

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Rocky Mountain Power’s Application for Alternative Cost Recovery for Major Plant Additions of the Pryor Mountain and TB Flats Wind Projects	<u>DOCKET NO. 21-035-42</u>
	<u>ORDER</u>

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ISSUED: December 15, 2021

**1. Procedural History**

On August 3, 2021, Rocky Mountain Power (RMP) filed its Application for Alternative Cost Recovery (“Application”), seeking cost recovery for investments in the Pryor Mountain and TB Flats wind projects (collectively, “Projects”) as “major plant additions” pursuant to Utah Code Ann. § 54-7-13.4 (“MPA Statute”).

On August 20, 2021, the PSC issued a Scheduling Order, establishing deadlines for filing petitions for intervention and written testimony, setting informal discovery turnaround times, and calendaring the matter for hearing on November 30, 2021.

Subsequently, the Division of Public Utilities (DPU), Office of Consumer Services (OCS), Utah Association of Energy Users (UAE),<sup>1</sup> and RMP each submitted direct, rebuttal,<sup>2</sup> and surrebuttal written testimony.

On October 26, 2021, the DPU, OCS, and UAE (“Movants”) filed a joint Motion for Summary Judgment (MSJ), arguing RMP’s additional investments at issue are not eligible for recovery under the MPA Statute. After RMP submitted a response to the MSJ, the PSC issued a Notice Regarding MSJ on November 15, 2021, notifying the parties the PSC would not decide

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<sup>1</sup> The PSC issued an order on September 2, 2021, granting UAE’s request to intervene.

<sup>2</sup> RMP and OCS are the only parties that submitted rebuttal testimony.

the MSJ in advance of the hearing on the merits.<sup>3</sup> Instead, the PSC “intend[ed] to address the legal issues raised in the [MSJ] in the order [it] issue[d] following the hearing.”<sup>4</sup> The notice advised the moving parties that they retained their opportunity to file a reply in support of the MSJ, which they did on November 22, 2021.

On November 30, 2021, the PSC held a hearing, during which witnesses for RMP, DPU, OCS, and UAE testified.

## **2. Background**

- a. The PSC granted RMP recovery for the Projects on an average-of-period basis in RMP’s last general rate case.

In 2020, RMP filed a general rate case (“2020 GRC”)<sup>5</sup> that was fully adjudicated with participation from all parties to this proceeding and many others. When RMP filed the 2020 GRC, it sought and obtained the PSC’s approval to use a projected test period, from January 1, 2021 through December 31, 2021 (“Test Period”).<sup>6</sup>

In its initial filing, RMP anticipated the Projects would be complete and in-service during the Test Period and sought full recovery for them. However, RMP later disclosed that portions of the Projects were delayed (“Delayed Plant”) and would not be placed into service until summer of 2021. RMP nevertheless sought to earn a full return using “the traditional 13-month average

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<sup>3</sup> As the PSC’s notice explained, insufficient time existed for a separate hearing on the MSJ because the PSC is statutorily obligated to issue an order within 150 days of RMP’s filing of a complete application. *See Utah Code Ann. § 54-7-13.4(4)(iii).*

<sup>4</sup> Notice Regarding Motion for Summary Judgment issued November 15, 2021 at 1.

<sup>5</sup> *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.

<sup>6</sup> *See 2020 GRC, Order Approving Test Period* issued March 6, 2020.

calculation for rate base.”<sup>7</sup> RMP conceded this “require[d] consideration of months well into the middle of 2022 for the Delayed Plant, a period that extend[ed] well beyond the Test Year.”<sup>8</sup>

RMP proposed a two-step, phased rate increase to ameliorate the problem that the Delayed Plant would not be in-service for much of the Test Period.

The PSC concluded the law barred the PSC from approving RMP’s request because it relied on projections more than 20 months from the date of its Application.<sup>9</sup>

Based on evidence showing the conventional ratemaking treatment for such a scenario involved recovery on an “average-of-period” basis (“AVP Basis”), the PSC ordered RMP would recover for the Delayed Plant on an AVP Basis and made the attendant adjustments to RMP’s revenue requirement. The GRC Order also expressly applied the same AVP Basis rate treatment to production tax credits, net power costs, and other benefits associated with the Delayed Plant.<sup>10</sup> The PSC noted this is the rate treatment the Projects would have received had RMP’s initial filing accurately projected the Projects would be complete in the middle of the Test Period. Thus, the rates set in the 2020 GRC include recovery of both benefits and costs commensurate with the Delayed Plant on an AVP Basis to reflect the portion of the Test Period in which it was projected to be in-service.

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<sup>7</sup> 2020 GRC, Order issued December 30, 2020 at 44 [hereafter, “GRC Order”].

<sup>8</sup> *Id.*

<sup>9</sup> *See* GRC Order at 45; Utah Code Ann. § 54-4-4(3)(b).

<sup>10</sup> *See* GRC Order at 45-46 and Table 3.

- b. RMP's Application seeks recovery for the Delayed Plant as a "major plant addition."

In the instant Application, RMP now asks us to authorize recovery in rates for the delayed portions of the Projects (*i.e.* the Delayed Plant from the 2020 GRC) as "major plant additions" under the MPA Statute. Generally, the MPA Statute allows a utility to file for cost recovery of a "major plant addition" ("MPA") provided the PSC entered a final order in a general rate case within 18 months of the projected in-service date of the MPA. The statute defines an "MPA" as "any single capital investment project ... that in total exceeds 1% of the ... [utility's] rate base, based on the [utility's] ... most recent general rate case determination."

These essential facts are not contested: (1) the Projects were fully placed into service on April 1, 2021, and July 26, 2021, respectively; (2) one percent of RMP's rate base, as determined in the 2020 GRC, is equal to \$75.6 million; (3) RMP's total investment in each of the two Projects exceeds \$75.6 million; (4) RMP's investment in the portions of the Projects that were placed into service after the Test Period is far less than \$75.6 million; and (5) the sum of RMP's investment in the portions of both Projects placed into service after the Test Period is also less than \$75.6 million.<sup>11</sup>

- c. The parties disagree as a matter of law as to whether RMP is entitled to recovery under the MPA Statute; the dispositive facts are uncontested.

All parties save RMP oppose the Application because the 2020 GRC fully contemplated RMP's investments in the Projects and accounted for them in establishing currently effective

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<sup>11</sup> The specific amounts of RMP's investments have been designated confidential.

rates. In their MSJ, the Movants argued these investments, therefore, are not “additions” and are not “major” under the defined statutory threshold.

RMP accuses the Movants of “pars[ing] the meaning of the words ‘major’ and ‘addition,’” and ignoring “that the term ‘[MPA]’ is statutorily defined.”<sup>12</sup> RMP emphasizes that the PSC may not simply rely on “dictionary definitions” to interpret the statute but rather must “give effect to the intent of the legislature,” mindful that the common meaning of words should not control where “the Legislature intended a less-preferred meaning in a particular context.”<sup>13</sup>

Looking exclusively to the definition provided in Subsection 1(c), RMP argues the investments qualify as MPAs because they were placed into service within 18 months of the PSC’s GRC Order and RMP’s “total investment” in each of the Projects exceeds the statutory threshold of \$75.6 million.

In reply, Movants observe the term “MPA” must have the same meaning throughout the statute. If RMP’s total investment in the Projects were the relevant measure of satisfying the \$75.6 million definitional threshold under Subsection 1(c), then RMP would be seeking “cost recovery of a major plant addition” equal to this total investment under Subsection 2. Similarly, the PSC would be concerned with the “projected net revenue requirement impacts” of RMP’s total investment under Subsection 4(b) and deferral or rate adjustments to account for RMP’s total investment under Subsection 5.<sup>14</sup>

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<sup>12</sup> RMP’s Opposition to MSJ at 9.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> Movants also point out Subsection 4(c) requires the PSC to “presume the prudence of the utility’s capital costs” when the PSC has previously issued an order and approved an MPA under the Energy Resource Procurement Act. *See* Utah Code Ann. § 54-17-302, 402. However, the MPA Statute does not speak to the possibility that the PSC previously approved an MPA in a

### **3. Discussion, Findings, and Conclusions**

While parties might reasonably advocate for conflicting interpretations of what constitutes a “single capital investment project,” the primary and immediate legislative purpose of the MPA Statute is obvious and readily inferable from its text.

General rate cases are costly proceedings for the utility, regulators, and all participating stakeholders. They entail exhaustive adjudication of the expenses and capital costs that comprise the utility’s revenue requirement, finding cost of service for each class of customers, and designing rates that are just and reasonable based on cost of service.

Yet, as the Legislature recognized, a utility’s investment in a “single capital investment project” may be so significant that it moves the utility to file an otherwise unnecessary rate case. Where stakeholders only recently litigated the multitude of issues attendant to a GRC, a single investment might thereby prompt an unnecessary, redundant, and expensive proceeding. This will be especially true if other conditions have not changed such that stakeholders will find value in the process. We conclude the Legislature intended the MPA Statute to provide a mechanism to avoid such an outcome.

Nothing indicates, however, the Legislature intended to create a broad license to engage in single-issue ratemaking whenever a utility makes an investment soon after a rate case. The statute establishes specific parameters in time and cost. The project must be projected to be in-service no later than 18 months after the final order in the last GRC. Of greater significance here, the statute specifically defines what constitutes a sufficiently costly “single capital investment

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general rate case because, Movants infer, the Legislature had no intention of permitting cost recovery when a project has already been included in rates.

project”: the investment must exceed one percent of the utility’s rate base as determined in its last GRC.

The relevant facts here are not contested. Based on our determination of rate base in the 2020 GRC, RMP must have invested \$75.6 million in a “single capital investment project” to meet the statutory threshold. RMP does not seek recovery of costs remotely equal to that sum for either of the two Projects. Even if the costs RMP seeks to recover for the Projects are combined, the total falls well short of the statutory threshold.

We conclude investment in plant for which a utility is already enjoying recovery in rates cannot serve, in whole or in part, to satisfy the one percent threshold in Subsection 1(c). RMP’s argument that its “total investment” in each Project is the appropriate measure for purposes of qualifying under Subsection 1(c) while the amount of its actual additional investment is the appropriate measure of its MPA for net revenue requirement impacts and cost recovery is flawed. It relies on inconsistent construction of the term “MPA” within the statute itself and yields a result contrary to the law’s purpose, which is to allow cost recovery for major capital investment projects that exceed one percent of rate base. RMP’s proposed reading renders the threshold meaningless and would allow recovery on any incremental investment in existing major plant so long as it can be characterized as a “portion” of the pre-existing project.

Our decision in this order creates some regulatory lag for both the costs and the benefits associated with the Delayed Plant. That kind of lag is never our objective, and we respect the mechanisms codified in state law to reduce regulatory lag. In some instances, state law uses generalized language that affords us higher levels of discretion. This is not one of those instances; the MPA Statute is sufficiently specific that we cannot exceed its explicit authority.

**4. Order**

RMP's investment in the Projects, including the Delayed Plant, were fully and fairly litigated in the 2020 GRC. There, we rejected as unlawful RMP's proposal to establish a separate test period for the Delayed Plant. Here, for the reasons discussed above, we conclude the MPA Statute does not provide us with a legally permissible avenue to accomplish, effectively, the same end.

We deny the Application. We expressly decline to modify or disturb any existing rate treatment established in our GRC Order or elsewhere.

DATED at Salt Lake City, Utah, December 15, 2021.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#321525



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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 December 15, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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