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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Rocky Mountain Power's Application for a Deferred Accounting Order Regarding Wildfire Claims	Docket No. 23-035-30
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UAE'S STATEMENT OF POSITION

The Utah Association of Energy Users ("UAE") hereby submits the following Statement of Position in response to the Scheduling Order issued by the Commission on July 17, 2023 in which the Commission permitted interested parties to "submit statements of position as to the procedure the PSC should follow and RMP's request to continue the matter for six months." Scheduling Order at 1.

I. Background

On June 21, 2023, PacifiCorp, doing business in Utah as Rocky Mountain Power ("RMP" or "Company"), filed its Application in this docket seeking "a deferred accounting order authorizing the Company to record a regulatory asset" associated with damages it may be required to pay after it was found liable for causing several wildfires in Oregon. [Application at 1]. The Company filed its Application after a jury verdict was entered against it in *James v. PacifiCorp*, an Oregon state court case in which the plaintiffs alleged that the Company's decision to keep

certain power lines energized during a high wind event in early September 2020 caused several wildfires that destroyed numerous homes and businesses. The jury awarded the 17 named plaintiffs in that action approximately \$90 million in damages. RMP asserts in the Application that there is additional pending litigation regarding these events and that there is “significant uncertainty about the legal outcome of these cases.” [Application, ¶ 6]. As such, the Company requests “that the Commission delay consideration of the approval of this deferral application until the costs and the impact on the financial stability of the Company are more fully known.” [*Id.*].

II. UAE’s Statement of Position

A. The Commission Should Deny RMP’s Request to Continue the Matter

The Company filed its Application before it has incurred any wildfire claims expenses and before it knows what those expenses might be or when they might be incurred. As a result, RMP cannot now satisfy the standards required for issuance of a deferred accounting order because it cannot show that the expenses it seeks to defer were “unforeseeable and extraordinary” when current rates were set. It cannot even say at this point that the wildfire claims expenses will exceed the “reasonable level of self-insurance and commercial insurance related to third-party claims” that is already built into rates. [Application, ¶ 4]. RMP’s Application was filed prematurely and the proper course of action is for the Commission to dismiss the Application at this time, rather than continue the matter for six months.

Given the nature of the appeals process, and the often slow pace of civil litigation, it’s highly unlikely that we’ll know more in six months than we do now about what expenses the Company seeks to defer or even whether or if it will ever incur any such expenses. RMP’s Application is not ready for adjudication at this point. If RMP believes that the Application will

be ready for adjudication in six months, then the Commission should dismiss the Application now without prejudice and allow RMP to file it again in six months.

As set forth below, in the event that the Commission does not deny the Application of its own accord, UAE believes the proper procedural course of action is to allow parties to raise any legal objections they may have to the Application and to set oral argument for those legal objections.

B. UAE's Recommended Procedure

Assuming the Commission does not dismiss the Application as being premature and also denies RMP's request to delay consideration of the Application for six months, UAE recommends a schedule consistent with the schedule set in Docket No. 18-035-48 regarding RMP's Application for an Accounting Order Related to its Pension Plans. In that docket, RMP sought a deferred accounting order related to certain pension costs. The Commission issued a Notice of Filing and Comment Period on January 2, 2019 in which it set deadlines for comments and reply comments related to the Application. The Division of Public Utilities, the Office of Consumer Services, and UAE each submitted comments opposing the Application. The Commission subsequently held a scheduling conference and issued a Scheduling Order that permitted the parties to file legal briefs regarding the Application and then set a hearing for the parties to present legal argument to the Commission.

UAE believes this schedule presented each party that participated in Docket No. 18-035-48 the opportunity to present their legal position to the Commission without also requiring the parties to spend significant time and effort drafting and submitting testimony. UAE proposes one deviation from the formal scheduling order adopted in Docket No. 18-035-48. While the parties

engaged in discovery prior to the issuance of the Scheduling Order in that docket, the Scheduling Order did not specifically contemplate discovery. UAE does not propose that the Commission set an evidentiary hearing at this stage, but discovery will be useful for the parties to support their arguments in areas where facts were not included in RMP's Application.


UAE proposes that the Commission enter a scheduling order that permits the parties to submit a legal brief of no longer than fifteen pages on or before September 8, 2023, with oral argument set on a date agreed on by the parties during either the week of September 18 or September 25, 2023. UAE further proposes that the turnaround time for discovery requests be set at 14 days until September 8, 2023 and 7 days thereafter.

If the Commission sets such a schedule and ultimately declines to dismiss the Application based on the legal grounds raised by the parties, the Commission could then determine if it requires an evidentiary hearing to create a record sufficient to grant or deny the Application on the facts presented.

At this stage, however, it is apparent that the Application is not ready for adjudication and the Commission should dismiss it while allowing the Company to file a new Application seeking a deferred accounting order if and when sufficient facts exist to justify such a filing.

DATED this 11th day of August 2023.

Respectfully submitted,

By: 

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Attorneys for UAE

Certificate of Service
Docket No. 23-035-30

I hereby certify that a true and correct copy of the foregoing was served by email this 11th day of August 2023 on the following:

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