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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. 09-035-23  <b>UTAH OFFICE OF CONSUMER SERVICES' RESPONSE IN OPPOSITION TO UTAH INDUSTRIAL ENERGY CONSUMERS' MOTION TO BIFURCATE PROCEEDINGS</b>
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The Utah Office of Consumer Services' opposes bifurcating this proceeding to consider Rocky Mountain Power's request to increase its rates. First litigating and determining the appropriate revenue requirement and at some undetermined time in the future, litigating and determining the rates to be charged markedly dissimilar customers, from the consumers' perspective, is an uncertain process that unfairly delays, or even renders inconsequential, the Commission's decision upon an essential element to just and reasonable rates.

In the motion to bifurcate this general rate case into phases, revenue requirement and cost-of-service, eight large industrial or special contract customers, contend that the

utility's total revenue requirement should be determined separately from the revenue requirement attributable to each customer class and a fair allocation to each customer class. These customers propose interim rates that assign to each customer class some portion of the adjusted revenue requirement. The imposition of interim rates means that bifurcating a general rate case does not disadvantage the utility. However, bifurcation ignores all other customers' interests in a determination of compensatory revenues and the equally important and essential determination of the portion of the revenues fairly related to the costs to serve a customer class. One can evaluate a rate for utility service as just and reasonable only if one knows how much is to be paid and by what customer class.<sup>1</sup> Imposing interim rates in this rate case is a stopgap that ignores the Commission's emphasis that customer classes are to pay cost-of-service based rates. *See* December 22, 2008 Report and Order on Cost-of-Service and Rate Design, *Docket No. 07-057-13*; February 26, 2009 Report and Order on Review, *id.*

Bifurcating this general rate case unnecessarily and unfairly impedes the Commission's timely and disciplined examination of the interdependent components to rates; revenue requirement, cost of service, rate spread and rate design. The Division of Public Utilities' response to the motion persuasively identifies the shortcomings of disconnecting equally essential elements of the ratemaking process and delaying indefinitely the ultimate decision of what are just and reasonable rates. The Division correctly notes that

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<sup>1</sup> For example, in this general rate case, the cost of service study upon which the utility relies concludes that residential rates will pay the cost of service if raised by .6% while large industrial rates must increase by 11.9 %. The eight customers asking to delay the cost of service phase of this case are industrial customers.

customers have a vested interest in a just and reasonable allocation of costs between classes and a just and reasonable rate design. And, while the Company will be made whole by interim rates during extended delays of rate spread and rate design decisions, customers are unlikely to be paying just and reasonable rates.<sup>2</sup>

Adoption of a power cost adjustment mechanism will not affect cost of service results. Adoption of a PCAM may require cost recovery through general rates and a tariff rider, for example, but a PCAM will not affect the allocation of costs to the various rate schedules upon which general rates have been set. Bifurcation of this general rate case is not necessary to a parties' position, defenses, discovery, or evidence pertaining to the PCAM proposal.

Bifurcating this general rate case is not justified because a party contends that foundational models and data are flawed or incomplete and cannot be relied upon. A party may pursue in discovery and offer into evidence, any such claim and any alternate or additional model or data the party believes supports their view of what the rates should be for any or all customer classes. For example, the moving parties do not explain why or how the fact that the new load research methodology that is available for only three months makes it unreasonable to consider the nine months of data from the previous collection method.

While cloaked in terms of judicial economy, related and parallel proceedings, and the desire to have the best information, the thrust of these customers' argument is that it is at this point in their financial interest to delay the fair determination of class cost of service and allocating rate increases according to standard rate-making principles.<sup>3</sup> The arguments also imply that it will be inconvenient for these customers to litigate cost-of-

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<sup>2</sup> See footnote 1.

service issues because they believe that matters and proceedings outside of the general rate case may affect these parties' positions in the case. These customers do not assert that the proceeding before the Commission will be unfair or prejudicial if not bifurcated. These customers do not claim that the revenue requirement is clearly separable from the cost of service or do not involve common questions of law or fact, nor do they address whether bifurcation will cause additional costs or delay.

Utah Rule of Civil Procedure 42(b) permits a trial court, "in furtherance of convenience or to avoid prejudice," to order a separate trial of "any claim" or "any separate issue." Regardless of convenience, however, an order to bifurcate trial "is an abuse of discretion if it is unfair or prejudicial to a party" or if "the issues are [not] clearly separable." *Walker Drug Co., Inc. v. La Sal Oil Co.*, 972 P.2d 1238, 1244-1245 (Utah 1998) citing *Angelo v. Armstrong World Indus.*, 11 F.3d 957, 964 (10th Cir. 1993) (interpreting Fed. R. Civ. P. 42, which is identical to the Utah rule). The trial court's discretion under Rule 42(b) to improve the efficiency or convenience of trial must always yield to its more fundamental duty to ensure that trial be fair and impartial. *Id.* As with damages and liability in *Walker*, a trespass and nuisance action, a utility's revenue requirement and class cost-of-service are closely interrelated and to bifurcate these issues in this general rate case is an abuse of discretion.

The eight industrial customers present no compelling reason to bifurcate this case. There are many compelling reasons not to.

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<sup>3</sup> See footnote 1.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of July 2009.

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## CERTIFICATE OF SERVICE

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