual general rate increase of approximately \$161 million or 11.3 percent, and approval of its proposed electric service schedules and electric service regulations.

2. The Commission issued a scheduling order December 27, 2007,¹ whereby it set forth a placeholder for a procedural schedule for filing testimony and conducting a hearing if it was ultimately agreed to by the parties or, upon motion of a party, the Commission determines it is appropriate to conduct a hearing to determine what test period should be used for purposes of Rocky Mountain Power's general rate case.

3. The Commission's scheduling order established a deadline of January 11, 2008 for parties to file a motion for a test period designation.

4. January 11, 2008, UAE filed a Request for Hearing on Test Period and the Division filed a Notice and Statement of the Utah Division of Public Utilities Regarding Test Year.

5. Rocky Mountain Power's opposition is timely as Commission Rule R746-100-4(D) permits responses to be filed within 15 calendar days, or in this case, until January 26, 2008.

¹ The Commission later issued another order amending and modifying the scheduling order, but did not amend or modifying the order with respect to test year issues.

Proceeding Time Period

6. Pursuant to Commission Rule R746-100-3(G)(1)(c), Rocky Mountain Power hereby provides notice to the Commission of other authority that may require the Commission to act within a specific time period. The Commission's scheduling order of December 27, 2007, as amended January 9, 2008, sets forth a procedural schedule and a hearing date in the event a party files a motion for a hearing for purposes of determining a test period in this proceeding. The placeholder for the hearing is February 7, 2008. The Commission's decision regarding UAE's motion may ultimately determine whether there is a need to go forward with the hearing on February 7, 2008.

Opposition to Request for Hearing on Test Period Determination

7. Rocky Mountain Power submits that UAE's request for a hearing on a test period determination is premature, unsupported by applicable state law or Commission rule, and arguably in contravention thereof, and is not an efficient use of administrative resources. Rocky Mountain Power further submits that the Commission should make a determination regarding the use and selection of a test period concurrently with the determination of just and reasonable rates, consistent with §54-4-4.

UAE's Request is Premature

8. The Company filed its application for a general rate increase December 17, 2007. Less than thirty (30) days following the filing of the application and a full five months prior to the scheduled hearing dates on the Company's proposed revenue requirement, UAE, in accordance with the scheduling order, filed a request that the Commission conduct a separate and distinct hearing to determine the appropriate test period that the Commission should use for

purposes of setting just and reasonable rates. Rocky Mountain Power contends that the request is premature and is an inefficient use of administrative resources.

9. As noted by the Division in its notice and statement filed January 11, 2008, the Division has not had an opportunity to adequately review the rate case filing and any data request responses regarding what should be the proper test year for this general rate case. Rocky Mountain Power contends that this could be said of every party to this proceeding and that no party has had an opportunity to adequately review the Company's filing sufficient to make substantive recommendations regarding test periods. The most efficient use of administrative resources would be to address the selection of test period when the Commission is determining just and reasonable rates.

10. To proceed with UAE's request at this time, the Commission will be presented with making a decision based upon philosophical testimony regarding the selection of a test year, and not the selection of a test period that is based upon what test period "best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect" after the receipt of all substantive evidence regarding the Company's revenue requirement, as required by Utah law. *See* Utah Code Ann. §54-4-4(3)(a).

UAE's Request is Not Supported by Applicable Statutes and Commission Rules

11. UAE indicates in its motion that its request is pursuant to the "Filing Requirements Task Force Report." However, the Company is unaware of any "Filing Requirements Task Force Report" that obligates or requires the parties or the Commission to make a test period determination prior to the Commission receiving all of the evidence regarding the utility's test period and proposed revenue requirement.

12. The Company is unaware of any Commission Rules or statutes that support UAE's request, let alone require the Commission to make such a determination at this time. Absent a stipulation among the parties, Rocky Mountain Power submits that any Commission determination of a test period prior to its receipt of all of the evidence regarding revenue requirement is arguably in violation of statutory framework set forth in §54-4-4. The Company believes that the reason the Commission established a placeholder for test period issues is because it was done in the last case, Docket No. 06-035-21. However, the establishment of a procedural schedule for test period issues was the result of a stipulation in Docket No. 05-035-54, and Rocky Mountain Power contends this was not the result of any obligation arising from Utah law or Commission rule, or any obligation arising from a task force report referenced by UAE in its moving papers.

13. The Commission's guidance for the use and selection of a test period is embodied in the statute pertaining to the Commission's rate setting process. Section 54-4-4 carefully lays out a three step procedural process the Commission shall take when determining just and reasonable rates. First, §54-4-4(1)(a) provides that the Commission "shall take an action described in Subsection (1)(b), if the commission finds after a hearing that" either the rates and charges of a public utility are unjust, unreasonable, discriminatory preferential or otherwise in violation of any provision of law or the rates and charges are insufficient. Second, §54-4-4(1)(b) provides that if the Commission makes a finding that rates and charges are either unjust, unreasonable, discriminatory or otherwise insufficient as described in §54-4-4(1)(a), then the Commission shall: "determine the just, reasonable, or sufficient rates and charges. . . ." The third step provides that "If in the commission's determination of just and reasonable rates the commission uses a test period, the commission shall select a test period that, on the basis of

evidence, the commission finds best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect” (emphasis added). *See* Utah Code Ann. §54-4-4(3)(a).

14. It logically follows from the three step process set forth in §54-4-4 that the Commission should only determine a test period after it receives all of the evidence in a proceeding. Otherwise, how can the Commission properly determine a test period that “best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect” prior to its receipt of all the evidence presented in a rate setting proceeding. *See* Utah Code Ann. §54-4-4(3)(a).

15. Accordingly, the Commission’s decision on test period should not precede its determination of just and reasonable rates, as requested by UAE. Rather, the Commission’s decision on test period should be determined concurrently with its determination of just and reasonable rates. §54-4-4.

16. Furthermore, UAE has not met its burden with respect to its motion requesting a hearing.² UAE has not provided any evidence or legal argument in its moving papers as to why it is necessary that the Commission make a test period determination at this time, as opposed to after the Commission has received all of the evidence regarding the Company’s revenue requirement consistent with §54-4-4. Granting UAE’s request would not be an efficient use of administrative resources as a decision on test period can and should be made by the Commission concurrent with its determination of just and reasonable rates.

² As the moving party, UAE has the burden with respect to its motion and why a hearing to determine a test period is appropriate at this time. Rocky Mountain Power does not suggest that this relieves it from the burden to support the requests made in its general rate case application, including the use of a test period ended June 30, 2009. Similarly, to the extent an intervening party proposes that the Commission select a test period different from the test year proposed by the Company, Rocky Mountain Power contends that party has the burden of proof regarding its proposed test period.

Statement in Support of the Division's Notice and Statement Regarding Test Year

17. As noted above, the Division filed a notice and statement regarding test year indicating that it has not had an opportunity to adequately review the general rate case filing and any applicable data request responses regarding what should be the proper test year for this general rate case.

18. Rocky Mountain Power supports the Division's statement in that Rocky Mountain Power believes the Division's statement is consistent with §54-4-4, in that to properly select a test period and meet the standard set forth in §54-4-4(3)(a), to wit, "the test period that the commission finds best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect", it is necessary for the parties and the Commission to review all of the information supplied by the Company in support of its proposed test period and revenue requirement.

Conclusion

Based upon the foregoing, Rocky Mountain Power respectfully requests that the Commission deny UAE's request for a hearing for purposes of determining the appropriate test period to be used for purposes of this general rate case proceeding, and to vacate the procedural schedule pertaining to test period issues, including the hearing scheduled for February 7, 2008.

DATED this ____ day of January 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of January 2008, I caused to be transmitted via electronic mail a true copy of the foregoing **Opposition to Request for Hearing on Test Year** of Rocky Mountain Power to the following:

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