- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Rocky Mountain Power's Application for Approval of the 2020 Energy Balancing Account	DOCKET NO. 20-035-01 ORDER

ISSUED: February 26, 2021

1. Procedural Background

On March 16, 2020, Rocky Mountain Power (RMP) filed its Application to Increase the Deferred EBA Rate through the Energy Balancing Account Mechanism ("Application"). The Application seeks to recover approximately $36.8 million in deferred costs through RMP's Energy Balancing Account (EBA). Broadly, the sum RMP requests includes (1) the difference between the actual recoverable costs RMP incurred and the projected costs in base rates for the "Deferral Period"[1] of approximately $44 million; (2) approximately $1.6 million in costs related to Utah situs resources; (3) approximately $2.9 million in accrued interest costs; and (4) credits totaling approximately $11.6 million relating to RMP's retiree medical obligation and sales made to a special contract customer. RMP represents the PSC's granting the Application will result "in an overall increase to retail customers of the Tariff Schedule 94 rate of approximately 1.0 percent."[2] RMP attached supporting materials to the Application, including written direct testimony and a revised version of Schedule 94 to implement the adjustment.

[1] The Deferral Period is January 1, 2019 through December 31, 2019.

[2] Application at 2.

On March 31, 2020, the PSC issued a Scheduling Order and Notice of Hearing ("Scheduling Order"), setting the matter for hearing on January 21, 2021.[3] Consistent with the PSC's prior order in a separate docket ("Procedural Order") that established procedural benchmarks for annual dockets to revise RMP's EBA rates,[4] the Scheduling Order established deadlines for the Division of Public Utilities (DPU) to submit an audit and report on RMP's Application and for the parties to submit several subsequent rounds of written testimony.

The DPU submitted written direct testimony on November 6, 2020, discussing the results of the DPU's audit and recommending the PSC reduce the amount of RMP's proposed adjustment. Subsequently, RMP, DPU, and the Office of Consumer Services (OCS) submitted several rounds of written testimony as the Scheduling Order contemplated.

On January 15, 2021, the OCS filed a Motion to Amend the Scheduling Order, seeking to postpone the hearing because RMP had disclosed new evidence, a second root cause analysis report pertaining to an outage at the Lake Side 2 plant, approximately one week before the hearing. After RMP filed a response volunteering to withdraw the report rather than postpone the hearing, the PSC denied the OCS's motion and indicated it would address any objections to the admissibility of the new report at hearing.[5]

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[3] Western Resource Advocates and the Utah Association of Energy Users timely filed petitions for intervention, which the PSC granted. However, neither intervenor ultimately testified in the docket.

[4] *See In the Matter of the Application of RMP for Approval of Its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15, Order issued March 13, 2020 (hereafter "Procedural Order").

[5] Order Denying Motion to Amend Scheduling Order issued January 20, 2021.

The PSC commenced the hearing on January 21, 2021. With general agreement from the parties and to allow the DPU and OCS a fair opportunity to evaluate and respond to RMP's new report, the PSC ordered the hearing would reconvene on February 12, 2021 for the limited purpose of presenting evidence pertaining to the outage discussed in the new report, an outage at RMP's Lake Side 2 plant. The PSC also amended the Scheduling Order to allow for written sur-surrebuttal testimony on the same subject. RMP, DPU, and OCS presented testimony pertaining to all other issues in the docket at the hearing on January 21, 2021.

On February 8, 2021, the OCS and DPU respectively filed written sur-surrebuttal testimony concerning the Lake Side 2 outage. On February 12, 2021, the PSC held another evidentiary hearing during which RMP, DPU, and OCS testified with respect to the same.

2. Factual Background

As the Procedural Order contemplates, the DPU conducted an audit of the EBA costs that RMP claims it incurred during calendar year 2019. The DPU utilized in-house staff to investigate whether RMP appropriately booked net power costs (NPCs) and retained outside consultants, Daymark Energy Advisors, Inc., to ascertain whether the actual EBA costs RMP "incurred [were] pursuant to an in-place policy or plan, were prudent, and were in the public interest."[6]

Based on its audit, the DPU recommended the following adjustments to the amount RMP seeks in its Application: (1) a $21,822 adjustment based on updating the system overhead allocation factor and associated interest expense ("SO Adjustment"); and (2) a $2,792,525

[6] Direct Test. of G. Smith at 2:22-3:26.

adjustment for replacement power costs RMP incurred as a result of four outages and their associated interest expense ("Outage Replacement Costs").

In its first written response to the DPU's audit, RMP agreed with the DPU's proposed SO Adjustment, explaining that the updated factor was not available at the time RMP filed its Application. With respect to the Outage Replacement Costs, RMP contested the DPU's recommendation, in part. RMP identified the four pertinent outages as follows: (i) Dave Johnston Unit 1, on February 18, 2019 ("DJ Outage"); (ii) Hunter Unit 3, on July 29, 2019 ("Hunter Outage"); (iii) Lake Side 2 Unit 3, on August 18, 2019 ("LS Outage"); and (iv) Wyodak Unit 1, on June 6, 2019 ("Wyodak Outage").

RMP conceded the PSC should deny recovery with respect to the replacement power costs it incurred because of the Wyodak Outage. RMP explained it took the Wyodak unit offline to address an economizer tube leak. Later, after returning the unit to service, RMP "discovered the leak had caused the ash in the ash silo to harden requiring an outage and silo cleaning."[7] Plant management was aware of the leak but "believed that it would not affect the ash silo because any discharge … would first have to travel through the scrubber."[8] RMP "recognizes that it could have managed the situation more effectively" and "agrees to remove the replacement power costs from the EBA as recommended by [the DPU]."[9]

[7] Response Test. of D. Ralston at 10:207-08.

[8] *Id*. at 10:209-10.

[9] *Id.* at 10:214-16.

RMP asserts, however, that the replacement power costs it incurred with respect to the other three outages are appropriately recoverable through the EBA. The circumstances surrounding these outages are individually discussed below.

The OCS offered testimony supporting the DPU's recommended disallowances concerning the LS Outage and the DJ Outage. The OCS did not provide testimony regarding the Hunter Outage but it represented this "should not be interpreted as disagreement with the DPU recommendations."[10]

3. Discussion, Findings, and Conclusions

In light of RMP's agreement to the SO Adjustment and disallowance of replacement power costs associated with the Wyodak Outage, the only contested issues concern RMP's recovery of replacement power costs associated with the DJ Outage, Hunter Outage, and LS Outage ("Disputed Outages").

a. Conclusions Regarding the Legal Standard and Burden of Proof Applicable to the Disputed Outages.

RMP is entitled to recover "prudently-incurred" NPCs through the EBA pursuant to Utah Code Ann. § 54-7-13.5 ("EBA Statute") and the PSC's prior orders. While the EBA Statute does not define "prudently-incurred" costs, the Legislature elsewhere requires the PSC to "apply the following standards in making its prudence determination[s]" when setting rates: (i) ensure just and reasonable rates for retail ratepayers; (ii) "focus on the reasonableness of the expense resulting from the action … judged as of the time the action was taken"; (iii) "determine whether a reasonable utility, knowing what the utility knew or reasonably should have known at the time

[10] Response Test. of P. Hayet at 2:26-29.

of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action"; and (iv) "apply other factors determined by the [PSC] to be relevant."[11]

The issue presented here concerns whether RMP acted prudently when it incurred the replacement power costs associated with the Disputed Outages. However, as has generally been the case in such circumstances, the DPU and OCS are not disputing that RMP acted prudently in purchasing the replacement power. Instead, they argue RMP has failed to show it acted prudently with respect to whatever caused the outage. The distinction is subtle but important.

i. RMP's failure to establish that it acted prudently with respect to an outage may support a finding that RMP did not prudently incur power replacement costs.

RMP bears the burden to prove it prudently incurred costs, which in the simplest context amounts to presenting evidence that a singular, specific decision was prudent. For example, when RMP decides to purchase power to replace the production of a failing generator, the most immediate question is whether, in light of the circumstances at the time, RMP's decision to purchase the power was prudent. On this level, the analysis takes the outage as a given, and simply examines whether the decision to purchase the replacement power was prudent given system requirements and available alternatives.

However, the prudence inquiry is not always so simple; RMP's failure to act prudently may put it in a position where the most prudent decision it can make entails incurring a cost that it could and should have avoided. Here, no party disputes that RMP's decision to purchase the

[11] Utah Code Ann. § 54-4-4(4).

replacement power in each instance was prudent, rather they argue that RMP's failure to act prudently to avoid the outage warrants a finding that RMP did not prudently incur the associated replacement power costs. As the Utah Supreme Court explained in another context, the PSC cannot "conceivably determine whether a rate increase is just and reasonable without examining whether the underlying cost-incurring activity was reasonable, which in turn seems to require some attention to the utility's [decision-making] process."[12]

Accordingly, recognizing that RMP "bears the burden of proof to establish, by substantial evidence, the prudence of each expense in the EBA," we have previously denied RMP recovery of replacement power costs through the EBA based on RMP's failure to show it acted prudently with respect to the cause of an outage.[13] In a prior order ("2019 Order"),[14] we emphasized the fact-intensive nature of this inquiry, which the PSC must conduct on "a case-by-case basis and judge[] as of the time the action was taken."

The 2019 Order made numerous conclusions of law "generally applicable to any EBA filing by [RMP]."[15] Among other things, the PSC concluded:

> The degree to which other parties dispute an expense is relevant to the evaluation of the evidence provided by [RMP], but no party has a burden to prove imprudence. Rather, we consider evidence suggestive of imprudence in our … analysis of whether [RMP] has met its burden to establish prudence.

[12] *See Comm. of Consumer Servs. v. Pub. Serv. Comm'n*, 2003 UT 29, ¶ 15.

[13] *Application of RMP to Increase the Deferred EBA Rate through the Energy Balancing Account Mechanism*, Docket No. 18-035-01, Order issued March 12, 2019.

[14] *Id.*

[15] *Id.* at 2.

In the context of a human error, we concluded RMP "bears the burden to establish … the expense was prudent notwithstanding the human error." In the context of a contractor's error, we concluded relevant considerations included (i) "the level and effectiveness of [RMP's] ongoing management of the relationship, including administration, monitoring, and … oversight" and (ii) the "propriety of the contractor's actions."

ii. RMP bears the burden to demonstrate its costs are prudently incurred, but this does not impose a burden on RMP to present evidence sufficient to absolutely preclude any possibility that it may have acted imprudently with respect to the cause of an outage.

While we intended our 2019 Order to provide some clarity for the parties, confusion still exists insofar as both sides of the argument contend the opposition is improperly shifting the burden of proof.[16]

We reaffirm our conclusion that RMP bears the burden of proof to establish it prudently incurred any costs it seeks to recover through its EBA. The law is unequivocal: "In the regulation of public utilities … a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon … any interested party or protestant, to prove the

[16] *See, e.g.,* Feb. 12, 2021 Conf. Hr'g Tr. at 13:18-20 (RMP arguing that "[r]equiring [RMP] to prove the cause of an outage in order to recover replacement power costs would turn prudent standards on its [sic] head"); *id.* at 63:17-23 (DPU arguing that "where the definitive root cause [of an outage] remains elusive, it would be unreasonable to default the sole responsibility … to ratepayers" and "would result in placing a burden of demonstrating [RMP's] imprudence on the intervening parties rather than [RMP] to demonstrate its prudence with substantial evidence").

contrary."[17] Moreover, the EBA Statute expressly states that an energy balancing account may not alter RMP's "standard for cost recovery" or its "burden of proof."[18]

While RMP's burden to prove it acted prudently is undisputed, the issue of what RMP must do to satisfy that burden when it purchases power to replace the production of a failing generator is a recurring one about which the parties strongly disagree.

As the DPU and OCS would have us apply it, RMP's burden requires that RMP produce evidence that precludes the possibility that it failed to act prudently. For example, they contend that where the cause of an outage is a genuine mystery that, despite exhaustive and costly investigation, cannot be identified, RMP cannot possibly meet its burden. According to this reasoning, if the cause of the outage is not known or reasonably knowable, then RMP cannot possibly demonstrate it acted prudently. To conclude otherwise, these parties assert would shift the burden of proof, requiring them to demonstrate RMP's imprudence.[19] Similarly, these parties contend that in all "cases involving substandard performance by vendors or contractors [regardless of] whether the utility is only partially to blame or even blameless," RMP cannot meet its burden.[20] The mere fact that a vendor made a mistake is dispositive in their view, regardless of "whether a reasonable utility, knowing what [RMP] knew or reasonably should

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[17] *Comm. of Consumer Servs.*, 2003 UT 29, ¶ 14 (quotation omitted).

[18] Utah Code Ann. § 54-7-13.5; *see also Office of Consumer Servs. v. Pub. Serv. Comm'n*, 2019 UT 26, ¶ 46 (holding the PSC failed to hold RMP to its burden of proof in approving RMP's request for an interim rate with respect to its energy balancing account).

[19] *See, e.g.,* Sur-surrebuttal Test. of P. DiDomenico at 4:71-76; Response Test. of P. Hayet at 2:41-42.

[20] Jan. 21, 2021 Conf. Hr'g Tr. at 104:16-19.

have known at the time of the action, would reasonably have … tak[en] the same … prudent action."[21]

Mindful of the recent case law, we are acutely aware of our responsibility to hold RMP to its burden of proof, but we must conclude – in the context of purchasing replacement power for a generator outage – RMP's burden does not require RMP to prove a negative, *i.e.*, RMP need not provide evidence showing the absence of any possibility that it made an imprudent choice or took an imprudent action. We conclude, instead, that RMP's burden requires it to demonstrate precisely what the statute requires: it acted prudently. The universe of relevant factors includes those we identified in our 2019 Order and those the Legislature has generally instructed us to consider in making prudence determinations, such as whether a similarly situated, reasonable, and responsible utility would have acted differently.[22]

Therefore, if RMP provides substantial evidence that its actions with respect to an outage were prudent, the party contending RMP failed to act prudently must at the very least rebut that substantial evidence by identifying some action RMP took or failed to take that was not prudent in relation to circumstances leading to the outage. This expectation does not shift the burden to the contesting party to "demonstrate imprudence" as the DPU and OCS contend, but it does preclude them from relying on the inexplicable nature of the underlying event or a third-party's conduct to render irrelevant all evidence of RMP's actual conduct. If the contesting party

[21] *See* Utah Code Ann. § 54-4-4(4).

[22] *See id.*

identifies some such action, the PSC must hold RMP to its burden to demonstrate that its actions were prudent notwithstanding the alleged error.

b. Findings and Conclusions Regarding the Disputed Outages.

i. The Hunter Outage

The Hunter Outage occurred because RMP took the unit offline to repair a reheater tube leak. RMP testified that "subsequent inspection identified that the rate of wear on upper portions of the vertical reheater … assemblies had accelerated which caused boiler tube leaks."[23]

The DPU argues RMP identified the need for "broad scale replacement of tubes in the reheater" in 2013, but nevertheless "decided to make extensive repairs in 2016 and defer full replacement to 2024."[24] The DPU relies on RMP's responses to data requests wherein the DPU asked RMP to specify "[w]hen were the reheater failures first identified as needing a broad-scale tube assembly replacement" and RMP responded that it identified "the need for broad-scale replacement in 2013."[25] The DPU argues RMP "has provided insufficient evidence of quantitative analysis to justify the [decision] to delay replacement of the reheater to 2024, despite evidence of a broad scale problem in 2013."[26] DPU concludes the outage was avoidable and that RMP has not demonstrated its actions were prudent in deferring replacement to 2024.

[23] Response Test. of D. Ralston at 4:83-85.

[24] Jan. 21, 2021 Conf. Hr'g Tr. at 85:21-25.

[25] Rebuttal Test. of P. DiDomenico and D. Koehler and attached Supporting Documents (DPU Data Requests 4.8 and 6.5).

[26] Jan. 21, 2021 Conf. Hr'g Tr. at 86:19-23.

RMP argues DPU has misconstrued its discovery responses and the evidence. RMP affirms that it planned, as of 2013, to fully replace the reheater in 2024, but RMP testifies this decision was based on its expectations arising out of its experience with and knowledge of the unit, not identification of particular problems at that time. To corroborate this testimony, RMP introduced inspection reports for 2012 and 2013, which do not indicate any significant issues. The report from 2013 states "[n]o tubes were found with thicknesses below 80 [percent] of min[imum] wall thickness" and that "[t]hickness measurements will be added to [the unit's] spreadsheet to track erosion rates."[27] In fact, the inspection report for 2013 indicates "the tubes were in good condition and no immediate repairs or concerns were identified."[28]

RMP introduced additional evidence showing it continued to monitor the system after the 2013 report and its attendant decision to plan for its replacement in 2024. Specifically, RMP inspected the reheater again in 2016 "during a scheduled overhaul, which included the general area where the tube leak occurred that later cause the July 29, 2019 outage."[29] The inspection report shows the area needed "some minor repairs but was in acceptable condition."[30]

Finally, RMP testified that the work it performed to repair the reheater tube leak in 2020, *i.e.*, the cause of the Hunter Outage, was not an acceleration of the planned 2024 replacement. RMP had budgeted $4.3 million for the 2024 replacement whereas the costs to repair the

[27] Response Test. of D. Ralston at Ex. DMR-2.

[28] Response Test. of D. Ralston at 5:96-97.

[29] *Id.* at 5:102-105.

[30] *Id.*

unexpected wear in 2020 were $627,000, a fraction of the cost. RMP testified that this repair work has allowed it to further defer the full replacement to 2028.

Based on RMP's testimony and corroborating documents, we find RMP acted prudently in taking the Hunter unit offline to repair the worn tubes and in obtaining replacement power. We further find RMP has provided substantial evidence to show that it reasonably monitored and maintained the unit, responsibly planning for its future maintenance and replacement. The fact that RMP planned, in 2013, to replace the reheater in 2024 does not meaningfully rebut or undermine the evidence that RMP acted prudently. The DPU's assertion to the contrary wholly relies on RMP's response to a discovery request that indicates RMP became aware of the need for "broad-scale" replacement in 2013. However, RMP has provided ample sworn testimony and documentary evidence to contextualize that response, showing that RMP made a reasonable and informed decision, based on its several inspections and knowledge of the equipment, to anticipate and budget for the reheater's replacement in 2024.

The record is insufficient to rebut the substantial evidence of RMP's prudent actions. For example, RMP's numerous inspection reports between 2012 and 2016 contain no indication of an actionable, unaddressed problem and support RMP's testimony that it prudently maintained and operated the equipment. The record contains no testimony or other evidence that suggests RMP failed to inspect and maintain the equipment consistent with responsible practices and industry standards. The mere fact that equipment fails before the end of its anticipated useful life is not alone sufficient to support a finding that a utility ought to have replaced it sooner or that a similarly situated, prudent utility would have done so.

We find and conclude RMP may recover the power replacement costs it incurred as a result of the Hunter Outage.

ii. DJ Outage

The DJ Outage occurred because a boiler feed pump (the "Pump") failed. The uncontested evidence shows RMP shipped the Pump offsite to the original equipment manufacturer ("Manufacturer") for maintenance that included a "rebuild" in 2018. After the Pump failed, RMP discovered the Manufacturer had, in rebuilding the Pump, installed the internal casing ("Casing") that receives the fluid backwards. RMP described the Pump as a vintage model, which the Manufacturer originally manufactured in 1958. RMP testified that its plant personnel does not have the technical expertise required to rebuild such pumps and RMP, therefore, has relied on the Manufacturer to conduct similar repairs for decades.

RMP testified the Manufacturer's incorrect installation of the Casing was not "visually identifiable by [RMP's] plant personnel" because the Manufacturer reassembled these internal components offsite.[31]

RMP further testified that the Manufacturer's "unsatisfactory performance" in this instance has caused RMP to select a different qualified contractor for future maintenance and repair work. RMP also negotiated a discount on the Manufacturer's invoice for the negligent repair ("Manufacturer's Discount").

[31] *Id.* at 3:61-65.

The DPU flatly declares that RMP "bears the responsibility for the actions of its contractors."[32] DPU argues RMP's "moving quickly to other pump service contractors" demonstrates the obvious nature of the Manufacturer's mistake and "suggests a lack of proper vetting and oversight of the contractor, to begin with."[33] The DPU did not rebut RMP's substantial evidence of prudent actions by identifying any particular action RMP should have taken with respect to the Manufacturer or the circumstances leading to the Pump's failure. Instead, the DPU argues "the fundamental (obvious) nature of the mistake," *i.e.*, installing the Casing backwards, is sufficient to deny RMP recovery for replacement power costs.[34]

The OCS similarly contends "in cases where a third party contractor or vendor supplies substandard services or products leading to higher costs to the utility, shareholders rather than ratepayers should be responsible for any unrecovered costs."[35] The OCS characterizes its position as coming "strictly from a policy perspective."[36] Testifying that the Manufacturer's "flawed and substandard" work "cannot possibly be considered acceptable or within industry standard[s]," OCS questions whether allowing RMP to recover under such circumstances provides any incentive for it to "always demand excellence."[37]

As we concluded *supra*, a contractor's mistake does not, as a matter of law, preclude RMP from demonstrating it acted prudently. Here, RMP testified that it acted prudently by

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[32] Daymark Energy Advisors' Audit Report at 29.

[33] *Id.*

[34] Jan. 21, 2021 Conf. Hr'g Tr. at 95:2-6.

[35] Response Test. of P. Hayet at 3.

[36] *Id.* at 2.

[37] Jan. 21, 2021 Conf. Hr'g Tr. at 105:14-19.

relying on the original equipment manufacturer to perform maintenance on a dated piece of equipment about which RMP's plant personnel lacked sufficient expertise. RMP testified that it relied on the Manufacturer's expertise based on its status as the original equipment manufacturer and decades' worth of similar or identical contract performance. Because the mistake was internal to the rebuilt unit, the uncontested evidence is that RMP could not have reasonably detected the problem with a visual inspection.

We find RMP has shown it acted prudently in relying on this decades-old relationship with the original manufacturer. No party has rebutted the substantial evidence supporting that finding by identifying any specific action that RMP, or any other responsible utility, ought to have taken to prevent the outage. In our 2019 Order, we concluded that RMP's "reasonableness and due diligence" in "entering the contractual relationship" along with RMP's "ongoing management of the relationship" were relevant considerations. Our finding that RMP acted prudently in relying on the original equipment manufacturer to perform repairs on this dated equipment, based on a commercial relationship that spanned decades, reflects and exemplifies these considerations.

We acknowledge the policy argument that allowing RMP to recover costs associated with a vendor's error may affect RMP's incentives to minimize costs associated with poor contractor performance. However, this criticism arguably applies to every net power cost recoverable through the EBA over which RMP may have some control. Nonetheless, the EBA Statute permits RMP to recover its prudently incurred costs, and it serves other policy objectives such as ensuring ratepayers pay an amount that reflects actual NPCs. The statutory standard is that RMP

may recover its prudently incurred costs, and we conclude it is not for the PSC to write caveats into the statute based on policy arguments.

Having found RMP has satisfied its burden to show it acted prudently, we conclude RMP may recover the replacement power costs associated with the DJ Outage through the EBA.

Importantly, RMP testified the Manufacturer provided a discount to alleviate the costs associated with its faulty work. Because ratepayers are ultimately bearing those costs, we find and conclude the benefits should similarly run to ratepayers through the EBA. Therefore, we adjust the EBA recoverable amount in connection with the DJ Outage by the amount of the Manufacturer's Discount.

iii. The LS Outage

The LS Outage occurred on August 18, 2019 when the generator "tripped offline due to … [a] protection lockout relay."[38] Plant personnel noted "a strong burnt electrical smell in the immediate area of the generator after this event occurred." Subsequent "[e]lectrical testing and visual examination confirmed that an electrical fault had occurred and melted a portion of the generator stator core beyond repair."[39]

RMP contacted the original equipment manufacturer to assist with its investigation into the failure, and the manufacturer conducted a root cause analysis ("Manufacturer's RCA"). Because the event was significant and RMP owns two other generators of the same design, RMP

[38] Response Test. of D. Ralston at 7:140-41.

[39] *Id.* at 7:151-52.

also hired a third-party contractor to conduct an additional root cause analysis ("Third-Party RCA").

Details of the reports are confidential. In very general terms, the Manufacturer's RCA ranks a scenario that entails some foreign object being left inside the machine as the potential cause with the least "contradictory evidence" but nevertheless a "low probability." RMP testified that no object was found in the machine and emphasizes there is no evidence to support the notion that an object was left in it. The Third-Party RCA also considered the possibility of a foreign object but determined that something more akin to an equipment failure was a more likely cause.

While the Third-Party RCA differs with the Manufacturer's RCA with respect to the likelihood of certain potential causes, both reports "reach the same ultimate finding: there is no conclusive cause of the outage."[40] RMP emphasizes that even the Manufacturer's RCA "did not find any occurrence of improper operation or maintenance, poor workmanship, foreign material, or signs of previous damage that would cause the failure."[41]

To demonstrate its prudent operation of the Lake Side plant, RMP testified it: (i) operated the generator "within design" and followed the manufacturer's recommendations; (ii) relied on "OEM experts on [this particular] equipment to perform the maintenance"; (iii) provided oversight and engagement during such maintenance activities; and (iv) followed the

[40] Sur-Surrebuttal of P. Hayet at 4:64-65.

[41] Response Test. of D. Ralston at 8:158-61.

manufacturer's and RMP's applicable foreign materials exclusion (or "FME") policies.[42] RMP further highlights that it acted swiftly to understand the root cause of the problem, working with both the manufacturer and a third-party to obtain two separate analyses of the problem.

To rebut RMP's assertion that it diligently maintained the plant, the OCS emphasizes that RMP failed to repair a particular monitoring system on the generator when it failed many months prior to the outage. RMP concedes it was not aware the monitor was not operational at the time of the outage. RMP testified it has experienced consistent reliability problems with the monitoring system from the beginning, which it characterized as an "option" from the manufacturer. RMP cited the manufacturer's documentation, which explains the manufacturer has installed the monitor on only a small fraction of the thousands of such generators currently operating in the world. RMP testified it has consulted with the manufacturer numerous times on the matter and emphasizes the manufacturer represented to RMP that there was "no risk" in operating the generator without the monitor. RMP further testified that repairing the monitor required a significant outage, potentially two weeks in duration. Finally, the monitor is designed to measure activity in a different portion of the generator than where the potential problem occurred with respect to the LS Outage.[43]

Again, the DPU offers primarily a policy-based argument. It argues "[i]n situations like these, where despite best efforts, the definitive root cause remains elusive, it would be

[42] Feb. 12, 2021 Conf. Hr'g Tr. at 13:8-16.

[43] In discovery responses, RMP conceded it could not know whether the monitor may have nevertheless detected the potential issue discussed in the Third-Party RCA.

unreasonable to default the sole responsibility for the costs incurred to customers."[44] DPU contends that "[t]o do so would result in placing a burden of demonstrating [RMP's] imprudence on the intervening parties rather than on [RMP] to demonstrate its prudence with substantial evidence."[45] The OCS similarly argues "[r]atepayers should not be held responsible for the costs of a problem whose root cause has not been determined that may be the fault of RMP or a third party."[46]

For the reasons discussed *supra*, we conclude RMP need not demonstrate a definitive cause of the outage to meet its burden to show it acted prudently. In addition to the reasons we previously articulated, to require that demonstration would raise the burden of proof far beyond the substantial evidence requirement.

With respect to the non-operational monitor, the available evidence demonstrates the monitor was an optional "add-on" from the manufacturer that ceased to function reliably from the outset, and that RMP relied on unequivocal assurances from the manufacturer that its absence presented "no risk" to the generator. The answer to the question as to whether RMP acted prudently is relatively obvious when we consider the inverse circumstance: would it have been prudent for RMP to shut down the generator and purchase replacement power for two weeks, passing such costs through the EBA onto customers, for the sole purpose of repairing an optional data system (rarely installed on this model of generator) even though RMP reasonably believed,

[44] Sur-Surrebuttal Test. of P. DiDomenico at 4:71-73.

[45] *Id.* at 4:71-76.

[46] Response Test. of P. Hayet at 2:41-42.

based on assurances from the manufacturer, that the issue posed "no risk" to the system? We find the answer is "no."

Accordingly, we find RMP has presented substantial evidence it operated and maintained the Lake Side plant prudently.[47] RMP acted diligently and thoroughly to investigate the cause of the outage, further evidencing its commitment to prudent oversight and maintenance of the generator. Despite the best efforts of numerous experts, the cause of the outage remains a mystery but this alone does nothing to rebut RMP's evidence that it prudently maintained and operated the unit. Again, no party has rebutted the substantial evidence of RMP's prudent actions by identifying any particular action RMP failed to take that a reasonable and responsible utility would have taken to avoid the outage.[48] We therefore conclude RMP may recover through the EBA the power replacement costs and interest expense associated with the LS Outage.

4. Order

In light of the foregoing findings and conclusions, we order RMP may recover the actual costs claimed in its Application through the EBA with the following modifications:

[47] This is consistent with our findings in the recent order we issued in RMP's general rate case, where RMP similarly provided testimony relating to its prudent operation of the Lake Side generator. *See Application of RMP for Authority to Increase Its Retail Electric Utility Service Rates*, Docket No. 20-035-04, Order issued Dec. 30, 2020 at 35-36.

[48] Perhaps in recognition of this failure, the DPU suggests the PSC "might also consider a cost sharing approach as a more balanced solution," providing an incentive to RMP to root out the underlying problem "while also recognizing the risk sharing partnership that exists between [RMP] and its customers." (Sur-Surrebuttal Test. of P. DiDomenico at 5:90-93.) However, we are aware of no authority under the law that permits us to unilaterally impose a "cost sharing approach" with respect to EBA costs that RMP demonstrates it prudently incurred.

1. RMP's recoverable EBA Costs will reflect the SO Adjustment and any associated interest expense;
2. RMP may not recover any replacement power costs or interest expense associated with the Wyodak Outage.
3. RMP may recover its replacement power costs associated with the DJ Outage but the EBA recoverable amount will be adjusted to reflect the full amount of the Manufacturer's Discount.
4. We decline to order any additional adjustments to the EBA.
5. RMP shall file a revised Tariff Schedule 94 reflecting this order.

DATED at Salt Lake City, Utah, February 26, 2021.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#317540

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this 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 does not grant a request for review or rehearing within 30 days after the filing of the request, 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 §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on February 26, 2021, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

Data Request Response Center (datareq@pacificorp.com, utahdockets@pacificorp.com)
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Office of Consumer Services

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Administrative Assistant