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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority to Increase Its Retail Electric Utility Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations	Docket No. 20-035-04

ROCKY MOUNTAIN POWER'S RESPONSE IN OPPOSITION TO PETITIONS FOR RECONSIDERATION, REVIEW, OR REHEARING

Pursuant to Utah Code §§ 54-7-15 and 63G-4-301 and Rule R746-1-801 of the Utah Administrative Code, Rocky Mountain Power ("RMP" or "Company") provides this opposition to the Division of Public Utilities' Petition for Review or Rehearing ("DPU Petition"), the Office of Consumer Services' Petition for Reconsideration and Rehearing ("OCS Petition"), the Petition of the Utah Association of Energy Users and the University of Utah for Review or Rehearing of

the Commission's Order Issued December 30, 2020 ("UAE Petition"), and the Office of Consumer Services' Joinder in the UAE Petition ("OCS Joinder") (collectively, the "Petitions") filed on January 29, 2021. The relief requested by the Division of Public Utilities ("DPU"), the Office of Consumer Services ("OCS"), the Utah Association of Energy Users ("UAE"), and the University of Utah ("University") in their Petitions is unsupported and unjustified. Accordingly, the Company respectfully requests that the Commission deny the Petitions.

The Petitions challenge three portions of the Commission's December 30, 2020 Order ("Order") in this docket:

1. The DPU Petition and OCS Petition seek review or rehearing of the Commission's conclusion that the Company met its burden of proof to recover the costs associated with the August 2019 generator failure at the Lake Side 2 power plant.

2. The UAE Petition and the OCS Joinder seek reconsideration of the Commission's decision to allow the Company to recover the full amount of its forecast, test-year pension settlement losses in a single year rather than recovering these costs through a long-term amortization of this expense. Alternatively, if the Commission denies reconsideration of recovery of the full amount of pension settlement losses in a single year, the UAE Petition and OCS Joinder seek reconsideration or rehearing—or simply clarification—regarding the amount of pension settlement losses that the Company may recover through a balancing account ordered by the Commission from year to year.

3. The UAE Petition seeks reconsideration of two aspects of the portion of the Order regarding rate design for Schedule 32 transmission voltage customers. First, the UAE Petition states that the Daily Power Charges for Schedule 32 transmission voltage customers appear to result from a mathematical error. Second, UAE and the University request clarification regarding the revenue increase intended by the demand charges set for transmission voltage customers.

The Commission's decisions with respect to each of the three issues were fully supported by substantial evidence in the record and are in full accord with the law. Therefore, the rulings do not need to be reviewed, reconsidered, or reheard. The Petitions should be denied.

I. ARGUMENT

A. SUBSTANTIAL EVIDENCE ESTABLISHES THAT THE COMPANY'S INSTALLATION AND MANAGEMENT OF THE LAKE SIDE 2 POWER PLANT WAS PRUDENT AND THERE IS NO EVIDENCE THAT THE GENERATOR FAILURE AT THE PLANT WAS THE RESULT OF IMPRUDENCE.

The Company's Lake Side 2 Unit 3 generator experienced a catastrophic failure on August 18, 2019, which resulted in an approximately five-month outage.[1] In this general rate case, the Company sought recovery of the costs associated with repairing that outage.

The original equipment manufacturer, Siemens, conducted a root cause analysis ("Siemens RCA") that was inconclusive.[2] The Siemens RCA set forth a detailed list of potential causes and determined that each of them were either completely eliminated or were low probability.[3] It also provided detailed observations as justification for each determination.[4] While there was no conclusion about the cause of the outage, there was also no evidence found in the Siemens RCA that the Company acted imprudently in its operation or maintenance of the unit or acted in a way that could have caused the outage.

In addition to providing the Siemens RCA, the Company also provided the previous generator testing and inspections, which showed that the Company performed all required maintenance and was not on notice of any problem with the generator that could have been addressed to prevent the outage.[5] In the last detailed inspection of the generator, Siemens

[1] Rebuttal Testimony of Dana M. Ralston (Oct. 5, 2020) at 2:29-42.
[2] *Id.* at 2:43-3:64.
[3] OCS Ex. 3.2-2, pages 24-27.
[4] *Id.* at 10-22.
[5] RMP Ex. DMR-2R

provided a report to the Company that stated: "Based on the visual inspections made and the results of the electrical tests, this generator can be expected to perform without restriction within normal operating parameters."[6] Although the Siemens RCA did not determine that foreign material left in the generator caused the outage, because that was the cause with the least number of contraindications (while still low probability), the Company also provided testimony that it maintains and follows foreign material exclusion policies and required its maintenance contractor Siemens to do the same.[7]

The Company also notified the Commission that it was performing a follow-up RCA to attempt to determine the cause of the failure, which was not complete at the time of the hearing.[8] While conducting the second RCA does not bear on the prudence of the Company's pre-outage conduct in operating and maintaining Lake Side 2 Unit 3, it demonstrates that the Company is generally prudent in the operation of its generation fleet.

The Commission determined that the Company "provided substantial evidence it has operated and maintained Lake Side 2 Unit 3 prudently."[9] Both DPU and OCS request consideration, arguing that the Commission applied an incorrect standard of proof when it determined the Company acted prudently. The Company does not dispute that it bears the burden to prove that its costs are just and reasonable by presenting substantial evidence to support them.[10] Substantial evidence means evidence beyond "bald assertions" of Company

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[6] *Id.* at 9.
[7] Rebuttal Testimony of Dana M. Ralston at 4:77-81.
[8] *Id.* at 4:87-90. The second RCA has since been finalized and was provided in the Company's EBA proceeding, Docket No. 20-35-01, as Confidential Exhibit RMP__(DMR-1S) on January 15, 2021. The second RCA, similar to the Siemens RCA, did not implicate any action on the part of the Company that could have contributed to the cause of the outage. It is unnecessary to consider the findings of the second RCA to determine that the Company acted prudently with respect to the Lake Side 2 Unit 3 outage.
[9] Order at 35.
[10] *Utah Office of Consumer Servs. v. Pub. Serv. Comm'n of Utah*, 445 P.3d 464, 2019 UT 26, ¶ 46 (citing *Comm. of Consumer Servs. v. Pub. Serv. Comm'n of Utah*, 2003 UT 29, ¶ 14, 75 P.3d 481 (holding that interim rates violate the statutes because they did not require the Company to provide "substantial evidence" in support of its costs before they went into effect).

representatives.[11] An agency decision is "'supported by substantial evidence if there is a quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.'"[12] The Company's evidence meets this standard.

The Commission's prudence decision is consistent with its earlier decision on the prudence of generation outages. In the 2019 EBA, under similar circumstances, the Commission determined that costs from the Company's Blundell Unit 2 were prudently incurred.[13] Notably, that determination was based in large part on the lack of any evidence to suggest the Company acted contrary to industry practice or that it failed to properly operate the plant.[14] Like the Blundell outage, the Lake Side outage was unanticipated, and all of the evidence shows that RMP acted prudently.

In contrast, in the 2018 EBA, the Commission held that the Company did not act prudently when there were "too many unanswered questions" about the cause of the outage.[15] Specifically, while emphasizing that it does not "expect a utility to conduct an RCA for every unplanned outage," the Commission determined that an inconclusive cause was not sufficient to justify cost recovery where there were no facts in the record about whether the failure mechanism was defectively manufactured, installed, or maintained.[16] In contrast to the outage disallowed in the 2018 EBA, the Company has delved into a comprehensive list of possible causes and has nonetheless been unable to determine a failure mechanism for the Lake Side outage. The comprehensive nature of the Company's inquiry supports that the Company acted

[11] *Utah Dep't of Bus. Regulations, Div. of Pub. Utilities v. Pub. Serv. Comm'n*, 614 P.2d 1242, 1247 (Utah 1980).
[12] *Becker v. Sunset City*, 309 P.3d 223, 2013 UT 51, ¶ 10 (citing *Ivory Homes, Ltd. v. Utah State Tax Comm'n*, 2011 UT 54, ¶ 11, 266 P.3d 751).
[13] *Application of Rocky Mountain Power to Increase the Deferred EBA Rate Through the Energy Balancing Account Mechanism*, Docket No. 19-035-01, Order Approving Rates and Granting Unopposed Motion to Vacate Orders, at 9 (Mar. 4, 2020).
[14] *Id.*
[15] *Application of Rocky Mountain Power to Increase the Deferred EBA Rate Through the Energy Balancing Account Mechanism*, Docket No. 18-035-01, Order, at 6 (Mar. 12, 2019).
[16] *Id.*

prudently in operating and maintaining Lake Side 2 Unit 3 because the detailed nature of the analysis likely would have uncovered any imprudent action by the Company, if any such action had led to the outage. If the Commission were to determine that the evidence put forth by the Company concerning the Lake Side 2 Unit 3 outage did not meet the substantial evidence standard, it is unlikely the Company would ever be able to recover costs in the face of an inconclusive RCA.

OCS relies heavily on *Committee of Consumer Services v. Public Service Commission of Utah*. In that case, the Utah Supreme Court overturned a decision of the Public Service Commission to accept a stipulation permitting Questar Gas Company to recover costs associated with a processing plant constructed by an affiliated company to reduce CO_2 in coal seam gas.[17] Importantly, Questar had a heightened burden to show prudence in that case because the costs were incurred in a transaction with an affiliated Company. Although the Commission specifically noted that Questar provided insufficient evidence of its analysis of its options relating to the transaction,[18] the Commission nonetheless approved the stipulation and associated cost recovery on the grounds that safety required the processing plant to be constructed.[19] The Utah Supreme Court declined to recognize the Commission's safety exception and held that the Commission had "abdicated its responsibility to find the necessary substantial evidence in support of the proposed rate increase" because it had not considered the prudence of entering into the affiliate contract.[20]

Here, unlike Questar, the Company clearly met the substantial evidence standard. Moreover, the Lake Side 2 Unit 3 outage costs are entirely distinguishable from the affiliate

[17] *Comm. of Consumer Servs. v. Pub. Serv. Comm'n of Utah*, 2003 UT 29, ¶ 15.
[18] *Id*. ¶ 5
[19] *Id.*
[20] *Id.* ¶ 15.

transaction costs considered in *Committee of Consumer Services*. Specifically, the Lake Side 2 Unit 3 outage did not involve any affiliate transaction, and the Company provided abundant record evidence demonstrating the Company's prudent actions in operating and maintaining the generator unit.

In challenging the Commission's decision, DPU and OCS inappropriately claim that the Commission's decision was based on the Commission's comments in commending the Company for performing the Siemens RCA and the follow-up RCA. While the fact that the Company "engaged qualified expert companies to develop, perform, and/or recommend procedures to operate the plant"[21] may be sufficient on its own to justify the prudence determination, that was not the sole basis for the decision here. Rather, the Commission carefully set forth the substantial evidence provided by the Company and clearly credited that evidence when it made its prudence determination.[22] The Commission's decision was supported by substantial evidence, and the Commission should not revisit it.

B. THE COMMISSION ACTED WITHIN ITS DISCRETION IN ALLOWING RECOVERY OF PENSION SETTLEMENT LOSSES AND ESTABLISHING A BALANCING ACCOUNT.

The UAE Petition, joined by OCS, requests that the Commission reconsider its ruling declining to adopt the proposal by UAE and OCS to amortize pension settlement losses over 20 years.[23] In the alternative, UAE and OCS request that the Commission clarify the amount of pension settlement losses that the Company may recover through rates and how the balancing account will operate.[24]

[21] Order at 36.
[22] *Id.* at 34-36.
[23] UAE Petition at 4.
[24] *Id.* at 8-9.

UAE's and OCS's primary request for reconsideration is simply a reiteration of the policy recommendations they fully presented and argued during the course of proceedings in this case. It is not based on any claim that the Commission's decision is not supported by evidence or contrary to law. The alternative request for clarification is a second bite at the apple that overlooks the clear language of the Order.

1. There is no basis to reconsider the decision to allow full recovery of the pension settlement loss in rates.

As the Commission discussed in the Order, the Company sought recovery for pension settlement losses through a deferred accounting order in Docket No. 18-035-48.[25] Other parties opposed the request on the ground that the costs were not appropriate subjects for deferred accounting and should be considered in a general rate case.[26] The Commission agreed with the other parties and denied the request, holding that the pension settlement losses were not unforeseeable or extraordinary.[27] Therefore, consistent with the positions of the parties and the Commission in Docket No. 18-035-48, the Company proposed to recover its test-period pension settlement costs in rates in this general rate case. It proposed that the amount it projected would be required to be expensed in the test period, $11.9 million, be included in full in rates.[28]

The OCS and UAE witnesses did not claim that pension settlement losses should not be recovered, that they were imprudent, or that the Company's actuarially-based forecast of the amount in the test period was unreasonable.[29] Instead, they attempted to delay the Company's recovery by proposing that pension settlement losses be deferred and amortized over 20 years.[30]

[25] Redacted Order, *Application of Rocky Mountain Power for an Accounting Order for Settlement Charges Related to its Pension Plans*, Docket No. 18-035-48 at 29.
[26] *Id.* at 30.
[27] *Id.*
[28] *Id.*
[29] Direct Testimony of Donna Ramas ("Ramas Direct") ll. 507-15; Direct Testimony of Kevin Higgins ("Higgins Direct") ll. 737-42; *see also* Hr'g Tr. 111:12-14, 113:5-13 (Nov. 5, 2020).
[30] Ramas Direct ll. 507-15; Higgins Direct ll. 737-42.

The positions of the parties were fully explored in testimony, cross examination, and argument. Based on a review of a full record on these issues, the Commission agreed with all parties that recovery of pension settlement losses in rates is appropriate.[31] The Commission expressly observed that it is not required to adopt financial accounting standards for regulatory accounting or ratemaking. However, it concluded in the case of pension settlements it was appropriate for regulatory accounting to be consistent with financial accounting.[32] Thus, the Commission concluded that recovery in rates of the full amount of pension settlement losses or gains, which are required by financial accounting standards to be expensed or recognized in income in a single year, is appropriate.[33]

The Commission further decided that recovery of pension settlement losses or gains would be through a balancing account so that only actual losses or gains would be included in rates.[34]

The UAE Petition claims that the Commission's decision should be reconsidered for two reasons. First, it claims that the decision was based on a misunderstanding of UAE's and OCS's position because the Commission found "that requiring the settlement losses to be amortized as the OCS and UAE recommend would be ignoring the fact that the settlement losses occurred."[35] UAE and OCS argue that their 20-year amortization does not deny recovery of the settlement losses and that it can be accommodated in a balancing account just as well as the immediate recovery proposed by the Company.[36]

[31] Redacted Order at 30.
[32] *Id.* at 31.
[33] *Id.*
[34] *Id.*at 32.
[35] UAE Petition at 5 (quoting Redacted Order at 31).
[36] UAE Petition at 5.

The Commission's discussion of the fact that pension settlement losses and gains must be recognized under financial accounting standards in a single year belies this argument. The language from the Order cited in the UAE Petition is part of the Commission's discussion of the fact that a 20-year amortization of the expense is inconsistent with the financial accounting requirement that the Company incur the entire expense in one year.[37] Clearly, the Commission's statement refers to the fact that UAE's and OCS's 20-year amortization recommendation ignores the fact that the Company is required to expense the loss in a single year.

Second, the UAE Petition argues that because pension settlement losses are related to long-term obligations to retired employees, and because they would have been recognized over the remaining life of those employees absent the change in financial accounting standards, they should be recognized over the long-term. UAE argues that recognizing them in one year is "incongruent with the matching principle in ratemaking" and inconsistent with the Commission's own finding that pension settlement losses "are a uniquely unpredictable and volatile accounting phenomenon," and are "not sufficiently representative of the costs RMP is likely to incur in subsequent years owing to the contingent and binary nature of Pension Settlement Adjustments."[38] Based on these quotes, UAE argues that the appropriate ratemaking for these costs would be the 20-year amortization it proposed.[39]

These arguments ignore that the Commission has broad discretion to set rates so long as they are (1) consistent with Utah law, (2) in the public interest, and (3) just and reasonable.[40] They also ignore the facts that the Company is required to expense the entire loss in one year on its financial books and that if gains occur, they will also be recognized immediately on both

[37] *See* Redacted Order at 31.
[38] UAE Petition at 6 (quoting Redacted Order at 31).
[39] UAE Petition at 6.
[40] Utah Code § 54-4-4.1; *See generally Mountain Fuel Supply Co. v. Pub. Serv. Comm'n of Utah*, 861 P.2d 414 (Utah 1993).

financial and regulatory books. These facts were why the Commission found the Company's position persuasive and in the public interest.

UAE also seems to argue that operation of a balancing account with a 20-year amortization would be simpler than operation of a balancing account with inclusion of actual losses and gains each year.[41] Nothing UAE says about operation of its proposed balancing account would not also apply to the approved balancing account, except that the approved balancing account recognizes gains and losses in the current year rather than amortizing them over 20 years.

Finally, UAE argues that the 20-year amortization is what the Company proposed in Docket No. 18-035-48 and what the parties agreed they would support in the next general rate case.[42] The parties reached no agreement in the earlier case, and the Company's proposal in this case is not barred by the positions it or other parties took in the prior case. This argument is simply wrong.

The Commission's decision to allow recovery of an expense that everyone agrees is prudent and recoverable in rates in one year rather than over 20 years is clearly a matter of regulatory policy left to the discretion of the Commission. Absent a showing that the Commission abused its discretion (which the OCS and UAE have not even attempted to show), there is no basis for the Commission to reconsider its decision.

2. There is no need to reconsider or clarify the initial amount in the balancing account or how the account will operate.

In rebuttal testimony, after the OCS and UAE opposed the Company's request to include the full amount of the projected pension settlement loss in rates, the Company proposed an

[41] *See* UAE Petition at 6-7.
[42] *Id.* at 7.

alternative balancing account. Specifically, the Company proposed a balancing account that would true-up, on an annual basis, the difference between the actual and expected level of net periodic benefit cost of the Company's pension and other post-retirement plans.[43] The Company testified that this alternative approach would satisfy the concerns of OCS and UAE.[44]

OCS and UAE opposed the Company's proposed balancing account for two reasons. First, they contended that inclusion of all pension costs in a balancing account would be a departure from how pension costs had been dealt with historically and would shift risks to customers.[45] Second, they argued that establishing balancing accounts is not good regulatory policy.[46] The OCS witness did acknowledge, however, that balancing accounts are an appropriate mechanism for dealing with volatile and unpredictable cost and benefit accounting items, and that there will be significantly more pension settlement activity and volatility in the future.[47] Similarly, the UAE Petition acknowledges that the parties do not "request[] that the Commission reconsider its decision to implement such a balancing account mechanism."[48] The only questions raised by the UAE Petition are the initial amount to be included in the account and how it will operate.[49] There is no need for clarification on these issues.

First, UAE's argument that the initial amount to be included in the balancing account is unclear is disingenuous. The Company presented undisputed evidence that $11.9 million in actuarially-projected pension settlement losses are forecast in the test period, and its rate request included that amount.[50] The OCS acknowledged in its testimony that the proposed balancing

[43] Rebuttal Testimony of Nikki L. Kobliha – Revenue Requirement ("Kobliha Rebuttal") ll. 45-47, 59-62.
[44] *Id.* ll. 62-64.
[45] Surrebuttal Testimony of Donna Ramas ("Ramas Surrebuttal") ll. 967-80.
[46] Surrebuttal Testimony of Kevin C. Higgins ("Higgins Surrebuttal") ll. 651-53.
[47] Hr'g Tr. 130:18-131:7; 132:21-133:4 (Nov. 5, 2020).
[48] UAE Petition at 4.
[49] *Id.* at 8-9.
[50] Direct Testimony of Nikki L. Kobliha – Revenue Requirement ("Kobliha Direct") ll. 594-96, 638-40.

account included the full amount of the pension settlement loss for which the Company sought cost recovery.[51] The Commission clearly stated that the test year included $11.9 million in pension settlement losses.[52] It further concluded based on undisputed evidence and policy recommendations of the parties "that RMP's Test Year pension settlement losses are plainly recoverable."[53] The Commission found "that requiring the settlement losses to be amortized as the OCS and UAE recommend would be ignoring the fact that the settlement losses occurred."[54] Thus, the Commission concluded it could find "no reason to remove those actual costs from the test year."[55] However, to assure that only actual losses or gains are included in rates, the Commission ordered the establishment of a balancing account.[56] It could not be more clear that the initial amount in the balancing account is $11.9 million.

Second, the Company provided testimony on how it proposed the balancing account would work.[57] This testimony specified that the balancing account would operate like other balancing accounts currently in place, including a balancing account for renewable energy credit revenues that was proposed by OCS.[58] No party claimed in subsequent testimony or argument that operation of the balancing account was unclear. In any event, the Commission directed the Company "to initiate a proceeding before the PSC on or before March 1, 2021 to establish the balancing account."[59]

Given the foregoing, there is no need for the Commission to review, reconsider, or clarify its Order with regard to the initial amount to be included in the balancing account or how the

[51] Ramas Surrebuttal ll. 954-56; Hr'g Tr. 88:10-13 (Nov. 5, 2020).
[52] Redacted Order at 30.
[53] *Id.* at 31.
[54] *Id.*
[55] *Id.*
[56] *Id.* at 32.
[57] Kobliha Rebuttal ll. 64-67; Rebuttal Testimony of Steven R. McDougal ("McDougal Rebuttal") ll. 1251-71.
[58] McDougal Rebuttal ll. 1269-70.
[59] *Id.* at 32.

account will operate. Those issues, if any, may be addressed in the separate proceeding the Commission has directed the Company to initiate.

C. UAE'S AND THE UNIVERSITY'S REQUEST TO RECONSIDER TWO ASPECTS OF THE COMMISSION'S RULING ON SCHEDULE 32 SHOULD BE DENIED.

The UAE Petition raises two issues with regards to the rate design for Schedule 32 customers. The first issue, an alleged mathematical error in the Daily Power Charges for Schedule 32 customers, could simply be the result of a minor reasonable adjustment to ensure the desired rate spread was achieved. The second request, to reconsider the revenue increase from the demand charges in Schedule 32, should be denied because it is inconsistent with the principles for Schedule 32, inappropriately removes the cost of the renewable resources from the Company's retail revenue when calculating the rate spread, and was not raised previously during this proceeding.

1. UAE's and the University's alleged mathematical error could simply be a just and reasonable adjustment to achieve an appropriate rate spread.

UAE and the University allege that the daily power charge prices the Commission ordered for Schedule 32 may have been the result of a mathematical error. During the proceeding, the Company and UAE agreed that the demand-related charges that Schedule 32 participants pay, which consist of delivery facilities charges and daily power charges, should be calculated from the combination of the demand-related charges (power and facilities charges) for full requirements customers.[60] UAE and the University noted that applying the generally accepted formula yielded slightly lower daily power charges than those which were ordered by the Commission for transmission voltage customers.[61]

[60] UAE Petition at 11.
[61] UAE Petition at 12.

The Company verified UAE and the University's calculations and confirmed that the daily power charges ordered for transmission voltage Schedule 32 customers are slightly higher than the generally agreed-upon formula. However, the ordered Schedule 32 rates are still reasonable, because this modest adjustment to the daily power charges may have been made in order to achieve its desired rate spread for Schedule 32, where the base revenue increase was set at the same level as Schedule 9 (2.65 percent). Therefore, this may not be a mathematical error, but rather an appropriate adjustment to achieve a desired rate spread.

The Company estimates that lowering the delivery power charges to the prices requested by UAE and the University would result in about a $34,000 reduction in revenue from Schedule 32.[62] If the Commission were to grant UAE and the University's petition specifically for this issue, then the revenue reduction of $34,000 would need to be collected from another customer class.

2. The Commission should reject UAE and the University's request for rehearing on the revenue increase for Schedule 32.

UAE and the University contend that the revenue increase assigned to Schedule 32 is too large because the 2.65 percent increase assigned is applied to revenue that includes the cost of a renewable resource.[63] However, UAE and the University's request should be denied because the Commission's Order is consistent with the principles agreed upon for Schedule 32 pricing, the renewable resource should be considered as retail revenue, and UAE and the University failed to timely raise this issue during the proceeding.

[62] *See* Company's rehearing appendix (scheduled 32 rates and revenue tab), attached hereto as Appendix A.
[63] UAE Petition at 13.

a. *The Commission's Order is consistent with the principles for pricing Schedule 32.*

Schedule 32 requires an approximately $300,000[64] increase because the Commission ordered pricing generally follows the same principle that UAE and the University articulated earlier in their petition – specifically that the combination of demand-related Schedule 32 charges should be derived from demand-related charges from full requirements schedules.[65] While the overall ordered base rate increase for Schedule 9 is 2.7 percent,[66] the increase for Schedule 9 power charges is also 17 percent,[67] which is higher than average. As noted by UAE and the University, ensuring "that Schedule 32 demand rates were designed to recover the same level of cost as the combination of Facilities and Power demand charges applicable to full requirements rate schedules by utilizing a formula set forth in the Schedule 32 tab of [the Company's] pricing model" is "a concept in which the Company, UAE, and the University were all in agreement."[68] Given the higher than average increase to Schedule 9 power charges, setting a much lower revenue increase to Schedule 32 in the rate spread is inconsistent with the principles that all the parties agree are appropriate for calculating delivery facilities charges and daily power charges.

b. *The renewable resource in Schedule 32 should be considered part of retail revenue.*

The cost of the renewable resource is appropriately considered as retail revenue and should be the basis for which the ordered increase is applied. On the "Monthly Billing" section of Schedule 32's tariff, the cost of the Renewable Energy Contract is listed along with the

[64] After following the formula agreed upon by the Company, UAE and the University, the Commission's proposed rates do require a modest adjustment to achieve their target revenue increase described in the previous section of the Company's response.
[65] UAE Petition at 11.
[66] Exhibit A to Order.
[67] Company's rehearing appendix, Schedule 9 revenue tab, attached hereto as Appendix A.
[68] UAE Petition at 11.

customer charge, the administrative fee, delivery facilities charges, daily power charges, and supplemental power and energy. A Schedule 32 participant pays the Company and the Company then pays for the cost of the renewable resource. The cost of the Renewable Energy Contract has been a part of Schedule 32's overall revenue in the Company's presentation of present and proposed revenue throughout this rate case proceeding, and should continue to be considered as retail revenue.[69]

c. *UAE and the University should be precluded from raising this new issue on rehearing.*

UAE and the University failed to timely raise any concerns about the inclusion of revenues from the Schedule 32 renewable resource in Company revenues for the purposes of rate spread previously during this proceeding. As a result, their petition should be denied. The Commission has explicitly declined to consider arguments that were raised solely on rehearing.[70] This is consistent with Utah Supreme Court precedent that "a request for reconsideration is not the proper time to raise new arguments or new issues[.]"[71]

The Company's presentation of present and proposed revenue has always considered the cost of the Renewable Energy Contract as a part of Schedule 32's overall revenue in the exhibits which show proposed price change impacts.[72] During the pendency of this proceeding, UAE and the University had ample opportunity to make arguments for why they believe that the renewable resource should not be considered Company revenue when determining rate spread in testimony or at the hearing. By arguing that the costs associated with the "Renewable Energy PPA" are

[69] *See* Meredith Direct, at Exhibit RMP RMM-4; Meredith Rebuttal at Exhibit RMP RMM-4R.
[70] *See* Order Denying Reconsideration, *In Re EAS in Utah County*, Docket Nos. 94-049-04, 95-049-09, 95-049-43, 1996 WL 769254 (Dec. 2, 1996) (Commission declined rehearing because, among other reasons, an issue had not been raised during the proceeding).
[71] *W. Water, LLC. v. Olds*, 2008 UT 18, 184 P.3d 578, 587 (2008). While rehearing for proceedings at the Commission is specifically governed under Utah Code § 54-7-15, precedent on reconsideration under the Utah Administrative Procedures Act ("UAPA"), Utah Code § 63G-4-302, is instructive as UAPA has been adopted in part for Commission proceedings under Utah Code § 54-1-2.5).
[72] *See* Meredith Direct at Exhibit RMP RMM-4; Meredith Rebuttal at Exhibit RMP RMM-4R.

"not RMP revenues and should not be included in calculating a revenue increase for Schedule 32 customers[,]"[73] when they failed to raise it earlier, UAE and the University's petition is beyond the scope of rehearing. As articulated by the Utah Supreme Court, "if a party were free to reshape its case, so long as it did so within 20 days after a decision, the administrative process might never end."[74] Accordingly, the Commission should deny UAE and the University's petition for rehearing on this issue.

II. CONCLUSION

For the foregoing reasons, the Commission should deny the Petitions.

Respectfully submitted this 16th day of February 2021.

ROCKY MOUNTAIN POWER

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[73] UAE Petition at 14.
[74] *Western Water*, 184 P.3d at 587 (citation omitted).

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2021, a true and correct copy of the foregoing was served by electronic mail to the following:

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