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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Alternative Cost Recovery for Major Plant Additions of the Populous to Ben Lomond Transmission Line and the Dunlap I Wind Project.	DOCKET NO. 10-035-89 **UIEC'S MOTION TO DEFER RECOVERY OF THE MAJOR PLANT ADDITION COSTS**

Pursuant to Utah Administrative Code R746-100-3.H, the group of industrial customers whose names appear on this record and who are identified on the record as the Utah Industrial Energy Consumers ("UIEC") submits this Motion to Defer Recovery of the Major Plant Addition Costs to the Utah Public Service Commission ("Commission"). Under Utah law, the Commission has authority to defer such recovery until a general rate case.

BACKGROUND

On February 1, 2010, pursuant to § 54-7-13.4, RMP requested an increase in rates for the alternative cost recovery of the major plant additions in the Ben Lomond to Terminal transmission line and the Dave Johnston Generation Unit 3 emissions control measures ("MPA I"). This matter was designated Docket No. 10-035-13 and was settled via stipulation. As noted in the Commission's order approving the settlement stipulation, the stipulation solved only "the monthly amount of the regulatory asset to be booked by the Company for its ultimate recovery

from customers in rates." Docket No. 10-035-13, Report & Order at 4, June 15, 2010 ("MPA I Order"). The stipulation did not resolve: (1) the means of collecting the regulatory asset from customers; (2) the date collection will begin; (3) the period of time over which recovery will take place; (4) the allocation of the deferred balance recovery among Utah customers and customers classes; (5) the structure of the collection mechanism, whether in base rates or in a surcharge; (6) the rate design of the collection mechanism; or (7) the billing determinants. *Id*. at 4-5. The Commission authorized the Company to allocate $30.8 million to Utah ratepayers and to establish a Utah-specific regulatory asset to record monthly, in a deferred account, the amount of $2,566,667, beginning July 1, 2010, with a carrying charge of 0.695% per month. *Id*. at 6.

Subsequently, RMP filed the application in the instant case to increase its rates for the Populous to Ben Lomond transmission line and the Dunlap I Wind Project ("MPA II"). The Company specifically requests: (1) an increase of $39.0 million for these latest major plant additions effective January 1, 2011; (2) a rate increase to encompass the MPA I revenue requirement of $30.8 million effective January 1, 2011; and (3) a rate increase effective January 1, 2011 to encompass the $15.7 million from the MPA I Order that will have been deferred for July 1, 2010 through December 31, 2010. As with the MPA I case, none of the issues being addressed in the load sampling and load allocation work groups have been resolved or implemented in this case. Also similar to the MPA I case, there is not enough information filed to determine: (1) the means of collecting the regulatory asset from customers; (2) the date collection will begin; (3) the period of time over which recovery will take place; (4) the allocation of the deferred balance recovery among Utah customers and customers classes; (5) the structure of the collection mechanism, whether in base rates or in a surcharge; (6) the rate design of the collection mechanism; or (7) the billing determinants.

RMP states that it intends to file a general rate case for another rate increase in January 2011. Docket No. 10-035-89, MPA II Application at 6.

During the course of the last general rate case, Docket No. 09-035-23, several serious issues were raised with respect to Rocky Mountain Power's ("RMP" or the "Company") load sampling, load forecasting, weather normalization, peak projection, consistency between inter-jurisdictional and class allocations, calibration, allocation factors, and general cost-of-service methodology. Docket No. 09-035-23, *Report & Order on Revenue Requirement, Cost of Service & Spread of Rates* at 116-123, Feb. 18, 2010. The issues were not resolved in the course of the case, but rather, the Commission ordered that the Division of Public Utilities ("DPU" or the "Division") convene work groups to study these issues. *Id.* at 118, 122. These work groups have been meeting monthly since May and expect to issue final reports to the Commission by November 30, 2010, as ordered. Progress is being made and the Company has acknowledged some improvements that can be made to increase accuracy with its next cost-of-service study.

Based on the following legal and equitable arguments, UIEC requests that the instant case be bifurcated into two phases: (1) a revenue requirement phase, addressing only the monthly amount of the regulatory asset to be booked by the Company for its ultimate recovery from customers in rates, and (2) a cost-of-service, rate spread and rate design phase.

Pursuant to a plain reading of the applicable statute, the MPA 1 amounts (the $30.8 million annual revenue requirement plus the $15.7 million uncollected in 2010) cannot be collected until the next general rate case, which RMP states will be filed in January 2011.

Based on equitable considerations, the amount to be awarded to the Company as a result of MPA II should also be deferred. UIEC suggests that recovery of these amounts be deferred until either (a) the next general rate case in 2011; or (b) after the work groups have issued their

reports, the Commission has issued an order on those reports, the Company has prepared a cost-of-service study in accordance with such order, and the parties have been given an opportunity to conduct discovery on that study. Because the Company is entitled to accrue what revenue it may be entitled to in the MPA II case in addition to a carrying charge on its deferred balances, it will not be harmed.

ARGUMENT

I. UNDER UTAH LAW, THE COMPANY CANNOT RECOVER THE MPA I DEFERRED AMOUNTS UNTIL ITS NEXT GENERAL RATE CASE.

Utah law requires that the deferred amount be collected in a general rate case. Section 54-7-13.4 provides:

> If the commission approves or approves with conditions cost recovery of a major plant addition, the commission shall do one or all of the following:
>
> (a) . . . authorize the . . . electrical corporation to ***defer the state's share*** of the net revenue requirement impacts of the major plant addition ***for recovery in general rate cases***; or
>
> (b) adjust rates or otherwise establish a collection method for the state's share of the net revenue requirement impacts that will apply to the appropriate billing components.

Utah Code Ann. § 54-7-13.4(5) (emphasis added).

Under Utah law, when interpreting a statute, the Commission should "look first to the statute's plain language to determine its meaning." *Utah v. Gallegos*, 171 P.3d 426, 429 (Utah 2007). When examining the plain language, it must be assumed that ***each term included*** in the statute was used advisedly. *Carrier v. Salt Lake County*, 104 P.3d 1208, 1216 (Utah 2004).

Furthermore, the Commission "has only the rights and powers granted to it by statute." *Hi-Country Estates Homeowners v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (citing *Williams v. Pub. Serv. Comm'n*, 754 P.2d 41, 50 (Utah 1988)). It has no "'inherent regulatory

powers other than those expressly granted or clearly implied by statute.'" *Id.* (quoting *Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 754 P.2d 928, 930 (Utah 1988)). "When a 'specific power is conferred by statute upon a tribunal, board, or commission with limited powers, ***the powers are limited to such as are specifically mentioned***.'" *Id*. (quoting *Union Pac. R.R. v. Pub. Serv. Comm'n*, 134 P.2d 269, 474 (1943)) (internal quotations omitted) (emphasis added). Accordingly, "'[t]o ensure that the administrative powers of the PSC are not overextended, any reasonable doubt of the existence of any power ***must be resolved against the exercise thereof***.'" *Id*. (quoting *Williams*, 754 P.2d at 50) (internal quotations omitted) (emphasis added).

In MPA I, the Commission ordered that collection of the $30.8 annual revenue requirement be deferred as a Utah-specific regulatory asset beginning July 1, 2010. Pursuant to the plain language of the statute, this deferred amount must be recovered in a general rate case. The Commission's authority with respect to this amount is limited to allowing recovery in a general rate case. Therefore, the Commission necessarily must deny RMP's request for alternative treatment of both the $15.7 million to be deferred in 2010 and the ongoing annual $30.8 million, and order that the amount in the Utah-specific asset be recovered in RMP's next general rate case.

II. COLLECTION OF THE MPA II AMOUNTS BEFORE THE WORK GROUPS COMPLETE THEIR INVESTIGATIONS OR THE NEXT GENERAL RATE CASE WILL RESULT IN A WASTE OF REGULATORY RESOURCES.

As a result of the timing of RMP's MPA II filing, the DPU and the Office of Consumer Services ("OCS" or the "Office"), as well as a number of other intervenors, will have wasted valuable resources if the amount allocated to Utah in the MPA II case is not deferred. To avoid this unnecessary waste, the recovery of any MPA II allocation to Utah ratepayers should be deferred to the next general rate case, or at least until the work groups have completed their investigations and RMP has completed a complying new cost-of-service study.

The work groups established by the Division to resolve load sampling, load forecasting, weather normalization, peak projection, consistency between inter-jurisdictional and class allocations, calibration, allocation factors, and general cost-of-service methodology issues will issue their final reports by November 30, 2010. Significant resources are being expended for resolution of these issues. However, the outcome of those work groups cannot be used if the Company is authorized to recover the MPA II amounts beginning January 1, 2011. All this effort, therefore, will be wasted.

Moreover, the Company has explicitly signaled its intent to file a general rate case for another rate increase in January 2011. Therefore, there is a vehicle through which RMP could fold the MPA II amount recovered into rates very soon. The Commission should prevent the unnecessary waste that would otherwise occur and order that recovery of the MPA II costs be deferred until after an updated cost-of-service study incorporating the results of the investigations can be implemented and thoroughly vetted.

Furthermore, just as the MPA I case did not resolve the following: (1) the means of collecting the regulatory asset from customers; (2) the date collection will begin; (3) the period

of time over which recovery will take place; (4) the allocation of the deferred balance recovery among Utah customers and customers classes; (5) the structure of the collection mechanism, whether in base rates or in a surcharge; (6) the rate design of the collection mechanism; or (7) the billing determinants, these same issues will remain unresolved for the MPA II case. They will be addressed in the general rate case as a result of the MPA I case deferral. Therefore, for efficiency purposes and to avoid unnecessary waste, all these issues should be addressed and the amounts allocated through the general rate case.

III. FAIRNESS DICTATES THAT THE AMOUNTS AUTHORIZED FOR RECOVERY IN MPA II BE DEFERRED FOR COLLECTION.

As explained above, even though the Commission acknowledged serious problems with the Company's class cost of service studies and load forecasts and ordered that solutions be investigated, the Company filed the instant case before those investigations could be completed. It did so knowing that it intended to file another general rate case in 2011 and that it could not incorporate the work group solutions in the major plant addition rate increase filing.

There is no statutory timing requirement for the filing of RMP's rate increase requests. RMP could just as easily have waited until after the Commission-ordered work groups resolved the issues raised in Docket No. 09-035-23. Implementing the allocation for the recovery of the MPA II amounts among Utah customers and customer classes prior to the results of the work group investigations is unfair to all Utah ratepayers. Just and reasonable rates cannot result from what is an admittedly flawed approach. Therefore, recovery should be deferred until after the investigation and decision are complete or until the next general rate case.

IV. THE COMPANY WILL NOT BE HARMED IF THE COMMISSION ORDERS THAT THE MPA II AMOUNTS BE DEFERRED.

The applicable statute requires that if the Commission authorizes RMP to defer Utah's share of the net revenue requirement impacts from MPA II, the amount deferred will accrue

monthly and shall be subject to a carrying charge. *See* Utah Code Ann. § 54-7-13.4(6)(c). Therefore, the Company is made whole and suffers no harm from a deferral. As a result, deferral of the MPA II amounts is fair to all parties.

CONCLUSION

Based on the plain language of Utah Code Ann. § 54-7-13.4, the amounts allocated to Utah for MPA I must be deferred until the next general rate case. This includes the annual $30.8 million annual revenue requirement and the $15.7 million accrued through December 31, 2010.

As explained above, efficiency and fairness dictate that the MPA II amounts be similarly deferred. While they could be deferred until after the work groups have completed their investigations and a new cost-of-service study is filed and vetted, it makes more sense to defer until the next general rate case, which will mean collection will begin a few months later. In any event, the Company will be unharmed because it will be accruing its revenue requirement monthly and earning a fair return on the deferred amount.

Accordingly, UIEC requests that the Commission issue an order deferring collection of the MPA I amounts until the next general rate case and deferring collection of the MPA II amounts until either the next general rate case, or until after the work groups have completed their investigations and a new cost-of-service study is filed and vetted.

RESPECTFULLY submitted this 25th day of August, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August 2010, I caused to be e-mailed, a true and correct copy of the foregoing **UIEC'S MOTION TO DEFER RECOVERY OF THE MAJOR PLANT ADDITION COSTS** to:

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