

PATRICIA E. SCHMID (#4908)
JUSTIN C. JETTER (#13257)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380
pschmid@agutah.gov
jjetter@agutah.gov

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**APPLICATION OF ROCKY MOUNTAIN
POWER FOR AN ACCOUNTING
ORDER FOR SETTLEMENT CHARGES
RELATED TO ITS PENSION PLAN**

**Docket No. 18-035-48
BRIEF OF THE
DIVISION OF PUBLIC UTILITIES
OPPOSING APPLICATION**

Pursuant to the March 5, 2019, Scheduling Order, the Division of Public Utilities (Division) submits this brief urging the Public Service Commission of Utah (Commission) to deny Rocky Mountain Power's (Utility or Company) December 31, 2018, "Application for Approval of a Deferred Accounting Order" (Application).

Contrary to the Utility's argument, the Financial Accounting Standard Board's requirements for deferral accounting reporting do not mandate regulatory deferral accounting treatment. The Utility's request for an opportunity to recover amounts in future rates should be denied because the foreseeable and unextraordinary pension event does not qualify for an exception to the rule prohibiting retroactive ratemaking. Furthermore, the Company's request for prior authorization for deferral accounting treatment of similar future pension events reveals that even it does not really view the pension event as extraordinary and unforeseen. The

Company's claim that granting its Application would stabilize pension expenses is not adequate justification for its requests. Pension expenses have already been quite stable, and stabilization is not a sufficient argument for deferral accounting. Approving the Application is not in the public interest. The Company fails to satisfy its burden of proof and the Application should be denied.

I. BACKGROUND

The Utility notes that because of a 2018 pension event (Pension Event):

Accounting Standards Codification (ASC) 715-30, which is the Financial Accounting Standards Board (FASB) accounting standard governing defined benefit pension plans, requires the Company to recognize portions of these otherwise amortizable costs in earnings that year rather than continuing to record such costs as a regulatory asset or liability for amortization over a period of years.¹

The Company claims it will be required to “expense approximately \$21 million [on a PacifiCorp-wide basis] in pension-related costs for the year and this is likely to reoccur in future years as well, given the number of plan participants nearing retirement age and the current low interest rate environment.”² The Company also claims that granting its requests will stabilize pension costs.³ Specifically, the Application seeks to defer these Pension Event related costs and seeks an opportunity to recover them in future rates. In addition, the Company requests prior authorization for deferral accounting treatment of future similar events.

The Division, the Office of Consumer Services (Office), and the Utah Association of Energy Users (UAE) each filed comments opposing the Application and urging the Commission to deny the Utility's requests.⁴ The Company filed response comments. Subsequently, a

¹ Application at p. 2.

² Application at p. 2. Of that \$21 million, Utah's allocated share is approximately \$9 million.

³ See, e.g., Application at pp. 2 and 9.

⁴ The Division and the Office filed comments February 1, 2019, and UAE filed February 4, 2019. The Utility filed reply comments February 19, 2019.

briefing schedule and a date for oral arguments were issued.

II. ARGUMENT

A. The Pension Event Does Not Satisfy Established Commission and Court Criteria for Regulatory Deferral Accounting Treatment

The Company fails to satisfy its burden of proof to show that deferral accounting treatment should be granted and, thus, the Application should be denied. The Pension Event does not justify a departure from the rule against retroactive ratemaking. The Pension Event does not qualify for deferral accounting treatment because it was not unforeseen and extraordinary. Nor does it qualify under the Commission's expanded test for deferral accounting treatment which requires an unforeseen and extraordinary effect upon the Company's revenues and expenses or actuals which unforeseeably and extraordinarily vary from projections.⁵ Also without merit are the Company's arguments that the Pension Event was out of its control, thus warranting deferred accounting treatment. Even if the Pension Event somehow qualified, granting the Company's requests is not in the public interest.

1. The Company Fails to Justify Departing from the Rule Against Retroactive Ratemaking

The rule against retroactive ratemaking should be applied here and the Company's requests should be denied. Under the regulatory paradigm, generally rates are to be set on a forward going basis and utility missteps do not justify retroactively changing rates.⁶

Additionally, allowing deferral of Pension Event costs so that recovery may be considered in

⁵ See In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order To Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization, Docket No. 06-035-163; In the Matter of the Application of Rocky Mountain Power for an Accounting Order To Defer the Costs Related to the MidAmerican Energy Holdings Company Transaction, Docket No. 07-035-04; and In the Matter of the Application of Rocky Mountain Power for an Accounting Order for Costs related to the Flooding of the Powerdale Hydro Facility, Docket No. 07-035-14, January 3, 2008 (January 2008 Order).

⁶ See, generally, Utah Department of Business Regulation v. Utah Public Service Commission, 720 P.2d 420 (Utah 1986) (EBA Case) and MCI Telecommunications Corporation v. Utah Public Service Commission, 840 P.2d 765 (Utah 1993) (MCI Case).

future rates distorts the ratemaking processes because only certain costs would be captured for recovery while other costs and revenues during that same time period would be ignored.

A current scenario involving a utility contract is a great example of this. In a special contract entered into in recent years, the Utility was allowed to retain a portion of new revenues. At the time the contract was executed and approved, parties anticipated a general rate case occurring soon afterward that would allow these revenues to be reflected in rates. However, the Utility then made its public pledge to not file a general rate case for some years. The Utility has happily kept the extra revenues resulting from that contract, which certainly was not foreseen the last time general rates were established.

2. The Foreseeable and Not Extraordinary Pension Event Fails to Qualify for Deferral Accounting Treatment under Commission Standards

a. The Pension Event Was Foreseeable

The Commission addressed standards for deferred accounting treatment in its January 2008 Order addressing the Utility's request for deferral accounting related to Grid West, MidAmerican, and the Powerdale Plant.⁷ Applying the Commission's rationale to the Utility's requests in this docket demonstrates that the Utility's requests should be rejected.⁸

⁷ The Utah Supreme Court has also addressed these issues. See the EBA Case and the MCI Case, *supra*.

⁸ The Application cites two prior dockets in which the Utility sought deferred accounting treatment. However, because those dockets were resolved by Commission approval of a settlement, the Division believes that, by their terms, they are worth little as precedent. Nonetheless, because the Utility's reply comments extensively address Docket No. 08-035-93, the Division will address that docket in this brief. The Company's reply comments also mention other deferred accounting orders, but those orders are not controlling here.

The Pension Event was foreseeable, and the Utility’s statements themselves reveal this foreseeability.⁹ Further, recent history suggests pension events were not all that uncommon.¹⁰ The Pension Event settlements from which the Company seeks relief are a designed function of the plan, known for some time. In its Application, the Company admits that a low interest rate will encourage the behavior it now claims is unforeseeable. The Company states, “The Company’s threshold for settlement has declined over the last few years due to low interest costs resulting from decreased discount rates and lower service cost due to freezing of the pension plans.”¹¹ Additionally, the Utility acknowledged, “A low interest rate environment that incentivizes retirees to elect lump sum cash distributions coupled with a low threshold results in higher likelihood of future settlements” and “[c]hanges in discount and interest rates may result in more years with total annual settlement amounts that exceed the threshold for recognition of gains and losses.”¹² Data from recent years suggest the 2018 settlements were not anomalous.¹³

⁹ The Pension Event is also foreseeable because unforeseeability does not result from the “inability to predict precisely, or from mismanagement.” MCI case at p. 771.

¹⁰ The Company’s response to OCS Data Request 1.10 shows that the 2018 Pension Event was not unforeseeable and extraordinary. Nor does it qualify under the Commission expanded test. For example, using Company provided data, contrast the number of employees receiving lump sum distributions and the amount of those distributions under the plan for past and forecasted years (footnote omitted):

Past Years		Future Years	
Number of Employees	Lump Sum Distributions	Number of Employees	Lump Sum Distributions
2013 - 204	2013 - \$52,183,189.75	2019 - 200	\$30,000,000 to \$40,000,000
2014 - 150	2014 - 22,015,658.47	2020 - 200	30,000,000 to 40,000,000
2015 - 216	2015 - 40,516,663.62	2021 - 200	20,000,000 to 30,000,000
2016 - 224	2016 - 31,927,445.97	-	-
2017 - 205	2017 - 39,949,967.56	-	-
2018 - 211	2018 - 52,249,575.45	-	-

The Company’s response to OCS Data Request 1.10 is attached as Exhibit A.

¹¹ Application at p. 8.

¹² Application at p. 8.

¹³ See the Company’s response to OCS Data Request 1.10.

Interest rates have been low and pension participants have been aging for quite some time. Just as it could have done at its last general rate case, the Utility is free to argue for some realization of these projections in rates at its next general case, which could be filed at any time it wishes.

There is simply no allegation in the Company's Application or reply comments that the pension settlement process has meaningfully changed since the last general rate case. The last general rate case offered the Utility an opportunity to seek some mechanism to address pension settlements involving this pension plan, which its management voluntarily and willingly established as part of its employee compensation package. The Company's rate case "stay out" obligation terminated January 1, 2016, and by voluntarily promising not to raise base rates until 2021, the Company has made the business decision not to file to reset costs and revenues to determine new rates in a general rate case.¹⁴

b. The Pension Event Was Not Extraordinary

In addition, the Pension Event was not extraordinary. Just as the Company's own words acknowledged that the Pension Event was foreseeable, those same words and more acknowledge that the Pension Event was not extraordinary.¹⁵ In its testimony leading to the January 2008 Order, the Division offered the following comments regarding "extraordinary."¹⁶ The Division characterized "extraordinary" as being "an event which is specific, unusual, unique, infrequent,

¹⁴ See Order in Docket No. 13-035-184. See also the Company's October 23, 2017 press release in which Cindy Crane, Company president and CEO, "pledge[s] to all Utah customers that base rates will not go up any time before the year 2021." The Utility incorrectly asserts that its "business decision to maintain stable rates is not relevant in determining whether the 2018 pension event qualifies for deferred accounting." See Company's reply comments at p. 3. However, the deferred accounting exception to the general rule against retroactive ratemaking is designed to prevent utilities and customers from self-serving piecemeal ratemaking. That other items exist with truly unforeseen expenses or revenues suggests the utility seeks a workaround for its rate pledge. Regardless, the standards for deferral are not met.

¹⁵ See discussion, *supra*.

¹⁶ See January 2008 Order at p. 9. The Division notes that while it has no statutory authority to adopt administrative rules or other provisions that would bind it or other parties in any way, it has used two separate sets of internal, non-binding guidelines for deferred accounting: one for unforeseen and extraordinary events and one for events which provide et future benefit for ratepayers.

material, not ongoing, and not a part of normal operations.”¹⁷ In its reply Comments, the Company claimed that the Pension Event was “beyond the Company’s control, unusual, unique and unforeseen.”¹⁸ The facts bely this assertion.¹⁹ The Company’s request for ongoing preapproval for similar future events highlights that even the Company recognized that the Pension Event was capable of repetition.²⁰

c. Even Under the Commission’s Expanded Criteria, the Pension Event Fails to Justify Deferral Accounting Treatment

The Pension Event still does not qualify for deferral accounting treatment even when analyzing it under the Commission’s expanded test. This expanded test allows deferral accounting treatment where “an event may be known or foreseeable, but whose impact upon the revenues or expenses of the utility are unforeseen and extraordinary or whose actual manifestations vary from their projections in an unforeseeable and extraordinary way.”²¹ In the many years since the Company’s last general rate case, it has recovered more than actual pension expense due to normal operation of the plan. Utah’s \$9 million share of the Pension Event is too small to have an extraordinary and unforeseeable effect upon the Utility’s revenues or expenses, particularly given the low pension expense noted in OCS DR.²² The Pension Event also does not vary from projections in an unforeseen and extraordinary way because pension expense variability is the rule, not the exception.²³

¹⁷ See *id.*

¹⁸ Company’s reply comments at pp. 2-3. The Division also disputes the Company’s claim that the Pension Event was “beyond the Company’s control” in a manner which makes deferral accounting treatment appropriate. Many events are out of the Company’s control; not every event makes deferred accounting appropriate for a regulated utility. Compare and contrast the Grid West and MidAmerican situations to the flooding of the Powerdale Plant as discussed in the January 2008 Order.

¹⁹ See the Company’s response to OCS Data Request 1.10.

²⁰ Additionally, deferral accounting requests should be examined on a case by case basis to arrive at reasonable rates.

²¹ January 2008 Order at p. 19.

²² See, e.g., generally, the Company’s rate case filings and the Company’s response to OCS Data Request 1.10.

²³ See Division’s comments at pp. 4-5.

Given that many other categories of expenses and revenues have likely shifted similarly since the last general rate case, it is not appropriate to single out this one for special treatment. The Utility has tools to manage expenses such as this one, including filing a general rate case with a test year including such expenses. It should not have the ability to choose piecemeal which bits of its business to stabilize with special mechanisms and which ones to keep the added fruits of between general rate cases, the timing of which it generally controls.

d. The Utility's Claim that Deferred Accounting Will Stabilize Pension Costs Is Unpersuasive and Does Not Provide a Rationale for Deferral

The Company's claims about stabilizing pension costs fail to support deferred accounting for the Pension Event. First, pension costs have been relatively stable for over four years to date, and with the Utility's stated intent not to change base rates until 2021, the pension costs to ratepayers could be stable for up to six years.²⁴ Second, "stabilizing costs" is not a recognized criteria for determining deferral treatment in regulatory accounting. The Company's application should be denied.

B. Financial Accounting Standards Requiring "Immediate Recognition" Do Not Dictate Regulatory Deferred Accounting Treatment

Contrary to the Company's assertions, financial reporting requirements do not govern regulatory deferred accounting and the Company's requests should be denied. Accounting Standard 715-30's requirement that the Pension Event be recognized in 2018 rather than amortized is not determinative here. The Commission has recognized that regulatory accounting and financial accounting have "different purposes and goals,"²⁵ stating "Regulatory accounting is a tool to arrive at the regulatory objective of just and reasonable rates."²⁶ The Commission has

²⁴ See Division's comments at p. 4.

²⁵ January 2008 Order at p. 13.

²⁶ January 2008 Order at pp. 13-14.

further noted, “The distinction maintained between regulatory accounting treatment and financial accounting treatment incorporates the understanding that what occurs in one does not necessarily control what occurs in the other.”²⁷

C. Docket No. 08-035-93’s Deferred Accounting Request Has No Bearing Here

In its Reply Comments, the Utility argues that the Division’s position in Docket No. 08-035-93, where the Division supported deferral treatment involving certain pension events, is “relevant and noteworthy.”²⁸ This argument bears little weight for a variety of reasons. First, that docket was settled and by its terms is explicitly nonprecedential. There is no record from which the Commission may deduce what other considerations may have been a part of that settlement stipulation and its entry. Second, the Division’s judgment is not confined to inquiring whether it once supported something similar to what it now opposes. Indeed, current Division management has a duty to consider the facts and law appearing before rendering a judgment about the public interest. Third, the fact that the Division supported a deferral in ratepayers’ favor when the Utility agreed says very little, if anything, about the extent to which it critically examined the relevant considerations.²⁹

D. Granting Deferral Accounting Treatment is Not in the Public Interest

Indeed, were we to seek broad stabilization of costs and revenues, we would upend the very framework of how utility rates are set. Doing so is not in the public interest. Although the Utility has sought and received a number of mechanisms to stabilize certain costs over the years, these mechanisms remain exceptions to the general rule and they have often been accompanied

²⁷ Re PacifiCorp, dba Utah Power & Light Co., Docket No. 99-035-10, May 24, 2000 at p. 57, order on reconsideration, In the Matter of the Application of PacifiCorp for Approval of its Proposed Electric Rate Schedules and Electric Service Regulations, October 6, 2000 (addressing revenue requirements).

²⁸ See the Company’s reply comments at p. 3.

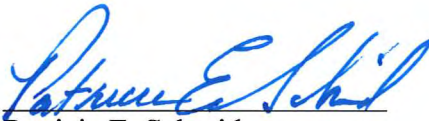
²⁹ The Company’s reply comments also mischaracterize the Division’s positions. See, e.g., Company reply comments at pp. 8-10. The Division disputes the Company’s mischaracterizations.

by legislation directing their consideration or adoption. The Company's Application should be denied.

III. CONCLUSION

The Application should be denied. The Utility has failed to prove that the Pension Event qualifies for regulatory deferral accounting treatment. No departure from the rule against retroactive ratemaking is warranted. The Pension Event was not unforeseen and extraordinary. Nor, if able to be foreseen, did it have an unforeseeable and extraordinary effect upon the Company's costs and revenues or have actual effects unforeseeably and extraordinarily differing from projections. Giving the Utility an opportunity to recover these costs in future rates, especially in light of so many other shifting costs, is unjustified. The facts and law pertaining to each regulatory deferral accounting request should be examined individually and preapproval of future deferrals is contrary to the public interest. Granting the Application's requests is not in the public interest.

DATED this 28th day of March 2019.


Patricia E. Schmid
Attorney for the Utah Division
of Public Utilities

18-035-48 / Rocky Mountain Power
January 18, 2019
OCS Data Request 1.10

OCS Data Request 1.10

- Refer to pages 8 and 9 of the Application discussing anticipated pension events.
- a. For each year, 2013 through 2018, please identify the number of employees that received lump sum cash distributions pursuant to the plan provisions.
 - b. For each year, 2013 through 2018, please provide the total amount of lump sum cash distributions paid to plan participants pursuant to the plan provisions.
 - c. For each year, 2019 through 2021, please provide the currently projected number of employees that will receive lump sum cash distributions pursuant to the plan provisions.
 - d. For each year, 2019 through 2021, please provide the currently projected dollar amount of lump sum cash distributions that will be paid to plan participants pursuant to the plan provisions.
 - e. For each year, 2019 through 2021, please provide the currently projected gain or loss recognition threshold (i.e., projected amount of service cost and interest cost components of net periodic benefit costs).

Response to OCS Data Request 1.10

- a. Number of employees that received lump sum cash distributions pursuant to the plan provisions.

2013 – 204
2014 – 150
2015 – 216
2016 – 224
2017 – 205
2018 – 211

- b. Total amount of lump sum cash distributions paid to plan participants pursuant to the plan provisions.

2013 – \$52,183,189.75*
2014 – \$22,015,658.47
2015 – \$40,516,663.62
2016 – \$31,927,445.97
2017 – \$39,949,967.56
2018 – \$52,249,575.45

* The calendar year 2013 lump sum cash distributions paid to plan participants did not trigger a settlement event, as the aggregate payment in this year did not exceed the defined threshold (service cost plus interest cost) required by ASC 715 to record

18-035-48 / Rocky Mountain Power
January 18, 2019
OCS Data Request 1.10

unrecognized actuarial gains or losses in AOCI or as a regulatory asset.

- c. Currently projected number of employees that will elect to receive lump sum cash distributions pursuant to the plan provisions.

2019 – 200

2020 – 200

2021 – 200

- d. Currently projected dollar amount of lump sum cash distributions that will be paid to plan participants pursuant to the plan provisions.

2019 – \$30,000,000 to \$40,000,000

2020 – \$30,000,000 to \$40,000,000

2021 – \$20,000,000 to \$30,000,000

- e. The currently projected gain or loss recognition threshold is the sum of the service cost and interest cost detailed in Attach OCS 1.6a or 1.6b.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of the Division of Public Utilities Opposing Application filed with the Public Service Commission was emailed on the 28th day of March 2019 to the following in Utah Docket 18-035-48:

BY Electronic-Mail:

Yvonne Hogle
Data Request Response Center
Jana Saba
Rocky Mountain Power

Yvonne.hogle@pacificorp.com
datarequest@pacificorp.com
Jana.saba@pacificorp.com
utahdockets@pacificorp.com

Patricia Schmid
Justin Jetter
Chris Parker
Artie Powell
Erika Tedder
Division of Public Utilities

pschmid@agutah.gov
jjetter@agutah.gov
chrisparker@utah.gov
wpowell@utah.gov
dpudatarequest@utah.gov

Michele Beck
Robert Moore
Steven Snarr
Office of Consumer Services

mbeck@utah.gov
rmoore@agutah.gov
stevensnarr@agutah.gov

Gary A. Dodge
Phillip J. Russell
Utah Association of Energy Users

gdodge@hjdllaw.com
prussell@hjdllaw.com

/S/

Erika Tedder, Paralegal
Utah Division of Public Utilities