

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

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| 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 | Docket No. 07-035-93 UTAH COMMITTEE OF CONSUMER SERVICES' RESPONSE TO PETITION FOR RECONSIDERATION |
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The Utah Committee of Consumer Services contends that the Commission's August 11, 2008 Report & Order is supported by substantial evidence and is correct under Utah law. Accordingly, Rocky Mountain Power's September 2, 2008 Petition for Reconsideration should be denied. In particular, the Committee believes that the Commission correctly increased imputed revenues related to the Sacramento Municipal Utility District Contract and that the Commission's rationale is proper under prior decisions and given the evidence in this docket. The Committee's response focuses on this decision.

It is generally accepted that imputing revenues from the SMUD contract is necessary to accurately determine net power costs and therefore just and

reasonable rates. The dispute is what rate will be used to calculate imputed revenues. Rocky Mountain Power contended that the \$37 per megawatt hour rate established by Docket No. 99-035-10, Report & Order, May 24, 2000, and by Docket No. 01-035-01, Report & Order, September 10, 2001, is binding on this and all general rate cases, and that the Commission may not under any circumstance adjust the rate for imputed revenues.

The Division of Public Utilities contended that the rate was to be adjusted to \$54.16/Mw hour. Later, the Division concluded that while it was not recommending an increase to the imputed revenue rate, the Division did not contend that \$37/Mw hour was reasonable, represented a compensatory imputed price, or was an appropriate rate on a going forward basis. *Testimony of James B. Dalton, June 4, 2008, Transcript page 468, line 3-22; page 468, line 25 to page 469, line 2.* The Division acknowledged that \$37/Mw hour only reflects the value of the up-front payment retained by PacifiCorp shareholders. *Dalton, Transcript page 467-469.*

Like the Division, the Committee recognized that the rate was not compensatory based upon the increased costs to serve the contract in excess of contract revenues. The Committee contended that \$43.80/Mw hour is the correct rate.

The Commission decided that the rate for revenues imputed from the SMUD contract must include two components: the costs to fulfill the contract requirements in excess of the sales revenues, and the value of the \$98 million up-

front payment that should have benefited retail ratepayers but was retained by PacifiCorp shareholders together with the value of the BPA firm power entitlement that could have been used to serve retail ratepayers, but which PacifiCorp allowed to lapse. The Commission established the rate at \$58.46/Mw hour.

Summarized, the Committee's response is: First, Rocky Mountain Power quite incorrectly describes and therefore incorrectly applies Commission orders pertaining to the SMUD contract and other long-term firm wholesale sales to non-jurisdictional customers. Rocky Mountain Power ignores the reasons why revenues must be imputed to the contract and the standards the Commission uses to establish the imputed revenue rate. Second, the Commission has determined that the imputed revenues must be periodically adjusted in order to protect retail customers. Third, the Commission's ordered adjustment is supported by substantial evidence.

a. Adjusting the imputed revenue rate from the SMUD contract to include the costs to serve, the \$98 million up-front payment and the BPA firm power entitlement transaction, is required in the public interest of ratepayers.

In its September 10, 2001 Report and Order in Docket No. 01-035-01, the Commission addressed "Long-Term Firm Sales Contracts; Imputation of Revenues" including the SMUD contract and long-term firm wholesale sales contracts. The Commission reaffirmed the policy to protect retail customers from the risk of long-term firm wholesale sales contracts established in Docket No. 90-035-06. The basis for imputing revenues is not whether entering the contracts was

prudent but what is required to protect retail ratepayers. Of particular importance to the present docket is the recognition that because the cost to serve these contracts are included in the retail revenue requirement, contract revenues and demonstrable and quantifiable contract benefits must be compensatory, i.e. covering the embedded costs to serve the contract and providing retail ratepayer benefits. The objective is to impute revenues to the SMUD contract to make it compensatory.

The Commission recognized in its August 11, 2008 Report and Order the continuing validity of its earlier orders holding that to be compensatory, the unique character of the SMUD contract requires calculation of both an imputed on-going contract price, and an imputed contract revenue. Because the SMUD contract price when entered and now is much “below-market”, imputing revenues are necessary to counter, “the contract’s adverse impact on the net power cost portion of jurisdictional revenue requirements”. *Docket No. 01-035-01 Report & Order, page 23*. This was referred to as a “regulatory correction” in Docket No. 99-035-10. *Docket No. 99-035-10 Report & Order, page 44*.

In addition, Rocky Mountain Power’s parent PacifiCorp kept or relinquished the only two possible benefits to retail ratepayers that could come from the SMUD contract by retaining for shareholders the \$98 million up front payment and forfeiting the BPA firm-power entitlements. Thus, given that the ratepayers were expected to pay the cost to serve the contract that exceeded the sales revenues and were deprived of any other benefit, from the ratepayers’

perspective the SMUD contract was imprudent.¹ Therefore, net power costs must include imputed revenues equal to the difference between the cost to serve and the sales revenues, and imputed revenues reflecting the ratepayer benefit retained by the utility, \$98 million, and the BPA firm power entitlement resource the utility allowed to lapse.

As in Docket No. 01-035-01, Rocky Mountain Power's petition for reconsideration argues that the \$37/Mw hour imputed revenue based upon a contemporaneous wholesale contract, is an "unequivocal" ruling that cannot be changed. *Petition for Reconsideration, page 6, footnote 11.* Rocky Mountain Power insists that *res judicata* bars any inquiry into the 1999 imputed revenue rate.² *Id. page 9-10.* The Commission plainly rejected the argument then and should reject it now.

In Docket No. 01-035-01, the Commission makes it very clear that the 1990 criteria for establishing imputed revenues to protect retail ratepayers as applied in 1999 and in 2001, was a governing regulatory policy unchanged by the decision in Docket No. 99-035-10. *Docket No. 01-035-01 Report & Order, page 29.* Citing *Salt Lake Citizens Congress v. Mountain States Telephone and Telegraph Co.*, 846 P.2d 1245 (Utah 1992), the Commission limits the issue before it to the rate of

¹ In a similar circumstance, the Division position was that an 80 year contract that did not include escalation factors is imprudent. *See Docket No. 99-035-10, Report & Order, page 25.*

² It should be quite apparent at this point that Rocky Mountain Power asserts its own interpretation of *res judicata* and *stare decisis* when it is to its advantage to do so, and is quick to abandon the legal principle when it is not in the utility's interest. *See Docket No. 08-035-38, Utah CCS First Response to Application, and Utah CCS Reply to RMP Response, page 6, footnote 2.* Also, Rocky Mountain Power dismisses as dicta and not appealable, any finding conclusion with which it disagrees or to which it does not wish to comply.

imputed revenues, not the prudence of the contract when entered. Once the Commission decides that an imputation must be made, which it has for the SMUD contract, the Commission determines a reasonable basis for imputation. The prospective revenue imputation rate for the SMUD contract is set and net power costs are accordingly adjusted. This decision is like any other made in a general rate case. The fact of revenue imputation is determined by the Commission's policy, which until changed is binding. The rate is established just as is any other element of net power costs.³

b. The Commission's Report and Order in this docket is consistent with prior decisions to impute revenues from the SMUD contract, other wholesale energy and transmission contracts and is supported by substantial evidence.

The Committee will not repeat what is apparent in the testimony that the Commission heard in this case. In the August 11, 2008 Report & Order, the Commission refers to evidence that the unadjusted revenue imputation was no longer compensatory given current wholesale prices and expected increasing wholesale prices, and to un-rebutted evidence that the SCE proxy contract had itself been adjusted. *Docket No. 07-035-93 Report & Order, page 25-27.*

The orders in Docket Nos. 99-035-10 and 01-035-01 describe different methods for determining the imputed revenues from SMUD and other long-term firm wholesale sales contracts. The Commission is well aware of these methods

³ This case, Docket No. 07-035-93, is the first time since 2001 that the Commission has heard evidence pertaining to the rate at which imputed revenues from the SMUD contract will be included in net power costs. General rate cases in the interim period contained the SMUD contract issues, but were resolved by stipulation that did not adjust the rate. The suggestion that \$37/Mw hour based on the Southern California Edison contract is compensatory because it has not been changed is misleading.

and the evidence that is relevant to its consideration of the issue. It is important to bear in mind however, that the Commission's revenue imputation policy for SMUD includes the requirement that the rate be adjusted going forward to reflect changes in the wholesale market, and that data closest to the test year is preferred; the 2008 calendar year in this docket. The purpose for using such adjustment measures is to indicate how such a contract might perform over time. *Docket No. 01-035-01 Report & Order, page 23.*

The Commission's decision in Docket No. 99-035-10 on the imputation of revenues from the 1962 fixed-rate, 80-year term contract to wheel Colorado River Storage Project power, is informative of the reasoning behind imputed revenues, and when and how they are to be reconsidered. *Docket No. 99-035-10 Report & Order, page 23-26.* The WAPA Wheeling Imputation was established "to prevent the subsidy that otherwise would flow from Utah Power's retail customers to CRSP preference customers." *Docket No. 99-035-10 Report & Order, page 23.* Benefits to retail ratepayers from non-jurisdictional contracts that lack quantitative support will without imputed revenues, constitute "subsidization of non-jurisdictional preference customers by retail customers." *Docket No. 99-035-10 Report & Order, page 26.* Accordingly, revenues were imputed based upon the then-current FERC wheeling rate.

Because the actual cost to serve the SMUD contract is a function of the utility's present-day net power cost, retail ratepayers are protected from subsidizing non-jurisdictional customers only if the rate for imputed contract

revenues is adjusted. And, in the case of the SMUD contract, the benefits to ratepayers were quantifiable and indeed quantified, but denied the ratepayers. These facts are substantial evidence that supports the Commission imputation of two revenue components.

c. Conclusion and requested relief.

The Committee understands the complexity of the revenue imputation issue presented by the SMUD contract. The recommended adjusted Mw hour rates, \$43.80 and \$54.16, and the established rate, \$58.46, should not but may cause the Commission to hesitate particularly given the rate applied since 2001.⁴ Again, this is the first opportunity since 2001 for the Commission to subject the rate to disciplined analysis. If the Commission is inclined to review its decision, the contract's complexity requires that a rehearing be allowed so that the parties can directly address the two components identified in the Commission's Report & Order. The Division's response to the Petition for Reconsideration makes a similar recommendation for a timely rehearing.⁵

The Committee's position is that the August 11, 2008 Report & Order correctly applies the long-standing policy for imputing revenues from SMUD, particularly that "both sources of revenue [the lump-sum payment and the ongoing contract revenue] must be accounted for in the imputed price for this contract."

⁴ The Division's self-doubt leading to a withdrawal of its recommendation is not a reason to reconsider adjusting the rate as it occurred late in the proceeding so parties did not have the opportunity to test whether the recommendation was as uncertain as its witness Mr. Dalton believed it to be.

⁵ The Commission should not and has no reason to put the issue off to another day when it has found in the August 11, 2008 Report & Order that the imputed revenue rate for SMUD must be adjusted in order for rates to be just and reasonable.

Docket No. 07-035-93 Report & Order, page 28. Since 1990 the Commission has held that a regulated public utility may not charge its retail ratepayers with the cost of serving below market long-term wholesale sales without strict compliance with two distinct regulatory principles: by imputing revenues, the ratepayer must be protected from a contract that costs more to serve than is received in contract revenues; and, the utilities venture into the wholesale market must benefit its primary legal duty to its retail customers.

RESPECTFULLY SUBMITTED this 17th day of September 2008.

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

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

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| 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 | Docket No. 07-035-93 CERTIFICATE OF SERVICE FOR RESPONSE TO PETITION FOR RECONSIDERATION |
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On September 17, 2008, a copy of the Utah Committee of Consumer Services' Response to Petition for Reconsideration was served upon the following by electronic mail.

Mark Moench
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone No. (801) 220-4050
Facsimile No. (801) 220-3299
Mark.moench@pacificorp.com

Daniel Solander, Utah Bar No. 11467
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111

Telephone No. (801) 220-4014
Facsimile No. (801) 220-3299
daniel.solander@pacificorp.com

Katherine A. McDowell
McDowell & Rackner P.C.
520 SW 6th Avenue, Suite 830
Portland, OR 97204
503-595-3924 - telephone
503-595-3928 - facsimile
katherine@mcd-law.com

Lisa F. Rackner
McDowell & Rackner P.C.
520 SW 6th Avenue, Suite 830
Portland, OR 97204
503-595-3925 - telephone
503-595-3928 - facsimile
lisa@mcd-law.com

Gary A. Dodge
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: 801.363.6363
Facsimile: 801.363.6666
Email: gdodge@hjdllaw.com

Kevin Higgins
Neal Townsend
ENERGY STRATEGIES
39 Market Street, Suite 200
Salt Lake City, UT 84101
Telephone: 801.355.4365
Facsimile: 801.521.9142
E-mail: khiggins@energystrat.com
ntownsend@energystrat.com

Mike Ginsberg
Assistant Attorney General
Division of Public Utilities
Heber Wells Building, Suite 500
160 East 300 South
Salt Lake City, UT 84111
mginsberg@utah.gov

Patricia E. Schmid
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111
pschmid@utah.gov

Roger J Ball
1375 Vintry Lane
Salt Lake City, Utah 84121
(801) 277-1375
ball.roger@gmail.com

Roger Swenson
US Magnesium LLC
238 North 2200 West
Salt Lake City, UT 84116
Roger.Swenson@prodigy.net

Lee R. Brown
US Magnesium LLC
238 North 2200 West
Salt Lake City, UT 84116
lbrown@usmagnesium.com

ARTHUR F. SANDACK (#2854)
Attorney for Petitioner IBEW Local 57
8 East Broadway, Ste 510
Salt Lake City, Utah 84111
Telephone: (801) 532-7858
asandack@msn.com

F. Robert Reeder
William J. Evans
Vicki M. Baldwin
Parsons Behle &, Latimer
201 South Main Street, Suite 1800
Salt Lake city, Utah 84111
bobreeder@parsonsbehle.com
bevans@parsonsbehle.com
vbaldwin@parsonsbehle.com

Peter J. Mattheis
Eric J. Lacey
BRICKFIELD, BURCHETTE, RITTS & STONE, P.C.

1025 Thomas Jefferson Street, N.W.
800 West Tower
Washington, D.C. 20007
pjm@bbrslaw.com
elacey@bbrslaw.com

Gerald H. Kinghorn
Jeremy R. Cook
PARSONS KINGHORN HARRIS, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
Facsimile: (801) 363-4378
ghk@pkhlawyers.com
jrc@pkhlawyers.com

Ronald J. Day
Central Valley Water Reclamation Facility
800 West Central Valley Road
Salt Lake City, UT 84119
dayr@cvwrf.org

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513-421-2255 Fax: 513-421-2764
E-mail: mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com

Steven S. Michel
Western Resource Advocates
2025 Senda de Andres
Santa Fe, NM 87501
505-995-9951
505-690-8733 (mobile)
smichel@westernresources.org

Mike Mendelsohn
Western Resource Advocates
2260 Baseline Rd, Suite 200
Boulder, CO 80302
303-444-1188x226
mmendelsohn@westernresources.org

Sarah Wright
Executive Director

Utah Clean Energy
1014 2nd Avenue
Salt Lake City, UT 84103
801-363-4046
sarah@utahcleancenergy.org

Stephen F. Mecham
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, UT 84133
sfmecham@cnmlaw.com
for Interwest Energy Alliance

Craig Cox
Interwest Energy Alliance
P.O. Box 272
Conifer, CO 80433
cox@interwest.org

Utah Ratepayers Alliance
c/o Betsy Wolf
Salt Lake Community Action Program
764 South 200 West
Salt Lake City, Utah 84101
bwolf@slcap.org

Stephen R. Randle - NO. 2687
STEPHEN R. RANDLE, P.C.
Attorney for Utah Farm Bureau Federation
664 N Liston Cir.
Kaysville, UT 84037
s.randle@yahoo.com

Holly Rachel Smith, Esq.
Russell W. Ray, PLLC
For Wal-Mart
6212-A Old Franconia Road
Alexandria, VA 22310
(703) 313-9401
holly@raysmithlaw.com

Mr. Ryan L. Kelly
Kelly & Bramwell, PC
For Wal-Mart
11576 South State Street Bldg. 203 Draper, UT 84020
(801) 495-2559

ryan@kellybramwell.com

DATED this 17th day of September 2008.

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