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March 28, 2019

***VIA ELECTRONIC FILING***

Utah Public Service Commission  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84114

Attention: Gary Widerburg  
Commission Secretary

RE: **Docket No. 18-035-48** - In the Matter of the Application of Rocky Mountain Power's Request for an Accounting Order for Settlement Charges Related to its Pension Plans.

In accordance with the Scheduling Order and Notice of Oral Argument issued by the Utah Public Service Commission in the above referenced docket, Rocky Mountain Power hereby submits for filing its brief.

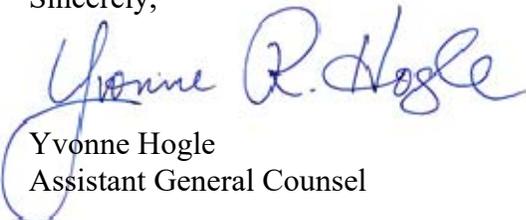
Rocky Mountain Power respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

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Sincerely,



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*Attorneys for Rocky Mountain Power*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

Application of Rocky Mountain Power for an Accounting Order for Settlement Charges Related to its Pension Plans	Docket No. 18-035-48 <b>BRIEF OF ROCKY MOUNTAIN POWER</b>
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “the Company”), submits this brief in support of its Application for Approval of a Deferred Accounting Order (“Application”) as directed in the Commission’s Scheduling Order and Notice of Oral Argument issued March 5, 2019. This brief will demonstrate that the Application presents the type of circumstance for which deferred accounting is appropriate and should be granted as a matter of sound regulatory policy.<sup>1</sup>

**INTRODUCTION**

The Application seeks authority from the Commission for the Company to defer and amortize the impact of a pension event. There is no dispute that (1) the Company is entitled to recover its prudently incurred costs associated with providing pension benefits to its employees,

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<sup>1</sup> Parties have filed comments and reply comments on the Application. The Division of Public Utilities (“Division”), the Office of Consumer Services (“OCS”), and the Utah Association of Energy Users (“UAE”) opposed the Application in their comments filed on Feb. 1, 2019. The Reply Comments of Rocky Mountain Power filed Feb. 19, 2019, fully rebutted their arguments. This brief will generally not repeat the Company’s arguments made in its Reply Comments, but incorporates them to the extent that parties continue to rely in their briefs on the same arguments.

(2) the Company has properly recorded its pension expenses and accrued liabilities, (3) decisions by retired employees with regard to receipt of their pension benefits resulting from the extended low-interest rate environment have caused a pension event requiring the Company to expense approximately \$22 million in 2018 that would otherwise have been amortized over the expected life of the pension plan participants, and (4) no similar pension event has occurred for the past decade.<sup>2</sup> The Application simply seeks authority to defer the expected impacts associated with the occurrence of this event and amortize the impact of the pension event over the same period that is used to amortize the underlying regulatory asset with the opportunity to seek recovery of the annual amortized amount in rates in a future rate case.

Requests for deferred accounting should be reviewed on a case-by-case basis. When unusual events occur resulting in significant expenses or revenues that were not foreseen in the prior rate case, the Company should be able to defer the expenses or income associated with them, establish a regulatory asset or a liability, and amortize them over a reasonable period of time. This will provide an opportunity for rates to be set in the future on the basis of all of the Company's normalized revenues and costs.

The Division and OCS supported deferral and amortization of a similar pension event in the past.<sup>3</sup> Nonetheless, they argue that deferral and amortization is not appropriate now because the Company has not filed a rate case since 2014 and the impact of the pension event is not being considered in the context of a rate case in which all changes in revenues and costs since the last rate case may be considered. The OCS also suggests that the impact of the event has apparently not impacted the Company's earnings because the Company has not filed a rate case. UAE has

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<sup>2</sup> The amount has been updated to actuals.

<sup>3</sup> As discussed in the Company's Reply Comments, the Division and OCS supported deferral and amortization of a pension event in the 2008 rate case. *See* Reply Comments at 3–6.

simply stated, without explanation or support, that the Company has not made a persuasive case that deferred accounting is in the public interest. These arguments are unpersuasive because they misunderstand the purpose and effect of deferred accounting and seek to apply it differently depending on whether it is sought in a rate case or between rate cases.

The pension event that occurred in 2018 qualifies for deferred accounting and amortization. It was unusual and was clearly not foreseen and its impacts were not known nor could they have been reasonably anticipated during the Company's last rate case. The event was caused by factors outside of the Company's control. In addition, the impact of the event is sufficiently large to justify deferred accounting. Whether deferred amounts will be included in rates will be determined in a future rate case.

### **ARGUMENT**

The purpose of deferred accounting—the creation of a regulatory asset or liability—is to defer recognition of expenses or revenues in a current period for possible ratemaking treatment in a subsequent period. A decision to grant deferred accounting is simply a decision to allow a utility to defer either expenses or revenues that are otherwise required to be recognized as an expense or revenue in a current period. It is typically used to smooth otherwise spiky expenses or revenues consistent with the concept that rates should be established based on anticipated normal and recurring revenues and expenses. The Commission has granted deferred accounting in a wide variety of circumstances indicating that requests for deferred accounting are considered on a case-by-case basis.<sup>4</sup> Although the Commission is not bound by financial accounting rules and guidelines regarding whether it is appropriate to defer an expense or revenue, the rules and guidelines may

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<sup>4</sup> Although the Company does not agree with some aspects of the Division of Public Utilities Guidelines for Allowance of Deferred Accounting, *see* Direct Testimony of David T. Thomson, Exh. 1.1, Docket Nos. 06-035-163, 07-035-04 & 07-035-14 (Utah P.S.C. Sept. 10, 2007), the Guidelines correctly recognize that requests for deferred accounting should be considered on a case-by-case basis.

provide factors to consider in reviewing a request for deferred accounting. *See, e.g.*, Report and Order, Docket No. 06-035-163 (Jan. 3, 2008) (“2008 Order”) at 13. On the other hand, as the Commission concluded in its 2008 Order, allowing deferred accounting “is an indication, if but an early tentative one, that there is a likelihood that the particular expense can be included in a future revenue requirement determination.” *Id.* at 16–17. The Commission stated that this conclusion meant that “ratemaking rules and principles . . . may be given greater weight than accounting rules and principles in considering whether to issue an accounting order.” *Id.* at 17.<sup>5</sup>

**A. The Application Is Consistent with Applicable Accounting Standards.**

The accounting standards applicable to deferred accounting are found in the Uniform System of Accounts (“USOA”) promulgated by the Federal Energy Regulatory Commission (“FERC”), 18 C.F.R. Part 101, Definition 31 and Account 182.3, and adopted by the Commission, Utah Admin. Code R746-310-7.A.

USOA allows the creation of regulatory assets and liabilities.

31. *Regulatory Assets and Liabilities* are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determination in one period under the general requirements of the Uniform System of Accounts but for it being probable:

A. that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or

B. in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.

18 C.F.R. Part 101, Definition 31. The USOA further provides that other regulatory assets should be recorded in Account 182.3. 18 C.F.R. Part 1, Account 182.3.

In addition to USOA, regulators have referred to Financial Accounting Standards No. 71

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<sup>5</sup> Contrary to this guidance, the Parties have focused almost entirely on the fact that the Company has not filed a rate case since 2014 rather than on ratemaking rules and principles or accounting standards in their comments.

(“FAS 71”) in considering deferred accounting.<sup>6</sup> FAS 71 is now codified at Accounting Standards Codification (“ASC”) Topic 980. ASC Topic 980 provides, in part:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a. It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. . . .

ASC 980-340-25-1. “Probable” is defined in Topic 450 as: “The future event or events are likely to occur.” ASC 450-20-20.

It is important to recognize that ASC 980 does not prescribe standards for issuance of accounting orders by the Commission, but instead sets the standard for the proper valuation related to the impact of such accounting orders and reporting to external investors and financial audiences. Once a company has received an order allowing deferral of costs under the USOA, the probability determination referenced in ASC 980 is a *management* test. The granting of a deferred accounting order by the Commission is separate and apart from this management determination. Thus, the Commission need not consider whether it is probable that it will ultimately consider the amounts deferred in setting rates in the future in deciding whether to grant an accounting order. Rather, the Commission may simply consider whether there is a reasonable likelihood that it might allow rate recovery of the amounts deferred and whether the amount of the expense is outside the normal range that might be expected in projecting future expenses or the timing of the expense is adjusted

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<sup>6</sup> See, e.g., *In Re United Water Delaware Inc.*, 2010 WL 4915803 (Del. P.S.C. Sept. 21, 2010); *In Re Consumers Energy Co.*, 2012 WL 666053, at \*1 (Mich. P.S.C. Feb. 15, 2012); *In Re Kingsport Power Co.*, 2013 WL 8769161, at \*2 (Tenn. P.S.C. Nov. 13, 2013).

by the event. *See* 2008 Order at 16–17.<sup>7</sup>

Based on the foregoing accounting standards and principles that are applicable to a Commission decision on whether to grant deferred accounting, a regulatory asset may be created if an expense is incurred in the current period that may appropriately be included in determining rates in a future period. The pension event clearly presents a circumstance justifying deferred accounting based on accounting standards and principles.

**B. The Application Should Be Granted under Reasonable Ratemaking Standards.**

As a general rule, rates are set following a general rate case in which all aspects of expenses, revenues and investments are considered to determine the level of rates that is designed to produce revenue sufficient to cover the costs incurred by a public utility in providing service to its customers during the period rates will be in effect. *Utah Dept. of Business Regulation v. Public Service Comm’n*, 720 P.2d 420 (Utah 1986) (“*EBA Case*”); *Utah Dept. of Business Regulation v. Public Service Comm’n*, 614 P.2d 1242, 1248 (Utah 1980) (“*Wage Case*”). Because rates are set for a future period, unusual costs or revenues are typically normalized to assure that rates are set to recover reasonably anticipated costs and not based on extreme events. R. Hahne and G. Aliff, *Accounting for Public Utilities* (LexisNexis 2008) at § 7.05. Granting deferred accounting does not depart from and is consistent with these principles. First, it does not set or change rates. Second, deferral and amortization is allowed for revenues or costs that are unusual and would typically not be allowed to be recovered in full in setting rates as a result of normalization, but instead would be amortized over a certain period.<sup>8</sup>

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<sup>7</sup> FAS 71 stated previously that “[t]he provisions of this Statement need not be applied to *immaterial* items.” (emphasis in original.) This led to debates about whether a revenue or expense proposed to be deferred had a material impact on earnings and, if so, if other accounting standards for materiality applied. ASC 980 no longer includes this statement, so the Commission need not consider this issue.

<sup>8</sup> *See, e.g., Office of Consumer Counsel v. Dep’t of Pub. Util. Control*, 905 A.2d 1, 1415 (Conn. 2006); *Re Missouri-American Water Co.*, 2004 WL 2579639 (Mo. P.S.C. Nov. 10, 2004); *Bus. and Prof’l People for the Pub. Interest v. Ill. Commerce Comm’n*, 563 N.E.2d 877, 881 (Ill. App. 1990); 2008 Order at 17.

Granting an application for deferred accounting does not amount to retroactive or single-issue ratemaking.<sup>9</sup> To the contrary, an application for deferred accounting is the opposite of retroactive ratemaking and is not single-issue ratemaking because, as recognized by the Commission, the rate treatment of the deferred amounts will only be considered in a future rate case where all revenues and expenses are considered. *See* 2008 Order at 16. Nonetheless, in the 2008 Order, the Commission stated that “[t]he rule against retroactive ratemaking, exceptions to the rule and their underlying rationales have application in considering whether an accounting order should be issued.” *Id.* at 16. Although the Commission was simply identifying factors that may be considered, the Division and OCS have apparently misinterpreted this language to argue that the Application is similar to piecemeal or retroactive ratemaking.

With regard to exceptions to the rule against retroactive ratemaking, the Commission cited *MCI Telecommunications Corp. v. Utah Public Service Comm’n*, 840 P.2d 765 (Utah 1992), “which recognized an exception to the rule against retroactive ratemaking exists where future rates can be influenced by ‘unforeseeable and extraordinary’ changes in expenses or revenues.” 2008 Order at 15. The Commission stated that “the extraordinary and unforeseeable nature of the expenses recognized under the exception differentiates them from expenses inaccurately estimated because of a misstep in the rate-making process, such as the inability to predict precisely, or from mismanagement.” *Id.* The Commission concluded that “the ratemaking principle that recognizes possible exceptions for unforeseen and extraordinary events also includes exceptions for events which may be known or foreseeable, but whose impact upon the revenues or expenses of the utility are unforeseeable and extraordinary or whose actual manifestations vary from their projections in an unforeseeable and extraordinary way.” *Id.* at 19.

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<sup>9</sup> See, e.g., *Bus. and Prof’l People*, 563 N.E.2d at 881 (“Nor does the order [for deferred accounting] constitute a backdoor approach to single-issue or retroactive ratemaking.”).

The Commission further discussed issues related to timing of raising issues for deferred accounting relative to a rate case in the 2008 Order. Where the subject of an expense was known at the time of a prior rate case, the Commission concluded that “[f]ailure to include costs or the inclusion of costs at different levels in a past rate case appears to draw closer to . . . missteps in the ratemaking process rather than unforeseen and extraordinary occurrences.” *Id.* at 20. However, contrary to the arguments of the Division and OCS, the Commission did not suggest that different standards apply when deferred accounting is considered in a rate case than when it is considered between rate cases.

The Commission has consistently approved deferred accounting when unusual and significant expenses or revenues are included in the test period in a rate case for normalization purposes.<sup>10</sup> It has also consistently approved deferred accounting when an unusual and significant revenue or expense arose between rate cases that was not known or reasonably foreseeable during the prior rate case.<sup>11</sup> These decisions indicate that deferred accounting may be granted between rate cases if the expense or revenue was unforeseen during the prior rate case and if deferred accounting would have been required had the expense or revenue been included in the test period during the rate case.

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<sup>10</sup> *See, e.g.*, Report and Order, Docket No. 13-035-184 (Utah P.S.C. Aug. 29, 2014) at 11-12, 70 (approving deferred accounting for Energy Imbalance Market costs); Report and Order, Docket No. 11-035-200 (Utah P.S.C. Sept. 19, 2012) at 28-29 (approving deferred accounting for power plant decommissioning costs, costs for air quality upgrades, depreciation expenses and wheeling revenues); Report and Order, Docket No. 99-035-10 (Utah P.S.C. May 24, 2000) at 60-64, 68-70 (approving deferred accounting for costs for Y2K, Noell Kempf Climate Action Project, reengineering and Glenrock Mine Closure).

<sup>11</sup> *See, e.g.*, Report and Order Memorializing Bench Ruling, Docket No. 14-035-147 (Utah P.S.C. Apr. 29, 2015) (allowing deferred accounting and amortization of costs associated with closure of the Deer Creek mine); Order, Docket No. 10-035-38 (Utah P.S.C. Sept. 13, 2010) (allowing deferred accounting and amortization of costs associated with a tax law change on the deductibility of certain post-retirement benefits); Bench Order (*see* Transcript of Hearing), Docket No. 08-035-93 (Utah P.S.C. Jan. 12, 2009) at 15-16 (allowing deferred accounting for a pension event); Report and Order, Docket No. 04-057-03 (Utah P.S.C. June 24, 2004) (allowing deferred accounting for costs associated with new federal safety requirements); Report and Order, Docket No. 01-035-02 (Utah P.S.C. Apr. 4, 2002) (approving deferred accounting and amortization of costs associated with closure of the Trail Mountain mine); Report and Order, Docket No. 00-2035-01 (Utah P.S.C. Jul. 12, 2000) (approving deferred accounting for employee severance costs associated with ScottishPower’s acquisition of PacifiCorp).

This reasonable and balanced approach is the opposite of that urged by the Division and OCS—that deferred accounting is appropriate and readily available during rate cases especially if it involves amortization of an unusually high expense, but should be denied except in the most extreme and extraordinary circumstances outside a rate case and then only if it is likely to result in *lower* rates in the future.<sup>12</sup> Just and reasonable rates are those that allow a utility a reasonable opportunity to recover its prudent costs, including a reasonable return on its investment in assets employed to serve its customers. *See* EBA Case; Wage Case. Contrary to the apparent concern of the Division and OCS, *see* Division Comments at 4; OCS Comments at 2, the fact that a utility may be earning near its authorized rate of return should not be a cause for concern—it should be viewed as an indication that current rates were just and reasonable when set. Further, contrary to the implications of the Division and OCS comments, the earnings level of the utility has nothing to do with whether deferred accounting is appropriate.

Based on consideration of the foregoing ratemaking rules and principles, the Commission should grant the Application. The pension event was not known or reasonably foreseeable during the Company's 2014 rate case. It is an unusual event caused by economic conditions and decisions of retired employees that are outside the control of the Company. It is sufficiently significant that it justifies deferred accounting. Had it been included in the test period in a rate case, the Division and OCS would have undoubtedly urged that it be amortized over a reasonable period for normalization purposes.<sup>13</sup> And contrary to the Division and OCS comments, granting deferred accounting is not piecemeal or single-issue ratemaking. Before any amounts associated with the event are included in rates, the expense will be subject to thorough review in a rate case in which all revenues and expenses of the Company will be considered.

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<sup>12</sup> *See also* Division Guidelines (*cited* in fn. 3, *supra*).

<sup>13</sup> *See* fn. 2.

### **C. Similar Applications Have Been Routinely Granted in Other States.**

Although the Commission is not bound to follow decisions of other state regulatory commissions, it should consider that other states have granted applications for deferred accounting based on pension events similar to the event giving rise to the Application. For example, the Florida commission granted an application for deferred accounting based on a pension event similar to the event which gave rise to the Application. *In re Progress Energy Florida*, 2006 WL 3837479 (Fla.P.S.C. 2006). The Wisconsin, South Carolina, and New York commissions have done the same.<sup>14</sup>

### **CONCLUSION**

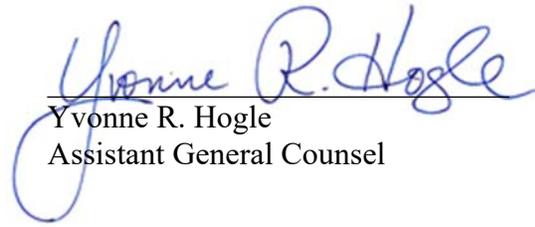
The pension event is the type of event for which deferred accounting is appropriate. The Commission should not be misled by the Division and OCS which are really just arguing that deferred accounting should not be granted because the Company has not filed a rate case for over four years. The fact that the Company has been able to maintain stable rates through management of expenses within its control for several years should not be the basis for denying deferred accounting for an unusual expense that was not foreseeable during the last rate case, that is outside the control of the Company and that is significant. If the pension event were included in a test year in a rate case, it undoubtedly would have been deferred and amortized. The Company respectfully requests that the Commission authorize the deferral and amortization of the impact of the pension event as requested in the Application.

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<sup>14</sup> See, e.g., *Application of N. States Power Co.*, 2018 WL 6804734, at \*2 (Wis. P.S.C. Dec. 21, 2018); *In Re Petition of Piedmont Nat. Gas Co., Inc.*, 2007 WL 8447375, at \*1 (S.C.P.S.C. Nov. 1, 2007); *In Re Niagara Mohawk Power Corp.*, 2004 WL 1813847 (N.Y.P.S.C. Aug. 11, 2004).

Respectfully submitted March 28, 2019.

ROCKY MOUNTAIN POWER

  
Yvonne R. Hogle  
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**CERTIFICATE OF SERVICE**

Docket No. 18-035-48

I hereby certify that on March 28, 2019, a true and correct copy of the foregoing was served by electronic mail to the following:

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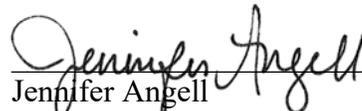
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