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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Rocky Mountain Power's Application for Alternative Cost Recovery for Major Plant Additions of the Pryor Mountain and TB Flats Wind Projects	Docket No. 21-035-42

CONFIDENTIAL MOTION FOR SUMMARY JUDGMENT

Pursuant to Utah Rule of Civil Procedure 56 and Utah Admin. Code R746-1-301, the Division of Public Utilities ("DPU"), the Office of Consumer Services ("OCS") and the Utah Association of Energy Users ("UAE") (collectively, "Movants") hereby file this Motion for

Summary Judgment seeking an order of the Public Service Commission of Utah ("Commission") dismissing the Application filed in this docket by Rocky Mountain Power ("RMP").

RELIEF REQUESTED

RMP's Application seeks relief pursuant to Utah Code § 54-7-13.4 ("MPA Statute") for costs associated with two capital investment projects that are already included in customer rates. This Motion seeks an order of summary judgment denying RMP's Application as a matter of law and dismissing the Application with prejudice.

GROUNDS FOR RELIEF

The MPA Statute does not permit RMP to receive the relief it seeks in this docket. As set forth more fully herein, the plain language of the MPA Statute, the role of the MPA Statute in utility ratemaking, and the historical use of the MPA Statute all demonstrate that the MPA Statute does not permit a utility to receive cost recovery for the costs of projects that are already included in customer rates. This Motion should be granted and RMP's Application should be dismissed because neither of the wind projects at issue in the Application—TB Flats and Pryor Mountain—qualify as a "major plant addition" for the following two reasons.

First, the entire amount of plant-in-service for both TB Flats and Pryor Mountain is already fully included in the average-of-period rate base calculation utilized in RMP's most recent general rate case to set current customer rates. As such, there is no capital investment project at issue in this Application that qualifies as a "major plant **addition**" to the investments already included in revenue requirement and customer rates.

Second, even if either of the projects could properly be considered an "addition" under the MPA Statute (and they cannot), the incremental rate base measurement for each plant does not exceed one percent of RMP's rate base. As such, there is no capital investment project at issue in this Application that qualifies as a "**major**" plant addition" to the projects already included in revenue requirement and customer rates.

STATEMENT OF FACTS NOT GENUINELY IN DISPUTE

1. RMP's most recent general rate case was Docket No. 20-035-04 ("2020 GRC"), which resulted in a final order on December 30, 2020. [*See* Docket No. 20-035-04, Report and Order (Dec. 30, 2020) ("2020 GRC Order")].

2. In the 2020 GRC, the Commission approved RMP's request for a test period ending December 31, 2021, using a 13-month average rate base. [*See* Docket No. 20-035-04, Order Approving Test Period (Mar. 6, 2020) at 4 ("We approve RMP's request to use a test period of twelve months ending December 31, 2021, using a 13-month average rate base.")].

3. In Docket No. 17-035-40, RMP sought and received approval to construct the TB Flats wind project ("TB Flats") pursuant to Utah Code § 54-17-302. [*See* Docket No. 17-035-40, Order (June 22, 2018) (approving forecasted costs associated with various Wind Projects, including TB Flats)].

4. In the 2020 GRC, the Commission approved RMP's request to include in rate base the costs for TB Flats that were approved by the Commission in Docket No. 17-035-40. [*See* 2020 GRC Order at 44-46].

5. In the 2020 GRC, the Commission approved RMP's request to include in rate base the costs for the Pryor Mountain Wind Project ("Pryor Mountain"). [*See* 2020 GRC Order at 46-50].

6. In the 2020 GRC, RMP initially asserted that TB Flats and Pryor Mountain would be fully in-service prior to the start of the approved 2021 test period, but later stated in rebuttal testimony that portions of each project would be placed in service before the start of the 2021 test year and that the remainder would be placed in service during the 2021 test year. [*See* 2020 GRC Order at 44].

7. In the 2020 GRC, RMP requested a two-step rate increase "with the first increase occurring on January 1, 2021 and the second to be effective as of July 1, 2021, or 30 days after the final in-service dates for the projects." The Commission noted that "RMP seeks the traditional 13-month average calculation for rate base and concedes that this requires consideration of months well into the middle of 2022 for the Delayed Plant, a period that extends well beyond the Test Year." [2020 GRC order at 44 (internal quotation marks omitted)].

8. The Commission rejected RMP's proposal on the grounds that using a separate test period for the TB Flats and Pryor Mountain wind projects would violate the prohibition set forth in Utah Code § 54-4-4(3)(b) against using a test period with projected data that exceeds 20 months from the date of the general rate case application. The Commission found that "[t]he law simply does not permit this." [GRC Order at 45].

9. In the 2020 GRC, this Commission approved the inclusion of the TB Flats and Pryor Mountain wind projects and granted cost recovery for those projects, including the full amount of the costs of those projects in the test year rate base determination. The Commission ruled that "RMP may recover for the Delayed Plant on an average-of-period basis over the Test Year," and found that this rate treatment was "just and reasonable." [2020 GRC Order at 46].

10. RMP notes in its filing that "[o]ne percent of the Company's Utah rate base approved by the Commission in the 2020 GRC is $75.6 million." [RMP Application at 5, ¶ 11].

11. In this docket, RMP seeks to change the rate base measurement period for the costs of the TB Flats and Pryor Mountain wind projects from the average-of-2021 period approved in the 2020 GRC to an average-of-2022 period. [*See* CONFIDENTIAL Direct Testimony of Kevin C. Higgins (UAE) at lines 121-171].

12. Changing the rate base measurement period from the average-of-2021 period approved in the 2020 GRC to the average-of-2022 period proposed in this docket results in an incremental addition to rate base for the TB Flats project of [redacted] [*See* CONFIDENTIAL Direct Testimony of Kevin C. Higgins (UAE) at line 202 (Table KCH-2); CONFIDENTIAL Direct Testimony of William A. Powell, Ph.D. (DPU) at line 128]. This amount is less than the $75.6 million that represents 1% of RMP's rate base approved in the 2020 GRC.

13. Changing the rate base measurement period from the GRC-approved average-of-2021 period approved in the 2020 GRC to the average-of-2022 period proposed in this docket results in an incremental addition to rate base for the Pryor Mountain project of [redacted] [*See* CONFIDENTIAL Direct Testimony of Kevin C. Higgins (UAE) at line 203 (Table KCH-2); CONFIDENTIAL Direct Testimony of William A. Powell, Ph.D. (DPU) at line 129]. This amount is less than the $75.6 million that represents 1% of RMP's rate base approved in the 2020 GRC.

ARGUMENT

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Utah R. Civ. P. 56(a). If the moving party presents evidence sufficient to determine an issue raised by the pleadings and that no material issues of fact remain, the burden then shifts to the nonmoving party to identify contested material facts, or legal flaws in the contentions raised by the moving party. *See Salo v. Tyler*, 2018 UT 7, ¶ 2, 417 P.3d 581.

II. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT

There are no genuine disputes with respect to the facts material to this motion. Moreover, even if RMP *could* raise genuine issues of fact, "the mere existence of genuine issues of fact . . . does not preclude the entry of summary judgment if those issues are immaterial to resolution of the case." *Burns v. Cannondale Bicycle Co.*, 876 P.2d 415, 419 (Utah Ct. App. 1994) (quoting *Horgan v. Industrial Design Corp.,* 657 P.2d 751, 752 (Utah 1982)).

III. MOVANTS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE THE MPA STATUTE DOES NOT PERMIT THE RELIEF RMP SEEKS

The MPA Statute does not permit a utility to receive additional recovery for a capital investment project that is already included in customer rates and also does not permit recovery for project costs that do not exceed 1% of the utility's rate base, and summary judgment is appropriate because neither project at issue in RMP's Application in this docket is a "major plant addition."

This Motion asks the Commission to interpret the MPA Statute. "The proper interpretation and application of a statute is a question of law." *Baird v. Baird*, 2014 UT 08, ¶ 16, 322 P.3d 728. "When interpreting a statute, our goal is to give effect to the words enacted into law by the legislature." *Utah Office of Consumer Services v. Public Service Commission*, 2019 UT 26, ¶ 30, 4445 P.3d 464. "[W]e look first to the statute's plain language to determine its meaning. We read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters." *Bd. of Educ. of Jordan School Dist.*, 2004 UT 37, ¶ 9, 94 P.3d 234 (internal quotation marks and citations omitted).

As set forth below, RMP's Application should be dismissed because neither TB Flats nor Pryor Mountain qualifies as a "major plant addition" for at least two reasons: A) neither TB Flats nor Pryor Mountain qualifies as a "major plant <u>addition</u>" because the costs of those projects is already included in customer rates, and B) neither TB Flats nor Pryor Mountain qualifies as a "<u>major</u> plant addition" because the incremental costs for which RMP seeks recovery do not exceed one percent of rate base.

A. Neither TB Flats nor Pryor Mountain Qualifies as a "Major Plant <u>Addition</u>" Because the Costs of those Projects are Already Included in Customer Rates

RMP's Application should be dismissed because the entire amount of plant-in-service for both the TB Flats and the Pryor Mountain project was included in full in the 2020 GRC test year average rate base calculation and, as such, both projects are included in rates and neither project is a "major plant <u>addition</u>." As set forth below, 1) the plain language of the MPA Statute limits its application to projects in <u>*addition*</u> to those already included in customer rates; 2) the MPA Statute's role in utility ratemaking limits its application to projects in <u>*addition*</u> to those already included in customer rates; 3) historical use of the MPA Statute confirms that it applies only to projects in <u>*addition*</u> to those already included in customer rates; and 4) the TB Flats and Pryor Mountain projects are not "major plant <u>*additions*</u>" because they are already included in customer rates.

1. *The Plain Language of the MPA Statute Limits its Application to Projects in **<u>Addition</u>** to those Already Included in Customer Rates*

The MPA Statute's plain language does not authorize a utility to obtain relief for any project that is already included in customer rates. The MPA Statute allows a utility to seek "cost recovery of a major plant addition" and defines "major plant addition" as follows:

> "Major plant addition" means any single capital investment project of a gas corporation or an electrical corporation that in total exceeds 1% of the gas corporation's or electrical corporation's rate base, based on the gas corporation's or electrical corporation's most recent general rate case determination that is:
> (i) used to serve Utah customers; and
> (ii) assigned or allocated to Utah.

Id. § 54-7-13.4(1)(c).

RMP incorrectly asserts that this provision permits it to seek "cost recovery" for the TB Flats and Pryor Mountain projects despite the fact that the entire amount of plant-in-service for both projects was included in full in the 13-month average-of-period rate base calculation in the 2020 GRC and that RMP is already recovering those costs in customer rates. RMP's interpretation is inconsistent with the plain language of the MPA Statute and neither TB Flats nor Pryor Mountain are a "major plant <u>addition</u>," for several reasons.

First, the only relief authorized by the MPA Statute is "cost recovery of a major plant addition." *See* Utah Code § 54-7-13.4(2). The term "cost recovery of a major plant addition" assumes the utility is not already receiving cost recovery through customer rates. When a project is approved and its costs are included in rates set in a general rate case, the utility receives "cost recovery" for that project. If the Utah Legislature had intended to allow a utility that *already* receives "cost recovery" for project to modify the order granting it relief in addition to "cost recovery" for that project, the MPA Statute would permit additional forms of relief. By limiting the available relief to "cost recovery of a major plant addition," the Legislature has limited the projects for which "cost recovery" may be obtained pursuant to the MPA Statute to those that are in *addition* to those capital investment projects already included in rates.

Second, the MPA Statute permits "cost recovery of a major plant addition" in two forms—the Commission may either authorize a rate change to permit the utility to collect the state's share of the net revenue requirement impacts of the project, or it may defer those costs until the next general rate case. *See* Utah Code § 54-7-13.4(5). These cost recovery mechanisms apply only to projects for which the utility does not already receive some form of recovery for the net revenue requirement impacts of all or any portion of the project. Specifically, the MPA Statute states that deferral of costs for a major plant addition "***shall terminate*** upon a final commission order that provides for recovery in rates of ***all or any part of the net revenue requirement impacts of the major plant addition***." Utah Code § 54-7-13.4(6)(b) (emphasis added). A general rate case is a "final commission order that provides recovery in rates of all or any part of the net revenue requirement impacts" for any project whose revenue requirement impacts are included in the test period. As such, any project whose costs are included in rates approved in a general rate case is ineligible for "cost recovery" pursuant to the MPA Statute.

Third, the MPA Statute does not authorize the Commission to grant "cost recovery" of only a portion of the costs of a "major plant addition," as would be necessary if the MPA Statute were to apply to projects already included in rates. The MPA Statute requires the Commission to either "approve, approve with conditions, or deny cost recovery of *the major plant addition*." Utah Code § 54-7-13.4(4)(a)(ii) (emphasis added). If the Commission approves "cost recovery of *the major plant addition*," it must "determine the state's share of projected net revenue requirement impacts of *the major plant addition*," *Id*. § 54-7-13.4(4)(b) (emphasis added) and then must either "defer the state's share of the net revenue requirement impacts of *the major plant addition* for recovery in general rate cases," or "establish a collection method for the state's share of the net revenue requirement impacts." *Id*. § 54-7-13.4(5) (emphasis added). These provisions require the Commission to consider the costs of "the major plant addition" in their entirety when considering the net revenue requirement impacts and the cost recovery to be granted pursuant to the MPA Statute. The plain language of the MPA Statute does not permit the Commission to grant "cost recovery" of only a portion of the prudently-incurred costs of a project, as would be necessary if the Commission could grant cost recovery for the costs of a project already included in rates. It does not, and the MPA Statute must be interpreted to permit "cost recovery" only for projects that are not already included in rates and for which the utility is not already receiving cost recovery.

Finally, further evidence that the MPA Statute does not permit cost recovery for projects already included in customer rates is the fact that the statute does not mention general rate cases when referencing prior orders approving the "major plant addition" at issue. Specifically, the MPA Statute directs the Commission to "presume the prudence of the utility's capital costs" for projects approved "as a significant energy resource under Section 54-17-302 or resource decision under Section 54-17-402." Utah Code § 54-7-13.4(4)(c). Notably, the MPA Statute does *not* direct the Commission to presume the prudence of capital costs for projects approved in a general rate case. This is because the MPA Statute is not intended to provide "cost recovery" for projects approved in a general rate case for which the utility is already recovering costs.

The plain language of the MPA Statute limits its application to projects not already included in rates.

2. *The MPA Statute's Role in Utility Ratemaking Limits its Application to Projects in **__Addition__** to those Already in Included in Customer Rates*

In addition to the plain language of the MPA Statute itself, its role in utility ratemaking also demonstrates that it may not be used to provide "cost recovery" for projects already included in customer rates. Utility ratemaking is traditionally conducted through general rate cases filed pursuant to Utah Code section 54-7-12. "In a general rate proceeding the commission determines for a test period the expenses, the rate base, and the rate of return to be allowed." *Utah Dept. of Bus. Reg., Division of Public Utilities v. Public Service Commission*, 614 P.2d 1242, 1248 (Utah 1980) ("*1980 DPU Case*") (reversing PSC order increasing rates based solely on evidence of increase in single category of costs). The test period utilized in the rate case is the one that "best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect." Utah Code § 54-4-4(3). "In determining an appropriate rate, the PSC considers the utility's historical income and cost data, as well as predictions of future costs and revenues, and arrives at a rate which is projected as being adequate to cover costs and give the utility's shareholders a fair return on equity." *Utah Dept. of Bus. Reg., Division of Public Utilities v. Public Service Commission*, 720 P.2d 420, 420 (Utah 1986) ("*1986 DPU Case*") (reversing PSC order permitting utility to tap balancing account to make up for general revenue shortfall, thus violating proscription against retroactive rate making). When a fully-projected test period is utilized, the Commission may not consider changes that occur outside of that future test period. *See* Utah Code § 54-4-4(3)(c) (permitting Commission to consider changes outside of "a test period that is ***not*** determined exclusively on the basis of future projections." (emphasis added)).

"To provide utilities with some incentive to operate efficiently, they are generally not permitted to adjust their rates retroactively to compensate for unanticipated costs or unrealized revenues." *1986 DPU Case*, 720 P.2d at 420. This traditional ratemaking process provides balance between the utility and the ratepayers because it "places both the utility and the consumers at risk that the rate-making procedures have not accurately predicted costs and revenues." *Id*. Any rate adjustment outside of a general rate case requires the utility to prove that it was subject to an expense that "constituted an extraordinary expense, e.g., disproportionate in relation to anticipated expenses and gross revenues" that were contemplated by the Commission when it set rates in the utility's most recent general rate case. *1980 DPU Case*, 614 P.2d at 1249.

The Utah Legislature has authorized the Commission to deviate from this traditional ratemaking process only in limited circumstances. Utah Code section 54-7-13.5 ("EBA Statute") authorized the Commission to adopt an energy balancing account to set rates associated with power costs outside of a general rate case. The MPA Statute also permits limited utility ratemaking outside of a general rate case. It authorizes a utility to file an application seeking cost recovery for "major plant additions"—**<u>major</u>** capital investment projects placed in service outside of the context of a general rate case, such that the project is not included in, and is in **<u>addition</u>** to, the Commission's "determin[ation] for a test period the expenses, the rate base, and the rate of return to be allowed." *1980 DPU Case*, 614 P.2d at 1248. If the Commission approves cost recovery of a "major plant addition," it may authorize the utility to either defer or adjust rates to collect the state's share of the net revenue requirement impacts of the major plant addition without filing a new general rate case.

An interpretation of the MPA Statute that allows cost recovery for projects already included in rates would render meaningless the Commission's selection of a test period that "best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect." Utah Code § 54-4-4(3). When selecting the appropriate test period, the Commission balances utility and ratepayer interests and considers various factors, including revenues, expenses, and the size and timing of utility investments.[1] If a utility could use the MPA Statute to selectively adjust the average-of-period rate base for selected projects after a rate case, it would undermine the balance created by the Commission's choice of test period. Such use of the MPA Statute would also allow a utility to circumvent Utah Code section 54-4-4(3)(c), which prohibits the Commission from considering changes outside of a fully forecasted test period when setting rate base and test year revenue requirement.

When considered in the context of other utility ratemaking statutes, the MPA Statute's role in utility ratemaking is limited and does not permit additional or supplemental cost recovery for projects already in rates.

3. *Historical Use of the MPA Statute Confirms that it Applies Only to Projects Not Already Included in Customer Rates*

The historical use of the MPA Statute is consistent with an interpretation that it authorizes cost recovery only for projects not already included in rates. RMP first sought relief pursuant to the MPA Statute shortly after it was enacted in 2009. In its 2009 general rate case in Docket No. 09-035-23 ("2009 GRC"), RMP sought a future test year ending December 31, 2010 so that it could include in the average-of-period rate base calculation its planned investments in the Ben

[1] *See* Docket No. 04-035-42, Order Approving Test Period Stipulation (Oct. 20, 2004); Docket No. 07-035-93, Order on Test Period (Feb. 14, 2008).

Lomond to Terminal transmission line and the Dave Johnston 3 emissions control measures, which it forecasted to be placed in service by May of 2010, the middle of RMP's proposed test period.[2] RMP's test year proposal indicated that RMP planned to exclude from the 2009 GRC revenue requirement its investments in certain other projects that may be placed in service late in the test year and that RMP would, instead, use the MPA Statute to obtain cost recovery of those projects when they were placed in service. Other parties proposed an earlier test period and RMP ultimately stipulated to the use of the twelve months ending June 30, 2010 as the 2009 GRC test period.[3] As part of the stipulation, RMP agreed to exclude from the 2009 GRC its investments in the Ben Lomond to Terminal transmission project and the Dave Johnston 3 emissions control measures and the other parties agreed that RMP could instead "use the alternative cost recovery mechanism in Utah Code Annotated ('UCA') § 54-7-13.4 to recover the costs of these projects."[4]

Subsequently, RMP filed Docket No. 10-035-13 ("2010 MPA I Docket") seeking cost recovery pursuant to the MPA Statute for its investments in the Ben Lomond to Terminal transmission line and the Dave Johnston Unit 3 emissions control measures.[5] Both projects were placed in service during the 2009 GRC test period but their costs were excluded from the test period rate base calculation.[6] RMP was able to seek "cost recovery of a major plant addition" for both projects pursuant to the MPA Statute because RMP did not seek cost recovery of these projects in the 2009 GRC. RMP also sought "cost recovery of a major plant addition" for

[2] *See, e.g.*, Docket No. 09-035-23, Direct Test Period Testimony of David Taylor (Apr. 30, 2009) at lines 283-381 (describing RMP's plan to use the MPA Statute to obtain cost recovery for investments excluded from the 2009 GRC but that may be placed in service during the test period).
[3] Docket No. 09-035-23, Report and Order on Test Period Stipulation (June 1, 2009) (approving stipulation designating the "twelve months ending June 30, 2010, utilizing a 13-month average rate base, as the test period")
[4] *Id*. at 3.
[5] *See* Docket No. 10-35-13, Report and Order (June 15, 2010).
[6] *Id*. at 5.

additional transmission and generation investments that were not included in the 2009 GRC revenue requirement in a separate MPA docket filed in 2010, Docket No. 10-035-89 ("2010 MPA II Docket"). The 2010 MPA I Docket and 2010 MPA II Docket are the only dockets in which a utility has sought relief pursuant to the MPA Statute and, in both dockets, RMP sought cost recovery for projects that were not already included in customer rates. No utility has previously sought to use the MPA Statute to obtain relief for a project that is already included in rates.

4. *The TB Flats and Pryor Mountain Projects are Not "Major Plant* ***Additions****" because those Projects are Already Included in Customer Rates*

This Commission approved the full forecasted costs of the TB Flats and Pryor Mountain projects in the 2020 GRC and those costs were included in the average-of-2021 test period and, as such, neither project constitutes a "major plant **addition**." In the 2020 GRC, the Commission "approve[d] RMP's request to use a test period of twelve months ending December 31, 2021, using a13-month average rate base."[7] In doing so, the Commission found that "RMP's 2021 Proposed Test Year meets the statutory requirements under Utah Code Ann. § 54-4-4(3), best reflects the conditions RMP will face during the rate effective period, and will allow RMP a reasonable opportunity to recover the costs associated with its capital projects and new depreciation rates."[8] Moreover, the use of a fully projected test period meant that the Commission was barred from considering projected data "exceeding 20 months from the date a proposed rate increase or decrease" was filed by RMP. *See* Utah Code § 54-4-4(3)(b).

[7] Docket No. 20-035-04, Order Approving Test Period (Mar. 6, 2020) at 4.
[8] *Id*. at 3-4.

In the 2020 GRC, RMP initially asserted that the TB Flats and Pryor Mountain projects would be placed in service prior to the start of the 2021 test period.[9] As such, RMP's initial 2021 test period revenue requirement proposal included the full forecasted costs of each project in the first month of the 13-month average rate base calculation. In rebuttal testimony, however, RMP acknowledged that only a portion of each project would be placed in service by the start of the 2021 test period and that the remainder of each project would be placed in service during the 2021 test period.[10] RMP then proposed a two-step rate increase utilizing a separate test period for the costs associated with the delayed portions of the projects. The Commission rejected that request as being contrary to Utah law because it would have relied on data projections more than 20 months from the date of the GRC filing.[11] Instead, the Commission incorporated the full costs of the two projects into the 2021 test period on an average-of-period basis by including in the rate base calculation the costs associated with the plants as and when portions of the plants were forecasted to be placed in service based on the information available at the time of the order.[12]

In this docket, RMP attempts to use the MPA Statute to modify the 2020 GRC Order to change the manner in which plant-in-service for the TB Flats and Pryor Mountain projects is measured for inclusion in rate base and customer rates. RMP's Application does not seek cost recovery for additional plant placed into service that is not already included in rate base; the entire amount of the plant-in-service for these projects is already included in rate base.[13] Instead, RMP

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[9] Docket No. 20-035-04, Direct Testimony of Joelle Steward at lines 218 & 250-252.
[10] *See* 2020 GRC Rebuttal Testimony of Timothy J. Hemstreet at lines 130-134; 2020 GRC Rebuttal Testimony of Robert Van Engelenhoven at lines 41-43.
[11] 2020 GRC Order at 45 ("Accordingly, we deny RMP's request to implement a two-step increase and to recover the Delayed Plant in reliance on projections beyond the approved Test Year.").
[12] *Id*.
[13] *See* CONFIDENTIAL Direct Testimony of Kevin C. Higgins at lines 164-171.

seeks to manufacture a "major plant addition" by proposing to measure rate base for the TB Flats and Pryor Mountain projects using a different test period than the one approved in the 2020 GRC. That is, while the 2020 GRC Order approved a 2021 test period and included the full plant-in-service for the TB Flats and Pryor Mountain projects on an average-of-2021 basis, RMP seeks in this docket to use an average-of-2022 basis for the projects.[14] As with its attempt in the 2020 GRC to obtain cost recovery for these projects based on projections outside the approved test period, RMP's request for relief in this docket is not permitted by Utah law.

Both the TB Flats and the Pryor Mountain project are already included in customer rates and, therefore, neither is a "major plant **addition**" and the Commission cannot grant RMP "cost recovery" for those projects pursuant to the MPA Statute. The Commission could not, for example, grant RMP's Application in this docket and then order the deferral of any costs of either project to then be included in the next general rate case. As noted above, the MPA Statute states that deferral of costs for a major plant addition "***shall terminate*** upon a final commission order that provides for recovery in rates of ***all or any part of the net revenue requirement impacts of the major plant addition***." Utah Code § 54-7-13.4(6)(b) (emphasis added). The 2020 GRC Order is a "final commission order that provides recovery in rates of all or any part of the net revenue requirement impacts" of both the TB Flats and Pryor Mountain projects and, thus, "cost recovery" under the MPA Statute is not available for those projects.

RMP incorrectly asserts that the MPA Statute permits cost recovery for any project so long as its costs exceed one percent of rate base—no matter when the project was placed in service,

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[14] *See id*. at lines 155-163.

when the costs were incurred, or whether some of those costs have already been recovered.[15] RMP's interpretation would selectively prolong the test period for large capital projects and would increase the revenue requirement results of using average rate base to set rates. *Any* plant placed in service after the first month of the test year would obtain a higher revenue requirement if its average plant-in-service were measured in the year subsequent. RMP could file an MPA Statute application for *any and all* such plant that exceeds one percent of rate base and obtain a higher revenue requirement for it. The MPA Statute would thus be turned into a tool to undermine the principle of using average rate base to determine revenue requirement in a general rate case.

RMP's interpretation would also allow it to file an MPA application to recover new incremental capital costs of *any amount* to any existing plant for which the total costs of the plant exceed one percent of rate base—no matter when the project was placed in service or how much of the project's costs have already been recovered. As noted by Division witness Dr. William Powell, RMP's interpretation would, if adopted, "be ripe for abuse and would not be in the public interest."[16] RMP completely reads out of the statute the word "addition," which limits the scope of potential projects for which cost recovery is available to those "major plant additions" not already included in rates. RMP already receives cost recovery for the TB Flats and Pryor Mountain projects. They are not "major plant **additions**" eligible for cost recovery pursuant to the MPA Statute, and RMP's Application should be denied as a matter of law.

[15] *See, e.g.*, Direct Testimony of Steven R. McDougal at lines 58-89 (stating that TB Flats and Pryor Mountain projects qualify for cost recovery pursuant to the MPA Statute because "[o]ne percent of the Company's Utah rate base approved by the Commission in the 2020 GRC is $75.6 million and each of the total project costs exceeds this threshold.").

[16] Direct Testimony of William A. Powell, Ph.D. at lines 161-162.

B. Neither TB Flats nor Pryor Mountain Qualifies as a "Major Plant Addition" Because Their Incremental Net Revenue Requirement Impacts Do Not Exceed One Percent of Rate Base

Even if portions of the TB Flats and Pryor Mountain projects could be considered "additions" because of RMP's proposal to change the rate base measurement for the projects from average-of-2021 to average-of-2022 (and they cannot), RMP's proposed incremental change in rate base for the projects is insufficient to qualify either project as a "**major** plant addition." A "major plant addition" is a project "that in total exceeds 1% of the . . . electrical corporation's rate base, based on the . . . most recent general rate case determination" on a Utah-allocated basis. Utah Code § 54-7-13.4(2). TB Flats and Pryor Mountain each fail to satisfy this requirement. Neither project is a "major plant addition" and RMP's Application should be denied as a matter of law.

RMP's Application does not seek cost recovery for the entire costs of either the TB Flats or the Pryor Mountain project. Such relief is not available to RMP because the costs of the projects are already included in rate base and in the customer rates that RMP has been collecting since January 1, 2021. The average-of-2021 rate base approved in the 2020 GRC for each project—the rate base already included in rates—cannot logically constitute an "addition." RMP's requested relief in this docket targets only the *change* in rate base that is observed when comparing the average-of-2021 rate base calculated in the 2020 GRC with that of the average-of-2022 period that RMP now prefers for these two projects. RMP's Application thus defines "the major plant addition" for which it seeks "cost recovery" as the *incremental change* in rate base for each project—the portion of the projects that RMP claims is not already included in rates. As noted above, the MPA Statute requires the Commission to either "approve, approve with conditions, or deny cost recovery of *the major plant addition*." Utah Code § 54-7-13.4(4)(a)(ii) (emphasis added), and, if the Commission approves the Application, it must "determine the state's share of projected net revenue requirement impacts of *the major plant addition*." Utah Code § 54-7-13.4(4)(b) (emphasis added). These provisions of the MPA Statute define "the major plant addition" as the net revenue requirement impacts of the costs for which the utility seeks recovery.

In its Application, RMP asserts that the measure of whether a project exceeds the one percent of rate base threshold required to constitute a "major plant addition" is the total costs of the project—no matter when the project is placed in service, when the costs were incurred, or whether some of those costs have already been recovered.[17] RMP's assertion ignores the language in the MPA Statute referring to cost recovery of the net revenue requirement impacts of "the major plant addition" for which the utility seeks "cost recovery." The provisions of the MPA Statute directing the Commission to either "approve, approve with conditions, or deny cost recovery of *the major plant addition*" and to "determine the state's share of projected net revenue requirement impacts of *the major plant addition*" do not authorize the Commission to grant "cost recovery" for only a portion of "the major plant addition."

The only possible interpretation of the MPA Statute that would allow a utility to seek "cost recovery" for a portion of the total costs of a project that is already included in rates is one that measures "the major plant addition" by the incremental costs the utility seeks to recover. Measured on this basis, the incremental change in rate base for TB Flats and Pryor Mountain falls below the one percent threshold required by the MPA Statute. RMP notes in its filing that "[o]ne percent of

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[17] *See, e.g.*, Direct Testimony of Steven R. McDougal at lines 58-89 (stating that TB Flats and Pryor Mountain projects qualify for cost recovery pursuant to the MPA Statute because "[o]ne percent of the Company's Utah rate base approved by the Commission in the 2020 GRC is $75.6 million and each of the total project costs exceeds this threshold.").

the Company's Utah rate base approved by the Commission in the 2020 GRC is $75.6 million."[18] As set forth in Table KCH-2 in the CONFIDENTIAL Direct Testimony of Kevin Higgins filed on behalf of UAE in this docket, the incremental costs of each of the TB Flats and Pryor Mountain projects falls below that threshold:[19]

[redacted]

Neither project meets the one percent threshold required in the MPA Statute when measured on an incremental basis, which is the basis for which RMP seeks relief and the only basis that that could possibly allow RMP to recover pursuant to the MPA Statute, and the only basis that makes sense from a ratemaking perspective. In fact, the projects do not reach the one percent threshold on a combined basis.[20]

As a result, neither project constitutes a "**major**" plant addition" for which cost recovery is authorized pursuant to the MPA Statute and RMP's Application should be denied as a matter of law.

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[18] RMP Application at 5, ¶ 11.
[19] *See* CONFIDENTIAL Direct Testimony of Kevin C. Higgins at lines 195-204.
[20] *Id*. at lines 205-209; *see also* Direct Testimony of Dr. William Powell at lines 31-34 ("[T]he Company is requesting to recover only the portion of those total costs not already included in base rates from the last general rate case. Neither the additional cost of each individual plant nor the combined additional cost of the two plants set forth here meets th[e] statutory threshold.").

IV. CONCLUSION

The MPA Statute does not allow a utility to recover costs associated with a project whose costs are already included in customer rates. The entire amount of the plant-in-service for the TB Flats and Pryor Mountain projects is already included in rate base approved in the 2020 GRC and RMP already receives cost recovery for those projects. As such, neither project is a "major plant **addition**." Alternatively, the incremental costs of the projects do not meet the MPA Statute's 1% threshold requirement needed for the projects to constitute a "**major** plant addition." Thus, the MPA Statute does not authorize RMP to receive the relief it seeks in this docket and its Application must be denied as a matter of law. As such, summary judgment is appropriate in this matter.

DATED this 26th day of October 2021.

Respectfully submitted by:

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Electronically signed with permission of counsel

REDACTED

Certificate of Service
Docket No. 21-035-42

I hereby certify that a true and correct copy of the foregoing was served by email this 26th day of October 2021 on the following:

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