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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

**REPLY IN SUPPORT OF THE UTAH
INDUSTRIAL ENERGY CONSUMERS'
MOTION TO BIFURCATE
PROCEEDINGS**

In accordance with Utah Code of Administrative Procedure R746-100-4, the group of electrical customers intervened in this proceeding under the name of Utah Industrial Energy Consumers (“UIEC”), hereby submits to the Public Service Commission (“Commission”) its reply in support of its motion to bifurcate the instant proceeding into two phases, a revenue requirement phase and a cost-of-service, rate spread and rate design (collectively “Cost of Service”) phase.

INTRODUCTION

The Utah Association of Energy Users (“UAE”) has joined UIEC’s motion. The Division of Public Utilities (“DPU”) does not oppose a short delay as long as it does not delay

implementation of rate design and rate spread past late spring of 2010. Response of the Division of Public Utilities to the Motion of UIEC to Bifurcate the Rate Case, 2 (“DPU’s Br.”). Rocky Mountain Power Company (“RMP”) does not oppose bifurcation as long as it does not delay implementation of rate design and rate spread by May 1, 2010, when summer seasonal rates go into effect, and in fact RMP supports bifurcation if it might mean a de facto denial of its proposed Energy Cost Adjustment Mechanism (“ECAM”). Response of Rocky Mount Power to UIEC Motion to Bifurcate, 1–2 (“RMP’s Br.”). Only the Office of Consumer Services (“OCS”) opposes the bifurcation. Utah Office of Consumer Services’ Response in Opposition to Utah Industrial Energy Consumers’ Motion to Bifurcate Proceedings (“OCS’s Br.”).

Based on the following, the UIEC respectfully requests that the Commission grant its motion to bifurcate and issue a notice for a separate scheduling conference for the Cost of Service portion of this case.

ARGUMENT

I. BIFURCATION FOR A SHORT PERIOD OF TIME IS APPROPRIATE.

Both the DPU and RMP indicated that they do not object to bifurcation as long as the Cost of Service aspects of the case are completed in time to be effective in the May 1, 2010, summer seasonal rates. RMP’s Br. 1–2, 6; DPU’s Br. 2, 4. UIEC has only asked that the case be bifurcated because there are a few tasks that should be completed for reliable data to be available for the determination of just and reasonable rates. As RMP argues, “[b]ecause the Revenue Requirement must be determined by February 18, 2010, well in advance of the effective date of summer seasonal rates, May 1, 2010, there is time in this case to determine Cost of Service following determination of Revenue Requirement.” RMP’s Br. 2. The tasks of concern to the UIEC were set forth in its opening brief. Each of the tasks are within the control of the parties

who are parties to this docket—there is no unknown or external party who has control of the outcome of those tasks. Each of the tasks are anticipated to be completed in ample time.

RMP further states that “if the Commission determines that the Company’s proposed ECAM must be implemented simultaneously with the final order in this case and the Commission is unwilling to accelerate the schedule in the ECAM docket so that it may be concluded by February 18, 2010, Rocky Mountain Power supports bifurcation.” RMP’s Br. 1, 4, 6. The new statute regarding energy balancing accounts provides:

An energy balancing account shall become effective *upon a commission finding that the energy balancing account is:*

(i) in the public interest;

(ii) for prudently-incurred costs; and

(iii) *implemented at the conclusion of a general rate case.*

Utah Code Ann. § 54-7-13.5(2)(b). Thus, there is little or no discretion. The language is plain. It does not say that it can be implemented any time after the conclusion of a general rate case. Implementation *at the conclusion* of a general rate case is a statutory requirement. So if not done simultaneously, it must certainly be done closely following to be considered implemented “at the conclusion” of the rate case.¹ Bifurcation of the Cost of Service allows adequate time to consider more reliable data and allows RMP to implement an ECAM, if one is determined to be necessary.

On the other hand, the OCS argues that bifurcating this case “renders inconsequential the Commission’s decision upon an essential element to just and reasonable rates.” OCS’s Br. 1.

¹ In its Motion for Ruling on Implementation of ECAM filed July 30, RMP sets forth an extensive argument explaining that “at” does not require simultaneous occurrence. Docket No. 09-035-15, Motion for Ruling on Implementation of ECAM, 7–9 (July 30, 2009) (attached as Ex. A).

Yet, the OCS never explains just what *essential element* would be rendered *inconsequential*, nor how. Nor does the OCS provide any explanation as to how bifurcating the Cost of Service from revenue requirement in this case renders the Commission's decision inconsequential, but did not do so in Docket Nos. 07-035-93 and 08-035-38, each of which was bifurcated. The OCS's arguments are full of sound and fury, but signify nothing. OCS makes bald assertions but provides no evidence or analysis to support its conclusion of prejudice if the Cost of Service is bifurcated.

Prejudice can cut many ways in a matter such as this. The truth of the matter is that it is in the OCS's clients' financial interest to rush the determination of class cost of service and allocation of rate increases. More accurate information is likely to result in higher costs for these customers. Therefore, prejudice is more likely to occur to one party or another if bifurcation is not granted. A rush to judgment, as urged by the OCS, does not ensure that rates will accurately reflect cost of service and avoid prejudice. It is more likely that we will just end up with flawed results quickly. Therefore UIEC requests that the Commission grant its motion.

II. AN ECAM THAT ACCURATELY REFLECTS THE COSTS OF PROVIDING SERVICE WILL REQUIRE MODIFICATIONS TO THE COST OF SERVICE STUDY.

Interestingly, not only RMP, but also OCS and DPU argue that the implementation of an ECAM does not affect cost of service results. DPU's Br. 2; OCS's Br. 3; RMP's Br. 3. Yet, while RMP states it is "theoretically unnecessary" to determine the design of an ECAM prior to determining Cost of Service, at least RMP acknowledges that this would be true only if the ECAM proposed by RMP is adopted. RMP's Br. 3. In fact, in response to UIEC Data Request No. 2.29, RMP admits that changes to its "method for allocating costs among the various rate schedules would be dependent upon the specific outcome that may result from the ECAM

proceeding.” Docket No. 09-035-23, RMP Data Response to UIEC 2.29 (attached as Ex. B). Neither DPU nor OCS give any support for their conclusory arguments, nor do they offer an endorsement of RMP’s approach to an ECAM.

Actually, RMP’s ECAM proposal was not supported by anyone else—definitely not the DPU or the OCS. DPU’s Memorandum, *In re: Application of RMP for Approval of Its Proposed ECAM*, Docket No. 09-035-15 (May 26, 2009) (attached as Ex. C); OCS’s Initial Scope of Issues List and Recommendations Regarding Rocky Mountain Power’s Proposed Energy Cost Adjustment Mechanism, Docket No. 09-035-15 (May 26, 2009) (attached as Ex. D). In fact, the OCS specifically identified cost allocation as an issue that would need to be addressed in designing an ECAM. OCS’s Issues List, 4 ¶ 6 (“Any ECAM design must specifically address how the costs are allocated to the various rate classes, including special contracts) [sic] and rate components.”).

Experts in the field discourage allocation of ECAM costs across the board as RMP has proposed, noting that it results in no, or bad, price signals to customers for cost of service. *See, e.g.*, ECAM Presentation, David Magnus Boonin, Principal, NRRI, Technical Workshop, PSC of Utah, 24 (May 5, 2009) (attached as Ex. E). RMP has proposed that it will compare actual net power costs to the forecasted net power costs embedded in rates from the most recent general rate case. Docket No. 09-035-15, *In re: Application for Approval of Proposed ECAM*, Direct Test. of Gregory Duvall, 2:28-32 (March 2009) (attached as Ex. F). This means that RMP proposes to true-up actual net power costs to what it has averaged and normalized.

Using annual average prices blunts correct price signals. Energy costs vary substantially monthly. When the blunt tool of annual average costs are used, energy users are shielded from the costs of their energy use. To avoid this, more discrete allocations are necessary. Therefore,

ECAM costs should at a minimum be allocated using real-time, time-of-day, or seasonal allocation. ECAM Presentation, 24–25. Also, voltage level adjustments should be made by class for transmission and distribution losses. ECAM Presentation, 25.

Furthermore, RMP should not be allowed to use an ECAM to merely correct for its wrong future forecasts. Therefore, to ensure transparency and accountability, recovery of energy costs should be implemented historically, not on a forecasted basis. This would require completely undoing the current cost of service study.

Thus, contrary to the arguments of RMP, OCS, and DPU, the design of any ECAM that may be adopted by the Commission *should* affect the way the cost of service study is performed. While no schedule has yet been issued by the Commission for the ECAM docket, Docket No. 09-035-15, a hearing date of March 30-31, 2010, for the design portion of that matter has been discussed by the parties to that docket. Accordingly, the best course of action in this case is to bifurcate Cost of Service from the revenue requirement portion.

III. THE ONGOING COST OF SERVICE MODEL WORKING GROUP SHOULD BE GIVEN THE OPPORTUNITY TO INVESTIGATE THE NUMBER OF SERIOUS CONCERNS RAISED.

Not surprisingly, RMP argues there is nothing wrong with its cost of service model, and therefore it argues that the concurrent working group established to address RMP’s cost of service model is irrelevant. However, given the testimony of the OCS and DPU in past cases, it is surprising that these two parties argue similarly.

In Docket No. 07-035-93, Mr. Daniel Gimble testified on behalf of the OCS (f/k/a the Committee of Consumer Services), “The Committee finds the Company’s COS study to be flawed in certain areas. Therefore, *the COS results should not be relied on for purposes of allocating costs among the various tariffed rate schedules.*” Docket No. 07-035-93, Direct

Test. of Daniel Gimble on Behalf of the Committee of Consumer Services, 2:57-59 (July 21, 2008) (emphasis added) (attached as Ex. G).

In that same docket Dr. Abdinasir Abdulle testified on behalf of the DPU:

The Division agrees that *the problem* raised by Mr. Higgins along with the problems raised by Mr. Chernick do *have a substantial impact on rate spread between the classes of service*. . . . Therefore, the Division recommends that the Commission order the Company *to comprehensively study the model* as part of the broader cost of service study group recommended above.

Docket No. 07-035-93, Rebuttal Test. of Abdinasir M. Abdulle, Ph.D., 19:397-399, 408-410 (Sept. 3, 2008) (emphasis added) (attached as Ex. H).

In Docket No. 08-035-38, Mr. Craig Paice testified on behalf of RMP that the COS study employed in that case used the same methodologies as the one filed in Docket No. 07-035-93. Docket No. 08-035-38, Direct Test. of C. Craig Paice, 2:40-43 (July 17, 2008) (attached as Ex. I). Then in this case, Mr. Paice testified that the COS study methodologies are the same as those used in Docket No. 08-035-38 (Direct Test. of C. Craig Paice, 2:40-43 (April 16, 2009)), which were the same as those used in Docket No. 07-035-93, which were the same as those that the OCS and the DPU testified were flawed and should not be used for rate allocation.

Furthermore, as part of the COS model working group, Mr. Jim Logan of the Commission's Staff filed Comments stating in part, with respect to RMP's model:

There is a problem calculating jurisdictional revenue changes required to recover cost-of-service at an allowed rate of return using the Company's Net-to-Gross factors. These factors fail to recognize the circularities inherent in the Company's model. The revenue changes calculated using Net-to-Gross factors do not achieve the allowed rate of return. . . . For the purposes of comparing required revenue changes among jurisdictions, it is convenient to use a jurisdiction's average bad debt ratio. However, it is inappropriate to apply this jurisdictional average to classes for ratemaking purposes [as RMP's model does]. . . . [T]hese

allocation factor decisions [made in RMP's functional and class cost-of-service studies] are inconsistent with those decision [sic] made in JAM [Jurisdictional Allocation Model].

Comments on PacifiCorp's Interjurisdictional & Class Cost-of-Service Models, Jim Logan, Utah PSC Staff, 2-3 (June 22, 2009) (attached as Ex. J).

As argued by RMP, "there is time in this case to determine Cost of Service following determination of Revenue Requirement." RMP's Br. at 2. The unnecessary rush to judgment argued by the OCS, given the generally acknowledged failings of RMP's model, would not result in just and reasonable rates, but just the opposite. Therefore, the Commission should grant the UIEC's motion.

IV. UPDATED COST OF SERVICE LOAD RESEARCH SAMPLE DATA IS CRITICAL IF THE GOAL IS FOR RATES TO REFLECT THE COST OF PROVIDING SERVICE.

As the UIEC discovered in Docket No. 07-035-93, load peaks are derived from sample data not only for the non-demand metered classes (residential class and schedule 023), but also for some demand-metered classes (schedule 006, and irrigation). Docket No. 07-035-93, RMP Data Response to UIEC 19.4 (attached as Ex. K).

In addition, the old load sample data used by RMP is ancient. The residential sample was originally installed in 1991. It was supplemented with additional sites in 1999, but the original sample was not redrawn or replaced. The Schedule 6 and Schedule 23 samples were both installed in 1990, and neither have been updated or supplemented. Docket No. 07-035-93, Direct Test. of Maurice Brubaker, 8:4-10 (July 21, 2008) (attached as Ex. L).

Also, as demonstrated in RMP's responses to data requests in that same docket, the old samples employed a stratification variable equal to the average monthly billed energy, while the new samples employ a kWh variable. *Compare* Docket No. 07-035-93, RMP Data Response to

UIEC 19.4, *with id.* RMP Data Response to UIEC 19.5 (attached as Ex. M). The old sampling variable employed was equal to the average monthly billed energy, while the new samples employ a 12 month mean demand at the time of system peak. *Id.* Additional data responses demonstrate that the specification of the target variable, choice of stratification variable, choice of method for estimating kW, choice of number of strata, and allocation of sample points to each stratum also differed between the old samples and the new. *Compare Id.* RMP Data Response to UIEC 19.2 (attached as Ex. N), *with id.* RMP Data Response to UIEC 20.5 (attached as Ex. O). This is obviously relevant to determining the loads of the sampled groups and the costs for providing service.

The Utah Code provides:

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.*

Utah Code Ann. § 54-4-4(3)(a) (emphasis added). How can evidence based on load sample information obtained from designs set up in 1990 and 1991 best reflect the conditions RMP will encounter during the period when rates will be in effect, 2010? Demographics, sizes of homes, and types of appliances have all changed drastically in the past 20 years. All these should have impacts on load, which should have an impact on the costs to provide service. How can the DPU, OCS, and RMP argue this is irrelevant?

Furthermore, the loads used in RMP's class cost of service study are not reconciled to the loads in the jurisdictional study. Docket No. 07-035-93, Brubaker Test. 3:4-7. In nearly every case, the results of the class load research data produce lower contributions to the peaks for these

four sampled classes (residential class, schedule 023, schedule 006, irrigation class) than the results that are used in the jurisdictional study. Therefore, if we are to assume the jurisdictional study, which relies on metered data, is correct, the load research and other analyses conducted by RMP to develop the loads used in its class cost of service study are wrong. *Id.* 12:1-3, 8-11; MEB-3, MEB-4. The situation remains the same in the application as filed in this case. *Compare* Docket No. 09-035-23, Test Period Results of Operations § 10 at 10.13, *with* Docket No. 09-035-23, Cost of Service Study § 5 at 7. The UIEC was led to believe that this differential would be corrected to some extent with the new load study sample data.

RMP activated new samples for the residential and Schedule 023 rate classes on October 1, 2008. Docket No. 09-035-23, RMP Data Response to UIEC 2.6 (attached as Ex. P). It activated a new Schedule 006 sample on November 1. *Id.* Thus, the load estimates used in this case include three months of data from the new samples for the residential and Schedule 023 classes, and two months from the Schedule 006 rate class. *Id.* The DPU states that it does not object to bifurcation to allow for the possibility of more load research data. DPU's Br. 3-4. If UIEC's motion is granted, and RMP is ordered to provide additional updated load data so that we have twelve months using the new samples, this will inarguably result in rates that will more accurately reflect the cost of service to the ratepayers than if Cost of Service is rushed to be completed with revenue requirement, as argued for by the OCS. The UIEC, therefore, requests that the Commission grant its motion.

V. BIFURCATION WILL ASSIST IN REDUCING SCHEDULING BURDENS.

With respect to RMP, at least the following matters are currently before the Commission: (1) a general rate case; (2) an application for an ECAM; and (3) a dispute regarding the existing demand-side management ("DSM") programs. The revenue requirement portion of the general

rate case has a 240-day statutory time limitation, which means a decision is due by February 18, 2010. An ECAM, if approved, must be implemented “at the conclusion” of the general rate case. In addition, there is an ongoing working group assessing the cost of service model and inputs, and there are available additional cost of service load sample data, both of which have an impact on the Cost of Service portion of the general rate case.

Attempting to schedule all the procedures² of the various matters has been an ordeal.³ An ECAM schedule was only able to be agreed to with an unspoken implication that (a) this motion

² The schedule if this motion is denied, which leaves implementation of any ECAM well after the conclusion of the general rate case, is as follows:

Week of August 10: DSM hearings; RMP’s supplemental ECAM testimony

Week of August 17: Scoping of other DSM issues

Week of September 7: Labor Day Holiday; DSM scheduling conference

Week of September 14: ROE direct testimony September 17

Week of October 5: ROE rebuttal testimony; Revenue Requirement direct testimony

Week of October 12: COS direct testimony

Week of October 19: ROE surrebuttal testimony

Week of October 26: ECAM direct testimony

Week of November 2: DSM Phase II hearings

Week of November 9: Veteran’s Holiday; ROE hearings; Revenue Requirement rebuttal testimony

Week of November 23: ECAM rebuttal testimony; Thanksgiving Holiday

Week of November 30: Revenue Requirement surrebuttal testimony; COS rebuttal testimony

Week of December 7: Revenue Requirement hearings (Commission’s Secretary has requested this be moved to following week but that interferes with ECAM Phase I hearings, see footnote 2 *infra*); ECAM surrebuttal testimony

Week of December 14: Chanukah Holiday; ECAM Phase I hearings

Week of December 21: Christmas Holiday

Week of December 28: New Year’s Holiday

Week of January 4: COS Surrebuttal

Week of January 11: COS hearings

Week of January 18: Martin Luther King Holiday; ECAM Phase II scheduling conference.

³In fact, after setting very aggressive schedules for this case, the ECAM case, and the DSM case on July 14, which

to bifurcate would be granted; or (b) an ECAM would be found unnecessary; or (c) an ECAM does not have to be implemented simultaneously with the end of a general rate case. Section 54-7-13.5(2)(b) requires that the ECAM be implemented “at” the end of the general rate case, and the Commission should not presuppose that it will find an ECAM unnecessary. That leaves one alternative. Unless the proceedings involving the design of an ECAM, including all testimony and the hearing, are squeezed into the eight weeks that include Christmas, Chanukah, New Year’s Day, Martin Luther King Day and the Cost of Service portion of the case, including the hearings, the ECAM cannot be completed simultaneously with the end of the general rate case. However, if the Cost of Service portion of the case is bifurcated, not only will more information be available for that portion of the case, but the design of an ECAM can then be conducted in a reasonable fashion and implemented at the end of the general rate case.

Accordingly, the UIEC request that its motion to bifurcate be granted.

VI. CONCLUSION

This matter has been fully briefed and is ready for decision. Based on the foregoing, the UIEC requests that the Commission issue an order (1) granting its motion to bifurcate; and (2) noticing a separate scheduling conference for the Cost of Service portion of this case, which will include a requirement that RMP provide the parties with an update of its load sample research data. The UIEC requests that this decision not be held until a decision on Rocky Mountain Power’s Motion for Ruling on Implementation of ECAM, unless that briefing schedule is

entailed not only the concurrence of the schedules of numerous parties, but also coordination with the Commission’s calendar, on July 30, the Commission’s Secretary informed the parties that the revenue requirement hearings agreed to be held on December 7-10 had to be moved. *See* Email from Julie Orchard, Commission Secretary, Utah Pub. Serv. Comm’n, to Docket No. 09-035-23 parties (July 30, 2009) (attached as Ex.Q). She suggested the hearings be moved to December 14-17, but this conflicts with the hearings reserved for the ECAM Phase I proceedings. *See* Email from Yvonne Hogle, General Council, RMP, to Docket No. 09-035-23 parties and Commission’s Secretary (July 30, 2009) (attached as Ex. R). As of the filing of this brief, the scheduling issues have not yet been resolved.

expedited. As will be more fully explained in UIEC's response to that motion it is not only not necessary to delay the decision on this motion until that decision is to be made, but, if the motion to bifurcate is ultimately denied, delaying the decision to do so will prejudice the parties by leaving a very short window for preparation of direct testimony under the current schedule. Therefore, the UIEC further requests that either the briefing schedule for Rocky Mountain Power's Motion for Ruling on Implementation of ECAM be expedited, or that the decision on this motion be issued forthwith and the decision on Rocky Mountain Power's motion just take that decision into consideration.

DATED this 3d day of August, 2009.

/s/ Vicki M. Baldwin

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CERTIFICATE OF SERVICE

(Docket No. 09-035-23)

I hereby certify that on this 3rd day of August 2009, I caused to be e-mailed, a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE UTAH INDUSTRIAL ENERGY CONSUMERS' MOTION TO BIFURCATE PROCEEDINGS** to:

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