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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

**UAE'S MEMORANDUM IN
REPLY TO RMP AND DPU
RESPONSES TO UIEC MOTION
TO DEFER RECOVERY OF MPA
COSTS**

The Utah Association of Energy Users (UAE) files this memorandum in reply to the Responses filed by Rocky Mountain Power (RMP Response) and the Division of Public Utilities (DPU Response) in response to UIEC's Motion to Defer Recovery of the Major Plant Addition Costs (UIEC Motion).

The UIEC Motion requests continued deferral until a future general rate case (GRC) of the incremental revenue requirement (Costs) approved in Docket 10-035-13 (MPA #1), as well as the MPA Costs approved in this docket (MPA #2). UAE's responsive memo (UAE Response)

supported the UIEC Motion on the grounds that continued deferral of the MPA #1 Costs is required by statute and deferral of MPA Costs is consistent with sound public policy.

Alternatively, UAE recommended that, if the Commission determines to permit collection of any MPA Costs prior to the next GRC, updated billing determinants should be used in setting the collection rates to avoid over-recovery by the utility.

In arguing for an interim rate increase, RMP and DPU offer an interpretation of Utah Code Section 54-7-13.4(5) that differs from the interpretation offered by UIEC (and supported in the UAE Response and generally accepted in the “Reply” filed by the Office of Consumer Services). While UAE understands that RMP and DPU may want to read the statute more broadly, UAE respectfully submits that their interpretation requires a contorted reading of the plain language of the statute.

Utah Code Section 54-7-13.4 establishes an alternative (to a general rate case) mechanism for dealing with utility investment in a prudent major plant addition. It requires the Commission to do three things within 150 days of a complete filing: (i) “review the application;” (ii) “approve, approve with conditions or deny cost recovery;” and (iii) “enter an order on cost recovery.” *Id.*, 54-7-13.4(4)(i)-(iii). In the “order on cost recovery” that must be entered within 150 days, the Commission is required, assuming it approves cost recovery, to elect one of three specified options: (1) authorize the utility to defer MPA Costs “for recovery in a general rate case;” (2) adjust rates or establish another collection method for the MPA Costs; or (3) a combination of deferral and collection. *Id.*

In compliance with this statutory scheme, the Commission reviewed RMP's Application in MPA #1, approved partial cost recovery, and entered an Order on cost recovery within 150 days. In that Order, the Commission elected the first recovery option, as advocated by RMP and supported by DPU: deferral of MPA Costs, which, by statute, may then be recovered only "in a general rate case." The Commission's Order did not adopt either of the other available options, i.e., to adjust rates or use an alternative collection method, or to use a combination of deferral and collection. By selecting deferral, the Commission is now required by statute to provide cost recovery "in a general rate case." There is no other option.

The position advocated by RMP and DPU is equivalent to asking the Commission to amend its cost recovery Order in MPA #1 and belatedly elect the third cost recovery option. Even had that option been available when the MPA #1 cost recovery order was entered, it is not available now. The deferral option provided by statute and selected by the Commission expressly requires recovery be deferred to a general rate case. Nothing in Utah law or the MPA statute authorizes the Commission to amend its prior deferral order now to adopt a different cost recovery option. Whether or not such authority might be useful, it is not provided by statute.

Beyond the statutory restriction, the UAE Response also offers sound public policy reasons why the Commission should exercise its discretion to defer recovery of MPA Costs, both as to MPA #1 and as to MPA #2. The RMP Response correctly notes that the legislature did not intend an MPA case to become a general rate case. However, it is indisputable that the more time that passes between a GRC order and an MPA rate case order, the less accurate or fair will

be the use of data from the last GRC. It is for that reason that the MPA statute includes two critical customer protections, one limiting an MPA case to eighteen months after a GRC order and the other providing the Commission with discretion to defer collection of MPA Costs to a GRC, when updated cost of service information and billing determinants can be developed and utilized.

The RMP Response criticizes the UIEC Motion for suggesting the use of corrected and updated cost of service information. RMP fails to acknowledge, however, that its own Application utilizes a different test period than that used in the last rate case. RMP elected not to use updated billing determinants appropriate to its new test period in setting collection rates. By using GRC billing determinants to collect MPA Costs, RMP is guaranteed over-recovery if load continues to grow, as expected. Fairness to the utility and its customers supports deferral of MPA Costs when significant time has passed since the GRC order.

The RMP Response suggests that its preference should control whether MPA Costs are deferred for later collection or adjusted in current rates.¹ Nothing in the statutory language supports such a suggestion. To the contrary, the Commission is directed to choose among specified collection options in entering its order. As with all other issues within the Commission's jurisdiction, the public interest should guide the exercise of Commission discretion on this issue. UAE respectfully submits that public interest considerations support

¹ “[I]f the Company requests that the Commission authorize it to collect the costs of the major plant additions related to the MPA II Docket at the conclusion of the MPA II Docket, the Commission should allow the Company to

deferral of MPA Costs under the circumstances of this case. Alternatively, UAE submits that the use of updated billing determinants should be required to the extent the Commission permits collection of any MPA Costs before the next GRC order.

RMP and DPU claim that customers will be harmed by deferral of MPA Costs. UAE disagrees. Customers are harmed by frequent rate increases as much or more as they are harmed by later, larger rate increases. Moreover, customers are harmed by the use of inaccurate data or billing determinants that assure over-recovery. Finally, customers are harmed by rates fashioned without the benefit of current and accurate cost of service and rate design evidence. Also, it should be noted that claims of customer harm were not raised by RMP or DPU in opposition to deferral of MPA #1 Costs; indeed, both parties supported deferral. There is no legitimate basis for a claim in this case that customers are harmed more by a deferral of MPA Costs than by adjusting rates prior to the next GRC.

RMP also claims that it will be damaged by deferral of MPA Costs. RMP has made no showing of any such damage. Moreover, RMP is in control of its budget and expenditures, as well as the timing of its GRC and MPA rate cases. It thus has ample ability to control cash flow. The statutory provision for a carrying charge eliminates any serious claim of harm to the utility.

Finally, the DPU Response argues that the Commission should not decide the issue of deferral or rate adjustment on the basis of the UIEC Motion, but should instead allow parties to

recover amounts authorized for recovery in the MPA II Docket, pursuant to the MPA Statute.” RMP Response, 11.

file testimony on that and other relevant issues. UAE is sympathetic with this argument, but it also wishes to avoid the expense of filing testimony on issues that can properly be resolved now as a matter of law or policy. UAE believes that the Commission properly can and should rule now on the legal issue that the MPA statute and MPA #1 Order require collection of MPA #1 Costs in the next GRC. Moreover, UAE believes that the Commission can properly determine now, based on public policy considerations, that either deferral of MPA Costs or the use of updated billing determinants is appropriate.

UAE respectfully submits that the Commission should grant UIEC's motion to defer to the next general rate case the collection of incremental revenue requirement impacts of the two 2010 MPA rate cases. Alternatively, UAE submits that updated billing determinants should be used in setting collection rates for the major plant additions.

Respectfully submitted this 16th day of September, 2010.

HATCH, JAMES & DODGE

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 16th day of September, 2010, on the following:

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