

- 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 Electric Service Schedules and Electric Service Regulations

DOCKET NO. 20-035-04
ORDER ON PETITIONS FOR REVIEW, RECONSIDERATION, OR REHEARING

ISSUED: February 26, 2021

On May 8, 2020, Rocky Mountain Power (RMP) filed an application (“Application”), requesting authority to increase its retail rates by \$95,786,460, or 4.8%, and to implement the new rates effective January 1, 2021. The PSC subsequently held hearings that spanned approximately nine days between October 29, 2020 and December 4, 2020 to hear the parties’ evidence and arguments. On December 30, 2020, the PSC issued a relatively voluminous order (“Order”), making findings and conclusions on dozens of disputed issues.

On January 29, 2021, the Division of Public Utilities (DPU) filed a Petition for Review or Rehearing (“DPU’s Petition”) and the Office of Consumer Services (OCS) filed a Petition for Reconsideration and Rehearing (“OCS’s Petition”), both seeking review of the PSC’s findings and conclusions pertaining to a power outage at RMP’s Lake Side 2 plant (the “LS Outage”). The same day, the Utah Association of Energy Users (UAE) and University of Utah (UU, and collectively with UAE, “Intervenors”) jointly filed a Petition for Review or Rehearing of the Order (“Intervenors’ Joint Petition”) that asks the PSC to reconsider or clarify portions of the Order pertaining to (1) the ratemaking treatment of RMP’s forecast pension settlement losses, (2) Schedule 32 rate and revenue increases, and (3) the rate design for transmission voltage customers under Schedule 32. The OCS independently made another filing that day, joining the Intervenors’ Joint Petition with respect to its request concerning the pension settlement losses.

RMP filed a consolidated Response in Opposition to Petitions for Reconsideration, Review, or Rehearing (“RMP’s Response”) on February 16, 2021, responding to the three petitions for review.

1. We Decline to Reconsider Our Findings and Conclusions with Respect to the LS Outage.

- a. RMP bears the burden to demonstrate its actions were prudent, but this does not impose a burden to prove the unknowable or to present evidence sufficient to preclude any possibility that it may have acted imprudently.*

RMP’s prudent operation of the Lake Side plant is at issue in another docket in which the PSC is contemporaneously issuing an order (“EBA Order”).¹ In that docket, DPU and OCS similarly distort RMP’s burden of proof, and the EBA Order discusses the issue at length. In the interest of brevity, we succinctly discuss our conclusions on the matter here and incorporate and adopt our conclusions in the EBA Order to the extent they are applicable.

As an initial matter, no question exists that RMP bears the burden to establish it is entitled to rate relief, including the burden to establish by substantial evidence that its actions were prudent.² However, in the context of an unexplained generator outage, DPU and OCS construe this burden to unreasonable and unworkable extremes by contending that RMP cannot meet its burden unless it identifies the specific actual cause of the outage.

For example, DPU argues evidence that “fall[s] into either the category of [prudent] general operation and maintenance” of the plant or RMP’s rigorous investigation into the cause

¹ *In the Matter of RMP’s Application for Approval of the 2020 Energy Balancing Account*, Docket No. 20-035-01, Order issued Feb. 26, 2021.

² *See, e.g., Comm. of Consumer Servs. v. Pub. Serv. Comm’n*, 2003 UT 29; *see also* Utah Code Ann. § 54-4-4(4).

of an outage “inherently [cannot] demonstrate prudence in terms of the even[t] that caused the outage.”³ Put more simply, DPU contends any evidence that RMP presents to show it prudently operated and maintained the plant, consistent with applicable industry standards and practices, is irrelevant unless RMP can specifically identify the cause of an outage. If the cause is unknowable, in this view, RMP cannot possibly meet its burden. The OCS similarly contends that “[i]f the record does not contain evidence establishing the cause of a catastrophic generator failure,” the utility cannot meet its burden “as a matter of law.”⁴

Though we are mindful of our responsibility to hold RMP to its burden of proof, we cannot conclude RMP’s burden requires it to prove a negative, *i.e.*, we cannot conclude RMP must provide evidence showing the absence of any possibility that it made an imprudent choice or took an imprudent action. We conclude, instead, that RMP’s burden requires it to demonstrate precisely what the law requires: it acted prudently. The universe of relevant factors includes those the Legislature has generally instructed us to consider in making prudence determinations, such as whether a similarly situated, reasonable, and responsible utility would have acted differently.⁵

Therefore, we conclude that if RMP provides substantial evidence that its actions with respect to an outage were prudent, the party contending RMP failed to act prudently must at the very least rebut that substantial evidence by identifying some action RMP took or failed to take

³ DPU’s Petition at 3.

⁴ OCS’s Petition at 6.

⁵ *See* Utah Code Ann. § 54-4-4(4).

that was not prudent in relation to the outage. This expectation does not shift the burden to the contesting party to “demonstrate imprudence” as the DPU and OCS might contend, but it does preclude them from relying on the inexplicable nature of an underlying event to render irrelevant all evidence of RMP’s actual conduct. If the contesting party identifies some such action, the PSC must hold RMP to its burden to demonstrate that its actions were prudent notwithstanding the alleged error.

b. Substantial evidence supports the PSC’s determination that RMP met its burden to demonstrate it acted prudently concerning the LS Outage.

The DPU argues the PSC’s “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 [evidence of RMP’s] general [prudent] operation and after-the-fact contracting for investigation of the root cause of the failure.”⁶ This is simply wrong.

The Order enumerates, at considerable length, the evidence supporting our finding that RMP prudently operated the plant, including testimony that RMP (i) operated the unit within its design specifications, (ii) followed original equipment manufacturer (OEM) recommendations, (iii) provided oversight and engagement with the OEM during maintenance activities, (iv) prudently used OEM experts to perform maintenance on the equipment, and (v) followed both RMP’s and the OEM’s foreign material exclusion policies.

Further, though not dispositive, the PSC did and does consider RMP’s exhaustive, documented efforts to ascertain the root cause of the problem to be a relevant consideration.

⁶ DPU’s Petition at 2.

No party rebutted the substantial evidence of RMP's prudent conduct by identifying any action RMP imprudently took or imprudently failed to take in connection with the LS Outage. In fact, the OCS's Petition agrees "nothing in the completed [root cause analysis] ... identifies negligence or impruden[t] actions as the likely cause of the outage."⁷

We decline to modify our findings and conclusions with respect to the LS Outage.

2. Pension Settlement Losses

The Intervenors make two requests in their Joint Petition relating to pension expenses. First, they request we "reconsider [our] ruling declining to adopt the proposal by UAE and OCS to amortize pension settlement losses over 20 years."⁸ If the PSC declines to reconsider its decision on amortization, UAE asks the PSC to "clarify the amount of pension settlement losses to be recovered in rates."⁹

- a. The PSC declines to modify its decision that pension settlement losses RMP must immediately recognize under financial accounting standards will not be amortized over 20 years.*

To support their request for reconsideration on the amortization issue, Intervenors generally reassert the same arguments the PSC already considered and rejected in our Order. There too, Intervenors argued it is appropriate to amortize pension settlement expenses over 20 years that RMP must recognize in the Test Year only because lump sum distributions happened to exceed the threshold that triggers an applicable financial accounting standard ("FASB's

⁷ OCS's Petition at 2.

⁸ Intervenors' Joint Petition at 4.

⁹ *Id.* at 8.

Rule”).¹⁰ As the Order explains, the PSC understands UAE’s proposal to amortize the expense would “facilitate RMP recovering its annual pension costs in the same manner in which it would have recognized them had lump sum distributions not exceeded FASB’s threshold.”¹¹

Our Order concluded, however, that “it [is] reasonable to recognize recovery of th[e]se pension losses consistent with the required financial accounting standard.”¹² Noting the uncontested evidence showing lump sum distributions were projected to trigger FASB’s Rule in the Test Year, “[w]e conclude[d] that the same facts that require a change in RMP’s financial accounting also justify inclusion of those expenses in the Test Year.”¹³ In their Joint Petition, Intervenors give us no cause us to reconsider our ruling on the amortization issue, and we decline to do so.

b. The PSC clarifies its approval of a balancing account mechanism to track Pension Settlement Adjustments and anticipates the operational details will be developed in a future docket.

The PSC recognizes the Order does not detail the operational mechanics of the balancing account we approved to track Pension Settlement Adjustments.¹⁴ While adjudicating and litigating a general rate case involving dozens of complicated issues, the PSC and the parties were not in a position to fully develop a record sufficient to detail precisely how the balancing

¹⁰ FASB’s Rule is defined, identified, and discussed in the Order at 29.

¹¹ *Id.* at 30.

¹² *Id.* at 31.

¹³ *Id.*

¹⁴ “Pension Settlement Adjustments” is a term defined in our Order at 29.

account will function. For this specific reason, the Order “direct[s] RMP to initiate a proceeding before the PSC on or before March 1, 2021 to establish the balancing account.”¹⁵

Seeking to provide findings and conclusions “sufficient to resolve the issue as regards rates to be effective January 1, 2021,” the PSC concluded RMP “may recover the \$11.9 million in settlement losses it anticipates incurring during the Test Year in rates effective January 1.”¹⁶

We were unequivocal, however, that the balancing account would “true-up, on an annual basis, the Pension Settlement Adjustments that [RMP] actually recognizes with the amount it recovered in rates.”¹⁷ Further, we expressly declined RMP’s request to implement a balancing account broader than necessary to track the Pension Settlement Adjustments. We were emphatic that “our intention [was] not to fundamentally alter the existing rate treatment of expenses associated with the Pension Plans,” but “[r]ather conclude[d] the specific Pension Settlement Adjustments that RMP must make to comply with FASB’s Rule pose a unique challenge for ratemaking such that tracking them in a balancing account is appropriate.”¹⁸

In Intervenors’ Joint Petition, they argue that while RMP forecast \$11.9 million in pension settlement losses in the Test Year, RMP’s direct written testimony proposed to include only \$7.9 million of this forecasted settlement loss in pension expense and to capitalize the difference. Intervenors further point out that the \$11.9 million and \$7.9 million figures both reflect company-wide losses and expenses. Intervenors argue “[t]he only portion that should be

¹⁵ *Id.* at 32.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

included in the balancing account is Utah's share of the Total Company pension settlement losses that are [actually] being expensed."¹⁹

RMP's Response does not address Intervenors' points or the provisions of RMP's testimony they cite in support. Instead, RMP simply declares "[t]he [PSC] clearly stated that the test year included \$11.9 million in pension settlement losses" and that "[i]t could not be more clear that the initial amount in the balancing account is \$11.9 million."²⁰

Though we intended to be clear in the Order, we reiterate we intend the balancing account we have approved to exist for the sole purpose of tracking the specific Pension Settlement Adjustments that RMP represents it is forced to make when lump sum withdrawals exceed the threshold under FASB's Rule.

The points Intervenors raise with respect to RMP's plan to capitalize, rather than expense, a portion of the \$11.9 million raises a genuine and significant question as to whether any capitalized portion will constitute a realized expense in the Test Year. Intervenors' concern that ratepayers in Utah should bear only their share of company-wide expenses is also valid and must be addressed. It should go without saying that the balancing account should reflect only a Utah-allocated expense, not a system expense.

We look forward to developing a full record on these issues in the forthcoming docket to address the balancing account. If the evidence demonstrates rates effective January 1, 2021 charged Utah ratepayers more for pension settlement losses than RMP actually realizes (properly

¹⁹ Intervenors' Joint Petition at 8.

²⁰ RMP's Response at 13.

allocable to Utah) in the calendar year, this will be precisely the sort of discrepancy the balancing account is intended to rectify.

3. Schedule 32

Intervenors' arguments pertaining to Schedule 32 are limited to two issues. First, they ask us to correct a mathematical error with respect to the summer and winter Daily Power Charge (DPC) our Order sets for transmission voltage customers under Schedule 32. To correct the error, Intervenors ask us to order a summer DPC of \$0.68 per kW (instead of \$0.71 per kW) and a winter DPC of \$0.59 per kW (rather than \$0.68 per kW).

Second, Intervenors request clarification regarding the revenue increase sought from demand charges for transmission voltage customers under Schedule 32. Specifically, Intervenors ask for clarification as to whether the PSC included costs associated with the Renewable Energy Power Purchase Agreement (REPPA), which Intervenors argue are not RMP revenues and should not be included in calculating a revenue increase for Schedule 32.

RMP recommends the PSC deny these requests.

a. Schedule 32 Rate Spread and Structure

Intervenors assert the Schedule 32 demand rates proposed by RMP were designed to ensure recovery of the same level of cost as the combination of facilities and power demand charges applicable to full requirements rate schedules. Intervenors represent that UAE relied on the method and formulas RMP set forth in its pricing model, specifically RMP's **Sch32 COS**

tab,²¹ to support UAE's Schedule 32 rate design proposal. Intervenors maintain the Delivery Facilities Charges (DFC) and DPCs for distribution voltage customers under Schedule 32 are properly calculated to recover the same level of cost as the combination of the facilities and power demand charges for Schedules 6 and 8 customers, but this is not the case for transmission voltage customers under Schedule 32.

RMP acknowledges the DPCs ordered for transmission voltage customers are slightly higher than the formula mutually relied upon by these parties. However, RMP asserts the ordered Schedule 32 rates are reasonable in order to achieve the desired rate spread for Schedule 32, where the base revenue increase was set at parity with that of Schedule 9. RMP estimates that modifying the DPCs to the prices that Intervenors request would result in an approximate \$34,000 shortfall in revenues from Schedule 32, which would need to be collected from other customer classes.

Intervenors' analysis does not include results of RMP's COS Study updated for our decisions in this case, which flow through to the Sch32 COS tab of RMP's pricing model. Table 1 below provides this updated COS information.

²¹ According to Intervenors, the formula is designed to allow the user to start with the total facilities charges and monthly demand charges for the full rate requirements schedules and then back out the desired Schedule 32 DFC, which then yields the correct DPCs for summer and winter months.

Table 1. Sch32 COS tab with updated COS information.

Delivery Facilities Charges	Source: UT GRC COS - Dec 2021 Test Period, PSC Decision, 12-23-20				
	Delivery Voltage				
	6. Secondary < 1 MW	6. Primary < 1 MW	8. Secondary > 1 MW	8. Primary > 1 MW	9. Transmission
Transmission-Demand COS	\$67,619,307	\$67,619,307	\$19,875,626	\$19,875,626	\$44,360,082
Distribution - P&C, Transformer & Substation	\$74,681,482	\$74,681,482	\$16,936,515	\$16,936,515	
Total	\$142,300,788	\$142,300,788	\$36,812,142	\$36,812,142	\$44,360,082
Billing Units	18,932,644	18,932,644	4,399,856	4,399,856	9,035,718
Per kW	\$7.52	\$7.52	\$8.37	\$8.37	\$4.91
Voltage Discount		(\$0.96)		(\$1.13)	
Delivery Charge per kW	\$7.52	\$6.56	\$8.37	\$7.24	\$4.91

For the transmission category, relying strictly on the method underlying the results in **Table 1** would yield a \$4.91 per kW DFC. In light of our findings that RMP’s proposal to maintain the 55/45 ratio of revenue collected from the DFCs and the DPCs: (a) serves to preserve our decision in Docket No. 14-035-T02; (b) avoids dramatic swings in the facilities charge; and (c) results in a reasonable change to the DFC, we then set the DFC at \$4.35 per kW to approximate the 55% of revenue to be collected from the DFC as prescribed.

Using the data in **Table 1**, and based on the differential between \$4.91 per kW and the \$4.35 per kW we approved, we then solved for an unrecovered cost per-kW, which we determined to be \$0.5594 per kW. This amount was netted against the -\$4.35 per kW DFC in the calculation of the Remaining Retail Rate for Backup Power Charge, which is then used to determine the summer and winter DPCs. This method achieves a revenue increase assigned to Schedule 32 commensurate to cover the overall spread decisions we approved in this case. As indicated in our Order, the rates we approved approximately preserve the 55/45 ratio proposed by RMP, result in a reasonable increase in the DFC, and approximately maintain the summer/winter differential presented by RMP in RMM-1SR for transmission customers.

For these reasons, we decline to modify the rates our Order approved for Schedule 32.

b. Schedule 32 Renewable Energy Power Purchase Agreement (REPPA) Revenues

According to Intervenors, we approved a 2.65% increase to Schedule 32 transmission voltage customer rates, which our Order indicates is an “approximately \$300,000 increase.” Intervenors seek clarification with respect to our conclusion that a 2.65% increase yields an “approximately \$300,000 increase” to the revenue that RMP will collect from Schedule 32 customers.

We find Intervenors rightly identified an inconsistency in the Order and clarification is warranted. Updating the pricing model RMP filed in its surrebuttal testimony to reflect our decisions in this case results in a 2.65% target increase for Schedule 32 revenues, representing an approximate \$300,000 increase in Schedule 32 base rates, and an additional approximate \$50,000 increase in the supplemental power and energy charges associated with Schedule 32, for a total revenue increase of approximately \$350,000. It is the latter phrase which we neglected to include.

To address Intervenors’ concern, we clarify that while no increase was assigned to the REPPA price, our rate design determinations for Schedule 32 were based on a spread decision that included the REPPA costs in the overall Schedule 32 revenues. This method was proposed by RMP in its direct testimony²² and remained undisputed throughout this case. Given this clarification, we now address Intervenors’ request to reconsider the inclusion of the REPPA revenues in our spread determination.

²² See Exhibit RMP_(RMM-4), Exhibit RMP_(RMM-5), and RMP Workpapers RMM 2 - Pricing filed on May 8, 2020.

Intervenors assert that costs associated with the REPPA are “not RMP revenues and should not be included in calculating a revenue increase for Schedule 32 customers.”²³

Intervenors argue the cost of the REPPA is “paid to the developer of the renewable energy facility and is not revenue to RMP.”²⁴

RMP asserts the costs of the renewable resource should be considered as retail revenue. RMP states the “Monthly Billing” section of Schedule 32 lists the cost of the REPPA²⁵ as well as the customer charge, administrative fee, DFCs, DPCs, and supplemental power and energy.

In addition, RMP argues Intervenors failed to timely raise any concerns about the inclusion of revenues from the Schedule 32 renewable resource in RMP’s revenues for the purposes of rate spread during this proceeding and the issue is now beyond the reasonable and appropriate scope of a petition for review or rehearing.

We find RMP was transparent about the inclusion of costs associated with the REPPA in its rate spread proposal since the Application was filed.²⁶ We further find Intervenors had ample opportunity to comment on this issue throughout the case but did not do so. For these reasons, we decline to modify the Order on this issue.

²³ Intervenors’ Joint Petition at 14.

²⁴ *Id.*

²⁵ According to RMP, the participant pays RMP the costs associated with the REPPA and RMP then pays for the cost of the renewable resource.

²⁶ See Exhibit RMP_ (RMM-4), Exhibit RMP_ (RMM-5), RMP Workpapers RMM 2 - Pricing filed on May 8, 2020; RMP Meredith Workpapers 2 – UT Pricing Model GRC 2020 Surrebuttal filed on November 6, 2020; and RMP Exhibit RMM-1SR – Billing Determinants and Proposed Prices filed November 12, 2020.

Based on our finding above, we modify the first sentence of the last paragraph of page 88 of the Order as follows:

We find it would not be reasonable to maintain the status quo of Schedule 32 in light of the revenue requirement and spread decisions we approve in this case, including a 2.65%, or approximately \$350,000, increase to Schedule 32. This amount reflects an approximate \$300,000 increase in Schedule 32 base rates and an additional approximate \$50,000 increase in the supplemental charges associated with Schedule 32.

ORDER

For the foregoing reasons, we decline to modify any of the rates we approved in our Order. We offer clarifications to our Order as expressly stated herein.

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

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#317541

Notice of Opportunity for Judicial Review

Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

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

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