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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR A DEFERRED ACCOUNTING ORDER REGARDING WILDFIRE CLAIMS	Docket No. 23-035-30 Statement of Position of the Utah Division of Public Utilities
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Pursuant to the Public Service Commission of Utah’s (“Commission”) July 17, 2023, scheduling order (“Scheduling Order”), the Division of Public Utilities (“Division”) files its Statement of Position in response to Rocky Mountain Power’s (“RMP” or “Company”) June 21, 2023, Application for a Deferred Accounting Order Regarding Wildfire Claims (“Application”). Allowing this docket to linger is unwarranted.

I. Introduction

In addition to seeking a deferred accounting order, the Application requests that “[t]he Commission delay consideration of the approval of the deferral until the costs and the impact on the financial stability of the Company are more fully known.”¹

¹ Application at 1.

During the June 30, 2023, scheduling conference, the Company “requested the PSC continue the scheduling conference and refrain from further action on this docket for a period of six months, explaining the matter involves several factors that continue to develop, and the parties will be better positioned to adjudicate the application in six months.”²

Following discussions and objections, “[t]he parties agreed they would like an opportunity to submit statements of position as to the procedure the PSC should follow and RMP’s request to continue the matter for six months.”³ In addition, it was agreed that “[n]otwithstanding this schedule, no party has waived its right to file any motion, dispositive or otherwise, at any time otherwise appropriate under applicable rules.”⁴ The Scheduling Order was issued in due course.

II. Statement of Position

The Division submits that the Application should not be allowed to linger. The Commission should dismiss the Application.

The Application’s own words and the Company’s statement at the scheduling conference establish that the Application is unripe. Even a cursory review of the Application reveals that it also fails to state grounds upon which relief can be granted. The Company appears to have filed for some sort of protection offered by the date of filing, but the filing is too deficient in its description for the filing to have any value. The Company should file a request for agency action when it actually wants agency action, not as a placeholder for future possibilities.

If the Commission decides not to dismiss the Application sua sponte, the Division urges the Commission to adopt an appropriate procedural schedule that allows time for dispositive

² Scheduling Order at 1.

³ *Id.*

⁴ *Id.*

motions to be extended, including allowing sufficient time for motions to dismiss and other dispositive motions as factual development occurs through discovery or otherwise.

If the Commission decides to adopt a procedural schedule, it should allow sufficient time for the Commission to consider motions, responses, and replies and issue an order before the parties need to take further actions in this docket. The Division would request that any procedural schedule extend the time for filing motions to dismiss and also not preclude the filing of summary judgment motions or other dispositive motions at a later date. If need be, testimony filing dates could be suspended if a motion to dismiss or other dispositive motion is filed.

The Division's initial analysis concludes that not only is the Application unripe, but it also fails to state grounds upon which relief can be granted. Such theories, and others, call out for a motion to dismiss. But with the Company's request to stand idle on its Application, it is unclear when the time for a motion to dismiss might start to run or for how long such motions might be appropriate. That prejudices other parties.

It is apparent from the Division's initial review that the Application seeks to establish a deferral account for expenses which the Company would not be entitled to collect from ratepayers. The Application relies upon *James v. PacifiCorp*⁵ as grounds to establish the deferral account, but the Company should not be able to recover expenses caused by its own negligence, gross negligence, and reckless and willful conduct. Thus, even the first step establishing a deferral account should be precluded. Nevertheless, the parties are prejudiced by the Application's lack of factual specificity. It seems the Company is asking for a deferral order for costs related to its own negligence, gross negligence, and recklessness, but without greater specificity in the Application, the full scope of the request is not clear. This is the reason why

⁵ *James v. PacifiCorp*, No. 20-CV-33885 (Cir. Ct. Multnomah Cnty., June 12, 2023).

requests for agency action should not be filed until the requesting party actually wants agency action.

Also, the Company has more conventional and proper means to obtain the relief it seeks. As noted in the Application itself,⁶ third party liability expenses are generally established thorough a more intensive rate case where a broad collection of parties participate actively.

III. Conclusion

The Division recommends that the Commission dismiss the Application. However, if the Commission issues a procedural schedule, the Division requests that the procedural schedule incorporate the Division's recommendations.

Respectfully submitted this 11th day of August 2023.



Patricia E. Schmid

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⁶ Application at 2.

CERTIFICATE OF SERVICE

I certify that on August 11, 2023, I caused a true and correct copy of the foregoing Statement of Position to be filed with the Public Service Commission and served by the Utah Division of Public Utilities to the following in Utah Docket No. 23-035-30 as indicated below:

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