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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 **REPLY IN SUPPORT OF UIEC'S MOTION TO DEFER RECOVERY OF THE MAJOR PLANT ADDITION COSTS**

Based on R746-100-4 and the Scheduling Order issued by the Utah Public Utilities Commission ("Commission") in this Docket, the group of intervenors collectively known as the Utah Industrial Energy Consumers ("UIEC"), respectfully submit this Reply in Support of its Motion to Defer Recovery of the Major Plant Addition Costs ("Reply").

In reply to the various briefs responding to UIEC's opening motion, this Reply further explains how Utah Code § 54-7-13.4 requires that the entire amount of cost recovery from the Major Plant Addition ("MPA") case of Docket No. 10-035-13 ("MPA I"), which the Commission authorized the Company to defer, with carrying charges, beginning July 1, 2010, must be collected in a general rate case.

In light of the responses received, it also provides further evidence justifying why equity and efficiency would best be served by the Commission bifurcating this current Application and ordering recovery of the additional major plant addition costs ("MPA II") until a general rate case.

ARGUMENT

I. **UTAH LAW REQUIRES THAT ALL AMOUNTS IN THE DEFERRED ACCOUNT ESTABLISHED PURSUANT TO THE COMMISSION'S ORDER IN DOCKET NO. 10-035-13 BE DEFERRED UNTIL THE NEXT GENERAL RATE CASE.**

A. **Utah Code § 54-7-13.4 Is a Legislatively Tailored Proceeding for an "Abbreviated" Rate Case.**

In *Utah Department of Business Regulation v. Public Service Commission* ("*Wage Case*"), the Utah Supreme Court explained why "single item rate cases" are generally prohibited and the limited circumstances under which they can be used. 614 P.2d 1242 (Utah 1980) (ruling that rate could not be adjusted based only on labor expense because six months had passed from general rate case and evidence showed that all other elements could not be assumed to have remained same). They are only permitted for "a prompt rate adjustment to offset an unusual change in an expense." *Id*. at 1249. Therefore, the Commission is allowed to "not adjust one side or part of the equation without adjusting the other" as long as "there is a finding that the particular expense is extraordinary." *Id*. at 1248.

The reason a "single item rate case" is generally prohibited is that to update one cost factor alone, without determining whether that factor itself needs evaluation or adjustment, or without concurrently assessing other related costs (some of which may have decreased) or revenues (which often have increased), is contrary to the over-arching requirement that rates set by the Commission must be "just and reasonable." *Id*. at 1249. If there is an extraordinary variation in an expense, such a proceeding can be used so long as all other factors can be assumed to have remained the same as they were when last evaluated in a general rate case ("GRC"). *Id*. at 1249.

Due to this doctrine, in Docket No. 06-035-21, the parties accommodated the Company's request for a rate increase that included the Lakeside plant, which was not yet commercially operational, by allowing a phased-in revenue increase. *See* Docket No. 06-035-21, Report & Order at 5, 7, 11 (Dec. 1, 2006) (approving stipulation that allowed Company to increase its annual jurisdictional revenues by $115 million effective December 11, 2006, subject to $30 million rate credit effective for period December 11, 2006 through May 31, 2007, based on anticipated commercial operation of Lakeside plant in May of 2007) (attached as Ex. A).

Since that time, Utah Code § 54-7-13.4 has been adopted. However, the adoption of this statute has not changed Utah Supreme Court precedent. The Commission has been given limited discretion to conduct such a proceeding, but within the confines of the statute. Adjusting one cost factor alone, without determining whether that factor itself needs evaluation or adjustment, or without concurrently assessing other related costs or revenues, still remains contrary to the requirement that rates set by the Commission must be just and reasonable.

This statute is a legislatively tailored procedure for an "abbreviated" rate case to resolve a problem that would otherwise arise in a period of capital growth—numerous consecutive general rate cases or the utility's inability to earn a return on assets that have become used and useful before completion of a GRC. However, neither of these reasons justifies ignoring the other reasonably projected costs, savings, and benefits and appropriate billing components for a determination of just and reasonable rates.

B. Pursuant to the Plain Language of the Statute and Well-Established Maxims of Statutory Construction, the Balance Accruing in the Deferred Account Established in MPA I, Both the $15.7 Million and the $30.8 Million, Cannot Be Recovered until a General Rate Case Order Is Issued.

Contrary to Rocky Mountain Power's bold assertions regarding the Commission's broad discretion,

> "It is well established that the Commission ***has no inherent regulatory powers other than those expressly granted or clearly implied by statute***." . . . "When a specific power is conferred by statute upon a . . . commission with limited powers, the ***powers are limited to such as are specifically mentioned***." . . . "Accordingly, to ensure that the administrative powers of the [Commission] are not overextended, any reasonable doubt of the existence of any power ***must be resolved against the exercise thereof***."

Heber Light & Power Co. v. Utah Pub. Serv. Comm'n, 231 P.3d 1203, 1208 (Utah 2010) (internal citations omitted) (emphasis added) (ruling that Utah Public Service Commission acted beyond its limited grant of statutory authority). Therefore, even though by enacting § 54-7-13.4 the legislature has set forth a specific procedure for an "abbreviated" case, the Commission's authority remains ***limited to such as is specifically mentioned***, and ***any reasonable doubt of the existence of a power must be resolved against the exercise thereof***.

Under the applicable rules of statutory construction, we first look "to the statute's plain language to determine its meaning."[1] *Id*. at 1209 (internal citations omitted). "[E]ach part or section should be construed in connection with every other part or section so as to produce a harmonious whole." *State v. Jeffs*, --- P.3d ---, 2010 WL 2899120, 661 Utah Adv. Rep. 14, 2010 UT 49 (July 27, 2010) (internal citations omitted). The statute "should be construed . . . so that no part [or provision] will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another." *State v. Jeffries*, 217 P.3d 265, 268 (Utah 2009) (internal citations omitted).

In this case, the statute, in relevant part, provides:

> . . .
>
> (2) A gas corporation or an electrical corporation may file with the commission a complete filing for cost recovery of a major plant addition if the commission has, in accordance with Section 54-7-

[1] RMP claimed several times that legislative intent supported its interpretation of the statute. RMP Br. at 3-6. However, RMP provided no citations or evidentiary support for this supposed legislative intent.

12, ***entered a final order in a general rate case proceeding*** of the gas corporation or electrical corporation ***within 18 months of the projected in-service date of a major plant addition***.

(3) (a) A gas corporation or an electrical corporation ***may not file for cost recovery of a major plant addition more than 150 days before the projected in-service date of the major plant addition***.

. . .

(4) (a) ***The commission shall***:

(i) review the application for cost recovery of a major plant addition;

(ii) after a hearing, approve, approve with conditions, or deny cost recovery of the major plant addition ***within***:

(A) 90 days after the day on which a complete filing is made with respect to a significant energy resource approved by the commission under Section 54-17-302 or resource decision under Section 54-17-402; or

(B) ***150 days after the day on which a complete filing is made for any other major plant addition***.

(b)(i) ***If the commission approved cost recovery*** of a major plant addition, the commission shall determine the state's share of projected net revenue requirement impacts of the major plant addition, ***including*** prudently-incurred capital costs and ***other reasonably projected costs, savings, and benefits***.

(ii) The gas corporation or ***electric corporation shall have the burden to prove a major plant addition's impacts*** as described in Subsection (4)(b)(i).

. . .

(5) ***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) ***subject to Subsection (6)(c)***, authorize the gas corporation or 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***.
>
> (6) (a) Deferral or collection of the state's share of the net revenue requirement impacts of a major plant addition under this section shall commence upon the later of:
>
> (i) the day on which a commission order is issued approving the deferral or collection amount; or
>
> (ii) the in-service date of the major plant addition.
>
> (b) The deferral described in this section shall terminate upon a final commission order that provides for recovery in rates of all or any part of the net revenue requirement impacts of the major plant addition.
>
> (c) If the commission authorized deferral under Subsection (5)(a), the ***amount deferred shall accrue a carrying charge*** on the net revenue requirement impacts as determined by the commission.

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

There are three caveats for proceeding under this tailored statute for cost recovery for major plant additions: (1) the application cannot be filed more than eighteen (18) months after a general rate case order; (2) it cannot be filed more than 150 days before the projected in-service date of the major plant addition; and (3) unless subject to a significant resource decision, the Commission must approve, approve with conditions, or deny the cost recovery within 150 days.

Pursuant to the statute's plain language, if the Commission approves cost recovery, or approves it with conditions, one or all of the following actions must be taken: (1) defer for recovery in general rate cases, subject to a carrying charge; or (2) adjust rates or otherwise establish a collection method. The language is very plain and clear—if there is a deferral, it must be recovered in a general rate case.[2]

[2] The Company's argument on page 6 that a deferral could continually grow for an indefinite period of time is absurd. The Company has control over when it files general rate cases. If there is a major plant deferral and the Company wants to begin collecting it, the Company will file a general rate case. Moreover, the Commission can

The Commission can (a) at the end of the 150 days, defer the total amount for recovery in a general rate case; or, (b) at the end of the 150 days, make an adjustment to the rates or set up some other collection method, such as a surcharge for a number of years; or, (c) at the end of the 150 days, defer a part for recovery in a general rate case and adjust rates for the remaining part; or, (d) at the end of the 150 days, defer a part for recovery in a general rate case and set up some other collection method, such as a surcharge, for the balance. But, if the Commission makes any deferral of any amount, that amount can only be collected in a general rate case.[3]

Regardless of which method is followed, the utility has the burden of proving the major plant addition impacts with evidence of "reasonably projected costs, savings, and benefits," and the revenue requirement must be applied to the "appropriate billing components." *See id*. § 54-7-13.4(5)(b).

In Docket No. 10-035-13, the Commission made a deferral. Contrary to the arguments of the Company and the Office of Consumer Services ("Office"),[4] the Commission's authority is limited to that which is specifically mentioned in the statute and the Commission's discretion is only available to fulfill the requirements of the statute. The deferral the Commission authorized in Docket No. 10-035-13 can only be collected in a general rate case.

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initiate a rate proceeding if it believes it is appropriate. *See, e.g., MCI Telecomm. Corp. v. Pub. Serv. Comm'n*, 840 P.2d 765 (Utah 1992).

[3] The Utah Association of Energy Users ("UAE") agrees that the UIEC's interpretation and application of the statute is correct. UAE Br. at 1-2.

[4] While the Office admits that UIEC's statutory interpretation and application are correct, it encourages the Commission to use discretion and consider other factors. Office Br. at 2. It is not clear whether the Office is proposing that the Commission use its discretion as to the deferred amount ($2,566,667, per month plus carrying charge of 0.695%) or if the Office is only referring to the $39.0 million at issue in this second plant addition case. If the Office is referring to the former, the Office is encouraging the Commission to act contrary to the law.

Moreover, that deferral was not broken into two pieces, as the Company has tried to pretend.[5] Regardless of what the Company may have requested in its application, the Commission's order is what is determinative. That order authorized the Company to establish one Utah-specific regulatory asset to record monthly, in one deferred account, the amount of $2,566,667, beginning July 1, 2010, with a carrying charge of 0.695% per month. Docket No. 10-035-13, Report & Order at 6 (June 15, 2010) ("MPA I Order"). Pursuant to the statute, because the major plant addition was already in service, deferral commenced upon the day on which the Commission's order was issued approving the deferral amount. No end date was provided in the Commission's order because the statute also provides the end date—for recovery in a general rate case.

There is no $15.7 million deferral separate from a $30.8 million deferral. The amount that is accruing in that account is one deferral and cannot be put into rates until a general rate case.

C. Application of the Well-Established Maxims of Statutory Construction Demonstrates the Division's Interpretation Is in Error.

Based on the traditional maxims of statutory construction, UIEC respectfully disagrees with the Division's interpretation of Utah Code § 54-7-13.4. The Division argues that subsection (6)(b) "allows the Commission the discretion to end the deferral at any time it issues a final order."[6] Div. Br. at 4.

A part or section should be construed in connection with every other part or section so as to produce a harmonious whole, and the statute should be construed so that no part or provision

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[5] The Division also appears to have been confused by this false presentation. The Commission ordered the creation of one deferral account. There is not a $15.7 million deferral separate from a $30.8 million deferral.

[6] Interestingly, no other party has suggested such a construction and the Division cites no case law supporting its method of statutory construction.

will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another. *See State v. Jeffs*, --- P.3d ---, 2010 WL 2899120, 661 Utah Adv. Rep. 14, 2010 UT 49 (July 27, 2010); *State v. Jeffries*, 217 P.3d at 268. The Division's interpretation appears to let each paragraph of the statute stand alone. This is contrary to these statutory construction maxims.

Section (5) lays out how the Commission is authorized to order recovery if it approves cost recovery with or without conditions. Reading subsection (6)(b) as another separate way in which the Commission is authorized to order recovery fails to construe the parts in connection with every other part so as to produce a harmonious whole. It destroys subsection (5)(a) and makes it superfluous. The Commission's discretion does not permit arbitrarily ending deferral at any time. That time is prescribed by the statute.

Instead, subsection (6)(b) should be read in harmony with the other parts and with subsection (6)(a). Subsection (6)(a) provides when a deferral is to start. Subsection (6)(b) provides when a deferral is to end. A deferral for recovery in a general rate case cannot continue past the date the final order providing for recovery is issued. The utility cannot continue to defer the amounts authorized. In other words, authorizing a deferral does not establish an energy balancing account ("EBA") in which the Company can continue to defer any other costs.

In addition, the plain reading of the statute argues against the Division's interpretation. The statute states: "The deferral ***described in this section***." Utah Code Ann. § 54-7-13.4(6)(b) (emphasis added). The deferral described in § 54-7-13.4 is a deferral for recovery in general rate cases. There is no other type of deferral.

The statute is clear and the Commission's discretion is limited. The amount that is being deferred monthly must continue to be deferred monthly for recovery in a general rate case.

II. BASED ON EQUITY AND EFFICIENCY THE AMOUNT TO BE RECOVERED UNDER MPA II SHOULD ALSO BE DEFERRED.

A. The Principles of Equity Demonstrate that the MPA II Cost Recovery Should also be Deferred.

1. The Fact that the Statute Requires that (a) the Utility Prove the Impacts with Reasonably Projected Costs, Savings, and Benefits; and (b) the Commission Apply the MPA II Revenue Requirement to the Appropriate Billing Components, Dictates Deferral in this Case.

Subsection (4)(b) requires the utility to prove the major plant addition impacts with "reasonably projected costs, savings, and benefits." *Id*. § 54-7-13.4(4)(b). The Company has filed based on an admittedly flawed cost of service study while there are ongoing work groups trying to remedy the numerous issues previously identified with that cost of service study. Thus, the Company cannot meet its burden of proof that the impacts are based on "reasonably projected costs, savings, and benefits."

Subsection (5)(b) requires that the revenue requirement of the MPA II be applied to the "appropriate billing components." Because we do not have a definition of what those may be, and keeping in mind that statutory provisions should be interpreted in harmony not only with other provisions in the same statute, but also in harmony with other related statutes, *see id*. *State v. Jefferies*, 217 P.3d at 268, we can look to the other rate making statutes for guidance.

Section 54-4-4 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 the 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). While this may not provide a clear rule, it is clear that just and reasonable rates require that the Commission consider conditions that best reflect those a public utility will encounter during the period when the rates will be in effect.

In this case, the class load data the Company used is "**identical** to that which was used in the Company's rebuttal filing to Utah Docket No. 09-035-23." RMP response to UIEC data request at 1.2 (emphasis in original) (attached as Ex. B). As the Company testified in that case, this was collected during "the 12 months ending December 2008." Report & Order on Rev. Requirement, Cost of Serv. & Spread of Rates at 116, Docket No. 09-035-23 (Feb. 18, 2010).

However, the Company admits that twelve (12) months of data from its new sample method for use in setting rates has been available since December 2009. RMP response to UIEC data request at 1.4 (attached as Ex. C). It has also admitted that the most recent twelve (12) month period for which sample data has been validated and is available for use is the twelve months ended June 2010. *Id*. at 1.7 (attached as Ex. D).

Therefore, even though (a) the statute requires that the MPA II revenue requirement be applied to the appropriate billing components; (b) just and reasonable rates require that the Commission consider conditions that best reflect those a public utility will encounter during the period when rates will be in effect; and (c) the Company had new sample data since December 2009, the Company filed this case in August of 2010 using sampled data from the twelve months ending December 2008. The Company gives no justification for why it has used this outdated information while it had more current information available.[7] The Company has not met its burden of proof based on reasonably projected costs, savings, and benefits.

As noted in UAE's brief:

[7] Contrary to RMP's assertions, UIEC is not rearguing its position from the last GRC. Instead of arguing that the old data is flawed, UIEC is arguing that the statute requires new data or deferral.

> When a utility is in a load-growth environment—as RMP has been in Utah for many years, even during recent recessionary periods—use of GRC billing determinants to collect the incremental revenue requirement impact of an MPA will ***guarantee*** over-recovery by the utility.

UAE Br. at 3 (emphasis in original). UAE states: "RMP used an updated test period to calculate projected net revenue requirement impacts of the MPA; however, it elected not to use updated billing determinants appropriate for that test period." *Id*. at 4. This is precisely the practice that the Utah Supreme Court found objectionable in the *Wage Case*. *Wage Case*, 614 P.2d at 1249. This practice is precisely why the statute was written to require application to the appropriate billing components.

The Company had more updated information but failed to provide it without explanation. It failed to meet its burden of proof. It failed to demonstrate the major plant addition impacts with "reasonably projected costs, savings, and benefits."

The information used does not reflect the conditions that will be present when the rates will be effective. Failure to defer the impact of the MPA II revenue requirement will result in a windfall to the Company. Under the principles of equity, the Commission should defer the MPA II recovery.

2. Arguments Against Deferral Ignore Significant Costs to be Borne by the Ratepayers.

The relevant proceedings before the Commission that are relevant here include the MPA cases, the past GRC, the upcoming GRC, and the work groups established as a result of the last GRC. To participate in these proceedings, RMP devotes a great deal of expertise, technical and legal, which comes at a significant cost of both time and money. For some of these proceedings, the Company also hires outside attorneys and consultants. This also results in a great deal of expense that is ultimately passed onto the ratepayers.

Similarly, ratepayer intervenors with an interest in these proceedings must hire expertise to participate in these proceedings. Attorneys are required, and in most cases, technical experts are required. This once again places a burden on the ratepayers.[8]

The same issues that were raised in the last GRC are being worked through in the work groups. Those same issues will be the subject of contention in the MPA II case unless cost recovery is deferred. Those same issues will then be raised in the upcoming GRC, because all the parties will have learned from the past work groups and want to apply what has been learned. This unnecessary repetition of the same issues is a burden on the ratepayers. The ratepayers will ultimately be better served and spared these unnecessary duplicative costs if the MPA II cost recovery is deferred to a GRC.

3. Costs for the Energy Gateway Transmission Expansion Should be Allocated According to Who Benefits from the Improvements.

RMP's witness Mr. Cupparo testifies that Gateway Central will provide an essential reliability backbone allowing Gateway West and Gateway South to operate at a higher reliability and at an overall higher capacity than would otherwise be possible. Cupparo D. Test. 9:174-77. This will strengthen Pacificorp's overall system, *id*. at 9:178-79, and satisfy multiple objectives of efficiently operating a six-state transmission system in the long-term, *id*. at 9:191-92. It will also provide incremental capacity to deliver isolated generation, primarily renewable, to the system. *Id*. at 10:194-97.

Mr. Gerrard provides testimony in this case outlining the purpose of the Populus to Terminal line. According to him those purposes include: (a) increase overall transmission capacity in the northern Utah southeast Idaho region; (b) improve system reliability "in the area"

[8] The staffs of the Office and the Division bear much of the burden in participating in these cases, though they do hire some experts. But, the agencies probably do not face the significant costs that these proceedings place upon the ratepayers.

to protect PacifiCorp's East Control Area and neighboring transmission balancing authority areas; (c) improve ability to perform maintenance; (d) integrate with future Energy Gateway segments to increase transfer capability between PacifiCorp's east and west control areas; (e) provide PacifiCorp with more options and greater flexibility for future resources; (f) facilitate the integration of potential new energy resources in Wyoming, Utah, and Idaho; and (g) provide benefits for future Energy Gateway transmission segments in the PacifiCorp jurisdiction and interconnecting the region in general. Gerrard D. Test. 3-4.

This obviously indicates that there are numerous beneficiaries of different types. Many of those beneficiaries will get away without being allocated for the costs of the benefits they are going to receive if PacifiCorp is able to recover all the costs through its retail ratepayers.

Pacificorp has provided no testimony as to how the costs for these benefits will be allocated amongst the various beneficiaries. Are the facilities used and useful for Utah, or is the Energy Gateway project more along the lines of a merchant plant providing thousands of megawatts of wind power and coal-fired surplus energy to Arizona, Nevada, Oregon, and on into California? If the Gateway project is similar to a merchant system, who should bear those costs? Who are the new energy resources in Wyoming, Utah, and Idaho and how much of the costs are being allocated to them? Is PacifiCorp foreclosing competition in the wholesale transmission markets by forcing local Utah retail ratepayers to underwrite the majority of the costs of the Energy Gateway project, which will result in lower rates and an unfair advantage to PacifiCorp in the wholesale market at the expense of Utah retail ratepayers? The MEHC merger commitment was to "[i]ncrease Path C capacity by 300 MW (from S.E. Idaho to Northern Utah)." Merger Commitments at 9, Docket No. 05-035-54 (attached as Ex. E). As a result of the Energy Gateway project, the Populus to Terminal line has a planned increase in transfer capacity of 1400 MW when combined with other segments. Cupparo D. Test. 7:137-39. For whom was this extra 1100 MW built? Will it increase PacifiCorp's through-and-out transfer capability? Is this really a merchant function? If so, who should pay for this additional capacity? Should it be the Utah ratepayers?

As recently noted by Judge Posner of the Seventh Circuit: "[A]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them." *Illinois Commerce Comm'n v. Federal Energy Regulatory Comm'n*, 576 F.3d 470, 476 (7th Cir. 2009) (internal citations omitted). Compliance with this "unremarkable principle" is accomplished by "comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party." *Id*. (internal citations omitted). In other words, if a party receives no benefit, it should not pay. Furthermore, "[t]o the extent that a utility benefits from the costs of new facilities, it may be said to have 'caused' a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed." *Id*.

Recognizing the need of "a transmission grid that can accommodate rising consumer demand for a more diverse mix of power generators and the sophisticated technology of the smart grid," while at the same time ensuring that "only those consumers benefiting from transmission facilities are charged for associated costs," FERC recently opened a proposed rulemaking to address, among other things, "cost allocation methods for beneficiaries of new transmission facilities." FERC News Release, FERC Proposes, Seeks Comment on Transmission Planning, Cost Allocation Principles (June 17, 2010) (attached as Ex. F).

In this rulemaking, FERC has proposed that public utility transmission providers establish a cost allocation method or methods that satisfy the following principles, among others: (a) the cost of transmission facilities must be allocated to those that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits; (b) those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated the costs of those facilities; and (c) the cost allocation and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to the proposed facility. 131 FERC ¶ 61,253, ¶ 164, RM10-23-000 (June 17, 2010) (attached as Ex. G).

The Energy Gateway project was described by PacifiCorp in its filing for incentive rate treatment as "eight interdependent line segments" that "will expand PacifiCorp's transmission network by 2,000 miles of extra-high voltage transmission lines," and that will exceed $6 billion in cost. 125 FERC ¶ 61,076, ¶¶ 1–2, Docket No. EL08-75-000 (Oct. 21, 2008) (attached as Ex. H). It is "a backbone transmission project providing a platform for integrating and coordinating future regional and sub-regional electric transmission projects being considered in the Pacific Northwest and the Intermountain West." *Id*. ¶ 3.

The foregoing examples demonstrate that this Energy Gateway project encompasses many beneficiaries; those who are allocated the costs should only be those that receive the benefits; and the allocation of costs should be commensurate with the benefit received. As a result of questions raised about cost allocation in PacifiCorp's proceeding, FERC held that the situation was not ripe for determination of rate allocation between wholesale and retail customers. *Id*. ¶ 62. FERC ruled that issue was "properly raised when PacifiCorp files under FPA section 205 to recover costs associated with the Project." *Id*. PacifiCorp explained to FERC that it intends to "ask state regulators to include the Project's investment in retail electric rates; to the extent that the recovery of ***all of the transmission investment*** is permitted in its retail rate base." *Id*. ¶ 12 (emphasis added). Is this why the Company feels compelled to rush allocation to Utah ratepayers so soon?

Utah ratepayers have for the past several years essentially underwritten through the Multi-State Protocol ("MSP") investments made by PacifiCorp for which Utah ratepayers received little or no benefit. That practice is anticipated to soon be stopped. Is Utah now going to underwrite the Energy Gateway project? The amount from the MPS (reportedly approximately $15 million) will pale in comparison to the estimated $200 million for which Utah may accept responsibility if there is not a review of the entire Energy Gateway project as a whole.

The Company's requests for cost recovery of this project one segment at a time are comparable to boiling a frog to death by incrementing the temperature 1 degree at a time. Utah ratepayers will be buried under a significant portion of the costs for this project without realizing the significance of what was happening.[9] The Company has never presented the entire picture to the Commission and has never explained how it would intend that costs be allocated between beneficiaries. To avoid having Utah ratepayers being "stuck holding the bag," the Commission should defer recovery of the MPA II costs until it has a better understanding of the big picture.

B. <u>The Alleged Harm to Ratepayers that May Occur as a Result of Deferral Is Insignificant to the Harm that Will Occur Due to a Rush to Allocation.</u>

The Division has done the calculations and explains that if the balances are deferred and amortized over 12 months, it means $4.8 million in carrying charges; amortized over 24 months means $7.6 million in carrying charges; and amortized over 36 months means $10.5 million.

[9] The Company's rush for cost recovery in the MPA cases is in stark comparison to the fact that PacifiCorp's wholesale transmission rates are based on a historic 1994 test year and it has not appeared anxious to ensure wholesale customers are paying fairly for the benefits they receive. The Company is not rushing to file FERC rate cases or cases in its other jurisdictions for recovery of the costs for this project.

Div. Br. at 6–7. UIEC believes the Division has presented a fair explanation of the result of deferral and does not argue with the Division's results.[10] However, this amount pales in comparison to the AFUDC that is being accrued for the Energy Gateway project and the amount that could otherwise be allocated to Utah ratepayers.

Mr. Cupparo testified that for the Populus to Terminal segment alone, PacifiCorp received approval for AFUDC of $110,563,079.[11] Cupparo D. Test. 18:379-80. Utah's portion (based on a 36% share) would be $39.8 million. As of June of this year, the Company has reduced that AFUDC amount to an estimate of $87,090,000.[12] Once again, Utah's portion would be about $31.3 million. There is no explanation of how that amount is calculated or why that amount is being imposed on Utah ratepayers.

There also is no explanation of what benefits of the Energy Gateway project will be garnered for Utah or the extent to which the project will become used and useful, or at what time. The Energy Gateway project almost certainly will add to PacifiCorp's ability to export its own power and to increase its offerings of through-and-out transmission service. But, the magnitude of those increased revenues has not been estimated, and the proposed rate increase is not explicitly offset in whole or in part by revenue credits that should flow from those increased revenues.

FERC is planning to wait for its allocation proceeding because PacifiCorp explained "that it will ask state regulators to include the Project's investment in retail electric rates; to the extent that the recovery of all of the transmission investment is permitted in its retail rate base." 125

[10] RMP's presentation of the rate impacts from its two MPA cases is misleading. RMP appears to imply that the rate impact from deferral would be $67.8 million ***plus*** $69.8 million. RMP Br. at 7 (stating that $67.8 million "would be *in addition to* the approximately $69.8 million ongoing") (emphasis in original). This is not the case.

[11] Thirty-six percent of this amount is $39,7802,708.44.

[12] Thirty-six percent of this amount is $31,352,400.

FERC ¶ 61,076, ¶ 12. The Commission cannot know at this time how much of the cost recovery should be allocated to Utah ratepayers versus wholesale customers, and a decision too soon will likely result in Utah ratepayers bearing costs that are more than their commensurate benefits.

C. The Company Failed to Explain Why the Flawed Cost of Service Study Meets the Standard of "Appropriate" Billing Components for Allocation of Costs to Utah Ratepayers.

UIEC has argued in the past several GRCs that the Company's cost of service study is seriously flawed. In the last GRC, Docket No. 09-035-23, the Company admitted that it had been using a methodology that distorted the forecasted loads, and it filed an updated cost of service study with its rebuttal. *See* Report & Order on Rev. Requirement, Cost of Serv., & Spread of Rates at 118 (Feb. 18, 2010). The Division argued that the Company's load research program does not meet the Public Utility Regulatory Policies Act precision standard, *id*. at 117, and proposed that in the future, the Company's sample design be altered and its stratification process changed. *Id*. Complaints were also raised by UIEC and UAE. As a result, the Commission ordered that the issues raised by all the parties "***must be addressed going forward***," and directed the Division to convene work groups to study the issues. *Id*. at 122 (emphasis added). Nevertheless, the Company filed this Application that suffers from all these unresolved issues without any testimony explaining why such a flawed cost of service study should be accepted for cost allocations in this case. There also appears to be a mismatching of the period used for revenue versus the one used for cost allocation. The Company has the burden to show costs, savings, and benefits, but it has not done so.

RMP's Application in this case, just as in the previous MPA case is a declaration of what the Company wants done. *See* RMP Br. at 11-12. However, it falls short of a well-reasoned explanation of why that course of action should be taken. It used the same flawed costs of service study as that used in its rebuttal testimony of the last GRC, thus, it did not provide reasonably projected costs, savings, and benefits. It also failed to provide testimony that would address the concerns that had been raised about the issues reserved from the MPA I case, yet they remain. A GRC is the best place for these to get resolved.

The Commission needs no new evidence, as suggested by the Division, to review this deferral request. The Application provides all the financial information needed for a revenue requirement determination. The Company's filing is based on the same flawed cost of service study it filed in the last GRC, despite the statutory requirement to use appropriate billing components and to show reasonably projected costs, savings, and benefits. Nothing has been solved with respect to that data.

Furthermore, the Company's argument that deferral "would create additional intergenerational subsidization" ignores these issues and is directly the reverse of what would happen. RMP Br. at 8. The current cost of service study perpetuates intergenerational subsidization. As is evident from the Company's testimony, the users of the system are the future generators it expects. Therefore, to prevent additional intergenerational subsidization, the MPA amounts should be deferred.

III. UIEC'S MOTION IS CONSISTENT WITH THE STATUTE.

A. UIEC's Request for Deferral is Consistent with the Statute.

RMP either does not understand the import of UIEC's motion or the Company is deliberately obfuscating. UIEC asks that the Commission only determine the revenue requirement for MPA II during the time applicable to this current Application.[13] UIEC asks that the remainder of the case be deferred until a GRC.

[13] UIEC reserves, however, that if the costs are mainly to benefit a merchant function, Utah's share may not be able to be determined.

This is not at all inconsistent with the statute. In fact, it is precisely what was done in MPA I—at the Company's request, no less—so it is not clear why the Company would suddenly claim that such a process is inconsistent with the statute. A revenue requirement must be done to know what amount to defer. The statute allows an amount to be deferred. Therefore, the statute is consistent with the concept of determining a revenue requirement based upon a MPA application, with the balance of the case to be determined later—in a general rate case.

Furthermore, the proposed schedule in this case anticipates that the elements of the case be broken down similarly such that deferral can easily be accomplished. The stated purpose of the hearing scheduled for December 6 is "for (i) approval of any settlement, or (ii) revenue requirement issues, absent a settlement; or (iii) ***cost of service and rate design issues, in the event of a revenue requirement settlement***." Docket No. 10-035-89, Scheduling Order ¶ 1 (emphasis added). The purpose of the hearing that may be held December 13 is "for cost of service and rate design issues, in the absence of a settlement." It is contemplated, therefore, that the issues of revenue requirement be determined separately from the cost of service and rate design issues. Thus, the Company's argument rings hollow.

B. <u>A Motion for Deferral Is UIEC's Only Remedy Under the Circumstances.</u>

UIEC does not argue with the Company that UIEC did not move for a finding that the Application in this case was incomplete. That is because all the parts required under the rules were filed. However, the statute requires that any cost recovery be allocated based on the appropriate billing components. There is no standard for what are the appropriate billing components. As explained above, the appropriate billing components are likely those that consider conditions that best reflect those a public utility will encounter during the period when the rates will be in effect. Those based on data gathered in 2008 likely do not meet that standard.

Because the Application was not incomplete, but the appropriate billing determinants have not been used, the only remedy left under the statute was to move for deferral. That is why UIEC has proceeded in this way.

Furthermore, the statute requires that RMP meet the burden of showing the impacts based on reasonably projected costs, savings, and benefits. Whether that was done could not be determined from the face of the filing itself. So similarly, the only remedy under the statute was to move for deferral.

IV. <u>PACIFICORP'S CASH FLOW COMPLAINTS DO NOT HOLD UP UNDER EXAMINATION.</u>

The Company states that granting UIEC's Motion "would be harmful to [RMP]," but provides no support for this assertion. RMP Br. at 10. Saying it, does not make it so.

The Company states that access to capital is critical and cites its major capital build cycle. *Id*. Cash flow is not typically used to finance capital investment. It is generally used to meet operating expenses, service debt, and pay dividends. Upon entering service, the project will alleviate congestion and increase transmission capability for through-and-out transmission service. The associated revenues will provide additional cash flow that has not been taken into account by PacifiCorp.

The Company has explained how it has funded the Energy Gateway project in its testimony, explaining it:

> [U]ses a blend of capital including operating cash flows, the issuance of new long-term and short debt and new equity capital to fund the construction of the Plant Additions. The long-term debt issuance of January 2009 helped fund a portion of the costs of the Plant Additions. In addition, the $125 million capital contribution received during December 2009 and the $100 million capital contribution received during June, 2010 from our indirect parent company, MidAmerican Energy Holdings Company, also assisted in financing the Plant Additions.

Williams D. Test. 1:22-2:29. The Company makes no claim that this has caused a problem or that it does not have adequate access to capital.

Pursuant to PacifiCorp's ***most recent*** 10-Q, which is attached hereto as Exhibit I,[14] for "Future Uses of Cash":

> PacifiCorp has available a variety of sources of liquidity and capital resources, both internal and external, including net cash flows from operating activities, public and private debt offerings, the issuance of commercial paper, the use of unsecured revolving credit facilities, capital contributions and other sources. These sources are expected to provide funds required for current operations, capital expenditures, debt retirements and other capital requirements. The availability and terms under which PacifiCorp has access to external financing depends on a variety of factors, including PacifiCorp's credit rating, investors' judgment of risk and conditions in the overall capital market, including the condition of the utility industry in general. . . . Certain authorizations or exemptions by regulatory commissions for the issuance of securities are valid as long as PacifiCorp maintains investment grade ratings on senior secured debt.

Id. at 32.

The report notes that assigned credit ratings are based on each credit rating agencies' assessment of PacifiCorp's ability to, in general, meet the obligations of its issued debt or preferred securities. *Id*. at 38. PacifiCorp's ratings are as follows: (1) Senior secured debt: Fitch A-, Moody's A2, Standard & Poor's A; (2) Senior unsecured debt: Fitch BBB+, Moody's Baa1, Standard & Poor's A-; Outlook: Stable from all three agencies. *Id*. The report continues by stating:

> PacifiCorp has no credit rating downgrade triggers that would accelerate the maturity dates of outstanding debt, and a change in ratings is not an event of default under the applicable debt instruments. PacifiCorp's unsecured revolving credit facilities do not require the maintenance of a minimum credit rating level in

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[14] The Company attached its previous Form 10-Q (March 31, 2010) as Exhibit BNW-3 to the Testimony of witness Bruce N. Williams.

order to draw upon their availability.

Id. It does not appear, therefore, that cash flow or funding is really a problem.

CONCLUSION

Based on the foregoing, UIEC requests that the Commission grant its request for deferral of both the MPA I and MPA II amounts to be allocated in a future general rate case. The new statute is a narrowly tailored prohibition against "single item rate making" or "abbreviated" rate cases and only allows the Commission to provide recovery through certain legislatively prescribed methods. The statutory language is clear—the MPA I amount must be deferred to a GRC.

Section 54-7-13.4 requires that the Company meet the burden of showing that any major plant addition impacts are based on reasonably forecasted costs, savings, and benefits. The Company has failed to meet that burden. The statute requires that the Commission impose cost recovery allocation based on reasonable billing components. The Company's filing makes that impossible to do at this time.

The Company has failed to adequately explain the benefits of the Populus to Terminal line so that costs can be fairly allocated to those who are likely to benefit. The Company has failed to explain in sufficient detail the complete pool of potential beneficiaries and the amount that will be allocated to each commensurate with their respective benefits. The cost to Utah ratepayers that will result due to deferral is insignificant in comparison with the unnecessary cost to Utah ratepayers if these questions are not fairly addressed before costs are allocated.

Deferral of the MPA II amount is consistent with the statute and based on the principles of equity and efficiency, deferral should be granted.

Therefore, UIEC respectfully requests that the Commission enter an order (1) bifurcating the revenue requirement issue alone for determination as a result of this Application; (2) denying

RMP's request for recovery of the deferral amount from Docket No. 09-035-13 to begin January 1, 2011, and ordering that such recovery must be made in a general rate case; (3) denying RMP's request for recovery of the amount to be recovered as a result of this current Application, and ordering that such recovery must be made in a general rate case.

RESPECTFULLY submitted this 16th day of September, 2010.

/s/ Vicki M. Baldwin
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Attorneys for UIEC, an Intervention Group

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September 2010, I caused to be e-mailed, a true and correct copy of the foregoing **REPLY IN SUPPORT OF UIEC'S MOTION TO DEFER RECOVERY OF THE MAJOR PLANT ADDITION COSTS** in Docket No. 10-035-89 to:

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