

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Rocky Mountain Power's Application for Approval of the 2020 Energy Balancing Account	<u>DOCKET NO. 20-035-01</u> <u>ORDER DENYING MOTION TO AMEND SCHEDULING ORDER</u>
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ISSUED: January 20, 2021

On January 15, 2021, the Office of Consumer Services (OCS) filed a Motion to Amend the Scheduling Order and for Expedited Treatment ("Motion"), requesting the Public Service Commission (PSC) vacate the hearing set for January 21, 2021 ("Hearing") to allow the parties an opportunity to conduct additional discovery and to submit another round of written testimony. The OCS asserts Rocky Mountain Power (RMP) disclosed significant, new information in the surrebuttal testimony it filed on January 15, 2021. More specifically, RMP's surrebuttal testimony included a previously undisclosed Second Root Cause Analysis (SRCA) regarding the outage at Lake Side 2. The OCS argues fairness and due process require the other parties have a reasonable opportunity to analyze the SRCA and to supplement their own written testimony, accordingly.

Given that time is short, the PSC issued a notice at 9:00 a.m. on January 19, 2021, requesting parties file any objection to the Motion by close of business on that date. Later that day, RMP filed its Opposition to the Motion, explaining that it introduced the SRCA "only to show that it has been completed and is willing to withdraw it from evidence as the [PSC] sees fit." RMP maintains it is not relying on the SRCA's contents to support its position and emphasizes its willingness to withdraw the exhibit as an alternative to delaying the Hearing.¹

¹ RMP indicates it would not oppose a short delay but strongly opposes any delay that would result in a rate effective date later than March 1, 2021.

The PSC recognizes that Schedule 94 contemplates the PSC will hold a hearing on RMP's energy balancing account application "on or about January 21" such that a written order may issue that makes the rates effective by "March 1 for a rate effective period of 12 months." The schedule the PSC adopted in this docket, to which the parties stipulated at the inception of the proceeding, set the Hearing for January 21, 2021.² Accordingly, all things being equal, the PSC prefers to proceed with the Hearing consistent with its scheduling order and RMP's tariff.

Nevertheless, the PSC recognizes that late or untimely disclosures have the potential to materially and unacceptably prejudice other parties. By way of analogy, the Utah Rules of Civil Procedure generally preclude a party from introducing evidence that it failed to timely disclose "unless the failure is harmless or the party shows good cause for the failure." Utah R. Civ. P. 26(d)(4). Here, RMP maintains the SRCA "was finalized on January 15, 2021," the date RMP submitted it in surrebuttal testimony, but RMP offers insufficient context to determine whether RMP reasonably could have disclosed the SRCA earlier. Similarly, OCS's Motion offers only conclusory assertions about the propriety of the recent disclosure without explaining how, or the degree to which, it will be prejudiced by admission of the evidence.

In light of RMP's professed preference to withdraw the SRCA as an exhibit rather than delay the Hearing, the PSC concludes the Hearing should proceed consistent with the established schedule and as contemplated under RMP's tariff. Therefore, the Motion is denied. In denying the Motion, we do not make any determination as to whether the SRCA is admissible. The OCS,

² See Scheduling Order and Notice of Hearing issued March 31, 2020.

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or any other party, may raise its objection at Hearing and the PSC will hear the parties on the matter.³

DATED at Salt Lake City, Utah, January 20, 2021.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#317033

³ In ruling on such a motion, we will not consider RMP's expressed willingness to withdraw the evidence to avoid delay to be dispositive, but we will be mindful of it in weighing the parties' respective arguments, especially in regards to how they might be prejudiced by our decision.

CERTIFICATE OF SERVICE

I CERTIFY that on January 20, 2021, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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