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Rocky Mountain Power's 2023 Wildland  
Fire Cost and Compliance Report

DOCKET NO. 23-035-27

ORDER

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ISSUED: November 9, 2023

### **1. Procedural History**

On June 1, 2023, Rocky Mountain Power (RMP) filed its 2023 Wildland Fire Cost and Compliance Report. On June 5, 2023, the Public Service Commission (PSC) issued a Notice of Filing and Comment Period (NOFCP), establishing deadlines for comments consistent with the timeline dictated under Utah Admin. Rule Code R746-315-3.

On June 22, 2023, the Office of Consumer Services (OCS) filed a motion ("Motion to Deviate") seeking expedited consideration to vacate the NOFCP, deviate from the schedule prescribed under administrative rule, and set the matter for a scheduling conference. The OCS argued that because RMP's filing included a request to increase rates, additional time to prepare for the necessary hearing was required and the PSC should exercise its discretion, under Utah Admin. Code R746-1-109, to deviate from the schedule prescribed by rule. On June 28, 2023, RMP filed a response indicating RMP did not oppose the OCS's motion.

On June 30, 2023, the PSC issued an order granting the OCS's Motion to Deviate, vacating the NOFCP, and setting a scheduling conference for July 10, 2023. Having conducted the scheduling conference, the PSC issued, on July 12, 2023, a Scheduling Order and Notice of Hearing ("Scheduling Order"). Consistent with the

parties' stipulation at the scheduling conference, the Scheduling Order bifurcated the docket into two phases. Phase I would address Sections 1-4 of RMP's June 1, 2023 Utah Wildland Fire Protection Plan Cost and Compliance Report ("Report"), which did not include a rate request. Phase II would address Section 5 ("Rate Request"), which concerned RMP's request to increase rates.

The PSC acknowledged the Report in a letter issued September 12, 2023 and need not detail further here filings related to Phase I. With respect to Phase II, the Scheduling Order set comment and reply deadlines and noticed a hearing on the merits to be held October 11, 2023.

The DPU and OCS each filed Phase II Comments on August 28, 2023 ("DPU's Comments" and "OCS's Comments," respectively). The OCS filed supplemental comments for Phase II ("OCS's Supplemental Comments") on September 1, 2023.<sup>1</sup> RMP filed Phase II Reply Comments ("RMP's Comments") on September 22, 2023.

The PSC conducted a hearing on October 11, 2023, during which witnesses for RMP, the DPU, and the OCS testified.

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<sup>1</sup> The OCS's Supplemental Comments were attached to a Motion for Leave to File Supplemental Initial Comments. The motion sought leave to supplement the OCS's Comments based on discovery responses it had received recently from RMP. No party filed any opposition to the motion, and the PSC issued an order granting it on September 20, 2023.

## **2. The Rate Request**

The PSC authorized RMP to establish a wildfire mitigation balancing account (“WBA”), after RMP requested authorization for the account in its most recent general rate case (GRC).<sup>2</sup> “RMP will report the WBA balance annually in [its] December Results of Operations Report and will include the balance in the next general rate case unless it reaches a material level, in which case RMP will request recovery earlier.”<sup>3</sup> The instant docket is the first occasion on which RMP has requested a rate change associated with a material change in the WBA.

RMP’s initial Rate Request reported a balance of \$6,834,479 in the WBA. After OCS identified a double entry regarding a \$45,000 donation, RMP acknowledged the error and revised its request down to \$6,789,479. RMP proposes to amortize the balance over a one-year period and allocate the sum to customer classes on the basis of distribution and transmission function, as identified in the class cost of service study RMP presented in its last GRC.

WBA rates are published in Schedule 97 of RMP’s tariff. The PSC approved a base level of costs associated with implementation of RMP’s wildland fire protection plan in the rates it approved in the GRC. As this is the first requested change in those rates, Schedule 97 rates are presently set to zero. In its initial Rate Request, RMP

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<sup>2</sup> *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 53.

<sup>3</sup> *Id.*

represented the requested change would result in a monthly bill increase of \$0.38 for a typical residential customer using 775 kWh per month.

### **3. DPU and OCS Comments**

In its initial comments, OCS notes RMP's operations and maintenance costs ("O&M") are more than twice those budgeted in RMP's 2020 Wildland Fire Protection Plan. OCS argues O&M costs are the primary driver of the Rate Request and complains RMP's Report and Rate Request contain only "a very high level overview of O&M costs." (OCS's Comments at 2.) OCS argued the Report and initial discovery it received from RMP contained "very limited information ... to help regulators determine if these costs are appropriate." (*Id.* at 4.)

After receiving further discovery, OCS filed supplemental comments focused on the OCS's inability to discern whether costs relating to labor and materials were already included in base rates. OCS argues, for example, policies pertaining to inspections and RMP's meteorology department predate the Plan's existence. The OCS questions whether RMP will, effectively, recover twice for these expenses, once in base rates and again through the WBA.

The OCS also challenges whether RMP prudently incurred two specific categories of expenses. First, the OCS objects to \$340,000 that RMP collectively donated to two non-profit organizations ("Habitat Donations"), which RMP alleges support habitat improvements that mitigate fire risk. OCS argues these charges should be removed from the WBA unless RMP provides "specific justification on how

these donations provide benefits that accrue to RMP's ratepayers from the perspective of wildfire mitigation." (OCS's Comments at 5-6.) Finally, the OCS challenges \$257,626 that RMP charged to the WBA pertaining to Alert Wildfire Cameras. OCS claims when it checked the cameras on August 31, 2023, 5 of 14 were not functioning and some of the others were poorly positioned such that they were of limited utility.

The DPU filed comments supporting the PSC's approval of RMP's Rate Request.

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

##### **a. Legal Standard**

In 2020, the Legislature enacted the Wildland Fire Planning and Cost Recovery Act ("Act").<sup>4</sup> The Act provides RMP "shall recover in rates all prudently incurred investments and expenditures, including the costs of capital, made to implement an approved wildland fire protection plan [hereafter, 'Plan']."<sup>5</sup> RMP must "file an annual report to the [PSC] identifying the actual capital investments and expenses made in the prior calendar year and a forecast of the capital investments and expenses for the present year to implement a[n] [approved Plan]."<sup>6</sup> The Act requires the PSC to "authorize the deferral and collection of the incremental revenue requirement for the

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<sup>4</sup> See Utah Code Ann. § 54-24-101, et seq.

<sup>5</sup> *Id.* at § 54-24-202(1).

<sup>6</sup> *Id.* at § 54-24-202(2).

capital investments and expenses” RMP incurs to implement an approved Plan that are “not included in base rates.”<sup>7</sup>

The law is clear: utilities bear the “burden to prove that [their] costs are prudently incurred ... by ‘substantial evidence.’”<sup>8</sup> “Substantial evidence is more than a mere scintilla of evidence though something less than the weight of the evidence, and the substantial evidence test is met when a reasonable mind might accept as adequate the evidence supporting the decision.”<sup>9</sup>

Therefore, to recover costs through the WBA, RMP must provide substantial evidence it has prudently incurred costs to implement its Plan and RMP is not already recovering such costs in base rates.

b. Discussion, Findings, and Conclusions

At the outset, the PSC acknowledges the essential public interest in curtailing wildland fires. RMP’s prudent investments directed at identifying areas in its service territory subject to heightened risk of fires and conducting inspections, vegetation management, and infrastructural upgrades that reduce the risk of wildland fires are imperative. The Act reflects the Legislature’s recognition of this important issue and

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<sup>7</sup> *Id.* at § 54-24-203(3).

<sup>8</sup> *Utah Off. Cons. Serv. v. Pub. Serv. Comm’n*, 2019 UT 26 ¶ 46. Utah Admin. Code R746-315-3 states the PSC will approve deferral and collection of the incremental revenue requirement “reasonably demonstrated” by a utility’s cost and compliance report. The PSC concludes “reasonably demonstrated,” as used in this rule, means “supported by substantial evidence” as is consistent with and required by Utah law.

<sup>9</sup> *Horning v. Labor Comm’n*, 2023 UT App 30 ¶ 30.

provides a mechanism to require electric utilities to responsibly invest in wildland fire prevention and to be compensated. The Act also recognizes the potential for double recovery and expressly precludes RMP from recovering costs already included in base rates.

The instant docket is the first in which RMP has sought a rate change associated with the WBA. The comments and testimony at hearing revealed the WBA poses some unique challenges relative to RMP's other balancing accounts, such as the Energy Balancing Account (EBA) and the Renewable Energy Credits Balancing Account (RBA). Expenses and revenues tracked in these other balancing accounts are generally discrete and of a nature that allows them to be distinguished with relative ease. Fuel costs and purchased power costs, for example, can simply be compared with those approved in base rates and any deficiency or surplus readily identified. Here, many of the costs for which RMP seeks recovery are general O&M costs that are not as easily disentangled from those included in base rates.

RMP's Report presents a high-level summary of its Plan-related expenses, identifying categories of costs such as "vegetation management," "inspections and corrections," and "situational awareness." The Report represents the increase in its Plan-related costs "is primarily due to additional inspections, patrolling, and vegetation management in areas of high fire risk." (Report at 5.)

The nature of these categories suggests labor is a significant component, though RMP has not provided sufficient information to determine the degree to which,

for example, “inspections and corrections” expenses are comprised of employees’ wages, contractors’ fees, cost of materials, etc.<sup>10</sup>

Employee wages, along with other O&M costs, are included when establishing base rates. Additionally, certain Plan-related activities pre-date the Plan and the categories of costs are, in some instances, so broadly identified that reasonable questions exist as to whether the category may include costs included in base rates.<sup>11</sup> The primary issue in this docket is, therefore, whether RMP has shown the Plan-related incremental costs for which it seeks recovery are distinguishable from and incremental to costs it is already recovering through base rates.<sup>12</sup>

RMP maintains the claimed WBA expenses are, in fact, incremental to those in base rates and testified “[t]his is demonstrated by how [RMP] records the costs, namely, all costs associated to implement the [P]lan are tracked and each month are

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<sup>10</sup> RMP noted at hearing that employees are not the only possible cost for increased inspection costs, and testified it “could require contracted services, could require different instrumentation, [and] use of helicopters” and “[a]ll of those would be potential reasons [RMP] might see incremental costs specifically for inspections.” Hr’g Tr. at 44:6-9. When asked on cross-examination whether RMP had provided “a breakdown of employee costs, contractor costs, helicopter costs, et cetera,” RMP conceded it had “not provided ... details to that extent.” *Id.* at 44:15-20.

<sup>11</sup> Vegetation management, inspections, and RMP’s meteorology department, for example, all pre-date RMP’s Plan. Base rates include an approved budget for these items to implement the Plan (against which RMP is tracking its Plan-related expenses through the WBA), but OCS questions whether claimed incremental WBA costs regarding non-personnel related expenses, such as materials costs, may be elsewhere included in base rates.

<sup>12</sup> Both for costs included in the normal revenue requirement, and costs already approved in the GRC as part of the Plan.



compared to the base amount with the incremental difference deferred to the WBA.” (Hr’g Tr. at 10:7-13.) RMP testified it tracks “specific [work] orders” for Plan-related expenses and accounts for them separately from “base functions.” (*Id.* at 36:13-16.)

Yet, RMP affirmed “in many instances” the employees conducting Plan-related work perform other work and have responsibilities unrelated to the Plan. RMP further affirmed such employees are not excused from performing their ordinary responsibilities when they are assigned to perform a Plan-related activity, such as patrolling or inspecting. RMP emphasized the individuals that perform Plan-related work “tend to be paid hourly” and “generally are not salaried employees.” (*Id.* at 32:4-5.)

The question, however, is not whether the employees are paid an hourly wage or an annual salary, the question is whether RMP would have paid the employees for the same time regardless of whether they were performing their work related to the Plan and whether the funds to pay them for that time are already captured in base rates.

With respect to a regular, full-time employee whose wages are included in base rates and who takes on additional Plan-related responsibilities, several possibilities are obvious: (1) the employee works additional hours to perform the Plan-related work, accruing overtime wages; or (2) the employee works with sufficient efficiency to absorb the Plan-related work without working additional hours.

Of course, if RMP pays an employee overtime to accommodate extra, Plan-related work, the overtime would be chargeable as an incremental expense to the WBA. However, to the extent an employee absorbs additional responsibilities without working overtime or otherwise creating an additional expense for RMP, then allowing RMP to recover for the employees' time spent on Plan-related work through the WBA amounts to compensating RMP twice for the same cost.

Here, RMP conceded at hearing it has not alleged it hired additional employees or paid overtime to existing employees in relation to the costs it seeks to recover through the WBA. The only evidence RMP has offered to support its claim these costs are incremental to those included in base rates is testimony that it separately issues and tracks work orders for Plan-related work. This practice may document tasks performed, but nothing in the record suggests it reasonably and reliably documents additional costs RMP actually incurred.

We focus on RMP's employees as an illustrative example and recognize categories like "vegetation management" and "inspections and corrections" are likely to include other kinds of expenses, such as contractors, vendors, lessors, materials, etc. However, the record contains little detail concerning the nature of the claimed expenses beyond these broad categories, and the same or similar analysis applies to any expense that is not readily distinguishable, in kind or quantity, from those

captured in base rates. For example, if materials such as “insulators, fasteners, etc.”<sup>13</sup> are claimed as a WBA expense, then the question arises whether the materials are being pulled from an inventory for which the cost is included in base rates. If they are pulled from a common inventory, then the cost is not incremental to base rates unless the inventory has been depleted such that RMP incurs actual costs to purchase additional materials, i.e. unless RMP would have avoided the materials cost but for the Plan-related activity.

In sum, we find and conclude RMP has not provided substantial evidence showing its claimed WBA costs are not included in base rates. We, therefore, cannot approve RMP’s Rate Request at this time.

However, given the essential public interest in wildland fire prevention, RMP should not be discouraged from making whatever investments are necessary to implement its Plan, and it should not be denied recovery for such important investments to the extent they are truly incremental to costs included in base rates. Further, the PSC recognizes this Rate Request is the first of its kind before the PSC, and RMP had no prior docket to inform its presentation of evidence.

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<sup>13</sup> For example, RMP’s Response to OCS Data Request 2.7 provides a chart identifying “Materials (Insulators, fasteners, etc.)” as a \$51,705.44 WBA-expense with respect to certain work performed for “Condition Corrections” associated with Cedar City’s fire season. (OCS’s Supplemental Comments at Attachment B, Response to OCS Data Request 2.7.)

Therefore, while the PSC denies the Rate Request because RMP has not presented substantial evidence the costs it seeks are incremental to base rates, the PSC's decision is expressly without prejudice. RMP may continue to defer and seek recovery of costs for this same period in a future filing. Alternatively, RMP may file a request to reopen the hearing in this docket on or before **Wednesday, February 7, 2024**. If RMP elects the latter, the PSC will notice a scheduling conference during which the parties may discuss an appropriate schedule for additional disclosure, discovery, and testimony.

Because we deny the Rate Request on other grounds, we need not reach the OCS's specific challenges regarding the prudence of RMP's Habitat Donations and its investments in Alert Wildfire Cameras. Nevertheless, the PSC notes the evidence in the existing record generally suggests these were prudently-incurred costs. We are not inclined to find RMP's working with a 501(c)(3) organization to further wildland fire prevention efforts to be imprudent simply because the counterparty is a non-profit entity. Similarly, the cameras appear to be precisely the kind of investment in proactive wildland fire prevention the Act seeks to encourage, and we are disinclined to deem them imprudent because of disagreements over the cameras' placement or operational status on one particular day. Accordingly, we encourage the parties to focus on other issues and, specifically, on whether claimed WBA costs are actually incremental to base rates in any future proceedings.

**5. Order**

The PSC denies RMP's Rate Request without prejudice. RMP may continue to defer the WBA costs it claims in its Rate Request. The PSC may approve recovery of those costs at a later date given RMP provides substantial evidence the claimed costs are not already recovered through the base rates approved in the most recent GRC. If RMP wishes to attempt to make such a showing in this docket, it may file a request to reopen the hearing in this docket on or before **Wednesday, February 7, 2024**. Alternatively, RMP may seek recovery in a future filing.

DATED at Salt Lake City, Utah, November 9, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#330702

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, 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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on November 9, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

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