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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.

Docket No. 08-035-38

**ROCKY MOUNTAIN POWER'S
REPLY TO OBJECTIONS TO ROCKY
MOUNTAIN POWER'S MOTION FOR
APPROVAL OF TEST PERIOD**

Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or the “Company”), pursuant to the Public Service Commission of Utah’s (“Commission”) Scheduling Order of September 29, 2008, submits its Reply to Objections to Rocky Mountain Power’s Motion for Approval of Test Period.¹ The Company respectfully requests that the Commission

¹ The Utah Industrial Energy Customers (“UIEC”) filed a Response to Rocky Mountain Power’s Motion for Approval of Test Period and testimony; the Division of Public Utilities (“DPU”), Committee for Consumer Services (“CCS”), and the UAE Intervention Group and Wal-Mart Stores, Inc. (“UAE”) filed testimony.

accept the Company's proposed test period of July 1, 2008, to June 30, 2009, using end-of-period rate base. In the alternative, the Company requests that the Commission adopt UIEC's and CCS's proposal to use a 2009 calendar year test period, using an average rate base, but only if the change in test period does not restart or delay the 240-day statutory time period imposed by Utah Code § 54-7-12(3)(c). Given that the Company will face financial harm if the Commission restarts or delays the statutory time period, the Commission should direct the Company to file a request for an interim rate increase should the Commission restart or delay the 240-day clock.

I. DISCUSSION

A. **The Proposed Test Period, With End-of-Period Rate Base, Reflects the Conditions Rocky Mountain Power Will Encounter During the Rate Effective Period.**

In 2003, the Utah Legislature passed Utah Code § 54-4-4(3)(a), which requires the Commission to select a test period that best reflects the conditions that a utility will encounter during the rate effective period. The Commission selects the test period (including the approach to measuring rate base) "prior to the onset of hearings and based on the then existing conditions of the utility and the economy in which it is operating."²

As noted in the direct testimony of Rich Walje, Rob Lasich, and Steven McDougal, deployment of major new capital projects and rising costs are among the most significant conditions the Company will face in the rate effective period, which now begins on May 8, 2009.³ Approval of the Company's proposed test period with end-of-year rate base permits the Commission to take these conditions into account and meet the mandate of Utah Code § 54-4-4(3)(a).

Collectively, the Company will refer to these parties as the "Responding Parties."

² *Re Mtn. Fuel Supply Co.*, Docket 89-057-15, Order (Nov. 21, 1990).

³ As the Commission observed in its test year order in the Company's 2007 rate case, the precise duration of a rate effective period is typically uncertain. *Re Application of Rocky Mountain Power for Authority to Increase its Retail Elec. Util. Serv. Rates in Utah*, Docket No. 07-035-93, Order on Test Period at 3 (Feb. 14, 2008). However, as noted in Robert L. Hahne, Gregory E. Aliff, & Deloitte & Touche LLP, ACCOUNTING FOR PUBLIC UTILITIES 8-3 (Oct. 2007), rates should be set assuming that they would properly reflect costs for at least one year after the rate effective date.

Some Responding Parties propose to combine the proposed test period with average-of-period rate base. This approach would result in rates that reflect only partial recovery of capital projects that will be fully used and useful in the rate effective period. As explained in Steven McDougal’s rebuttal testimony on test period, use of average rate base would produce an under-recovery of approximately \$37 million for plant in-service in the rate effective period.⁴ This, in turn, would produce an effective return on equity in the test period of approximately 9.5%, even if the Commission approved the Company’s requested 10.75% return on equity.⁵ The Commission should approve the proposed test period with end-of-period rate base to address and ameliorate the attrition (*i.e.* increased levels of earnings deterioration) that would otherwise occur using average-of-period rate base.

1. End-of-Period Rate Base Is A Well-Recognized Tool in Constructing a Test Period in an Increasing Cost Environment.

Many commissions employ the end-of-period method for measuring rate base, especially when the utility, like Rocky Mountain Power, is in a build cycle and faces increasing costs.⁶

⁴ Rebuttal Testimony of Steven R. McDougal on Test Period at 2, ll. 25–30. As explained in the testimony, the \$37 million takes into account the removal of the High Plains wind project from this case.

⁵ Rebuttal Testimony of Steven R. McDougal on Test Period at 2, ll. 31–39.

⁶ *See, e.g., N.C. Util. Comm’n. v. Piedmont Nat. Gas*, 119 S.E.2d 469, 480, 38 P.U.R.3d 469 (N.C. 1961) (court overturned decision of the utility commission to use average-of-period rate base because the utility was a fast growing company and its investment was greatest at the end of its historic test period; therefore, that rate base should be used rather than an average-of-period rate base); *Bd. of Supervisors of Arlington County v. Va. Elec. & Power Co.*, 87 S.E.2d 139, 150, 8 P.U.R.3d 120 (Va. 1955) (use of end-of-period rate base was appropriate because the utility was experiencing periods of abnormal expansion and rising costs); *Re Golden Heart Util., Inc. & College Util. Corp.*, Alaska P.U.C. Docket No. U-07-76, Order No. 8 at 39 (June 30, 2008) (end-of-period rate base appropriate if the change in net plant is abnormal); *Re Notice of Intent of Miss. Power Co. to Reclassify Generating Facilities and to Modify Certain Provisions of its Performance Evaluation Plan*, Miss. P.S.C. 2003-UN-0898, 2004 WL 3654345 (May 25, 2004) (parties stipulated to use of end-of-period rate base and projected test period); *Wash. Util. and Transp. Comm’n. v. Olympic Pipe Line Co.*, Wash.U.T.C. Case No. TO-011472, 2002 WL 32862587 at 44 (Sept. 27, 2002) (end-of-period rate base appropriate to remedy regulatory lag even though it does not match revenues and costs); *Re Boise Water Corp.*, Id. P.U.C. Case No. BOI-W-93-3, Order No. 25640, 153 P.U.R.4th 320 (July 14, 1994) (*overturned on other grounds*) (finding year-end rate base appropriate where customer base and plant investment are growing rapidly); *Re Roanoke Gas Co.*, Va. St. Corp. Comm’n. Case No. PUE890055, 116 P.U.R.4th 328, 333, 1990 WL 488820 (Sept. 19, 1990) (use of end-of-period rate base provides sufficient attrition allowance); *Re Atlanta Gas Light Co.*, Ga. P.S.C. Docket No. 3923-U, 119 P.U.R.4th 404, 407 (Sept. 18, 1990) (end-of-period rate base appropriate because utility was experiencing rapid growth and attrition); *D.C. Natural Gas, a Div. of Wash. Gas Light Co.*, D.C. P.S.C. Formal Case No. 870, Order No. 9230, 10 D.C. P.S.C. 217 (Mar. 7, 1989) (finding that end-of-period rate base was the appropriate method to compensate for rate base attrition); *Re Attrition and Presentation of Rate Cases*, D.C. P.S.C. Formal Case No. 712, Order No. 8204, 66 P.U.R.4th 478, 501 (Apr. 3, 1985) (using end-of period rate base to “better reflect the rate effective period . . . [w]here attrition has been

This is true whether commissions use historic test years, future test years, or some combination of the two.⁷

In determining the applicability of an end-of-period rate base, commissions have considered factors similar to what this Commission uses in test period selection:

- (1) the general level of inflation;
- (2) changes in the utility's investment, revenues, or expenses;
- (3) changes in utility services;
- (4) availability and accuracy of data to the parties;
- (5) ability to synchronize the utility's investment, revenues, and expenses;
- (6) whether the utility is in a cost increasing or cost declining status;
- (7) incentives to efficient management and operation; and
- (8) the length of time the new rates are expected to be in effect.⁸

demonstrated and rate base costs have been shown to be consistently increasing"); *Wash. Util. and Transp. Comm'n. v. Wash. Nat. Gas Co.*, Wash.U.T.C. Cause No. U-80-111, 44 P.U.R.4th 435, 438 (Sept. 24, 1981) ("Year-end rate base is an appropriate regulatory tool under one or more of the following conditions: (a) Abnormal growth in plant (b) Inflation and/or attrition (c) As a means to mitigate regulatory lag (d) Failure of utility to earn its authorized rate of return over an historical period"); *Re Potomac Elec. Power Co.*, Md. P.S.C. Case No. 7300, Order No. 63716, 70 Md. P.S.C. 132, 134 (Apr. 18, 1979) (using end-of-period rate base); *Re Gen. Tel. Co. of Fla.*, Fla. P.S.C. Docket No. 760464-TP(CR), Order No. 7669, 19 P.U.R.4th 227, 231-232 (Mar. 7, 1977) (end-of-period rate base used when utility continued to add plant during inflationary periods); *Re Alaska Gas and Serv. Co.*, Alaska P.U.C. Docket No. U-75-30, Order No. 4, 1975 WL 23288, 1A A.P.U.C. 202, 206 (July 1, 1975) ("The year-end rate base concept is best applied in an atmosphere where the utility is experiencing extraordinary high growth in plant and customers and the utility has made a clear showing that it is endeavoring to cope with needs for their services due to abnormal population and economic growth conditions within its service area."); *Re Mt. States Tel. and Tel. Co.*, Wyo. P.S.C. Docket No. 9343, Sub 4, 9 P.U.R.4th 518, 523 (May 19, 1975) (end-of-period rate base used to counter effects of regulatory lag and attrition); *Re Brooklyn Union Gas Co.*, N. Y. P.S.C. Case 26507, Opinion No. 74-27, 6 P.U.R.4th 417, 420 (Sept. 10, 1974) ("In the circumstances of this case, particularly in light of the large amount of scheduled additions to plant in service in 1974 we conclude that use of a projected year-end 1974 rate base will more accurately reflect the conditions which may be expected in the period during which rates established here will be in effect."); *Re S.W. Bell Tel. Co.*, Kan. St. Corp. Comm'n. Docket No. 93,367-U, 98 P.U.R.3d 30 (Jan. 5, 1973) (plant investments increased at a faster rate than revenues so end-of-period rate base was appropriate); *Re S. Central Bell Tel. Co.*, Ky. P.S.C. Case No. 5625, 96 P.U.R.3d 493 (Oct. 20, 1972) ("[I]t appears more appropriate and more equitable to consider the investment at the date nearest the time when rates for its use are implemented. The date nearest the time at which the rates herein approved could become effective is the end of the test period."); *Re Mich. Bell Tel. Co.*, Mich. P.S.C. Case No. U-3204, 85 P.U.R.3d 467 (Aug. 31, 1970) (finding end-of-period rate base appropriate where utility was adding plant rapidly and increased costs reduced utility's ability to maintain fair return on equity).

⁷ See, e.g., *Wash. Util. and Transp. Comm'n. v. Olympic Pipe Line Co.*, Wash.U.T.C. Case No. TO-011472, 2002 WL 32862587 at 44 (Sept. 27, 2002) (using a historical test period); *Re Miss. Power Co.*, Miss. P.S.C. 2003-UN-0898 (stipulating to projected test period); *Re Atlanta Gas Light Co.*, Ga. P.S.C., 119 P.U.R.4th at 407 (using historical and forecast data); *Re Brooklyn Union Gas Co.*, N. Y. P.S.C., 6 P.U.R.4th at 420 (using forecast data).

⁸ *Re Application of PacifiCorp for Approval of Its Proposed Elec. Serv. Schedules and Elec. Serv. Regulations*, Docket No. 04-035-42, Order Approving Test Period Stipulation (Oct. 20, 2004).

For example, commissions have adopted the end-of-period rate base method when the overall economy is experiencing high levels of inflation;⁹ when a utility has been experiencing changes in its investment, revenues, or expenses that are unusual or extraordinary;¹⁰ when a utility experiences changes in its services including an extraordinary growth in customer load;¹¹ or when a utility experiences dramatic increases in costs.¹² Other commissions have adopted end-of-period rate base to address regulatory lag,¹³ when a utility has failed to earn authorized rate of return over an historical period,¹⁴ when the economy is in a period of decline,¹⁵ or in generally unusual circumstances.¹⁶ As explained in the testimony of Steven McDougal and Jeffrey Larsen on test period, the Company's current circumstances implicate many of the factors commissions typically rely upon in using end-of-period rate base.

⁹ *Wash. Nat. Gas Co.*, Wash.U.T.C., 44 P.U.R.4th at 438 (abnormal inflation justifies the use of end-of-period rate base); *Re Attrition and Presentation of Rate Cases*, D.C. P.S.C., 66 P.U.R.4th at 501–502 (explaining that when inflation drives up rate base costs, the use of end-of-period rate base can be employed to counter that pressure and set realistic rates for the future based upon anticipated increases in costs).

¹⁰ *See Re Attrition and Presentation of Rate Cases*, D.C. P.S.C., 66 P.U.R.4th at 501 (stating that end-of-period rate base is appropriate when utility's operating expenses increase at a faster pace than rate base or operating revenues); *Re Golden Heart Util., Inc. & College Util. Corp.*, Alaska P.U.C. Docket No. U-07-76, Order No. 8 at 37 (declining utility revenues coupled with a depressed economy support the use of end-of-period rate base as does extraordinary investments in plant coupled with a lack of customer growth); *Re Mich. Bell Tel. Co.*, Mich. P.S.C. Case No. U-3204, 85 P.U.R.3d 467 (Aug. 31, 1970) (finding that end-of-period rate base was appropriate where the utility was experiencing rapid growth in plant-in-service coupled with expanding O&M expenses).

¹¹ *Re Golden Heart Util., Inc. & College Util. Corp.*, Alaska P.U.C. Docket No. U-07-76, Order No. 8 at 37 (end-of-period appropriate when utility is experiencing extraordinary growth in both plant and customers).

¹² *See Re Attrition and Presentation of Rate Cases*, D.C. P.S.C., 66 P.U.R. 4th at 501 (finding that in period of increasing costs it is appropriate to use end-of-period rate base when its use will better reflect the rate effective period because the end of the test period is closer in time to the rate effective period).

¹³ *See Wash. Nat. Gas Co.*, Wash.U.T.C., 44 P.U.R.4th at 438.

¹⁴ *See id.*

¹⁵ *See Re Golden Heart Util., Inc. & College Util. Corp.*, Alaska P.U.C. Docket No. U-07-76, Order No. 8 at 37.

¹⁶ *See Wash. Nat. Gas Co.*, Wash.U.T.C. 44 P.U.R.4th at 437.

DPU cites ACCOUNTING FOR PUBLIC UTILITIES to support its argument for the use of average rate base.¹⁷ That treatise, however, notes only that average rate base is appropriate when the test period and rate effective period coincide in time.¹⁸ Here the test period ends only seven weeks into the rate effective period, so the two coincide only incidentally.¹⁹ In cases like this one where the test period lags behind the rate effective period, the treatise notes that commissions have used year-end rate base to mitigate regulatory lag²⁰ and attrition.²¹

2. The Matching Principle Does Not Prevent the Use of an End-of-Period Rate Base.

The Responding Parties object to the use of an end-of-period rate on the grounds that it fails to match revenues, expenses, and investments. The Responding Parties, however, fail to acknowledge three key points: (1) Utah's test period statute requires matching between the test period and the rate effective period, which in this case is facilitated by use of end-of-period rate base; (2) the Commission has regularly allowed some level of mismatched revenues, expenses, and investments in historical test years, adjusted for known and measurable changes; and (3) matching of costs and revenues within the test period is but one of eight factors the Commission must balance when it selects a test period.²² In this case, as explained in the testimony of Steven McDougal, the proper balancing of test year factors supports the use of end-of-period rate base.

¹⁷ DPU Exhibit 1.0 at 13, l. 263–17, l. 340.

¹⁸ Robert L. Hahne, Gregory E. Aliff, & Deloitte & Touche LLP, ACCOUNTING FOR PUBLIC UTILITIES 7-5 (Oct. 2007).

¹⁹ Although Utah Code § 54-4-4(3)(a) allows test periods to extend up to 20 months to coincide with the rate effective period, in the Company's 2007 general rate case, the Commission was unwilling to allow a forecast test period over 12 months. The Company deferred to the Commission's concerns about longer-range test period forecasts in filing for a test period of twelve months ending June 30, 2009, but proposed end-of-year rate base to better match conditions in the rate effective period.

²⁰ Robert L. Hahne, Gregory E. Aliff, & Deloitte & Touche LLP, ACCOUNTING FOR PUBLIC UTILITIES 7-6 (Oct. 2007).

²¹ *Id.* at 8-22.

²² *Re Application of PacifiCorp.*, Docket No. 04-035-42, Order Approving Test Period Stipulation.

Despite the fact that the use of end-of-period rate base may create a mismatch of revenues, expenses, and investments, other jurisdictions have discounted that disadvantage when weighed against the many advantages of utilizing an end-of-period rate base. For example, the Georgia Public Service Commission (“GPSC”) chose to utilize an end-of-period rate base where a utility was experiencing rapid growth which was causing attrition.²³ The GPSC found that offsetting attrition using end-of-period rate base outweighed the fact that its use caused a mismatch of rate base and income.²⁴ The Alaska Public Utilities Commission has similarly noted that despite the mismatch of revenues and investments, end-of-period rate base:

“...is best applied in an atmosphere where the utility is experiencing extraordinary high growth in plant and customers and the utility has made a clear showing that it is endeavoring to cope with needs for their services due to abnormal population and economic growth conditions within its service area.”²⁵

Additionally, the Florida Public Service Commission (“FPSC”) has utilized end-of-period rate base to offset the effects of inflation on a utility’s earnings.²⁶ After acknowledging that the use of an end-of-period rate base creates a mismatch between investments and revenues, the FPSC nonetheless allowed its use and stated:

“[I]n an inflationary economy with associated increased operating costs, a utility's earnings necessarily erode or wear away in a similar fashion. If such conditions are present, as they are here, we would be remiss in our regulatory responsibility if we were to restrict a utility's ability to offset these effects of attrition and have the opportunity to earn its authorized rate of return. A year-end rate base is the most practical way by which to

²³ *Re Atlanta Gas Light Co.*, Ga. P.S.C. 119 P.U.R.4th at 407.

²⁴ *Id.*

²⁵ *Re Alaska Gas and Serv. Co.*, Alaska P.U.C., 1A A.P.U.C. at 206. *See also Re Golden Heart Util., Inc. & College Util. Corp.*, Alaska P.U.C. Docket No. U-07-76, Order No. 8 at 37 (abnormal economic growth can include a depressed economy, as well as, a growing economy).

²⁶ *Re Gen. Tel. Co. of Fla.*, Fla. P.S.C., 19 P.U.R. 4th at 232.

alleviate the problem.”²⁷

The Washington Utilities and Transportation Commission (“WUTC”) has also adopted end-of-period rate base when its benefits outweigh the fact that it does not perfectly match revenues and costs.²⁸ The WUTC found that because the use of end-of-period rate base mitigated the effects of regulatory lag on the utility it “contributes to rates that are fair, just, reasonable and sufficient.”²⁹ Again, the WUTC examined end-of-period rate base in the context of the entire proceeding and found that it supported the ultimate regulatory goal of just and reasonable rates.

In each of these cases, the commission fully acknowledged that some mismatching would occur, but that mismatching needed to be weighed against the advantages of using end-of-period rate base. In each case, the ultimate goal was just and reasonable rates and the commissions found that end-of-period rate base best accomplished that goal.

3. Utah Precedent Does Not Preclude the Use of End-of-Period Rate Base.

The Responding Parties cite the Commission’s *Mountain Fuel* order³⁰ as support for use of average rate base instead of end-of-period rate base. Although the Commission has generally (but not always)³¹ used average-of-period rate base, it acknowledged in the *Mountain Fuel* order that it would review application of this and other test year conventions on a case-by-case basis considering the then existing conditions of the utility and the economy in which it is operating.³² The conditions now faced by Rocky Mountain Power—huge capital additions, increasing costs,

²⁷ *Id.* at 231-232.

²⁸ *Olympic Pipe Line Co.*, Wash.U.T.C., 2002 WL 32862587 at 44.

²⁹ *Id.*

³⁰ *Re Mtn. Fuel Supply Co.*, Docket 89-057-15, Order (Nov. 21, 1990).

³¹ In *Re Questar Gas Co.*, Docket 01-057-02, Order (Dec. 30, 2002), the Commission approved a Stipulation based upon an agreement between Questar and the DPU (but not CCS) to use year-end rate base.

³² *Re Mtn. Fuel Supply Co.*, Docket 89-057-15, Order (Nov. 21, 1990). In the appeal of this Order, the Utah Supreme Court did not reach the merits of the end-of-year rate base issue, instead finding only that that the utility had not proven that the decision to use average-of-period rate base caused it substantial prejudice. *Mtn. Fuel Supply Co. v. Pub. Serv. Comm’n of Utah*, 861 P.2d 414 (Utah 1993).

and earnings attrition—are far different from those faced by Mountain Fuel in 1990, which was in a decreasing cost and declining rate base environment.

Additionally, the *Mountain Fuel* order pre-dates Utah Code § 54-4-4(3), the current test period statute, which was adopted in 2003.³³ As noted above, this statute requires adoption of a test period that best matches conditions for the utility in the rate effective period. The *Mountain Fuel* case cannot be relied upon as precedent to support average rate base when the result would be a test period that violates the mandate of Utah Code § 54-4-4(3) by permitting only fractional recovery for fully deployed capital assets.

4. Use of End-of-Period Rate Base Does Not Prejudice Customers.

In addition to being the test period that most appropriately reflects circumstances that will be in effect during the rate effective period, end-of-period rate base is appropriate because it does not prejudice customers. In this case, the use of an end-of-period rate base eliminates approximately six months of regulatory lag.³⁴ If the test period was moved forward by six months to the end of 2009, as both CCS and UIEC recommend, the resulting revenue requirement would be approximately \$11 million higher than the revenue requirement resulting from the Company's proposed test year.³⁵

UIEC argues that the use of the end-of-period rate base shifts too much risk to ratepayers when combined with a forecasted test period.³⁶ Establishing rates that recover the appropriate costs of service is not a risk shifting issue. Additionally, UIEC neglects to consider that the rates established in this case will not be effective until near the very end of the test period. Therefore,

³³ Utah Sen. 60, 55th Leg., Gen. Sess. (Mar. 19, 2003).

³⁴ See Direct Testimony of Steven R. McDougal at 12, ll. 268–270.

³⁵ Direct Testimony of Steven R. McDougal at 12, ll. 268–274.

³⁶ *Re Application of Rocky Mountain Power for Authority to Increase its Retail Elec. Util. Serv. Rates in Utah*, Docket No. 08-035-38, UIEC's Response to Rocky Mountain Power's Motion for Approval of Test Period at 15 (Oct. 7, 2008).

test period data must be adjusted to account for future conditions.³⁷ Use of end-of-period rate base in the test period appropriately adjusts the test period data to account for conditions that will be in effect during the rate period.

UIEC also argues that use of the end-of-period rate base increases the risk to customers if a plant is cancelled or delayed.³⁸ In this case, there is no risk of customers paying for generation projects that are cancelled or delayed, because all major projects in the Company's rate filing will be on line well before the rate effective date. At filing, there was only one generation plant in the case that was scheduled to go on line in 2009—the High Plains wind project—and, as noted in the rebuttal testimony of Steve McDougal on test period, the Company is removing this project from the case because of a change in the construction schedule.³⁹

B. If the Commission Selects a Calendar Year 2009 Test Period, the Start Date of the 240-day Time Period Should Remain September 10, 2008.

If the Commission decides against use of end-of-period rate base, the Commission should order the Company to use the 2009 calendar year as the test period, as advocated by CCS and UIEC. The test period must reflect the conditions the utility will encounter during the rate effective period. These conditions include major new capital investment, inflation, and load growth.⁴⁰ DPU acknowledges that the Company is currently investing in capital projects, is facing increased net power costs and construction costs, customer growth, and increasing inflation.⁴¹ Other parties do not dispute that these factors indicate that the Company is facing a period of increasing costs, especially in the areas of net power costs and construction. The test

³⁷ Robert L. Hahne, Gregory E. Aliff, & Deloitte & Touche LLP, *ACCOUNTING FOR PUBLIC UTILITIES* 7-5 (Oct. 2007).

³⁸ *Re Application of Rocky Mountain Power for Authority to Increase its Retail Elec. Util. Serv. Rates in Utah*, Docket No. 08-035-38, UIEC's Response to Rocky Mountain Power's Motion for Approval of Test Period at 16.

³⁹ Rebuttal Testimony of Steven R. McDougal on Test Period at 1, ll. 15–21.

⁴⁰ Direct Testimony of Steven R. McDougal at 6, l. 143–8, l. 205

⁴¹ DPU Exhibit 1.0 at 13, l. 263–17, l. 340.

period of the 2009 calendar year is a reasonable alternative to the Company's proposed test period.

Contrary to the contention of CCS and UIEC,⁴² the 240-day clock for a new rate order should not be reset if the Commission chooses to require Rocky Mountain Power to use a test period of the 2009 calendar year. CCS claims that the time limit would need to be reset based on the Commission's Order on Motions to Dismiss or Address 240-Day Time Period.⁴³ In that order, however, the Commission addressed restarting the 240-day clock after it had found the Company's additional filing prejudiced other parties in the docket.⁴⁴ If the Commission selects an alternative test period advocated by CCS and UIEC, it can hardly find that the Company's required compliance filing is prejudicial to the parties in this same manner.

The Commission addressed this exact issue when deciding the Company's test period in the 2007 rate case. In that order, the Commission selected an alternative to the test period the Company filed.⁴⁵ The Commission directed the Company to update its filing within four weeks of the order and did not restart the 240-day clock.⁴⁶

This result is consistent with the governing statutes. Utah Code § 54-7-12(3)(c) requires that if the Commission fails to enter an order granting or revising a revenue increase within 240 days after the utility files its schedules, the rate increase proposed by the utility is final. This provision does not contain an exception to the 240-day requirement if the Commission chooses to order a new test period. In addition, the Utah Legislature passed the statute governing the Commission's determination of test periods, Utah Code § 54-4-4(3), when the 240-day clock

⁴² CCS-1D at 5, l. 94–6, l. 97.

⁴³ *Re Application of Rocky Mountain Power for Authority to Increase its Retail Elec. Util. Serv. Rates in Utah*, Docket No. 08-035-38, Order on Motions to Dismiss or Address 240-Day Time Period (Sept. 23, 2008).

⁴⁴ *Id.* at 24–25.

⁴⁵ *Re Application of Rocky Mountain Power for Authority to Increase its Retail Elec. Util. Serv. Rates in Utah*, Docket No. 07-035-93, Order on Test Period at 5 (Feb. 14, 2008).

⁴⁶ *Id.*

was already law. If the Legislature had intended for the Commission’s determination of a new test period to stop the 240-day clock (a proposition directly at odds with decreasing regulatory lag and attrition through the use of future test periods), it would have indicated as such when it passed the test period statute. In addition, it would be contrary to the goal of the 240-day clock statute—to ensure that the Commission makes a determination in a rate case in a set period of time—for the Commission to have the ability to reset the 240-day clock simply by ordering a new test period.

Finally, given the financial harm to the Company that will result if the Commission restarts or delays the 240-day clock, the Commission should direct the Company to file a request for an interim rate increase if there is any further delay or restart of the 240-day clock in this case. An interim rate increase in this case could be based upon the Company’s filing, but using the results of the 2007 rate case for disputed issues such as return on equity and property taxes.

C. UIEC’s Additional Arguments on Test Period are Inaccurate and Irrelevant.

1. UIEC’s Interpretation of the Test Period Statute is Flawed.

UIEC argues that the Company’s proposed test year circumvents a “statutory prohibition against updating future test years.”⁴⁷ UIEC’s argument is flawed on a number of bases. First, UIEC’s interpretation of the statute is unreasonable. UIEC claims that the fact that the test year statute states if “the commission establishes a test period that is not determined exclusively on the basis of future projections” the Commission shall consider certain changes outside the test period means that the Commission cannot consider changes outside the test period if the test period is based on future projections.⁴⁸ If the Legislature had intended to prohibit the Commission from considering changes outside the test period in all cases except when the test period is not based on future projections, it would have said so. The plain language of the statute

⁴⁷ *Re Application of Rocky Mountain Power for Authority to Increase its Retail Elec. Util. Serv. Rates in Utah*, Docket No. 08-035-38, UIEC’s Response to Rocky Mountain Power’s Motion for Approval of Test Period at 15.

⁴⁸ *Id.* at 12.

contradicts UIEC's argument. Second, even if UIEC's statutory interpretation was reasonable, UIEC does not explain what changes outside the test period the Company has included in its filing. The Company used historic information to establish projections for the test period. It is unclear whether UIEC is arguing that the Company cannot use historic information to calculate test period data, but if so, that position is patently unreasonable.

UIEC's argument regarding updating projected test periods with changes outside test period appears to be a new permutation of the same arguments UIEC presented in its Motion to Dismiss the Application of Rocky Mountain Power. In its Order on Motions to Dismiss or Address 240-Day Time Period, the Commission rejected UIEC's argument that the Company's rate filing should be dismissed.⁴⁹ In doing so, the Commission implicitly rejected UIEC's argument that *res judicata* and administrative finality causes the Company's rate filing with the test period of July 1, 2008, to June 30, 2009, to be improper. The Commission properly rejected those arguments and should reject UIEC's similar arguments in this case.

As the Company discussed in its Response to Motions to Dismiss or to Restart the 240-Day Statutory Time Period,⁵⁰ UIEC misunderstands the test period concept. Administrative finality and similar arguments would be applicable if the Company were relitigating rates for the same *rate effective period*. This is fundamentally different from the Commission using the same or overlapping test periods to calculate rates for different rate effective periods. No statute, rule, or policy prohibits the Commission from using the same or overlapping test periods to set rates for different rate effective periods. In fact, a Commission rule or policy prohibiting the use of the same or overlapping test periods could contradict Utah Code § 54-4-4(3)(a) if it prevented the Commission from using the test period that best reflects the conditions that a utility will

⁴⁹ *Re Application of Rocky Mountain Power for Authority to Increase its Retail Elec. Util. Serv. Rates in Utah*, Docket No. 08-035-38, Order on Motions to Dismiss or Address 240-Day Time Period at 26–27 (Sept. 23, 2008).

⁵⁰ The Company hereby incorporates that pleading into this Reply by reference. *See Re Application of Rocky Mountain Power for Authority to Increase its Retail Elec. Util. Serv. Rates in Utah*, Docket No. 08-035-38, Response of Rocky Mountain Power to Motions to Dismiss or to Restart the 240-Day Statutory Time Period (Aug. 28, 2008).

encounter during the rate effective period. In addition, the use of the same or overlapping test periods does not implicate the rule against retroactive ratemaking because the Commission is setting rates for a future rate effective period. In sum, UIEC presents no support for its argument that the proposed test period presents legal problems and should be denied.

2. The Commission Should Decide Whether to Use End-of-Period Rate Base at this Time.

UIEC argues that the Commission should decline to decide whether to use end-of-period rate base, alleging that it would be making “piecemeal” decisions.⁵¹ UIEC ignores the fact that determination of rate base calculation is integral to the determination of test period—indeed, in this case the choice of whether to use average or end-of-period rate base may depend on what test period the Commission chooses.

In the *Mountain Fuel* order, the Commission expressly held that “it will decide issues concerning test year, rate base, out-of-period adjustments, and related matters, prior to the onset of hearings and based on the then existing conditions of the utility and the economy in which it is operating.”⁵² The Commission should follow this practice in this case.

III. CONCLUSION

Rocky Mountain Power respectfully requests that the Commission issue an order accepting the Company’s proposed test period, including end-of-year rate base.

RESPECTFULLY SUBMITTED: October 21, 2008.

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⁵¹ *Re Application of Rocky Mountain Power for Authority to Increase its Retail Elec. Util. Serv. Rates in Utah*, Docket No. 08-035-38, UIEC’s Response to Rocky Mountain Power’s Motion for Approval of Test Period at 14–15.

⁵² *Re Mtn. Fuel Supply Co.*, Docket 89-057-15, Order (Nov. 21, 1990).