

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

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
APPLICATION OF ROCKY MOUNTAIN POWER FOR 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 Division of Public Utilities' Petition for Review or Rehearing

Pursuant to Utah Code §§ 54-7-15, 54-4a-1, 63G-4-301 and Utah Admin Code r. 746-1-801 the Utah Division of Public Utilities (Division) files this Petition for Review. The Public Service Commission of Utah (Commission) should review and reconsider its December 30, 2020 Order (“Order”) concluding that Rocky Mountain Power (“RMP”) met its burden of proof to recover the costs associated with the August 2019 generator failure at the Lake Side 2 power plant. The Commission committed legal error by applying the incorrect burden of proof and should reconsider and correct its legal error. The facts on the record are insufficient to meet RMP’s burden and the Commission should reconsider its Order, applying the correct burden of proof, and deny recovery.

Under Utah law “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.” *Utah Dep't of Bus. Regulation, Div. of Pub. Utilities v. Pub. Serv. Comm'n*, 614 P.2d 1242, 1245 (Utah 1980). This burden is essential to ratemaking because the utility is typically the party in possession of the necessary evidence. “Otherwise, the hands of the regulatory body could be tied in such fashion it could not effectively determine whether a proposed rate was justified.” *Id.*

In the Order, the Commission found that RMP had met its burden of substantial evidence because it “followed prudent practices by performing an RCA.” Order at 35. And that there was nothing in the RCA that “identifies negligent or imprudent actions as a likely cause” of the generator failure. *Id.* at 35-36. The Commission further supported this finding because “RMP demonstrated concerted efforts to prudently contract for quality services in maintaining and operating” the Lake Side 2 power plant. *Id.* at 36. The Commission further held that “evidence does not support disallowance.” *Id.* In summary the finding of prudence for the outage appears from the Order to be based on the lack of factual evidence of imprudence and not on any specific evidence of prudence outside of general operation and after-the-fact contracting for investigation of the root cause of the failure.

The evidence on record does not conclusively show imprudence. That is not the appropriate burden of proof, however. The burden rests on RMP to prove by substantial evidence that it acted prudently in incurring the expenses that it seeks to recover. The Division is not disputing the Commission’s findings with respect to the normal daily operation and maintenance or recovery of the expenses related to those activities or the efforts after the outage to determine the cause. Only the direct cause of the outage.

The Order's findings of fact related to this outage fall into either the category of general operation and maintenance or the review of the outage. Prudence in both categories does not inherently demonstrate prudence in terms of the event that caused the outage. A utility might act entirely prudently in the operation of a facility, have an imprudently caused outage, and then follow it with a prudent investigation of the outage. The utility would not be entitled to recovery. In this case, the Order lacks a finding of substantial evidence that RMP acted prudently with respect to the actual cause of the outage. The Commission recognized that "RMP continues to work to uncover the root cause of this outage..." *Id.* Therefore, it is a natural result that the Order could not have found that substantial evidence of prudence related to the root cause has been shown.

Given the lack of substantial evidence relating to the outage, when the correct burden of proof is applied, prudence cannot be shown. "If there is no substantial evidence to support an essential finding, that finding cannot stand and a rate order predicated upon it must fall." *Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm'n of Utah*, 105 Utah 266, 145 P.2d 790, 792 (1944). The lack of evidence supporting disallowance is insufficient for RMP to have carried its burden and the Commission should reconsider the burden of proof and its application to the facts.

The Commission's desire not to provide a disincentive for RMP to seek the true cause is a laudable goal. One that the Division fully supports. The fact that a second investigation may be ongoing does not demonstrate imprudence. But it also does not demonstrate prudence with respect to the matter at issue here: the prudence of the outage. A default rule allowing for recovery of costs for events where no cause is determined is inconsistent with the substantial evidence burden. This rule would set a clear incentive for the utility to find the cause inconclusive or fail to conduct comprehensive investigation in any event that could result in the root cause

analysis pointing to imprudent behavior. In those instances, the utility is better off finding no cause than identifying the cause. In the alternative, if the utility does not recover costs when equipment failure cause is unknown the utility will have a significant incentive to investigate thoroughly.

The Commission committed legal error in approving recovery of the costs related to the Lake Side 2 outage by applying the incorrect burden of proof to the relevant events. Applying the correct burden of proof to the Commission's own findings of fact in its Order results in a necessary conclusion that RMP failed to meet the burden of substantial evidence of prudence with respect to the cause of the Lake Side 2 outage and the incurrence of the capital costs associated with it. The Commission should reconsider its approval of recovery of the costs related to the Lake Side 2 outage. Should further evidence be offered in a future proceeding, the Commission could approve costs as prudent at that time. The inconvenient timing of a general rate case that occurs before evidence of prudence exists does not eliminate the requirement that such prudence be demonstrated before the costs may be included in rates.

Submitted this 29th day of January 2020.

/s/ Justin C. Jetter

Justin C. Jetter
Assistant Attorney General
Utah Division of Public Utilities

CERTIFICATE OF SERVICE

I certify that on January 29, 2021, I caused a true and correct copy of the foregoing to be filed with the Public Service Commission and served by the Utah Division of Public Utilities to the following in Utah Docket 20-035-04 as indicated below:

BY Electronic-Mail:

Rocky Mountain Power

Jana Saba

Joelle Steward

Emily Wegener

datarequest@pacificorp.com

jana.saba@pacificorp.com

joelle.steward@pacificorp.com

emily.wegener@pacificorp.com

Stoel Rives, LLP on behalf of Rocky Mountain Power

Cameron L Sabin

cameron.sabin@stoel.com

Public Service Commission

James A. Logan

psc@utah.gov

jlogan@utah.gov

Utah Association of Energy Users

Phillip J. Russell

Kevin Higgins

Neal Townsend

Justin Bieber

Courtney Higgins

Donald Hendrickson

Olivia Smith

Gary A. Dodge

prussell@jdrsllaw.com

khiggins@energystrat.com

ntownsend@energystrat.com

jbieber@energystrat.com

chiggins@energystrat.com

dhendrickson@energystrat.com

osmith@energystrat.com

gdodge@hjdllaw.com

Western Resource Advocates

Sophie Hayes

Nancy Kelly

Steven S. Michel

Callie Hood

Douglas Howe

James B. Dalton

April Elliott

Aaron Kressig

sophie.hayes@westernresources.org

nkelly@westernresources.org

smichel@westernresources.org

callie.hood@westernresources.org

dhowe@highrocknm.com

jamesblainedalton@gmail.com

april.elliott@westernresources.org

aaron.kressig@westernresources.org

Walmart, Inc.

Vicki M. Baldwin

Stephen W. Chriss

vbaldwin@parsonsbehle.com

stephen.chriss@walmart.com

Nucor Steel-Utah

Peter J. Mattheis

Eric J. Lacey

Jeremy R. Cook

pjm@smxblaw.com

ejl@smxblaw.com

jcook@cohnekinghorn.com

The Kroger Co.

Kurt J. Boehm
Jody Kyler Cohn
Richard A. Baudino

kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com
rbaudino@jkenn.com

Utah Clean Energy

Hunter Holman
Kate Bowman
Sarah Wright

hunter@utahcleanenergy.org
kate@utahcleanenergy.org
sarah@utahcleanenergy.org

US Magnesium

Phillip J. Russell
Roger Swenson

prussell@jdrslaw.com
roger.swenson@prodigy.net

Stadion LLC

Irion A. Sanger
Joni Sliger
R Bryce Dalley
Elizabeth Ferrell
Jacqueline Dory
Brian Dickman
Erin Yoder Logue

irion@sanger-law.com
joni@sanger-law.com
rbd@fb.com
eferrell@fb.com
jdory@fb.com
bdickman@newgenstrategies.net
erin@sanger-law.com

University of Utah

Phillip J. Russell
Christopher F. Benson

prussell@jdrslaw.com
chris.benson@utah.edu

ChargePoint, Inc.

Scott Dunbar
Matthew Deal

sdunbar@keyesfox.com
matthew.deal@chargepoint.com

Salt Lake City Corporation

Megan J. DePaulis
Christopher Thomas

megan.depaulis@slcgov.com
christopher.thomas@slcgov.com

Christensen Associates Energy Consulting, LLC with DPU

Bruce R. Chapman
Robert Camfield
Corey J. Lott
Nicholas Crowley

brchapman@caenergy.com
rjcamfield@caenergy.com
cjlott@caenergy.com
nacrowley@caenergy.com

William Dunkel and Associates with DPU

William Dunkel
Roxie McCullar

williamdunkel@consultant.com
roxiemccullar@consultant.com

Daymark Energy Advisors with DPU

Philip DiDomenico

pdidomenico@daymarkea.com

Dan Koehler

dkoehler@daymarkea.com

Office of Consumer Services

Michelle Beck

mbeck@utah.gov

Alyson Anderson

akanderson@utah.gov

Erin Childs

echilds@strategen.com

Matt McDonnell

mmcdonnell@strategen.com

Mary Caroline Palmer

cpalmer@strategen.com

Ron Nelson

rnelson@strategen.com

Maria Roumpani

mroumpani@strategen.com

Philip Hayet

phayet@jkenn.com

Randall J. Falkenberg

randacf@aol.com

Samuel Wyrobeck

swyrobeck@jkenn.com

J. Randall Woolridge

jrwoolridge@gmail.com

Donna Ramas

donnaramas@aol.com

Utah Attorney General's Office

Assistant Attorney Generals

Justin Jetter

jjetter@agutah.gov

Patricia Schmid

pschmid@agutah.gov

Robert Moore

rmoore@agutah.gov

/S/

Madison Galt, Legal Assistant
Utah Division of Public Utilities