ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

1407 West North Temple
Salt Lake City, Utah 84116

November 10, 2021

VIA ELECTRONIC FILING

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Administrator

Re: Docket No. 21-035-42
In the Matter of Rocky Mountain Power's Application for Alternative Cost Recovery for Major Plant Additions of the Pryor Mountain and TB Flats Wind Projects
Rocky Mountain Power Opposition to Confidential Motion for Summary Judgment

Pursuant to Utah Rules of Civil Procedure 56 and Utah Admin. Code R746-1-301, PacifiCorp dba Rocky Mountain Power hereby submits its confidential opposition to the motion for summary judgment filed by the Division of Public Utilities, the Office of Consumer Services, and the Utah Association of Energy Users in the above referenced matter.

Rocky Mountain Power respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): datarequest@pacificorp.com
jana.saba@pacificorp.com
emily.wegener@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Informal inquiries may be directed to Jana Saba at (801) 220-2823.

Sincerely,

Joelle Steward
Vice President, Regulation

cc: Service List Docket Nos. 21-035-42

CERTIFICATE OF SERVICE

Docket No. 21-035-42

I hereby certify that on November 10, 2021, a true and correct copy of the foregoing was served by electronic mail to the following:

Utah Office of Consumer Services

Michele Beck	mbeck@utah.gov
Alyson Anderson	akanderson@utah.gov
ocs@utah.gov	

Utah Association of Energy Users

Phillip J. Russell **(C)**	prussell@jdrslaw.com
Courtney Higgins **(C)**	chiggins@energystrat.com
Neal Townsend **(C)**	ntownsend@energystrat.com
Justin Bieber **(C)**	jbieber@energystrat.com

Division of Public Utilities

dpudatarequest@utah.gov

Assistant Attorney General

Patricia Schmid	pschmid@agutah.gov
Justin Jetter	jjetter@agutah.gov
Robert Moore	rmoore@agutah.gov

Rocky Mountain Power

Data Request Response Center	datarequest@pacificorp.com
Jana Saba	jana.saba@pacificorp.com utahdockets@pacificorp.com
Emily Wegener	Emily.wegener@pacificorp.com

Mary Penfield
Adviser, Regulatory Operations

Emily L. Wegener (12275)
Stephanie Barber-Renteria (8808)
Rocky Mountain Power
1407 W. North Temple, Suite 320
Salt Lake City, Utah 84116
Tel. 801.220.4526
emily.wegener@pacificorp.com

Attorneys for Rocky Mountain Power

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 OPPOSITION TO CONFIDENTIAL MOTION FOR SUMMARY JUDGMENT

Pursuant to Utah Rules of Civil Procedure 56 and Utah Admin. Code R746-1-301, PacifiCorp dba Rocky Mountain Power ("RMP" or the "Company") hereby submits its opposition to the motion for summary judgment ("Motion") filed by the Division of Public Utilities ("DPU"), the Office of Consumer Services ("OCS"), and the Utah Association of Energy Users ("UAE") (collectively, "Movants") in the above referenced matter.

INTRODUCTION

Utah Code § 54-7-13.4 ("MPA Statute") allows utilities to recover the costs of a "single capital investment project" that exceeds 1% of the utility's rate base outside of a general rate case for projects placed in service within 18 months of a final order in the Company's most recent

general rate case. One of the purposes of the statute is to avoid back-to-back rate cases when the Company's costs have recently been thoroughly evaluated.[1]

It is undisputed that the Pryor Mountain and TB Flats wind projects (collectively, the "Projects") are each "single capital investment projects," they each total more than 1% of the Company's rate base, and neither were fully included in the revenue requirement for the Company's 2020 general rate case, Docket No. 20-035-04 ("2020 GRC"). Movants argue that because part of the project costs were included in the 2020 GRC revenue requirement, that the MPA statute either does not apply or that only the incremental addition to the total project costs should be considered when determining if the projects meet the statutory size threshold. While Movants claim their interpretation of the statute is based on its "plain language," their reading actually requires the Commission to read additional requirements into the statute. In addition, their interpretation would create an odd incentive for major capital additions to be considered outside of general rate proceedings to ensure that the full cost of a project is included in rates at the time it is placed into service. The Company's Application to include the entire project costs for the Projects in rate base meets the purpose and the plain language of the MPA statute, and the Commission should grant the Application.

RESPONSE TO MOVANTS' STATEMENT OF FACTS

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.

RESPONSE: Undisputed.

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.

[1] Direct Testimony of Michelle Beck, October 6, 2021, at 2:36-38.

RESPONSE: Undisputed.

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.

RESPONSE: Undisputed.

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.

RESPONSE: Undisputed that the Commission approved the cost recovery for TB Flats in the 2020 GRC. It is also undisputed that even though cost recovery was approved that not all costs associated with TB Flats were included in the 2020 GRC revenue requirement because it was not in service at the beginning of the test year.

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").

RESPONSE: Undisputed that the Commission approved the cost recovery for Pryor Mountain. It is also undisputed that even though cost recovery was approved that not all costs associated with Pryor Mountain were included in the 2020 GRC revenue requirement because it was not in service at the beginning of the test year.

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.

RESPONSE: Undisputed.

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."

RESPONSE: Undisputed. The Company made this request in rebuttal because circumstances changed significantly between the time the Company filed its notice of filing to when rebuttal testimony was filed as a result of the Covid-19 pandemic, which delayed the in-service dates of the Projects.

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."

RESPONSE: The Commission's Order in the 2020 GRC speaks for itself.

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."

RESPONSE: Undisputed that the Commission approved cost recovery for Pryor Mountain and TB Flats. It is also undisputed that the full amount of the project costs was not included in the revenue requirement in the 2020 GRC because they were not in service at the beginning of the test period.

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."

RESPONSE: Undisputed.

11. In this docket, RMP seeks to change the rate base measurement period for the costs of the TB Flats and Prior Mountain wind projects from the average-of-2021 period approved in the 2020 GRC to an average-of-2022 period.

RESPONSE: Disputed. The Company objects to this purported "fact" because it is not a fact, but rather an incorrect legal conclusion. Subject to and without waiving its objection, the Company responds that there is no limitation or requirement regarding a test period in the MPA statute.[2] Therefore, the Company's Application does not change the test period of the 2020 GRC. Mr. Higgins' characterization of the test period issue has no basis in the Company's Application, pre-filed testimony, or the law.

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]. This amount is less than the $75.6 million that represents 1% of RMP's rate base approved in the 2020 GRC.

RESPONSE: Disputed. There is no limitation or requirement regarding a test period under the MPA statute, so there is no change to the "rate base measurement period." *See* Response to Fact No. 11. The Company does not dispute the amount of the incremental addition to rate base for the TB Flats project or that the incremental amount is less than 1% of rate base approved in the 2020 GRC. The MPA statute defines "major plant addition" as the costs of a "single capital investment project," which means that the Commission should

[2] Utah Code Ann. § 54-7-13.4.

consider the total project costs when determining if TB Flats qualifies for cost recovery under the MPA statute.

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]. This amount is less than the $75.6 million that represents 1% of RMP's rate base approved in the 2020 GRC.

RESPONSE: Disputed. There is no limitation or requirement regarding a test period under the MPA statute, so there is no change to the "rate base measurement period." *See* Response to Fact No. 11. The Company does not dispute the amount of the incremental addition to rate base for the Pryor Mountain project or that the incremental amount is less than 1% of rate base approved in the 2020 GRC. The MPA statute defines "major plant addition" as the costs of a "single capital investment project," which means that the Commission should consider the total project costs when determining if TB Flats qualifies for cost recovery under the MPA statute.

ADDITIONAL MATERIAL FACTS

14. The MPA statute went into effect on March 25, 2009. There is little legislative history available shedding light on the purpose or intent of the statute. *See* Utah State Legislature, SB00075, available at https://le.utah.gov/~2009/bills/static/SB0075.html.

15. At the time the MPA statute went into effect, the Company had a pending general rate proceeding that included a request to recover a number of capital additions.[3] As part of a non-binding, non-precedent setting settlement on the test year for the 2009 GRC, parties

[3] *See* Docket No. 09-035-23 ("2009 GRC"), Direct Testimony of David Taylor (Apr. 30, 2009) ("Taylor Direct").

agreed that the Company would remove two capital projects from the 2009 GRC and seek recovery under the MPA statute. 2009 GRC, Report and Order on Test Period Stipulation (June 1, 2009) ("2009 GRC Test Period Order").

16. Nothing on the record relating to the 2009 GRC, the test year settlement stipulation, or the subsequent MPA proceeding states that the Company would not have been able to recover the projects through the MPA statute if they had been partially included in the 2009 GRC revenue requirement.

17. The Company's total investment in TB Flats that is allocated to Utah customers is estimated to be $280.5 million.[4] This amount is more than the $75.6 million that represents 1% of RMP's rate base approved in the 2020 GRC.

18. The Company's total investment in Pryor Mountain is estimated to be $ million.[5] This amount is more than the $75.6 million that represents 1% of RMP's rate base approved in the 2020 GRC.

ARGUMENT

I. SUMMARY JUDGMENT STANDARD

Under the Utah Rules of Civil Procedure,[6] the Movants are entitled to summary judgment "only on a showing 'that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.'"[7] If "various conflicting inferences material to the

[4] Rebuttal testimony of Steven R. McDougal, Confidential Table 3, line 114.
[5] Rebuttal testimony of Steven R. McDougal, Confidential Table 3, line 114.
[6] There is no provision for motions to dismiss or for summary judgment under the administrative rules governing the Public Service Commission. When no administrative rule governs, the Utah Rules of Civil Procedure apply unless the Commission considers them "unworkable or inappropriate" in a given situation. Utah Admin. Code R747-100-1(C).
[7] *Kearns-Tribune Corp. v. Salt Lake County Com'n*, 2001 UT 55, ¶ 7, 28 P.3d 686.

outcome of the case can be drawn from the facts," the Movants are not entitled to summary judgment.[8]

II. THE COMPANY'S APPLICATION IS AUTHORIZED BY THE MPA STATUTE.

Movant's entire Motion hinges on their strained interpretation of the MPA statute. The goal of statutory interpretation is "to give effect to the intent of the legislature."[9] The "threshold question" when interpreting a statute "is whether the legislative text conveys some specialized meaning such as a statutorily defined term . . . and if it does, the specialized meaning controls."[10] Only when there is no statutory definition does the analysis turn to the "plain and ordinary meaning" of the statutory terms, including the dictionary definition or definitions included in other sections of the Utah code.[11] "Even if a word bears one meaning in the majority of cases where that word is used proximate to another, that does not foreclose the possibility that the Legislature intended a less-preferred meaning in a particular context."[12] Therefore, in interpreting the MPA statute, the Commission should attempt "to ascertain the intent of the Legislature disclosed by the language of the act as a whole, the act's operation, and its purpose."[13] If the plain statutory language leads to an "absurd" result that the legislature "could not reasonably have intended," the Commission "should not follow the literal language of the statute."[14] "[T]he absurd consequences canon is intended to operate as a tie-breaker when a statute's plain text lends itself to two plausible alternative readings." *Utley v. Mill Man Steel, Inc.*, 357 P.3d 992, 2015 UT 75, ¶ 52. "In cases of apparent conflict between provisions of the same statute, it is the Court's duty to harmonize and

[8] *AKB Properties, LLC v. Rubberball Productions LLC*, 487 P.3d 45, 2021 UT App 48 ¶ 15.
[9] *State v. Rasabout*, 2015 UT 72, ¶ 10, 356 P.3d 1258.
[10] *O'Hearon v. Hansen*, 409 P.3d 85, 2017 UT App 214, ¶ 24 (internal citations omitted).
[11] *Id.* ¶¶ 25-26.
[12] *Rasabout*, 2015 UT 72, ¶ 10.
[13] *Id.*
[14] *Arnold v. Dept. of Workforce Servs*, 291 P.3d 957, 2021 UT 27, ¶ 12.

reconcile statutory provisions, since the Court cannot presume that the legislature intended to create a conflict." *Anabasis, Inc. v. Labor Comm'n*, 30 P.3d 1236, 2001 UT App 239, ¶ 19 (citations omitted)

Here, Movants attempt to parse the meaning of the words "major" and "addition," but ignore that the term "Major Plant Addition" is statutorily defined, and that the Projects each meet the statutory definition. Movants support their proposed interpretation of the definition of "Major Plant Addition" with a misinterpretation of other subsections of the MPA statute relating to cost deferral and resource approval decisions. Neither of these subsections are relevant to the Company's Application, and their language does not foreclose the cost recovery of the Projects through the MPA statute. Additionally, the Commission should not accept Movant's proposed interpretation because the result would favor considering major capital additions outside of general rate proceedings if there were ever a risk that the project would not be completed during the test year, a result that is at odds with general ratemaking principles and that no reasonable legislator could have intended. Movants also point to a non-precedential settlement of the Company's 2009 GRC test year as evidence that their interpretation is correct, but nothing in any filings relating to that settlement mandate that the Commission grant summary judgment here. Finally, the Commission should reject Movants' alternative argument that the Company's Application should be dismissed because the incremental increase to the Projects does not meet the statutory threshold as this argument rests on similarly flawed statutory interpretation arguments.

A. The Projects Each Meet the Statutory Definition of "Major Plant Addition."

The MPA statute allows a utility to file for cost recovery of a "major plant addition" so long as the Commission has "entered a final order in a general rate case proceeding of the [utility]

within 18 months of the projected in-service date of a major plant addition."[15] Under the MPA statute, a "major plant addition" is defined as "any single capital investment project of . . . an electrical corporation that in total exceeds 1% of the . . . electrical corporation's rate base, based on the . . . electrical corporation's most recent general rate case determination . . . ." There is no dispute that the Projects meet this definition: they are each single capital investments, they both exceed 1% of the Company's rate base, and the Commission entered a final order in the Company's general rate proceeding December 30, 2020.

Movants do not claim that the Projects do not qualify as "single capital investment project[s]." Nor do they dispute that the total costs of each Project meet the 1% statutory threshold. Rather, they read another requirement into the statute: that the "single capital investment project" cannot be a "major plant addition" if it has been partially included in rates. This extra requirement is not included in the definition of "major plant addition," and the limitation is not supported by the plan language of the statute.

Movants next attempt to use a flawed interpretation of subsection 6 of the MPA statute to bolster their position. Subsection 5 of the MPA statute allows a utility to recover costs either through a deferral or an adjustment in rates. Subsection 6 specifies that the deferral terminates "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."[16] In this proceeding, the Company seeks an adjustment in rates, not a deferral so the provision relating to deferral is not applicable.[17] Even if the deferral provision were applicable, subsection 6 relates to the termination of the deferral after the major plant addition. Just because the deferral terminates upon a final commission order

[15] Utah Code § 54-7-12
[16] Utah Code Ann. § 54-7-13.4(b).
[17] The Company requests a deferral in the alternative in the rebuttal testimony of Joelle Steward, but its request in the Application and its preferred outcome is a rate adjustment.

providing for cost recovery does not necessarily mean that a portion of the project could not have previously been included in revenue requirement. The fact that the deferral terminates when the Commission grants recovery of "any part" of the net revenue requirement impacts can just as easily be read in favor of the Company's position. Specifically, the relief requested in this major plant addition proceeding is to incorporate the part of the net revenue requirement impacts of the Projects into rates that was not included in the 2020 GRC. If the deferral terminates only when a Commission order incorporates "all" of the net revenue requirement impacts, the plain statutory language could allow the deferral to continue indefinitely or may support Movants' interpretation.

Movants also claim that referring to "major plant addition" in the singular indicates that the legislature did not intend that the mechanism could be used after a portion of a single capital project investment has been incorporated into rates. They claim that because the MPA statute does not explicitly allow cost recovery of a portion of the major plant addition costs, that recovery of costs associated with a project partially in rates must not have been contemplated. To clarify, the Company seeks cost recovery for a portion of the costs of two single capital investment projects, not a portion of the projects themselves. This may be nuanced, but it is important. If the Company sought recovery for a portion of the costs, it could theoretically add to single capital investment projects after they are placed in rates and claim that the partial additions can be recovered under the MPA statute. In contrast, seeking recovery of the portion of the costs associated with the single capital investment project not already included in rates is entirely consistent with the statute and is not precluded.

Finally, Movants argue that because the MPA statute does not direct the Commission to presume prudence for projects approved in previous general rate cases, as it did for significant energy resource decisions in subsection 4(c), that the legislature did not intend that such projects

would be eligible for major plant addition recovery. Just because the legislature did not specifically exempt costs partially included in the revenue requirement from the prudence review does not mean that the Company cannot recover such costs under the MPA statute. Nothing in subsection 4 changes the fact that the Projects fall under the statutory definition of "major plant addition," and the Commission should consider and grant the Company's Application for cost recovery.

B. The Purpose of the MPA Statute and General Ratemaking Principles Support the Company's Position.

Movants next point to the MPA statute's "role in utility ratemaking" to justify dismissing the Company's Application, but the MPA's "role in utility ratemaking" actually supports the Company's Application because cost recovery of the Projects through the MPA statute could delay the need for a general rate proceeding and nothing in the MPA statute requires consideration of any test year, whether for the major plant addition itself or from the last general rate proceeding. Movants spend several pages discussing the purpose of a general rate proceedings and forecasted test years, attempting to demonstrate that the Company's Application seeks to circumvent this process. But after all of that explanation, Movants acknowledge: "The MPA Statute also permits limited utility ratemaking outside of a general rate case."[18]

In spite of the specific authorization in the MPA statute for the Company to recover major plant additions outside of general rate proceedings without consideration of the test year, Movants claim that this Application "renders meaningless" the selection of the test period in the 2020 GRC.[19] Movants' position has a major logical flaw: under Movants' position the Company could

[18] Motion at 12.

[19] Movants make this argument twice: first on page 11 under the heading "2. The MPA Statute's Role in Utility Ratemaking Limits its Application to Projects in Addition to those Already in [sic] Included in Customer Rates." and again on page 15 under the heading "4. The TB Flats and Pryor Mountain Projects are Not "Major Plant Additions" because those Projects are Already Included in Customer Rates." Because these subsections cover largely the same ground, the Company addresses both within this subsection.

have removed the Projects from the general rate proceeding and sought recovery under the MPA statute, with the same result that the Company seeks here. Under Movants' reading of the MPA statute, the Company would have a perverse incentive to seek recovery major capital additions outside of a general rate proceeding, even when they are expected to be completed during the forecast test year. Given the ratemaking preference to consider expenses in the context of the Company's entire operations, this odd result seems very unlikely to be what the legislature intended. To the extent the MPA statute can be read to permit cost recovery only if an expense is not included in a general rate proceeding, the result is absurd and should be disregarded.[20]

The Company agrees that "[u]nder circumstances ***where the legislature has not directed otherwise***, a utility may not seek to adjust rates based on isolated issues without considering all relevant costs and revenues."[21] But when the legislature has directed otherwise, as with Utah Code § 54-7-13.5 (the EBA statute) and the MPA statute, the Commission has the power to adjust rates under the terms of the statute. Both the EBA and MPA statutes were enacted in 2009, well after the two main cases concerning test year and utility ratemaking discussed Movants' brief. They give the Commission authority to consider certain costs outside of general rate proceedings.[22] The MPA statute balances the need to consider individual expenses in the context of the Company's entire operations with a need to avoid consecutive rate cases motivated by capital expenditures by limiting its application to projects of a specified magnitude that have projected in-service dates within 18 months of the final order in the utility's last general rate proceeding.[23] OCS witness Michelle Beck specifically notes in her testimony that "[t]he MPA statute was contemplated for

[20] *Utley v. Mill Man Steel, Inc.*, 357 P.3d 992, 2015 UT 75, ¶ 52.
[21] *In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program*, Docket No. 14-035-114, Consolidated Order Denying Dispositive Motions (February 23, 2017).
[22] Motion at 11-13, citing *Utah Dept. of Bus. Reg., Division of Public Utilities v. Public Service Commission*, 614 P.2d 1242, 1248 (Utah 1980) and *Utah Dept. of Bus. Reg., Division of Public Utilities v. Public Service Commission*, 720 P.2d 420 (Utah 1986).
[23] Utah Code Ann. § 54-7-13.4(2).

new investments within close time proximity to the general rate case to eliminate the need for the full rate review when it has been done recently."[24] Yet Movants' reading of the statute undermines this purpose by delaying cost recovery of major plant additions and potentially motivating additional rate case filings. Therefore, the Commission should reject Movants' interpretation as inconsistent with the statute and good ratemaking principles.

C. Historical Use of the MPA Statute Does Not Shed Light on the Current Situation

The Commission has not previously interpreted the scope of the MPA statute. The Company is the only utility that has sought cost recovery under the MPA statute, and it has done so on only two previous occasions, both in 2009. Movants point to the structure of the 2009 GRC Test Period Stipulation as evidence of the intent of the statute. As an initial matter, as with nearly all settlements, the settlement of the 2009 GRC test year was not precedent setting. The Test Period Stipulation states:

> All negotiations related to this Stipulation are privileged and confidential and no Party shall be bound by any position asserted in negotiations. Neither the execution of this Stipulation nor the order adopting this Stipulation shall be deemed to constitute an admission or acknowledgment by any Party of any liability, the validity or invalidity of any claim or defense, the validity or invalidity of any principle or practice, or the basis of an estoppel or waiver by any Party other than with respect to the issues resolved by this Stipulation; nor shall they be introduced or used as evidence for any other purpose in a future proceeding by any Party except a proceeding to enforce the approval or terms of this Stipulation.[25]

Movants were all parties to this stipulation, and arguably violate it by attempting to use it in support of their interpretation of the MPA statute in this proceeding.

Movants claim that because the 2009 GRC Test Year Stipulation removed certain capital expenditures from the 2009 GRC entirely that this must mean that the MPA statute cannot be used to recover the part of project costs not included in rates. Nothing in the 2009 GRC Test Period

[24] Direct Testimony of Michelle Beck, October 6, 2021, at 2:36-38.
[25] 2009 GRC Test Period Order, Test Period Stipulation, ¶ 15.

Order affirms this position. Moreover, the circumstances around the settlement of the 2009 GRC test period were significantly different than the circumstances of the 2020 GRC and the Company's Application here. The 2009 GRC Test Year Stipulation settled only what test year to use for the 2009 GRC. It was entered into before any testimony had been filed did not involve resources that were delayed after testimony in the rate case had been filed.[26] Parties agreed that the test period would be the thirteen months ending June 30, 2010. The two resources called out in that settlement were not anticipated to be completed until May and June 2010.[27] The reason for pulling these projects from the 2009 GRC was not stated by the parties. It could have been because there was a question about whether the projects would be completed within the test period.[28] It could also have been because parties disputed the scope of the MPA statute. None of these justifications are on the record, and attempts by Movants to read the settlement tea leaves should be disregarded. What the parties chose to do to resolve their differences concerning the 2009 GRC test period do not relate to the scope of the MPA statute as apparent in its plain language. The 2020 GRC, on the other hand, involved a delay to the in-service dates of the Projects in the middle of the substantive portion of the general rate proceeding due in part to the unprecedented global health crisis. It makes sense that parties may choose to treat capital additions differently under such different circumstances.

D. Incremental Additions to Single Capital Invest Projects Are Recoverable under the MPA Statute.

The MPA statute definition of "major plant addition" allows the Company to recover the portion of the Projects not already in rates. The Projects each qualify for cost recovery under the

[26] See 2009 GRC Test Period Order.
[27] Taylor Direct at 15:318.
[28] This interpretation is supported by the testimony submitted with the Company's initial test period proposal in the 2009 GRC. Specifically, the direct testimony of David L. Taylor indicates that one of the reasons the Company did not include one major capital addition was because it may not be completed during the Company's originally proposed test period ending December 31, 2010. Taylor Direct 15:334-335.

MPA statute because their total costs exceed 1% of the Company's rate base. Movants claim that even though the statute defines "major plant addition" as a "single capital investment project . . . that in total exceeds 1% of . . . rate base," with no limitation, the statute actually relates only to the unrecovered portion of the project costs. This argument is nothing but another attempt by Movants to read a requirement into the definition that is not found in its plain language. No party disputes that Pryor Mountain and TB Flats are "single capital investment project[s]" that meet the size requirement to proceed under the MPA statute. The Commission should reject Movants' attempt to limit recovery with an additional requirement that is not included in the statute.

CONCLUSION

The plain language and general intent of the MPA statute support that the Company's Application is permitted. The Commission should therefore deny Movant's Motion.

DATED this 10th day of November, 2021.

Respectfully submitted,

Emily Wegener
Attorney for Rocky Mountain Power