ROBERT J. MOORE (5764)
Assistant Attorney General
STEVEN W. SNARR (3022)
Special Assistant Attorney General
Utah Attorney General
160 East 300 South, Fifth Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0312
Facsimile: (801) 366-0101
E-mail: rmoore@agutah.gov
stevensnarr@agutah.gov
Attorneys for Utah Office of Consumer Services

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electronic Service Schedules and Electronic Service Regulations	Docket No. 20-035-04 Post Hearing Brief

Pursuant to Utah Code § 54-10a-301, UTAH ADMIN. CODE r. 746-1-101 through 801 and the Public Service Commission of Utah's ("PSC") November 12, 2020 Amended Scheduling Order and Notice of Electronic Hearing and the PSC's November 20, 2020 Clarification to November 12, 2020 Amended Scheduling Order, the Utah Office of Consumer Services ("OCS") submits this Post Hearing Brief arguing that the PSC must reject Rocky Mountain Power's ("RMP" or "Company") proposed rate increase and instead grant the OCS recommendation that rates be reduce by a total of $37,300,000.

COST OF CAPITAL

The OCS's primary ROE recommendation is 9.00% with a proposed hypothetical capital structure of 50.00% equity 49.99% debt, and 0.01% preferred stock resulting in an overall ROR of 6.90%.[1] OCS's alternative ROE is 8.75% using RMP's proposed capital structure of 53.67% equity 0.01% preferred stock and 46.32% debt, yielding a total ROR of 6.92%.[2]

ROE. OCS's primary ROE of 9.00% and alternative ROE of 8.75% are based on a range of reasonable ROEs of 7.60% to 8.95%.[3] The primary recommendation is above this range to give weight to authorized ROEs and the concept of "gradualism."[4] RMP's initially proposed ROE of 10.20% is based on a range of 9.75% to 10.25%.[5] Although claiming that its analysis supports an ROE of 10.20%, RMP lowered its ROE request to 9.80%. While the difference in ranges is significant, both parties employ variations of the same economic models, the DCF model and the CAPM model.

The difference in the ranges can be explained by errors in RMP's DCF and CAPM analyses. Specifically, RMP's DCF analyses use an unproven constant-growth DCF model, selectively eliminates low end results, rely on overly optimistic projection of EPS growth and ultimately reject its own results. RMP rejects its DCF results on the erroneous contention that interest rates will increase and utility stock prices will decrease and therefore the present dividend yield is too low.[6]

---

[1] Woolridge Surrebuttal at pg. 3 ln. 58–-pg. 4 ln 72.
[2] *Id.* at pg. 4 ln. 73-86.
[3] Woolridge Direct at pg. 4 ln. 79-85.
[4] *Id.*
[5] At the hearing, RMP noted that Professor Woolridge recommended ROEs in a past case were below the ROEs that were eventually authorized. However, authorized ROE's are sticky but trending downward. It is not surprising an economic analysis is below authorized ROEs. Moreover, OCS's recommendations of 9.00% and 8.75% are closer to the current average authorized ROE of 9.44% than Ms. Bulkley's recommendation of 10.20%, particularly when considering the authorized ROE's equity position of 49.37% and Ms. Bulkley's equity position of 53.6%. DPU Cross Exh. 1 "RRA Regulatory Focus, Major Rate Cases Decisions - - January – September 2020
[6] Woolridge Direct.at pg. 22 ln. 395—403.

Several errors also exist in RMP's CAPM analyses, including the reliance on a long-term projected thirty-year Treasury yield of 3.20%, which is significantly above the current yield of 1.50%, and, again, reliance on overly optimistic projections of EPS growth of 12.12% leading to an unjustified market risk premium of 12.60%.[7]

The first two errors in the DCF results are largely admitted. Hearing testimony established that the use of the constant-growth DCF model was for illustrative purposes only and the method is not scientific.[8] The OCS argued that the selective elimination of low end results creates a statistics error and this contention has gone unrebutted.[9] The other errors, reliance on projections of higher interest rates and high EPS growth rates, affect both models.[10]

First, with regard to RMP's contention that interest rates will rise in the near term, the OCS demonstrates that economists consistently predict interest rates will rise and have been consistently incorrect. The OCS cites studies that track predictions of rising interest rates and compare them to what actually occurred proving the predictions to be fallacious.[11] Indeed, even Ms. Bulkley testified: "As I stated before, forecast of higher interest rates have been notoriously wrong for a decade."[12] Nevertheless, Ms. Bulkley claims she "relied primarily on interest rate forecasts to account for the fact that investors expect interest rates to increase from current levels in the near term."[13] However, investors would not be buying long-term Treasury bonds or utility stocks at the current yields if they expected interest rates to suddenly increase, thereby producing negative returns.[14]

---

[7] Woolridge Surrebuttal at pg. 26 ln. 497-512.
[8] Bulkley Hearing at pg. 115 ln. 3-6.
[9] Woolridge Surrebuttal at pg. 22 ln. 497-411.
[10] Bulkley Hearing at 124 ln. 16-20.
[11] Woolridge Surrebuttal at pg. 12 ln. 169—pg . 13 ln. 213.
[12] Bulkley Rebuttal at pg. 107 ln. 2168–2169.
[13] *Id.* at pg. 54 at ln. 1103-1105.
[14] Woolridge Direct at pg. 20 ln. 412-414.

In addition, faced with the COVID-19 pandemic and related recession the Federal Reserve has determined to keep interest rates near zero through 2023.[15] RMP does not dispute this but argues changes in the federal funds rate do not affect long term interest rates and therefore do not argue for lower ROEs. However, RRA Regulatory Focus, Major Rate Cases Decisions - - January – September 2, contradicts RMP's position:

> The averages [of electric utilities ROEs] for the first nine months of 2020 are at the lowest level ever witnessed in the industry, and with the recent interest rate cuts by the U.S. Federal Reserve and current pandemic-induced recession even lower authorized returns may be on the horizon. . . .
>
> . . . .
>
> While changes in the federal funds rate do not move in lockstep with long term treasuries and authorized ROEs do not move in lockstep with interest rates, the expectation is that as interest rate change, authorized ROEs change in a similar fashion.[16]

It is of note that during the revenue requirement portion of this case, RMP argues that interest rates will remain low in the near to long term causing settlement losses in their pension plan that should be included in the revenue requirement.[17] RMP should not be allowed to argue that interest rates will remain low to increase the revenue requirement in one phase of this case and argue that interest rates will rise to increase their ROE in another phase.

Second, with respect to the projected EPS growth rate of 12.12%, just as with interest rates, studies have proven that Wall Street projected EPS growth rates have been unwarrantedly optimistic and upwardly biased.[18] These studies track predictions of EPS growth and compare

---

[15] Woolridge Surrebuttal at pg. 8 ln 153—pg..9 ln. 65.
[16] DPU Cross Exh. 1, pg. 2-3 "RRA Regulatory Focus, Major Rate Cases Decisions - - January – September 2020"
[17] Kobliha Hearing at pg. 48 ln. 8—pg. 50 ln. 13.
[18] Woolridge Direct at pg. 42 ln. 909—pg. 43 ln. 917; Woolridge Surrebuttal at pg. 27 ln. 534—pg. 28 ln. 550.

them to what actually occurred proving the predictions to be wildly optimistic.[19] Indeed, RMP projects that earning on its pension assets will grow at 7.00%, not 12.12%.[20]

Ms. Bulkley recognizes the history of overly optimistic forecasts but claims "recent academic research has found that analyst bias has been reduced or eliminated, if it ever existed, after the financial market reforms of the early 2000s."[21] However, the study she cites for this assertion proves the opposite. Specifically, she cites to a 2010 McKinsey and Company study entitled "Equity analysts: Still too Bullish" that concludes "analysts have been persistently over optimistic for the past 25 years, with estimates ranging from 10 to 12 percent a year, compared to actual earnings growth of 6 percent . . . . On average, analysts' forecasts have been almost 100 percent too high."[22] Also, the OCS cites another study that concludes: "Despite reforms intended to improve Wall Street research, stock analysts seem to be promoting an overly rosy view of profit prospects."[23] Thus, the OCS has demonstrated that the projected high EPS growth rates relied upon by RMP are significantly overstated.

These upwardly biased projections have a profound impact on RMP's market risk premium, a central component of RMP CAPM analysis.[24] Specifically, RMP's 12.12% EPS growth rate led to its calculation of a market risk premium of 12.60%, which is well above market risk premiums found by leading academic scholars, analysis of historic stock and bond returns and surveys of financial professionals.[25] Indeed, the 12.12% leads to the chimerical conclusion that EPS growth will grow at approximately three time the projected growth of the

---

[19] Woolridge Direct at 43 ln. 43—pg. 44 ln. 953; Woolridge Surrebuttal at pg 27 ln. 534—pg. 28 ln. 550.
[20] Kobliha Hearing at pg. 51 ln. 8—pg. 52 ln.4.
[21] Bulkley Rebuttal at pg. 114 ln.2326-2328; Bulkley Hearing at pg. 236 ln. 2-16.
[22] Bulkley Hearing at pg. 138 ln. 17—pg. 139 ln. 3: Woolridge Surrebuttal at pg. 23 ln.421-444; OCS Cross Exhibits 5a and 5b.
[23] Woolridge Surrebuttal at pg. 23 ln. 445—pg. 25 ln.449.
[24] *Id.* at pg. 27 ln. 521-533;
[25] Woolridge Surrebuttal at pg. 27 ln. 528—pg 28 ln. 537;

underlying economy, an assertion that has been rejected by leading financial scholars, noble prize winning economist Milton Friedman and Warren Buffett.[26] In sum, RMP's analyses are fatally flawed. On the other hand, the OCS recommendations are analytically sound and should be accepted.

Capital Structure. The OCS recommends a hypothetical capital structure of 50% equity and 50% debt.[27] RMP seeks an equity percentage of 53.67%.[28] RMP's request is a high equity position in comparison to the Woolridge proxy group at 44.00% equity and the Bulkley proxy group at 43.60% equity and in comparison to RMP's parent Berkshire Hatheway Energy ("BHE") at 42.40% equity.[29] The OCS recommendation of 50% equity is about halfway between the Woolridge proxy group of 44.00% and RMP's requested equity percentage of 53.67% and represents a more reasonable capital structure when compared to the electric utility industry.[30] Indeed, RMP's request for 53.67% equity is significantly higher than the average authorized capital structure from electric utility rate cases in the first nine months of 2020 of 49.37% equity.[31] It is also of note that RMP's requested 53.67% is higher than its current authorized capital structure of 51.34%, RMP's current actual equity percentage of 51.00%, and the equity percentage in the RMP's Washington settlement of 49.10%.[32]

When setting an authorized capital structure, the PSC must be guided by the interplay between the equity percentage and the amount of risk facing the utility. Specifically, because debt is riskier than equity, when the amount of debt in the capital structure decreases, the amount

---

[26] *Id,* at pg. 29 ln. 565—pg. 30 ln. 595.
[27] Woolridge Direct at pg. 32 ln. 666—673.
[28] *Id.* at pg. 3 ln. 61.
[29] *Id.* at pg. 26 ln. 539—pg. 28 ln. 569.
[30] *Id.* at pg. 32 ln. 666-673.
[31] DPU Cross Exh. 1 pg. 4 "RRA Regulatory Focus, Major Rate Cases Decisions - - January – September 2020."
[32] Woolridge Direct at pg. 6 ln.111; Kobliha Hearing at pg. 36 ln. 8-9; Woolridge Surrebuttal at pg. 7 ln. 128—pg. 8 ln. 145.

of risk decreases so the ROE should decrease to reflect the lower risk.[33] This is why the OCS alternative recommendation using RMP's proposed capital structure of 53.67% is coupled with a lower ROE.[34] Accordingly, when faced by a utility seeking an above average equity position, regulators have two choices, lower the amount of equity, as reflected in the OCS's primary recommendation, or lower the ROE, as reflected in the OCS's alternative recommendation.[35]

RMP's criticism of the OCS's use of holding companies, as opposed to operating companies, in the capital structure comparison is unjustified. Both Professor Woolridge and Ms. Bulkley, by necessity, use the holding companies in their ROE analysis because only the holding companies have market information required for inputs in the economic modeling.[36] The risk associated with the holding companies' ROEs reflects, in part, the holding companies' lower equity percentages. That is, if the holding companies had the higher equity percentage of the operating companies, their risk would be reduced and their ROEs would be lower. Therefore, in order to reflect the risk associated with the proxy companies used for the ROE analysis, it is necessary to use the proxy companies' capital structure in comparing the appropriate equity positions.[37] Capital structure and ROE are two sides of the same coin.

RMP's other criticisms of the OCS's capital structure analysis also are unavailing. First, it is proper to use short term debt in assessing common equity rates because of the risk associated with short terms debt's higher claims on assets and earnings and because such an approach is consistent with the analysis used by S&P and Moody's.[38] Second, it is appropriate for the PSC to consider the comparison with BHE's equity position because of the impact of double

[33] Woolridge Direct at pg. 31 ln. 652-660.
[34] *Id.* at pg. 33 ln. 701—pg. 34 ln. 09.
[35] *Id.* at pg. pg. 31 ln. 641-651.
[36] Woolridge Surrebuttal at pg. 14 ln. 248—pg. 15 ln. 259.
[37] *Id.*
[38] *Id.* at pg.15 ln. 260-270.

leveraging. BHE is more leveraged than RMP evidencing that at least some of RMP's equity is financed by debt from BHE.[39] Moreover, RMP's broad claim that a 53.37% equity position is needed to sustain RMP's high credit rating is unsupported by specific evidence.[40] In sum, given the evidence at the hearing, a hypothetical capital structure of 50% or a significant reduction in ROE is appropriate in this case.

Interplay among Capital Structure, ROE and Revenue Requirement. As mentioned above, risks decrease when equity increases leading to a lower ROE. However, because equity is more expensive than debt, if a regulator allows for a high equity position but holds the ROE constant, the revenue requirement will necessarily increase.[41] The OCS demonstrates the extent of this impact in analyzing the Washington settlement that had an equity position of 49.10% with an ROE of 9.50%.[42] Using the OCS's revenue requirement calculations in this case, a 49.10% equity requires an ROE of 9.00% to keep the revenue requirement constant.[43] Moreover, the current average authorized ROE to date in 2020 for vertically integrated electric utilities is 9.54% and for all electric utilities is 9.44% with an average equity percentage of 49.37% .[44] Accordingly, to be comparable with current authorized ROEs while using RMP's capital structure of 53.67%, RMP's ROE must be significantly lower than 9.50%.

Comparative Risk. RMP is less risky than the average of the companies in the proxy group and this fact justifies a lower ROE.[45] This is conclusively established by the undisputed fact that RMP has a better credit rating than the companies in both proxy groups.[46] Specifically,

---

[39] *Id.* at pg. 16 ln. 271-280; Woolridge Direct at 26 ln. 571—pg. 27 ln. 603.
[40] Woolridge Direct at pg. 33 ln. 693-695.
[41] Kobliha at pg. 47 ln. 3-6.
[42] *Id,* at pg. 7 ln. 37.
[43] *Id.* at pg. 7 ln. 37--pg. 38 ln. 145.
[44] DPU Cross Exh. 1, pg. 4-5 "RRA Regulatory Focus, Major Rate Cases Decisions - - January – September 2020.
[45] *See e.g., Id.* at pg. 21 ln. 377-382; Bulkley Direct at pg.72 ln. 1436-1437; Kobliha Hearing at pg. 55 ln 18—pg. 56 ln. 1.
[46] Wooldridge Surrebuttal at pg. 17 ln. 306-311.

RMP's S&P rating is A, two notches above the average S&P rating of BBB+ for the proxy group companies, and RMP's Moody's rating is A3, one notch above the average Moody's rating of Baa1 for the proxy group companies.[47] RMP nevertheless argues that it is riskier because of the regulatory environment, capital expenditures and generation ownership.[48] However, all these factors were taken into consideration by the rating agencies when they gave RMP the superior rating.[49] Thus, RMP's argument regarding these risk factors fails.

Moreover, RMP's argument that the regulatory environment in Utah is hostile to utilities because Dominion Energy's ROE of 9.50% is below the industry average is simply incorrect.[50] Dominion's ROE is well above the average authorized ROE for gas companies in 2020.[51] Moreover, RMP's analysis establishes that the Wyoming regulatory environment is riskier than Utah yet RMP has made the same ROE request in Wyoming.[52] Further, Utah's preapproval and major plant addition statutes mitigate risk for utilities.[53] The OCS presented these arguments in its testimony and they have gone unrebutted. Therefore, RMP's credit rating coupled with RMP failure to advance any argument meaningfully countering the obvious conclusion that a superior credit rating equates to lower risk, establish that RMP requires a lower ROE than the companies in the proxy groups.

[47] *Id.* at pg. 17 ln 306-311; Kobliha Hearing at pg. 55 ln. 11.
[48] Bulkley Direct at pg. 63 ln 1241-1250; pg. 72 ln. 1426-1437; pg. 78 ln. 1546-1555.
[49] Kobliha Hearing at pg. 53 ln. 2-19; Woolridge Direct at pg. 1468 – pg. 69 ln 1470; Bulkley Direct at pg. 61 ln. 1197-1220; pg. 65 ln. 1277-1293; pg. 72 ln. 1439 – 1445.
[50] Bulkley Hearing at pg. 153 ln. 7-12.
[51] Bulkley Hearing at pg. 157 ln. 22 – pg. 158 ln. 13; Woolridge Surrebuttal pg. 18 ln. 315 -m316; OCS Cross Exh. 4 "RRA Regulatory Focus "Water utilities ROE average declines steeper than electric and gas utilities" July 2020 (Gas utilities ROE 9.4%); DPU Cross Exh. 1 "RRA Regulatory Focus, Major Rate Cases Decisions - - January – September 2020 (Gas utilities ROE 9.42%).
[52] Woolridge Surrebuttal at pg. 20 ln. 535-364.
[53] *Id.* at pg. 18 ln. 317—pg 19 ln. 351.

REVENUE REQUIREMENT

The OCS has demonstrated that rather than an increase in rates, RMP's revenue requirement should be decreased in this proceeding. In support of this position, the OCS submits the following discussion of issues and legal authorities.

Pryor Mountain The OCS recommends disallowance of the Pryor Mountain cost because 1) it is more expensive than other recent acquisitions the Company made in the 17-035-40 new Wind docket, 2) it is based on an affiliate transaction that has not been fully justified, and 3) it is not strictly needed to satisfy Rocky Mountain Power's resource requirements. The OCS is not suggesting a different standard for approval of Pryor Mountain due to its lack of pre-approval, rather, since no review of prudence has been made to date, a full prudence review of both planning decisions and construction costs must take place in this proceeding with the Company bearing the burden of proof[54] which RMP has not done.[55]

The costs of the Pryor Mountain project should be excluded because the Company has not demonstrated it was a prudent resource acquisition at the time it decided to proceed. For example:

---

[54] RMP was fully aware of the need to demonstrate prudency in connection with (1) the decision it made to proceed with the Pryor Mountain project, (2) the incurrence of actual cost overruns, and (3) the acquisition of wind turbine components from an affiliate, including regulatory scrutiny in acquiring the equipment at cost or market. *See,* Steward Hearing, at pg. 36 ln. 14 – pg. 39 ln. 7.

[55] The utility bears the burden of presenting the evidence necessary to support the Commission's "essential finding[s]." *Comm. of Consumer Servs. v. Pub. Serv. Comm'n of Utah*, 2003 UT 29, ¶ 14, 75 P.3d 481, 486.

> In the regulation of public utilities by governmental authority, a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the Commission, the Commission staff, or any interested party or protestant, to prove the contrary .. . . . The utility must therefore put forth substantial evidence to establish that its proposed increase is just and reasonable. The Commission, in turn, bears responsibility for holding the utility to its burden.

Id. (internal quotations and citations omitted); *see also, Utah Dep't of Bus. Regulation, Div. of Pub. Utilities v. Pub. Serv. Comm'n*, 614 P.2d 1242, 1245–46 (Utah 1980) "Rate making is not an adversary proceed in in which the applicant needs only to present a prima facie case to be entitled to relief. A state regulatory commission . . . must be informed of all relevant facts." *Id.*

- There is an absence of evidence showing that the project would "most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers"[56]
- The capital costs associated with the Pryor Mountain project are considerably greater than the cost of comparable projects approved in Docket 17-035-40. (Hayet Hearing 140 ln16-22)
- The Company has not demonstrated a need for the project given the availabilities of Front Office Transactions (FOTs)[57] and the pending large solicitation for renewable resources (Hayet Hearing pg. 153 ln. 24 to pg. 154 ln. 23).

RMP provided no evidence of any evaluation that the price paid was lower of cost or market for critical wind turbine generator components (hubs and nacelles) the Company decided to use from its Berkshire Hathaway affiliate.[58] Without that evidence, it appears that the sale was an opportunity for an affiliate to offload wind turbine components that were simply sitting in storage at a time when their value was declining because PTCs were expiring.

While RMP claims to have addressed the prudency of its initial decision to proceed with the project by running its GRID model, the Company acknowledged that it has presented no

---

[56] Utah Code § 54-17-201(2)(c)(ii)(A). While the Company may have proceeded on a specific course that would not necessarily invoke the Energy Resource Procurement Act, any prudent decision to move ahead with a project the size and scope of the Pryor Mountain project should necessarily take into consideration the public policy considerations articulated in the Energy Resource Procurement Act.

[57] RMP has supported, and the PSC has approved, a limited amount of FOTs as an acceptable means of meeting load requirements for many years. Without Pryor Mountain, RMP remains within those limits, and even with Pryor Mountain RMP would only reduce its FOT by just 52.2 MW. (2020 IRP shows a need for 508 MW of FOTs is 2021.)

[58] Hayet Hearing at pg 140 ln. 12-16; *Re Mountain Fuel Supply Co.,* No. 89-057-15, 1990 WL 509865 (Nov. 21, 1990).

> The Commission is of the view that transactions involving affiliates place ratepayers at a disadvantage that can never be entirely controlled or offset. For that reason it is generally appropriate to allow transfers of property from affiliates to the utility at the lesser of book or market and transfers going the other way at the greater of book or market. *We find that Mountain Fuel's property transferred to an affiliate should be valued at the greater of market or book, while that transferred from an affiliate to Mountain Fuel should be valued at the lesser of market or book.*

Id.(emphasis in original).

Commissioner Clark's questioning of RMP witness Van Engelenhaven established that RMP produced no evidence of the 2019 market value of the WTG when RMP purchased them at 2016 book value as wind PTCs were expiring. Van Engelenhaven Hearing at pg. 10 ln. 20—pg. 111 ln. 16.When pressed on cross whether the WGT had zero value in 2019, Mr. Van Engelenhaven could only state that the WTG had "some value." *Id.* at pg. 93 ln.3—pg. 59 ln. 11.

evidence related to the prudency of the cost overruns associated with the Pryor Mountain project which the Company is seeking to have recovered through rates.[59] For these reasons, the OCS maintains that the Company has failed to satisfy its burden of proof demonstrating that it is entitled to recover the costs of the Pryor Mountain project**.**

Lake Side 2 Outage. The OCS recommends a disallowance of the cost of the long Lake Side 2 outage that occurred in August 2019. The OCS believes the outage should have been avoided and there is information in the root cause analysis that supports this.[60] Support for this conclusion can also been drawn from a previous outage in 2009. Customers should not be asked to pay for any part of the cost of the repair that occurred during the test period. Outages such as occurred at Lake Side do not happen without a cause and the Company cannot carry its burden by simply establishing a lack of understanding as to what the cause may have been.[61] Rather, it is incumbent upon the Company to affirmatively prove prudence and not the job of the OCS or PSC to prove otherwise.[62] Allowing a utility to escape responsibility under the circumstances in this case would provide disincentives for utilities to uncover the cause of outages or pursue third parties that may be responsible.

Transmission Power Delivery Bad Debt. Rocky Mountain's base year expenses that carried forward to the future test year included approximately $980,000 for amounts recorded in a general ledger account for Transmission Power Delivery Bad Debt expense, with a portion these costs allocated to the Utah jurisdiction.[63] RMP explained that these costs include

[59] Link Hearing, at pg. 60 ln. 16-20; Hayet Hearing at pg. 140 ln. 4-5; pg 187 ln. 10-23.
[60] OCS is not including confidential information in this brief. See Hayet Confidential Direct at pg. 9 ln. 224—pg. 13 ln. 301. Hayet Hearing at pg. 191 ln. 16—pg.192 ln. 24.
[61] *Utah Dep't of Bus. Regulation*, 614 P.2d at 1245–46.
[62] *Comm. of Consumer Servs*, 2003 UT 29, ¶ 14.
[63] Ramas Direct pg. 28, ln. 585-591; Ramas Surrebuttal at pg. 17 ln. 334—pg.18 ln. 372; Ramas Hearing at pg. 105 ln. 8—pg. 107 ln. 23.

interconnection study costs that exceeded a customer's deposit and customer collections, which were then written-off.[64]

The Company failed to produce any evidence of a reasonable causal connection between the expense and Utah customers, despite Ms. Ramas' direct testimony identifying this disconnect and discovery requests seeking explanation.[65] No rationale was provided supporting the allocation of expenses of a transmission feasibility study to Utah customers, as opposed to assigning the expense to transmission customers.[66]

As with any costs the Company seeks to recover in rates, it bears the burden to bring forth substantial evidence supporting its claim.[67] The transmission power delivery bad debt expense the Company allocated to Utah in its filing should not be included in the revenue requirements and passed on to Utah customers.

Generation Overhaul Expense. For determining the amount of generation overhaul expense to include in revenue requirement, the OCS, RMP and Division agree that the amount should be based on a four-year historic average.[68] The issue for the PSC to decide in this case is whether the historic costs should be escalated prior to averaging.[69] This issue has been addressed extensively in prior rate case proceedings and again in this proceeding. In the two proceedings in which the PSC addressed the issue in an order, the PSC determined that the historic costs should not be escalated.[70]

---

[64] Ramas Surrebuttal pg. 17 ln. 334 – pg. 18 ln. 372; Hearing pg. 105 ln. 8 to 107 ln. 23.
[65] *Supra* n. 64.
[66] *Supra* n. 64.
[67] *Supra* n. 55.
[68] Ramas Direct at pg.31 ln. 561-661.
[69] *Id.* at pg. 32 ln. 682—pg. 33 ln. 690.
[70] Ramas Direct at pg. 32 ln. 666-673; pg. 33 ln. 695-710; pg. 34 ln. 728-742; *In the Matter of the Application of Rocky Mountain Power,* Docket 07-035-93, Report and Order on Revenue Requirement at pg. 82-83 (August 11, 2008, Utah P.S.C.); *In the Matter of the Application of Rocky Mountain*, Docket 09-035-23, Report and Order at 97 (February 18, 2010, Utah P.S.C.)

Rocky Mountain has failed to set forth facts and reasons that would allow for the PSC to demonstrate a fair and rational basis for approving a change in the escalation approach in this case.[71] The application of inflation to the historic amounts does not factor in productivity offsets, experience gained from prior overhauls that led to efficiencies, and cost saving measures. Nor does the application of inflation take into account the potential impacts of approaching plant retirements and early retirements on the extent of future overhaul work.[72]

Non-Labor O & M Escalation. In its initial filing, RMP escalated non-labor O&M expenses using industry-specific escalation factors developed by IHS Markit in its fourth quarter 2019 forecast released in February 2020.[73] OCS recommended that the base year non-labor O&M expenses should be escalated to test year levels using the more recent industry-specific escalation factors.[74] Application of the escalation factors to base year non-labor O&M expenses is consistent with prior RMP rate case proceedings, consistent with PacifiCorp's approach in the concurrent Oregon rate case, and consistent with the PSC's findings on this issue that were recently affirmed in Dominion Energy's rate case.[75]

Deer Creek Mine Regulatory Asset. The Company's proposal to recover the estimated recovery-based royalties in this case should be disallowed. The recovery-based royalties are not yet known or measurable and have not yet been paid. The Company has not yet begun the negotiations with the Office of Natural Resources Revenue to settle the amount owed.[76] In fact,

---

[71] In reviewing a request to use a different approach the PSC should note the requirements of Utah Code § 63G-4-403(4)(h)(iii), which require that a reviewing court will overturn an agency action if it is: "contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency. . . ."
[72] Ramas, Direct at pg. 36, ln. 778—pg.37, ln.796.
[73] Ramas Surrebuttal at pg. 24 ln. 497—pg. 25 ln. 520.
[74] *Id.* at pg. 24 ln. 504-505; pg. 29 ln. 622-624.
[75] *Id.* at pg. 25 ln. 529—pg. 29 ln. 626; *Application of Dominion Energy Utah to Increase Distribution Rates,* Docket 19-057-02, Report and Order at 20 (February 25, 2020, Utah P.S.C.) (Global Insights referenced in the Dominion rate case has changed its name to IHS Markit which is also the source of escalation factors in this case).
[76] Ramas Direct at pg. 65 ln. 1423—pg. 68 ln. 1497; Ramas Surrebuttal at pg. 31 ln. 662-667.

in a prior case the PSC has excluded dam removal estimated expenses as not know or measurable because "the outcome of negotiations is unknown, removal of the dam is an uncertain event. . . ."[77] The OCS recommends that the recovery-based royalties be addressed in a future rate case after the amounts are known and measurable.[78]

Utah AMI Project. The OCS recommends that the Company's Utah AMI project be excluded from the test year as the benefits of the project are largely not expected until 2023 when the project is fully implemented. The purported benefits and offsetting cost savings are not reflected in the test year, and the project will not be fully used and useful in the test year.[79] Actual amounts spent on the Utah AMI project assets completed and being placed in service during 2020 are expected to be less than about $2.5 million.[80] Without the realization of significant benefits in the test year or the inclusion of any of the purported benefits and cost offsets in the test year, the recovery of the costs should not be allowed in this rate case.[81]

Pensions. Settlement Loss. RMP's proposal to include the full amount of the projected 2021 settlement loss of $11.9 million as a component of the pension expense included in revenue requirements is unreasonable.[82] The OCS recommend that, beginning with the test year, the PSC allow RMP to defer settlement losses or settlement gains that are triggered by the annual lump sum cash distributions exceeding the threshold, and to recognize such deferred settlement losses or gains as part of annual pension costs over the remaining life expectancy of plan participants.[83] Under such an approach, the settlement losses (or gains) would continue to be recognized in

[77] *See, In Re PacifiCorp,* Docket No. 97-035-01, 1999 WL 218118 (Utah P.S.C. Mar. 4, 1999).
[78] Ramas Surrebuttal at pg. 31 ln. 696-701.
[79] *Id.*at pg. 51 ln. 1109—pg. 52 ln. 1123.
[80] Mansfield, Hearing at 87 ln 20—pg. 88 ln 1.
[81] *Supra,* n. 55.
[82] Kobliha Direct at pg. 31 ln. 680—pg. 32 ln. 682.
[83] Ramas Direct at pg. 24 ln. 507-515.

annual pension costs the same way they would have been recognized had the recognition of the settlement loss (or gain) not been triggered.[84] This is consistent with the treatment RMP requested in Docket No. 18-035-48, recognized as a valid approach by RMP and does not unreasonably inflate the revenue requirement.[85]

Prepaid Asset. RMP's proposal to included prepaid pension asset and accrued other post-retirement asset, net of the associated accumulated deferred income taxes, resulting in $110.3 million included in rate base, must be rejected. Such an approach is a radical departure from past practice and RMP has not provided any new facts or rationale to justify this inconsistency.[86] Over the duration of these retirement plans, the total amount of cash contributions to the plans will ultimately equal the total amount of expense associated with the plans. It would be unfair to charge ratepayers a return now that the Company is in a net prepaid position when ratepayers did not benefit through a reduction to rate base during the many past years in which a net accrued liability existed.[87] While RMP claims that its shareholders have funded the net prepaid pension asset and accrued other post-retirement asset balances, it is unable to prove or support this claim. It cannot be determined if the prepaid balance on RMP's books was funded by shareholders or ratepayers as rates are not reset annually and the amount recovered in rates cannot be determined for many years because many cases were resolved by settlement.[88] It would be unfair to change the longstanding treatment of these prepaid assets by now including them in rate base.

Balancing Account. As an alternative approach, RMP proposes the creation of a pension balancing account for the first time in its rebuttal filing less than one month prior to the

[84] Ramas Direct at pg. 24 ln. 507-515.
[85] *Id.* at pg. 24 ln. 520—pg. 25 ln. 531; Kobliha Hearing at pg. 218 ln. 2-8.
[86] Utah Code § 63G-4-403(4)(h)(iii).
[87] Ramas Direct at pg. 24 ln. 520—pg. 25 ln. 531.
[88] Ramas Hearing at pg. 125 ln. 9—pg. 126 ln 8.

hearing.[89] Under this proposal, RMP would still include the full projected 2021 settlement loss in pension expense and would defer the difference between the amount of pension expense included in revenue requirements and the amount actually booked resulting in a regulatory asset or liability.[90] This approach must be rejected. Pension costs are not sufficiently variable to justify a balancing account as the variability touted by RMP is easily addressed through the deferral and amortization of the settlement losses/(gains) discussed previously and the proliferation of balancing accounts is contrary to policy considerations against single issue ratemaking.[91]

EDIT Regulatory Liability Amortization. In determining the amortization period for the return of the EDIT Regulatory Liability to the ratepayers, the PSC should be guided by whether this case results in a rate increase or decrease. If this case results in a decrease of rates the PSC should adopt the position of the OCS for a 10-year amortization period. If rates are increased, a shorter amortization period than the 10 years may be appropriate to offset any increase.[92]

[89] Ramas Surrebuttal at pg. 42 ln. 941—pg. 43 ln. 946; Ramas Hearing at pg. 88 ln. 21—pg. 89 ln. 1.
[90] Kobliha Rebuttal at pg. 3 ln. 57—pg. 4 ln. 70.
[91] Ramas Hearing at pg. 128 ln. 15—pg. 129 ln. 14; pg. 130 ln. 7—pg. 131 ln. 13; Higgins Surrebuttal at pg 28 ln. 557-560.
[92] Ramas Hearing at pg. 92 ln. 13—pg. 9 ln. 17.

COST OF SERVICE/RATE DESIGN

The OCS has examined RMP's cost-of-service study and found that the Company's modifications to traditional cost of service study methods to incorporate "subfunctionalization" is fatally flawed, inappropriately and without transparency shifts costs from energy to demand, and could have additional unintended consequences.[93] RMP's proposal for unbundling rates, based on this flawed subfunctionalization should be unequivocally rejected. Further, the flaws in RMP's cost-of-service study require that the PSC consider other factors when allocating revenue to customer classes and determining final rates and rate design.

RMP's suggested rates for residential service incorporate increases to residential customer monthly service charges combined with the elimination of the last rate tier which together result in an unequitable imposition of increased rates for customers with lower and average levels of use.[94]

RMP's proposed interruptible pilot program for industrial interruptible service is poorly thought out and lacks important structure to enable lessons learned to be integrated into future rate offerings.

The Company's justification for the project has been primarily focused on possible improvements to the meter reading process. AMI meters can be a grid modernization tool, but without proper analysis, planning, transparency, and accountability, customer benefits will not be realized and the project will not be cost-effective.[95] The OCS recommends that RMP develop an

[93] Nelson Direct at pg. 66 ln. 1320—pg.. 67 ln. 1324 and Workpaper OCS 5.2D; *see also,* Meredith Rebuttal at pg. 22 ln.466-46;, Meredith Direct at pg.19 ln. 394-400.
[94] Nelson Direct at pg. 75 ln. 1470—pg. 77 ln. 1509.
[95] Nelson Direct at pg. 98 ln. 1927—pg. 103 ln. 2022.

advanced rate design road map to ensure that AMI functionality provides benefits for ratepayers as soon as is reasonable.[96]

RMP's Cost of Service Study. One of the guiding principles recognized by regulatory authorities in designing rates for regulatory utilities is cost causation. That principle has been described by the U.S. Court of Appeals for the District of Columbia as requiring that "all approved rates reflect to some degree the costs actually caused by the customer who must pay them."[97] In elaborating further on this cost causation principle, the Court explains:

> In the context of monopoly regulation, this principle helps ensure that utilities 'produce revenues from each class of customers which match, as closely as practicable, the costs to serve each class or individual customer. That is, we scrutinize a utility's rates to ensure a match between cost-causation and cost-responsibility.[98]

Such cost-causation principles have been embraced in Utah regulatory proceedings where utilities have been required to perform cost-of-service studies in support of their proposed rate designs.[99]

In the cost-of-service study submitted by RMP, the Company claims to have followed traditional steps of analysis where costs are first functionalized, then classified, and finally allocated to inform rate design.[100] However, the technical mechanics of RMP's fixed and variable subfunctionalization and changes made to facilitate "unbundling" are not an accepted or recognized cost-of-service approach.

---

[96] Nelson Direct at pg. 103 ln. 2024 – pg. 106 ln. 2076. OCS also provides recommendations for a Grid Modernization strategy, Nelson Direct pg. 118 ln. 2303 – pg. 121 ln. 2353.
[97] *Black Oak Energy, LLC v. FERC,* 725 F.3d 230, 237 (D.C. Cir 2013), *see also*, *E. Ky Power Coop., Inc. v. FERC,* 489 F.3d 1299, 1303 (D.C. Cir 2007).
[98] *Black Oak Energy,* 725 F.3d at 237 (citations omitted), *see also, Ala. Elec. Coop. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982); *K.N. Energy, Inc. v. FERC,* 968 F.2d 1295, 1300-01 (D.C. Cir 1992).
[99] *See, e.g., U.S. West Communications, Inc.,* Docket 95-049-05, Order at 4, 1995 WL 798880 (November 27, 1995, Utah P.S.C.)
[100] Meredith Direct at p. 5 ln. 92-96.

RMP not only failed to provide sufficient detail and support for its subfunctionalization, but its method is also highly flawed both technically and theoretically. Subfunctionalization's purpose is to better reflect cost causation, but when it does not change the classification and allocation of costs, costs cannot be more accurately categorized into energy, demand, or customer-related nor split between customer classes.

RMP's subfunctionalization proposal is not transparent. In fact, it is an attempt to work around the long standing 75/25 demand and energy split precedent for production and transmission classification. To achieve the work around, RMP creates unprecedented cost components referred to as fixed and variable supply. According to the Company, "cost causation principles would support recovery of [fixed supply] costs through demand rates."[101] Because the fixed supply cost component is greater than the costs traditionally classified as demand-related within the ECOSS, RMP's approach could be used to justify inflated demand charges and lower kWh charges.[102] RMP's use subfunctionalization will deviate from cost-based rates by creating a new cost components that do not align with traditional ECOSS cost component results that use the 75/25 split.[103] Using contrived cost components that do not follow cost-of-service best practices, is clearly a deviation from traditional cost-based ratemaking. Simply stated, the variable supply, or EBA, costs are not the same as the energy related costs within the cost-of-service study but RMP uses the EBA costs to alter rate design. EBA costs do not equal energy-

[101] Meredith Direct at pg. 19 ln. 394-400.
[102] Nelson Direct at pg. 69 ln. 1360—pg. 70 ln. 1381. Note that Figure 1 on pages 69-70 show variable supply cost components as less than energy-related cost components. The text above is the complement to this figure, which is that fixed supply is greater than demand-related costs. *See also* Exhibit RMP_(RMM-5) and associated "UT Pricing Model GRC2020" workpaper. Both fixed and variable supply cost components can be calculated from the workpaper, as well as unit energy and demand cost components. However, RMP is unclear how the two sets of cost components are used to inform and design rates.
[103] To be clear, RMP subfunctionalization does not change the ECOSS results. Instead, it creates two different sets of cost components that can be used to inform rate design. The traditional cost components are energy, demand, and customer cost components. While RMP retains the traditional cost components, it creates additional fixed and variable supply cost components that are used to inform rate design.

related costs. Even though RMP characterized the changes being made to its cost of service as helpful for "unbundling", RMP's proposed fixed and variable cost subfunctionalization is technically unsound, creates significant confusion through a lack of transparency, and represents an unprecedented move away from cost-of-service-based ratemaking.

Various witnesses representing different parties acknowledge reviewing RMP's cost-of-service study as part of their analysis presented in this case.[104] However, most of those witnesses also acknowledged that the subfunctionalization step proposed by RMP presented confusion and should not result in changes to the separate steps of functionalization, classification and allocation of costs.[105] Witnesses also acknowledged a lack of transparency and understanding as it related to RMP's claim that it was necessary to make a change to incorporate "unbundling"- a step that was not fully explained, supported, or justified by the Company.

Without providing clear evidence of the need for the extra step of subfunctionalization and without a cogent explanation as to what was being accomplished by the Company's "unbundling" change, the evidence presented by RMP fails to satisfy the Company's burden of proof to support its proposed rate design.[106] Thus, the PSC should unequivocally reject RMP's proposal for unbundled rates. The OCS does not oppose unbundling per se, but did provide

---

[104] Chapman Hearing at pg 106 ln 7-12; Baudino Hearing at pg 28 ln 5—pg. 30 ln, 11.

[105] Bieber, Hearing at pg. 228 ln. 3—pg. 231 ln. 6. The OCS asked Witness Bieber whether functionalization and subfunctionalization were within the first step of an ECOSS. His response was, "Typically … [but) I'm not saying that functionalization is always being carried out first, though." *Id.* at pg.228 ln. 19-23. The OCS then explained that RMP's only modification to its ECOSS was a subfunctionalization step to enable rate unbundling. When asked whether he had reviewed RMP's "efforts to unbundle" in the ECOSS and whether he had "an understanding of what [RMP] did and where the costs are going," *Id.* at pg. 229 ln. 14-16. Witness Bieber answered yes. *Id.* at pg. 229 ln. 17. The OCS finds it inconsistent to claim that one understands subfunctionalization, when one is unclear which step it takes place within the analysis. Chapman, Hearing at pg 109 ln 3-17; and Thomas, Hearing at pg 201 ln 7—pg. 202 ln 7.

[106] *Supra,* n. 55.

adequate evidence to demonstrate RMP's proposal for unbundling would not be in the public interest – a conclusion supported by other parties in this proceeding.[107]

Further, given the weaknesses of RMP's cost of service study, along with additional evidence presented by OCS, the PSC should give consideration to factors other than just the Company's cost-of-service study in deciding how to allocate costs to the various customer classes. There is record evidence available for the PSC to carefully review and consider the relative performance of customer classes in providing revenues compared to the costs that have been assigned to each class.[108] There is also evidence relating to an anticipated increase in residential revenues in light of the effects of the pandemic that customers have been recently experiencing.[109] These facts, along with equitable consideration associated with gradualism can easily form a framework from which the PSC can prescribe a fair and equitable approach to be taken in the design of rates, as opposed to relying upon the flawed and unpersuasive cost of service study that was submitted by RMP.

Residential Rates. The OCS examined RMP's proposed rate design as it might affect the rates of residential customers with particular focus of ensuring that no subset of the customer class is burdened with an unreasonably high rate shock. While the OCS generally supports the Company's suggestion to split the basic monthly service charge between multi- family and single family customers, OCS witness Ron Nelson demonstrated that the increase in monthly customer service charges were not fully justified. Mr. Nelson demonstrated that RMP's proposal to include demand-related transformer costs within the customer charge was not supported

[107] See testimony of Utah Clean Energy Sarah Wright and Salt Lake City witness Christopher Thomas. Wright Phase II Surrebuttal, at pg.7 ln. 98—pg. 9 ln. 147; Thomas Surrebuttal, pg. 3 line 44—pg. 4 ln. 52.
[108] Nelson Rebuttal at pg. 26 ln. 542—pg. 27 ln. 564.
[109] Meredith, Hearing at 36 ln 19—pg. 37 ln 6. Camfield, Hearing at pg 128 ln 18—pg 129 ln 1, 130 ln 3—pg. 131 ln 5.

theoretically and that, instead, only customer-specific costs should be collected through the customer charge.[110] Because the costs of transformers are caused by the need to meet customer demand, these costs are more appropriately recovered through the residential class's volumetric component.[111] Even RMP own distribution planning criteria state that "transformers are sized to serve peak coincidental load," not to serve customer-specific service needs.[112] RMP's transformers are therefore certainly not "directly related to the number of customers served," which is how the NARUC manual defines customer costs.[113] Based on the evidence presented, the OCS specifically submits that the single family basic monthly service charge could be increased, but not to exceed $7.

The OCS also examined RMP's proposal to remove the last inclining block rate for residential service. While RMP did not present the evidence to compel the elimination of the third tier,[114] the OCS decided that it would support the Company's proposal to remove the inclining block rate so long as the basic monthly service charge for single family customers would be limited to a fee not greater than $7. The OCS believes that incorporation of the Company's proposal without these limitations would result in rates that would be unjustified and inequitable, particularly when considering the effects such rates would have on low and average use residential customers.

Industrial Interruptible Pilot Program. RMP's proposed interruptible pilot is poorly thought out and lacks important structure to enable lessons learned to be integrated into rate design. Specifically, RMP offers no objective criteria, metrics, reporting requirements, or any

---

[110] Nelson Direct at pg. 78 ln. 1529—pg. 83 ln. 1616.
[111] *Id.*
[112] Nelson Surrebuttal at pg. 46 ln. 879-888.
[113] Nelson Direct at pg. 15 ln. 313-316.
[114] *See,* Camfield, Hearing at pg. 124 ln 23—pg.127 ln 8; Wright, Hearing at pg. 191 ln 7-19, 195 ln 25—pg. 196 ln 3.

other objective framework from which to evaluate the pilot.[115] For that reason, OCS recommends that the PSC require RMP to file a pilot framework.

Utah AMI Meters project. Grid modernization investments are often investments in technology and communications to enable data collection and enable tangible interaction between the utility and its customers. To reap the benefits of such investments, a utility has to manage complex technology investments and conduct iterative data analytics to derive customer and system insights to successfully create benefits for customers. By narrowly focusing the AMI project on meter reading savings, RMP is foregoing any discussion or development of a comprehensive and transparent grid modernization strategy that better leverages demand-side resources, allows the utility and third-parties to provide new energy services, and improves load flexibility – all critical benefits for ratepayers.

Articulating a comprehensive and cohesive strategy is critical because grid modernization investments are significant, technologically complex, and need to be sequenced such that risks are minimized and benefits are maximized for ratepayers. The information that RMP provided in its filing and through discovery is wholly inadequate for the PSC to determine the reasonableness of the proposed AMI project investments. Instead, the information provided by RMP with its narrower focus on meter reading improvements is sufficient for the PSC to make a determination that RMP's proposed AMI project investments are unreasonable.

For RMP's proposed investment into AMI meters to be considered prudent, the Company must focus more specifically on the unique benefits that can be provided through its proposal for grid modernization. An appropriate cost benefits analysis must enumerate the operational and

[115] Nelson Direct at pg. 87 ln. 1704-1706.

system benefits as well as direct customer benefits that RMP anticipates it can achieve in order to justify the investment in its proposed AMI meter project.

The OCS recommends that the PSC reject RMP's AMI project without prejudice and order RMP to provide a more comprehensive cost and benefits study addressing the additional issues and potential grid modernization benefits that might be associated the AMI meter project. OCS's suggestion is supported by witnesses supporting other parties.[116]

Respectfully submitted, November 30, 2020.

__/s/_*Steven W. Snarr*________
Steven W. Snarr
Assistant Attorney General

__/s/_*Robert J. Moore*_______
Robert J. Moore
Assistant Attorney General

Attorneys for the Office of Consumer Services

---

[116] UCE Witness Sarah Wright and WRA Witness Douglas J. Howe supported the OCS in this recommendation. Wright Phase II rebuttal pg. 9 ln. 131 – pg. 10 ln. 160. Howe rebuttal pg. 5 ln. 62 – 66; Wright, Hearing at pg 190 ln 17—pg. 19 ln 6; Howe, Hearing at pg 17 ln 4–25.