

scope of proper discovery, no further issues exist regarding discovery related to allegations of excess capacity on the Populus to Terminal transmission line.

The remaining issues raised by the motion to compel relate solely to the Company's information concerning the natural gas hedging policies and practices of its affiliates. UIEC submitted the initial data requests in question on March 10, 2011, seeking, in general terms, information about the natural gas facilities owned and operated by the Company's parent, MidAmerican Energy Holding Company ("MEHC") through its other public utilities, and how, if at all, those utilities hedge the associated fuel cost. The Company objected to these requests as irrelevant and not calculated to lead to the discovery of admissible evidence.

This initial exchange was followed by several rounds of UIEC follow-up requests. The Company responded asserting MEHC's businesses (the Company's affiliates) are independently managed and operated, with different resource portfolios, market structures and risks. The Company also asserted "Rocky Mountain Power does not review or consider the hedging policies of other MEHC affiliates in determining its hedging policy."¹ In supplemental responses the Company added that it does not have custody, possession or control of the information sought. On the basis of these arguments the Company concludes UIEC's motion is moot and "...no useful or admissible information can be gained about the prudence of the Company's hedging policies, strategies and practices from the hedging policies strategies and practices of [the Company's] affiliates."²

¹ See 1st Supplemental Response to DR 10.3, UIEC Motion to Compel..., May 11, 2011, Exhibit C.

² See Response of Rocky Mountain Power..., May 26, 2011, pp. 6-9.

UIEC contends in its June 6, 2011, reply the Company's objection on the basis of a lack of possession, custody or control of the hedging policies of its affiliates is misplaced. UIEC argues the majority of its requests do not seek documents but rather information. UIEC notes the requirement for "possession, custody or control," while a threshold for the production of documents and things, is inapplicable to its requests for "explanations and descriptions."³ UIEC reasons the four common officers shared by the Company and MEHC must have information about the natural gas hedging practices of the Company's affiliates. UIEC maintains these practices are relevant in this proceeding "...because they go to what RMP reasonably should have known with respect to hedging strategies, which is directly relevant to the issue of the prudence of RMP's natural gas hedging practices."⁴

ANALYSIS

In general, parties to Commission proceedings may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.⁵ In examining the scope of relevant matters in this case, we are guided by Utah Code Ann. § 54-4-4(4)(a), which applies whenever, in the determination of just, reasonable, or sufficient rates, the Commission considers the prudence of a utility's actions or the expenses it incurs. In such cases, the statute directs the Commission to apply the following standards in making its prudence determination:

- (i) ensure just and reasonable rates for the retail ratepayers of the public utility in this state;

³ Reply in Support of UIEC's Motion..., June 6, 2011, p.3.

⁴ Id. at 6.

⁵ See Utah Admin Code R746-100.B.; Utah Rules of Civil Procedure, Rule 26(b)(1).

- (ii) focus on the reasonableness of the expense resulting from the action of the public utility judged as of the time the action was taken;
- (iii) determine whether a reasonable utility, knowing what the utility knew or reasonably should have known at the time of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action; and
- (iv) apply other factors determined by the commission to be relevant, consistent with the standards specified in this section.

Applying these standards, we conclude what the Company knew about the natural gas hedging policies and practices of its affiliates, when the Company's current policies were being developed or in effect, is relevant to our determination of the prudence of the natural gas hedging expenses for which the Company seeks recovery in this case.

The Company argues the natural gas hedging requirements of its affiliates apply to resource portfolios, market structures and risks different from those the Company encounters. The Company will have the opportunity to demonstrate these differences and their affects during the hearings. In the absence of such evidence now, we cannot foreclose parties from examining the hedging policies and practices of the Company's affiliates known by the Company while it was developing and implementing its current hedging policies. Given the commonality of ownership and officers, the nature and extent of the Company's knowledge of the practices of its affiliates is a reasonable subject of inquiry.

Our conclusion in this case is supported, in part, by the unusual subject matter of UIEC's data requests. Most utility practices that affect expenses and rates are based on decades of experience and refinement. This history affords parties and the Commission a seasoned understanding of what constitutes reasonable utility practice. The relevance, or lack thereof, of affiliate practices in such cases is different than in this matter. The types of financial

arrangements the Company now employs to hedge its natural gas expenses are relatively new and are receiving their first real scrutiny in Commission proceedings. In this circumstance, we must determine whether a reasonable utility knowing what the Company knew, or should have known, would have fashioned and implemented the policies that drive the hedging expenses the Company seeks to include in the requested rates. We conclude what the Company knows about the natural gas hedging policies and practices of affiliates is a relevant matter for inquiry in examining that issue. UIEC lists the following as its data requests that address the relevant information: UIEC Data Request Nos. 10.3, 19.2, 19.9, 19.11, 20.5, 20.9 through and including 20.27, 20.30, and 20.31. With the exceptions noted below, we direct the Company to disclose its responsive information pertaining to the time period when the Company's current hedging policies were developed or in effect.

As noted above, the Company, in its response to UIEC's motion refers to its supplemental responses, in which it declares it does not have possession, custody, or control of the requested information. UIEC contends the Company's use of the standard applying to the production of documents and things is not appropriate because the majority of its disputed requests seek explanations and descriptions, not documents. It asserts the following data requests fall into this category: UIEC Data Request Nos. 10.3, 19.2, 19.9, 19.11, 20.10 through 20.15, 20.17 through 20.27, 20.30, and 20.31. We note Data Request Nos. 19.2, 19.9, and 19.11 from this list, while not explicitly calling for documents, seek such detailed information over extended time frames as to only reasonably be available through reference to corporate documents. Since the Company has stated it does not have any relevant documents in its possession, custody, or control, we consider the controversy to be resolved as to these three data

requests, just as with the requests explicitly requesting documents, namely: Nos. 20.5, 20.9, and 20.16. Accordingly, no further response is required from the Company as to these requests.

UIEC has obtained from the Iowa Utilities Board some of the affiliate information it requests from the Company and presents this information in its testimony. UIEC asserts that because it had to file its direct testimony before this discovery dispute could be resolved, the Commission should prohibit the Company from contesting any information UIEC presents on the natural gas hedging strategies, policies and practices of the Company's affiliates, and that it be deemed admitted. We decline to adopt this remedy. Rather we will reserve ruling on the admissibility of the UIEC testimony until it is offered in evidence and will at such time take into account the facts and circumstances pertaining to discovery, as presented by UIEC and the Company in their pleadings. Additionally, we will allow UIEC to augment its rebuttal testimony (due June 30, 2011) on or before July 11, 2011, to address the data responses it receives pursuant to this order.

ORDER

1. The Company shall disclose to UIEC within seven calendar days of the date of this Order all known information responsive to UIEC Data Request Nos. 10.3, 20.10, 20.11, 20.12, 20.13, 20.14, 20.15, 20.17, 20.18, 20.19, 20.20, 20.21, 20.22, 20.23, 20.24, 20.25, 20.26, 20.27, 20.30, and 20.31, to the extent such information pertains to the period of time during which the Company's current hedging policies were developed or in effect.

DOCKET NO. 10-035-124

- 7 -

DATED at Salt Lake City, Utah, this 28th day of June, 2011.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
D#207538