- 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 ORDER

ISSUED: May 22, 2019

The Public Service Commission ("PSC") denies PacifiCorp's ("RMP") Application for Approval of a Deferred Accounting Order ("Application").

1. **Procedural History**

On December 31, 2018, RMP filed its Application. On February 1, 2019, the Division of Public Utilities ("DPU") and the Office of Consumer Services ("OCS") filed comments, and the Utah Association of Energy Users ("UAE") filed comments on February 4, 2019. All recommended the PSC decline to approve the Application. RMP submitted reply comments in support of its Application on February 19, 2019.

On March 5, 2019, the PSC held a scheduling conference and, later that day, issued a Scheduling Order and Notice of Oral Argument, inviting the parties to submit legal briefs and setting the matter for oral argument. The DPU, the OCS, RMP, and UAE submitted legal briefs on March 28, 2019, and the PSC heard all of these parties at oral argument on April 11, 2019.

2. **Factual Background**

The Application explains that RMP "typically records certain pension-related costs and credits as a regulatory asset or liability and amortizes the balance over the actuarial remaining life expectancy of pension plan participants," which "allows for smooth recognition of the unrecognized costs each year through consistent amortization expense." (Application at 2.) RMP further explains that "[i]f certain pension events occur, however, Accounting Standards

Codification (ASC) 715-30 … requires [RMP] to recognize portions of these otherwise amortizable costs in earnings in that year rather than continuing to record such costs as a regulatory asset or liability for amortization over a period of years." (*Id.*) Of particular importance here, "[i]f the aggregate of all lump sum cash distributions in a calendar year exceed a defined threshold (service cost plus interest cost), ASC 715 requires [RMP] to recognize in earnings a pro rata portion of the unrecognized actuarial gains or losses …." (*Id*. at 7.)

The Application explains that economic conditions have caused a significant amount of pension plan participants to take lump sum distributions "in 2018, triggering a requirement for [RMP] to expense approximately $21 million in pension-related losses [the "Settlements"] for the year," and notes "this is likely to recur in future years as well, given the number of plan participants nearing retirement age and the current low interest rate environment." (*Id*. at 2.)

The Application requests authority from the PSC to (1) "defer as part of a regulatory asset associated with the Pension Regulatory Asset, an expense of approximately $21 million [*i.e.*, the Settlements] … which [RMP] must otherwise recognize and record against its income statement under applicable accounting regulations"; and (2) "amortize the expense over the same period as the Pension Regulatory Asset, which is currently being amortized over approximately 21 years, with the opportunity to recover the amount in rates as part of net periodic benefit costs." (*Id*. at 9.) The Application also asks the PSC authorize RMP to defer and amortize the expected impact of "any subsequent similar pension events." (*Id.*) RMP asserts allowing such treatment "would allow for recognition of relatively stable pension costs" and "maintain normalized pension costs and credits and avoid exposing customers to potential cost volatility from single year 'pension events.'" (*Id.*)

The DPU, the OCS, and UAE make numerous arguments and observations in opposition to the Application, including but not limited to the following: (1) the Settlements are "[o]rdinary pension costs" dictated by "normal pension provisions" and "should be set for recovery only in the normal course of a general rate case," not as "piecemeal" or single-issue ratemaking (DPU's Comments at 5-6); (2) the number of employees that retired and received lump sum distributions in 2018 was not anomalous nor was the total amount of the distributions (*see, e.g.,* OCS's Br. at 2-3); and (3) although the last general rate case was settled, actual pension expenses have been substantially lower than the expenses RMP claimed in testimony during that case in each year since and will be significantly lower for 2018 even if the PSC denies the Application for deferred accounting (*see, e.g.,* OCS's Comments at 3).

3. Findings and Conclusions

Utah law recognizes a general rule against retroactive ratemaking, defined as "a utility's recoupment of costs that were greater than projected or revenues that were less than projected from future rates." *MCI Telecommunications Corp. v. PSC*, 840 P.2d 765, 770 (Utah 1992) [hereafter "*MCI*"]. However, the law recognizes several exceptions, including "when an unforeseeable event results in an extraordinary increase or decrease in expenses or revenues." *Id.* at 771. The exception "applie[s] not only to unforeseeable and extraordinary increases in expenses, but also to unforeseeable and extraordinary decreases in expenses." *Id.* The exception contemplates two conditions: (1) the event giving rise to the increase or decrease was unforeseeable; and (2) the increase or decrease is extraordinary. *Id.*

MCI explained the exception to the rule against retroactive ratemaking "cannot be invoked simply because a utility experiences expenses that are greater … than those projected in the general rate proceeding." *MCI* at 772. "An increase or decrease in expenses that is unforeseeable at the time of a rate-making proceeding cannot, by hypothesis, be taken into account in fixing just and reasonable rates." *Id.* at 771. Additionally, the expense must be extraordinary, which is to say "the increase or decrease must have an extraordinary effect on the utility's earnings, [and] the increase or decrease will necessarily be outside the normal range of variance that occurs in projecting future expenses." *Id.* at 771-72.

For example, *MCI* held Congress' cutting the federal corporate income tax rate by more than one-fourth constituted an unforeseeable, extraordinary decrease in expenses. *Id.* at 772. *MCI* noted "[i]ncreased expenses from natural disasters," expenses arising from "extreme weather conditions," and a one-time assessment for permanent storage of nuclear waste as examples of expenses other courts have found to be unforeseeable and extraordinary. *Id*. at 771.

a. *We Conclude RMP Bears the Burden of Satisfying the MCI Standard with Respect to the Relief It Seeks in this Docket.*

RMP emphasizes a distinction between "retroactive" or "single-issue" ratemaking and the relief it seeks here: deferred accounting. (*See, e.g.,* RMP's Br. at 7.) RMP urges it is not, here, seeking to recover the Settlements in rates, but only to defer and amortize the expense such that it can be considered for recovery in a future rate case. (*Id.*) Nonetheless, as RMP notes, we have previously concluded, "authorization of an accounting order [to defer] a particular expense 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."[1]

We recognize we have not strictly applied the *MCI* standard in every instance where a utility seeks a deferred accounting order. Generally, however, where we have allowed deferred accounting without requiring a showing under *MCI*, it has been in the context of agreement among stakeholders that deferred accounting is appropriate and in the public interest.[2]

Here, no stipulation exists and all parties, save for RMP, oppose RMP's request for deferred accounting. Under the specific facts of this application, we conclude that where RMP seeks deferred accounting to facilitate potential recovery of a specific category of prior year pension expenses in a future general rate case, the principles of both retroactive ratemaking and single-issue ratemaking require us to apply the legal standard articulated in *MCI*.[3] To grant

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[1] RMP's Br. at 4 (quoting *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, Report and Order issued Jan. 3, 2008 at 16-17 (hereafter the "2008 Order").

[2] For example, though disagreement existed about the specific amounts, the "parties [were] unanimous" in their support of deferred accounting treatment for expenses associated with the power plant for which we approved deferred accounting in the 2008 Order upon which RMP relies in its brief. 2008 Order at 17. Similarly, RMP points to several settlement stipulations in other dockets in which stakeholders agreed deferred accounting treatment was appropriate under the conditions involved. Application at 8, n.2. Where stakeholders agree to deferred accounting, we contemplate the parties have, perhaps, negotiated an offsetting term or the parties' stipulation may reflect their agreement, in principle, that the circumstances satisfy the *MCI* standard. In fact, the 2008 Order explains the parties' unanimous support for deferred accounting "is not surprising as the driving event underlying the request is … flooding and resulting damage" and "[a] flood is one of the types of natural disasters usually given when discussing exceptions to the rule against retroactive ratemaking." 2008 Order at 17.

[3] While it seems intuitive that the *MCI* standard should apply to most instances where a utility seeks a deferred accounting order, it is unnecessary for us to conclude in this order whether a factual scenario might potentially exist where the standard would not apply. Our conclusion is limited to the facts on the record in this docket.

RMP's request for a deferred accounting order, we must find RMP has met its burden to demonstrate the Settlements were unforeseeable and are extraordinary.

b. We Find RMP Has Not Shown the Settlements were Unforeseeable.

RMP asserts the Settlements were "not known or reasonably foreseeable" because they constitute an "unusual event caused by economic conditions and decisions of retired employees that are outside the control of [RMP]." (RMP's Br. at 9.) However, the Settlements do not stem from any change in law, change to applicable accounting principles, or change to RMP's underlying pension plan. Instead, the Settlements arise from the simple fact that known and applicable accounting rules require RMP to record the Settlements against its income statement because they exceed the sum of service costs and interest costs. That is, the Settlements are a function of foreseeably fluctuating variables.

Expenses arising out of variable interest rates, retirees' elections to take lump sum distributions in the ordinary course of RMP's pension plan, and the application of generally accepted accounting principles are simply not the kind of expenses *MCI* contemplates as unforeseeable. The Settlements are not analogous to a drastic legislative reduction in income taxes, extreme weather event, natural disaster, or other genuinely unforeseeable expense of the kind *MCI* contemplates.

We do not conclude that extreme, historically anomalous deviations in such variables could never give rise to an unforeseeable expense. However, RMP offered no evidence that the individual components leading to the Settlements (*i.e.,* service costs, interest costs, and lump sum distributions) were historically anomalous in 2018 or otherwise outside the reasonable, foreseeable range at the time of its last general rate case. On the contrary, based on RMP's responses to the OCS's discovery requests, the number of employees that retired and received lump sum distributions in 2018 was near the average of the five most representative years from 2013 through 2018 and the total lump sum cash distributions RMP paid in 2018 is only 0.13% more than it paid in 2013. (*See, e.g.,* OCS's Br. at 2-3 and attached RMP response to OCS Data Request 1.10.)

We find RMP has not shown the Settlements constitute an unforeseeable expense.

c. We Find RMP Has Not Shown the Settlements Constitute an Extraordinary Expense.

RMP offers no reference point against which to compare the costs it will realize as a result of the Settlements to demonstrate the costs are extraordinary. We recognize categories of unforeseeable costs exist for which no such reference point may exist because the costs are of a kind that cannot be forecast and considered in a general rate case (*e.g.,* costs arising out of significant changes in law, natural disasters, etc.). Here, however, RMP seeks to defer pension expenses that arise out of the ordinary operation of its pension plan, and pension expenses are a known and anticipated category of costs.

The only quantitative reference point any party offered for evaluating whether the Settlements will result in an extraordinary expense is the amount of net periodic benefit costs RMP claimed, in written testimony, in the last general rate case. (OCS's Comments at Attachment OCS 1.2.) In that case, RMP claimed more than $21 million in net periodic benefit costs in both its written direct and written rebuttal testimony. (*Id.*)

We do not consider RMP bound to the written testimony it submitted in its last general rate case concerning a category of costs for which the PSC made no specific findings, as a consequence of settlement. Settlements are statutorily encouraged and we do not wish to dissuade parties from future settlements by holding parties, in subsequent proceedings, to preliminary representations in prior dockets that were never fully litigated.

Indeed, recognizing the last general rate case was settled without a specific finding as to approved pension costs, the PSC asked RMP's counsel at oral argument "how should we look at the starting point of approved pension costs compared to what [RMP is] asking to defer?" (Hr'g Tr. at 16:22-17:2.) RMP's response was that we should not look at the amounts posited in RMP's testimony from the last general rate case but should rather "look at … whether the event was truly unforeseen, unusual, unique, significant enough."[4] As noted above, we recognize some categories of costs are, by their nature, unforeseeable (*e.g.*, certain legislative acts, natural disasters), but pension expenses are not among them.

In sum, RMP did not quantitatively demonstrate that the Settlements would cause its pension expense to be, in the language of *MCI*, "outside the normal range of variance that occurs in projecting future [pension] expenses."

We find RMP has failed to show the Settlements are an extraordinary cost as contemplated under *MCI*.

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[4] RMP's counsel also referred to a prior circumstance, referenced in RMP's briefing, where the DPU and the OCS stipulated to deferred accounting arising out of a change to RMP's pension plan in a prior docket. (Hr'g Tr. at 17:7-15.) As noted above, the DPU and the OCS's stipulation to deferred accounting in a prior case does not alleviate RMP's burden to satisfy the *MCI* standard where no such stipulation exists. *See supra* at 5.

4. **Order**

For the foregoing reasons, we deny the Application.

DATED at Salt Lake City, Utah, May 22, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#308412

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on May 22, 2019, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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