
Application of Rocky Mountain Power to Establish a Balancing Account for Pension Settlement Adjustments	<u>DOCKET NO. 21-035-14</u>
	<u>ORDER</u>

ISSUED: November 3, 2021

1. PROCEDURAL HISTORY

In Rocky Mountain Power’s (RMP) last general rate case (“GRC”), the Public Service Commission (PSC) directed RMP to file an application to establish a Pension Settlement Adjustment Balancing Account (PSABA).¹ To fulfill this requirement, RMP filed its Application to Establish a PSABA in this proceeding on March 1, 2021.

The PSC granted a petition to intervene from the Utah Association of Energy Users (“UAE”) and received pre-hearing written testimony from UAE, RMP, the Division of Public Utilities (DPU), and the Office of Consumer Services (OCS).

The PSC held a hearing on August 23, 2021 to consider the Application. RMP, DPU, OCS, and UAE appeared and offered testimony. At the conclusion of the hearing, and on the OCS’s request, the PSC allowed parties 10 days from the date the PSC published the transcript to submit post-hearing briefs.

¹ See *Application of RMP 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 issued December 30, 2020 at 32 (providing “RMP may recover the \$11.9 million in settlement losses it anticipates incurring during the Test Year in rates effective January 1, 2021. However, RMP will establish a balancing account and true-up, on an annual basis, the Pension Settlement Adjustments that it actually recognizes with the amount it recovered in rates. ... We direct RMP to initiate a proceeding before the PSC on or before March 1, 2021 to establish the balancing account.”)

The OCS subsequently filed an unopposed motion, on September 9, 2021, to postpone the deadline for filing post-hearing briefs to September 27, 2021. The PSC granted the OCS's motion on September 10, 2021.

On September 27, 2021, OCS, DPU, UAE, and RMP filed post-hearing briefs.

2. BACKGROUND RELATING TO THE GRC

The central issue presented in this docket is inextricably intertwined with certain testimony the PSC heard and the orders it issued in the GRC. This order summarizes briefly the pertinent history from that prior docket.

During the GRC, RMP sought to fully recover through base rates \$11.9 million in pension settlement losses. These are losses RMP projected it would incur in the Test Year as a consequence of Accounting Standards Codification Topic 715, which requires RMP to immediately recognize a portion of unrecognized actuarial gains or losses in earnings when aggregate lump sum cash distributions from its pension plan exceed a defined threshold in a calendar year.² We refer to these adjustments generally as "Pension Settlement Adjustments" and we refer to the related \$11.9 million in pension settlement losses (on a Utah-allocated basis) that RMP projected for the Test Year as the "Test Year PSL."

Certain parties, including UAE and OCS, contested RMP's proposed ratemaking treatment of the Test Year PSL, arguing the cost should be amortized over the remaining average service life of the pension plans.

² See GRC, Order issued Dec. 30, 2020 [hereafter "GRC Order"] at 29-32.

Ultimately, the PSC granted RMP's request and included the Test Year PSL as a component of the base rates it approved in its GRC Order. However, noting the unique and sporadic nature of those costs, the PSC ordered RMP to "establish a balancing account and true-up, on an annual basis, the Pension Settlement Adjustments that it actually recognizes with the amount it recovered in rates."³

On January 29, 2021, UAE filed a Petition for Review or Rehearing of the GRC Order ("UAE's Petition") requesting the PSC "reconsider its ruling declining to adopt the proposal by UAE and OCS to amortize pension settlement losses over 20 years."⁴ If it declined to reconsider its decision on amortization, UAE would ask the PSC to "clarify the amount of pension settlement losses to be recovered in rates" and to reconsider or clarify portions of the GRC Order pertaining to, among other things, the ratemaking treatment of RMP's forecast pension settlement losses.⁵ As UAE's Petition asserted, "If there is to be a balancing account and 'true up' mechanism associated with pension settlement losses, [RMP] and the parties require clarity regarding the base revenue requirement associated with pension settlement losses included in rates as well as the intended operation of the true-up."⁶ That same day, OCS filed a joinder to portions of UAE's Petition pertaining to RMP's ratemaking treatment of its Test Year pension settlement loss expense.

On this and other issues, UAE and OCS sought reconsideration. Continuing to advocate for amortization of the Test Year PSL, UAE also argued that RMP should not be allowed to

³ GRC Order at 32.

⁴ UAE's Petition at 4.

⁵ *Id.* at 8.

⁶ *Id.*

recover the full Test Year PSL in rates because \$4 million of that sum would be capitalized. In response, RMP persisted in its representation that the full \$11.9 million was recoverable in rates and argued “[i]t could not be more clear that the initial amount in the [PSABA] is \$11.9 million.”⁷

In its Order on Petitions for Review, Reconsideration, or Rehearing, issued February 26, 2021 in the GRC, the PSC declined to modify the GRC Order. As a result, all aspects of the GRC Order remained in effect, including: (a) allowing RMP to recover the full Test Year PSL of \$11.9 million; and (b) an approved total revenue requirement increase of \$31.41 million.

3. THE PROPOSED PSABA

To establish and administer the PSABA, RMP proposes it calculate, on an annual basis, the difference between the Utah-allocated Pension Settlement Adjustments RMP collects in rates and the actual Utah-allocated Pension Settlement Adjustments that RMP recognizes. The difference would be deferred to a regulatory asset or regulatory liability with an annual carrying charge at the PSC-approved rate under Schedule No. 300. RMP proposes to use the allocation factors approved in the most recent general rate case to determine the Utah-allocated balance.

RMP further commits to report the total regulatory asset or regulatory liability balance in the PSABA each year on or about May 15. RMP intends to include a detailed calculation showing the difference between the Utah-allocated Pension Settlement Adjustments already collected in rates and the Utah-allocated Pension Settlement Adjustments it actually recognized for the year.

⁷ GRC, RMP’s Response in Opposition to Petitions for Reconsideration, Review, or Rehearing, filed Feb. 16, 2021 at 13.

Generally, the parties agree with the mechanism RMP proposes. Under every party's proposal, each year RMP will calculate the difference between actual, realized Pension Settlement Adjustments ("Actual PSA") and the adjustments that RMP has already collected through base rates ("Recovered PSA") approved in the GRC. The difference each year will increase or decrease, as applicable, the balance in the PSABA.

Strong disagreement exists, however, over the amount to be used in the PSABA calculation to represent Pension Settlement Adjustments previously recovered in rates. DPU, OCS, and UAE all urge the issue is settled because the PSC allowed RMP to recover the full, projected Test Year PSL (\$11.9 million on a Utah-allocated basis) as a component of base rates in the GRC.

RMP, however, alleges it made an error in the GRC and, notwithstanding its arguments and representations in the GRC to the contrary: "only \$7.9 million of the \$11.9 million projected settlement loss was included in base rates."⁸ Therefore, RMP asks the PSC to order Recovered PSA will equal \$7.9 million in the PSABA calculation each year as opposed to the \$11.9 million reflected in the PSC's GRC Order.

All other parties vigorously protest the adjustment RMP seeks, though they offer different legal theories to arrive at the same conclusion.⁹

⁸ Direct Test. N. Highsmith at 4:72-73.

⁹ UAE relies on the doctrines of res judicata and issue preclusion; OCS argues judicial estoppel precludes RMP's requested change; and the DPU contends using any figure other than the previously determined \$11.9 million to reflect the amount RMP already recovered in rates would constitute prohibited single-issue and retroactive ratemaking.

4. DISCUSSION, FINDINGS, AND CONCLUSIONS

- a. Consistent with the GRC Order, the Value of Recovered PSA is \$11.9 Million.

In the GRC, RMP repeatedly represented it was forecast to incur \$11.9 million in pension settlement losses during the Test Year and argued this full sum should be included in base rates. Early in the case, UAE's written direct testimony specifically identified the alleged error from which RMP now seeks relief.¹⁰ Nevertheless, through multiple rounds of written testimony and testimony at hearing, RMP insisted \$11.9 million was the correct figure and that the full sum should be included in base rates.

After UAE sought review on this issue, and again specifically argued RMP should not recover the full \$11.9 million because it would capitalize \$4 million of that sum, RMP emphatically denied it. In fact, RMP characterized UAE's argument as "disingenuous" and declared it had "presented undisputed evidence that \$11.9 million in actuarially-projected pension settlement losses are forecast in the test period" and emphasized its "rate request included that amount."¹¹ RMP asserted that the PSC "clearly stated that the test year included \$11.9 million in pension settlement losses" and "[i]t could not be more clear that the initial amount in the balancing account is \$11.9 million."¹²

¹⁰ GRC, Direct Testimony of K. Higgins at 32:709-710, filed Sept. 2, 2020 (characterizing RMP's proposed treatment of the forecast PSL as including \$7.9 million in pension expense and capitalizing the remainder).

¹¹ GRC, RMP's Response in Opposition to Petitions for Reconsideration, Review, or Rehearing, filed Feb. 16, 2021 at 12.

¹² *Id.* at 13.

RMP now concedes and evidence presented in this docket demonstrates that RMP was aware, early in the GRC, it had overstated the amount of pension expense associated with pension settlement losses in the Test Year and elected not to correct its testimony. Now, having testified and successfully argued to the contrary numerous times in the GRC, RMP asks us to order the PSABA assume it recovers only \$7.9 million in pension settlement losses per year. DPU, OCS, and UAE raise legitimate questions as to whether a number of legal doctrines preclude us from granting RMP's request, but we need not reach them.

Even if RMP's assertion here is true and the GRC Order erred in approving the full \$11.9 million as a component of base rates, the error is the product of RMP having misled the PSC and the parties through multiple rounds of testimony in the GRC and the subsequent agency review process.¹³ Whether we have discretion to correct such an error now, *e.g.* whether doing so would violate the prohibitions on single-issue and retroactive ratemaking, is a complicated question. We conclude it is unnecessary to answer it because regardless of whether that discretion exists, we emphatically decline to exercise it. RMP has presented no authority suggesting the law requires us to rescue it from its misrepresentations in the GRC and we are aware of no authority that compels us to do so.

Consistent with our findings and conclusions in the GRC Order, the Total Company Pension Base for the PSABA will be \$11.9 million.

¹³ Even if RMP had not misled the PSC on this alleged error, the proper way to correct an error like this would have been to both (a) modify the \$11.9 million pension settlement adjustment; and (b) allow all parties to comment on whether that modification should result in a change to the total revenue requirement increase of \$31.41 million. Because we are beyond the opportunity to make any adjustment to the total revenue requirement increase from the GRC, it would be patently duplicitous of us to now modify only the pension settlement adjustment.

b. Issues Pertaining to the Jurisdictional Allocation Factor and Threshold for Rate Treatment.

The OCS and RMP offered different proposals regarding the appropriate system allocation factor the PSABA should employ for determining the Utah-jurisdictional share of Actual PSA that RMP realizes each year. We find RMP's proposal to use the final System Overhead allocation factor ("SOF") from RMP's most recently filed Utah year-end Results of Operations Report to be appropriate, just, and reasonable because using the most recently filed report provides more flexibility in addressing pension settlement losses that can occur at any time. The annual Recovered PSA, *i.e.* the Pension Settlement Adjustments deemed already collected in rates, is fixed at the Utah-allocated portion of the \$11.9 in pension settlement losses previously adjudicated in the GRC.

The OCS also recommended parties "be permitted to petition the PSC to request the implementation of a surcredit or surcharge after the review of the annual PSABA reporting if the balance in the PSABA reaches a threshold of +/- \$10 million on a Utah jurisdictional basis."¹⁴ We conclude any party may file a request for agency action at any time to request rate treatment of the balance in the PSABA. We, therefore, decline to establish any such threshold because to do so would only limit parties' opportunities.

ORDER

We approve and direct RMP to establish a PSABA consistent with this order. RMP will calculate, on an annual basis, the difference between Utah-allocated Recovered PSA and Utah-allocated Actual PSA, deferring the difference to a regulatory asset or regulatory liability with an

¹⁴ Surrebuttal Test. of D. Ramas at 2:32-35.

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annual carrying charge at the PSC-approved rate under Schedule No. 300. Each year, until completion of another general rate case or the PSC orders otherwise, the Recovered PSA shall equal Utah's allocated portion of the \$11.9 million in pension settlement losses previously adjudicated in the GRC. Actual PSA for each year shall be equal to the Utah-allocated portion of the Pension Settlement Adjustments that RMP actually recognizes for the year, using the SOF from RMP's most recently filed Utah year-end Results of Operations Report. Except as we have specifically provided in this order, we approve the remaining provisions of RMP's Application.

RMP will file a report on or about May 15 each year that discloses the regulatory asset or regulatory liability balance in the PSABA, and the report will include a detailed calculation showing the difference between the Utah-allocated Recovered PSA and the Utah-allocated Actual PSA realized for the year.

DATED at Salt Lake City, Utah, November 3, 2021.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#320985

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC does not grant a request for review or rehearing within 30 days after the filing of the request, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on November 3, 2021, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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