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VIA ELECTRONIC FILING

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

Attention: Gary Widerburg
Commission Administrator

RE: Docket No. 23-035-40
Application of Rocky Mountain Power for a Deferred Accounting Order Regarding Insurance Costs
RMP Pre-hearing Brief

In accordance with the Scheduling Order and Notice of Hearing issued by the Public Service Commission of Utah on September 13, 2023, Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or the "Company"), submits its pre-hearing brief in the above reference matter.

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

Sincerely,

A handwritten signature in blue ink that reads "Joelle Steward".

Joelle Steward
Senior Vice President, Regulation and Customer/Community Solutions

Cc: Service list for 23-035-40

CERTIFICATE OF SERVICE

Docket No. 23-035-40

I hereby certify that on January 10, 2024, a true and correct copy of the foregoing was served by electronic mail to the following:

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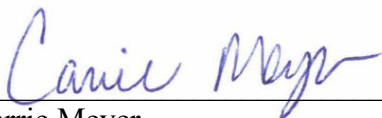
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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**Application of Rocky Mountain Power for
A Deferred Accounting Order Regarding
Insurance Costs**

Docket No. 23-035-40

**ROCKY MOUNTAIN POWER'S
PRE-HEARING BRIEF**

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I. INTRODUCTION

In accordance with the September 13, 2023, Scheduling Order and Notice of Hearing, PacifiCorp d/b/a Rocky Mountain Power (“Company”) submits this Pre-Hearing Brief to the Public Service Commission of Utah (“Commission”). The Company seeks a deferred accounting order authorizing the Company to record in a regulatory asset the extraordinary increase in annual excess liability insurance premiums for the policy period beginning August 15, 2023.¹ The Company’s insurance costs are now approximately \$122.6 million total-Company, an increase of \$112.1 million, or \$49.2 million Utah-allocated,² over the \$10.5 million approved in the Company’s last general rate case in 2020.³

Excess liability insurance, including wildfire liability insurance, is a prudent business expense that protects the Company and its customers against financial losses from third-party claims. Based on the Company’s actual costs at the time, the Commission approved a reasonable level of insurance in the 2020 rate case. Since then, wildfires across the western United States have proliferated and these fires have become larger and more destructive.⁴ Wildfire costs and risks have increased, while the ability to acquire insurance at reasonable rates and coverage levels has decreased. As a result, the Company’s excess liability insurance premium expense increased by 1,067 percent between 2020 and 2023.⁵ A cost increase of this magnitude was unforeseeable in 2020, and its impact is both material and extraordinary.

The evidence and authorities outlined below demonstrate that the Company’s application meets the Commission’s requirements for deferred accounting, which is the sole issue before the

¹ Application for Deferred Accounting Order at 4 (Aug. 21, 2023).

² Rebuttal Testimony of Shelley E. McCoy at 4 (Dec. 21, 2023).

³ *Application of Rocky Mountain Power 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 (Dec. 30, 2020); *see also* Direct Testimony of Shelley E. McCoy at 3 (Oct. 13, 2023).

⁴ Direct Testimony of Mariya V. Coleman at 6 (Oct. 13, 2023).

⁵ Rebuttal Testimony of Shelley E. McCoy at 3.

Commission at this time. The Company requests that the Commission approve the application now and review the prudence of these costs and their ultimate recovery in a future rate proceeding.

II. BACKGROUND

The Company holds excess liability insurance to cover claims for damages to third parties, including claims related to general liability, automobile accidents, and wildfires.⁶ The Company self-insures up to \$10 million and relies on commercial insurance for claims above this level.⁷ The Company seeks to maintain excess liability insurance at sufficient levels to avoid the negative and volatile impact of third-party claims on customer rates.⁸

In the Company's last rate case in 2020, the Commission authorized inclusion of \$10.5 million total-Company for excess liability commercial insurance expense.⁹ This was based on the best information available at the time, which was the cost of the most recent insurance renewal in August 2020.¹⁰ The Company has not updated these costs in Utah rates since that time.

In the last several years, wildfires across the western United States have increased in frequency, scale, and destructiveness.¹¹ Utah has recognized its increasing exposure to wildfires and enacted the Wildland Fire Planning and Cost Recovery Act, effective 2020, to address this risk.¹² Faced with these conditions, insurers have increased the price at which they will offer insurance covering wildfire claims and limited coverage levels.¹³

In August 2023, the Company's excess liability insurance premiums increased by \$112.1 million total-Company, or 1,067 percent, compared to the premium costs included in the

⁶ Direct Testimony of Mariya V. Coleman at 5.

⁷ *Id.*

⁸ *Id.* at 8.

⁹ *Id.* at 5-6. The Commission also authorized recovery of \$3.9 million for property insurance premiums. Direct Testimony of Shelley E. McCoy at 3.

¹⁰ Direct Testimony of Shelley E. McCoy at 3.

¹¹ Direct Testimony of Mariya V. Coleman at 6.

¹² *Id.*; Utah Code Ann. § 54-24-101 *et seq.*

¹³ Direct Testimony of Mariya V. Coleman at 6.

Company's revenue requirement in the 2020 rate case.¹⁴ As compared to the previous year (the policy period beginning in August 2022), the Company's costs increased by approximately 234 percent, from \$32 million to \$122.6 million.¹⁵ The Company's liability insurance costs have been fairly stable year-over-year, so such increases are unprecedented. While the Company could have reasonably assumed some cost escalation for excess liability insurance premiums at the time of the 2020 rate case, an increase of 1,067 percent in only three years was unforeseeable.¹⁶

On a Utah allocated basis, the increase in excess liability insurance premium cost is \$49.2 million.¹⁷ This expense is material and extraordinary as to the Company's earnings, with an impact of more than 90 basis points on the Company's return on equity. The return on equity of 4.58 percent reported in the Company's June 2023 Results of Operation would decrease to 3.66 percent due solely to the increase in excess liability premiums.¹⁸ That is nearly 600 basis points below the Company's authorized return on equity of 9.65 percent.¹⁹

The Division of Public Utilities ("DPU"), the Office of Consumer Services ("OCS"), and the Utah Association of Energy Users ("UAE") have participated as parties in this proceeding. DPU and OCS oppose approval of the Company's application, while UAE does not oppose approval.²⁰

In addition to the application in this docket, the Company has requested deferral or recovery of these increased costs in Idaho, Washington, Oregon, California, and Wyoming.²¹ The

¹⁴ Rebuttal Testimony of Shelley E. McCoy at 3-4.

¹⁵ *Id.* at 4; Direct Testimony of Mariya V. Coleman at 6.

¹⁶ Direct Testimony of Mariya V. Coleman at 5-6; Rebuttal Testimony of Shelley E. McCoy at 3.

¹⁷ Rebuttal Testimony of Shelley E. McCoy at 4.

¹⁸ *Id.*

¹⁹ *Id.*; Docket No. 20-035-04, Order at 16.

²⁰ Direct Testimony of Kevin Higgins at 3 (Nov. 29, 2023). UAE requests that the Commission consider in a future rate case a wide range of factors when determining the specific amount of the deferred expense that the Company ultimately recovers.

²¹ Direct Testimony of Shelley E. McCoy at 5.

Idaho Public Utilities Commission approved the Company’s deferral request on December 29, 2023.²² In Washington, the Company included these costs in its rebuttal filing in its pending rate case.²³ The Company and most parties in that case entered a partial stipulation that resolved recovery of the Company’s insurance premiums,²⁴ which the Washington Utilities and Transportation Commission is planning to consider at a hearing on January 12, 2024.²⁵ In Oregon, the Public Utility Commission is expected to consider the Company’s deferral application at its Public Meeting later this month.²⁶ In California, the parties have submitted a joint stipulation to the Public Utilities Commission of California for approval.²⁷ Finally, in Wyoming, the Company initially sought to include these costs in its rebuttal filing in its pending 2023 general rate case, but the Wyoming Public Service Commission asked that the Company instead seek deferral; the Company subsequently submitted an application seeking to defer its excess liability insurance premium expenses on December 18, 2023.²⁸

III. LEGAL STANDARD

Utah law allows utilities to seek deferred accounting “for unforeseeable and extraordinary increases or decreases in expenses[.]”²⁹ Deferred accounting under such circumstances is

²² *In the Matter of Rocky Mountain Power’s Application for a Deferred Accounting Order Related to Insurance Costs*, IPUC Case No. PAC-E-23-18, Order No. 36045 (Dec. 29, 2023).

²³ *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, WUTC Docket No. UE-230172, Rebuttal Testimony of Mariya V. Coleman at 5 (Oct. 27, 2023).

²⁴ WUTC Docket No. UE-230172, Settlement Stipulation at 2 (Dec. 15, 2023) (“The Stipulation resolves all issues among the Parties in this proceeding except for net power costs (NPC) and the Power Cost Adjustment Mechanism (PCAM)[.]”).

²⁵ WUTC Docket No. UE-230172, Notice Modifying Procedural Schedule (Dec. 19, 2023).

²⁶ *See In the Matter of PacifiCorp, dba Pacific Power, Application for Authorization of Deferred Accounting Related to Insurance Costs*, OPUC Docket No. UM 2301, Supplemental Application (Dec. 19, 2023).

²⁷ *Application of PacifiCorp (U901E) for Authority to Establish the Wildfire Expense Memorandum Account*, CPUC Application 23-06-017, Joint Motion to Enter Stipulation into the Record at 3 (Dec. 4, 2023) (“The Stipulation addresses . . . the manner in which PacifiCorp obtains and allocates costs related to liability insurance[.]”).

²⁸ *In the Matter of the Application of Rocky Mountain Power for Authority for a Deferred Accounting Order to Record a Regulatory Asset Associated with Incremental Costs Related to Third-Party Liability in Excess of \$10 Million*, WPSC Docket No. 20000-654-EA-23 (Record No. 17470), Application (Dec. 18, 2023).

²⁹ *MCI Telecomms. Corp. v. Pub. Serv. Comm’n*, 840 P.2d 765, 772 (Utah 1992) [hereinafter “MCP”].

recognized as an exception to the general prohibition on retroactive ratemaking and single-issue ratemaking.³⁰ This exception is based on the recognition that the prohibitions on retroactive and single-issue ratemaking are intended to apply only to “missteps in the rate-making process” and do “not apply where justice and equity require that adjustments be made for unforeseen windfalls or disasters not caused by the utility.”³¹ A utility seeking approval for deferred accounting bears the burden of proof to demonstrate that the expenses were unforeseeable and extraordinary.³² Commission approval of an application for deferred accounting does not guarantee recovery of any deferred funds; those costs will instead be subject to analysis and adjustment at the time when the utility seeks to include the deferred costs in its revenue requirement.³³

IV. DISCUSSION

A. The magnitude of the increased insurance premiums was unforeseeable when the Commission last set the Company’s rates.

Foreseeability is evaluated at the time that the utility’s “last general rate case was decided.”³⁴ To be eligible for deferred accounting, an expense must be one that could not have been taken into account when setting the utility’s rates.³⁵ However, even when a factor is

³⁰ *Id.*; *Utah Dep’t of Bus. Regul., Div. of Pub. Utils. v. Pub. Serv. Comm’n*, 720 P.2d 420, 424 (Utah 1986) [hereinafter “EBA”]; Docket No. 20-035-04, Order at 30 (discussing a finding that a requested deferral “would violate the prohibition against single-issue ratemaking absent a showing the expenses were extraordinary or unforeseeable”); *see also Application of Rocky Mountain Power for an Accounting Order for Settlement Charges Related to its Pension Plans*, Docket No. 18-035-48, Order at 5 (May 22, 2019) (“principles of both retroactive ratemaking and single-issue ratemaking require [the Commission] to apply the legal standard articulated in *MCI*.”).

³¹ *MCI* at 772; *see also EBA* at 420-21 (explaining that the prohibitions on retroactive and single-issue ratemaking are intended to provide utilities with an incentive to operate efficiently).

³² Docket No. 18-035-48, Order at 5-6.

³³ *In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order To Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization; In the Matter of the Application of Rocky Mountain Power for an Accounting Order To Defer the Costs Related to the MidAmerican Energy Holdings Company Transaction; In the Matter of the Application of Rocky Mountain Power for an Accounting Order for Costs related to the Flooding of the Powerdale Hydro Facility*, Docket Nos. 06-035-163, 07-035-04, and 07-035-14, Report and Order at 16 (Jan. 3, 2008).

³⁴ *MCI* at 772.

³⁵ *Id.* at 771.

accounted for when setting rates, an expense may be eligible for deferred accounting if “its impact is greater than that which was used in setting rates.”³⁶

Under these standards, the sharp increase in excess liability insurance premium costs related to higher wildfire risk was clearly unforeseeable. First, the magnitude of the increase was unprecedented for a cost item that has previously been relatively stable year-over-year.³⁷ The Company’s insurance costs increased an astounding 1,764 percent between 2019 and 2023.³⁸

Second, the cause of these excess liability insurance cost increases—unpredictable and catastrophic wildfires³⁹—makes these costs unforeseeable and particularly appropriate for deferred accounting. In *MCI*, the Utah Supreme Court explained that “[i]ncreased expenses from natural disasters, such as extreme weather conditions, and other extraordinary events are the typical bases for the exception” to the general rule against retroactive ratemaking.⁴⁰

Only DPU has challenged whether the increased excess liability insurance premiums were unforeseeable. DPU asserts that the increase in insurance premium costs was foreseeable before the Company purchased its current insurance policies in August 2023.⁴¹ However, DPU misapplies the standard. For purposes of a deferral, the Commission considers whether the increased costs were “unforeseeable at the time of a rate-making proceeding,”⁴² not whether the costs were

³⁶ *In the Matter of the Application of PacifiCorp for Approval of Its Proposed Electric Rate Service Schedules & Electric Service Regulations-Hunter Plant; In the Matter of the Application of PacifiCorp dba Utah Power & Light Company for a Deferred Accounting Order; In the Matter of the Application of PacifiCorp dba Utah Power & Light Company for Recovery of Excess Wholesale Power Costs*, Docket Nos. 01-035-23, 01-035-29, and 01-035-36, Order on Stipulation at 7 (May 1, 2002) (“*MCI* includes cases based on unexpected loss of generation and cases where a factor is known, but its impact is greater than that which was used in setting rates (e.g., weather effects are considered in normal ratemaking, but severe ice storms provide exceptions to the rule).”).

³⁷ See *MCI* at 772 (explaining that, while changes in tax law are not ordinarily a sufficient basis for a deferral, the scope of the reduction in the utility’s tax rate was unforeseeable).

³⁸ Direct Testimony of Mariya V. Coleman at 6.

³⁹ *Id.*

⁴⁰ *MCI* at 771.

⁴¹ Direct Testimony of Jeffrey S. Einfeldt at 7 (Nov. 29, 2023).

⁴² See *MCI* at 771 (“An increase or decrease in expenses that is unforeseeable at the time of a rate-making proceeding cannot, by hypothesis, be taken into account in fixing just and reasonable rates.”); see also Docket No. 18-035-48,

foreseeable before the utility incurred those costs. DPU acknowledges that the increased insurance premiums were not foreseeable in 2020 when the Company's rates were last set,⁴³ and for that reason these increased premium expenses are appropriate for a deferral. Even closer in time to the August 2023 renewal date, the Company could not have predicted the scale and speed of the increase.⁴⁴

B. The increased excess liability insurance premiums have an extraordinary impact on the Company's earnings.

A utility may seek deferred accounting when an increase or decrease in expenses has “an extraordinary effect on the utility's earnings[.]”⁴⁵ An extraordinary effect is one that is “outside the normal range of variance that occurs in projecting future expenses.”⁴⁶ While there is no bright-line standard of what constitutes an extraordinary increase or decrease in expenses, the fact that the insurance cost increase here reduces the Company's return on equity by over 90 basis points meets this requirement by any measure. Indeed, the Commission has previously approved deferrals for amounts less than those in this case and found them to be extraordinary.

OCS initially asserted that the Company had failed to show that the increased excess liability insurance expenses would have an extraordinary impact on earnings,⁴⁷ but in its surrebuttal testimony, OCS modified its position and acknowledged that the Company had met its burden of demonstrating that the impact from these expenses would be extraordinary.⁴⁸ DPU argues that the Company has not demonstrated an extraordinary impact on its earnings related to

Order at 6-7 (rejecting a requested deferral because the utility failed to show that the requested expenses were “outside the reasonable, foreseeable range at the time of its last general rate case”).

⁴³ Direct Testimony of Jeffrey S. Einfeldt at 7; Docket No. 20-035-04, Order.

⁴⁴ Direct Testimony of Mariya V. Coleman at 6.

⁴⁵ *MCI* at 771.

⁴⁶ *Id.* at 771-72.

⁴⁷ Direct Testimony of Alyson Anderson at 3 (Nov. 29, 2023).

⁴⁸ Surrebuttal Testimony of Alyson Anderson at 2 (Jan. 9, 2024).

the insurance cost increase, but provides little support for this position, which is contrary to past cases.

For example, in a prior case involving costs incurred from flooding in the Powerdale hydroelectric facility (“Powerdale”), the Commission approved deferral of \$8.9 million in undepreciated plant expense and \$6.3 million in decommissioning costs (both total-Company).⁴⁹ The Commission found that these amounts—less than the costs involved here—were material and extraordinary, and no party disagreed. In that case, DPU suggested application of the Federal Energy Regulatory Commission’s definition of materiality, which considers an item to be material if it constitutes approximately five percent of income, computed before extraordinary items.⁵⁰ In its testimony in this case, DPU estimates that the increase in insurance expense represents between 9.35 percent and 11.25 percent of Utah allocated net revenue (i.e. net income), meeting the materiality standard DPU suggested in Powerdale.⁵¹

Similarly, in Docket No. 17-035-69, the Commission approved deferred accounting and a refund of \$61 million (Utah-allocated), in excess federal income tax resulting from the Tax Cuts and Jobs Act of 2018 (“TCJA deferral”).⁵² The costs approved in the TCJA deferral would have constituted approximately 12.9 percent of Utah’s operating revenue for return. Here, the \$49.2 million (Utah-allocated) increase in excess liability insurance premium expenses for which the

⁴⁹ Docket Nos. 06-035-163, 07-035-04, and 07-035-14, Report and Order at 8, 18; *see also* Docket No. 07-035-14, Application at 7 (Mar. 21, 2007) (identifying the \$8.9 million in undepreciated plant expense).

⁵⁰ Docket Nos. 06-035-163, 07-035-04, and 07-035-14, Report and Order at 9.

⁵¹ Direct Testimony of Jeffrey S. Einfeldt at 5-6.

⁵² *Investigation of Revenue Requirement Impacts of the New Federal Tax Legislation Titled: “An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution of the budget for fiscal year 2018”*; *In the Matter of the Application of Rocky Mountain Power to Implement Programs Authorized by the Sustainable Transportation and Energy Plan Act*, Docket Nos. 17-035-69 and 16-035-36, Order Approving Settlement Stipulation at 1 (Nov. 9, 2018).

Company seeks deferred accounting would be approximately 13.7 percent of Utah’s operating revenue for return, 60 basis points more than tax refunds in the TCJA deferral.⁵³

DPU asserts that the Company’s increased excess liability insurance premiums are not extraordinary because the increased costs are “likely to continue as the ‘new normal.’”⁵⁴ The Company agrees that these increased insurance premium expenses will likely continue due to ongoing challenges with wildfire issues in the West, but that does not negate the extraordinary nature of the increase from 2020.⁵⁵ As mentioned above, in the TCJA deferral, the Commission approved deferred accounting of excess revenues resulting from a federal tax decrease. Even though this decreased tax rate affected an ordinary cost and continued to affect the Company’s revenues on an ongoing basis—i.e., the decreased tax rate became the “new normal” for the Company—the DPU supported the TCJA deferral, asserting that the tax decrease “plainly [fell] within the exception for unforeseeable and extraordinary events” and therefore was appropriate for deferral.⁵⁶ The Commission agreed, and approved the deferral of the excess revenue resulting from the decreased tax rate.⁵⁷

Consistent with the precedent discussed above, the extraordinary impact to the Company’s earnings resulting from the increased excess liability insurance expenses warrants approving the Company’s application for deferred accounting.

⁵³ Rebuttal Testimony of Shelley E. McCoy at 4-5; *In the Matter of PacifiCorp’s Financial Reports 2023*, Docket No. 23-035-12, Rocky Mountain Power’s June 2023 Results of Operations (Oct. 31, 2023).

⁵⁴ Direct Testimony of Jeffrey S. Einfeldt at 6.

⁵⁵ Rebuttal Testimony of Mariya V. Coleman at 3 (Dec. 21, 2023).

⁵⁶ Docket No. 17-035-69, Comments of the Division of Public Utilities in Support of UAE’s Motion for Orders for Deferred Accounting Treatment of Benefits Associated with 2018 Tax Reconciliation Act at 3 (Jan. 12, 2018).

⁵⁷ Docket No. 17-035-69, Order Granting Motion for Deferred Accounting Order and Notice of Scheduling Conference at 2-3 (Feb. 28, 2018).

C. **Arguments relating to cost recovery are outside the scope of this proceeding because the Company does not seek recovery of its insurance premium costs or a prudence determination in this docket.**

If the Commission approves the request for deferred accounting, recovery of the deferred costs will be subject to a prudence review and a final decision on cost recovery in a future rate proceeding. Notwithstanding the fact that the Company does not seek recovery of its increased excess liability insurance premium expenses in this docket, both OCS and DPU have asserted that recovery of these increased excess liability insurance premiums may not be appropriate because, according to those intervenors, there are several factors that will affect a determination as to whether these costs were prudently incurred.⁵⁸ These assertions are outside the scope of the Company's application and parties should raise them at a later time when the Company seeks to amortize the deferral.⁵⁹

While OCS agrees that the Company's increased excess liability insurance premiums were unforeseeable at the time of the Company's last rate case and have an extraordinary impact on the Company's earnings,⁶⁰ OCS argues that the Company must also demonstrate that it is likely to successfully recover these expenses in a future proceeding before the Commission can approve the Company's application for deferral.⁶¹ Effectively, OCS's argument adds a third criterion to the Utah Supreme Court's holding in *MCI*, specifically, a requirement that the Company prove the costs were prudently incurred *before* the Commission approves a deferred accounting order. OCS's interpretation of *MCI* incorrectly conflates two separate proceedings, deferral and the subsequent

⁵⁸ Direct Testimony of Jeffrey S. Einfeldt at 7-8; Direct Testimony of Alyson Anderson at 5-6.

⁵⁹ See Direct Testimony of Jeffrey S. Einfeldt at 8 (acknowledging that issues relating to recovery of these costs are more appropriately addressed in a general rate case); see also Direct Testimony of Kevin C. Higgins at 3 (Nov. 29, 2023) ("The specific amount that is ultimately recoverable should be determined in [the Company's] next general rate case and should be based on a Commission finding that the amount of costs being allocated to customers is just and reasonable.").

⁶⁰ Surrebuttal Testimony of Alyson Anderson at 2.

⁶¹ OCS Prehearing Brief at 6 (Jan. 9, 2024).

recovery of deferred expense. The Commission applies the exception identified in *MCI*—allowing deferral of unforeseeable and extraordinary expenses⁶²—when considering an application for deferred accounting.⁶³ If the Commission approves a deferral, then prudence and rate treatment will be assessed in a later proceeding when the Company seeks cost recovery.⁶⁴ For that reason, OCS’s arguments regarding prudence of these insurance expenses are not ripe and should instead be raised in a future proceeding when the Company seeks to amortize the deferred expenses and recover them in rates.

OCS also cites *Powerdale*, in which the Commission stated that “authorization of an accounting order for a particular expense is an indication, if but an early tentative one, that there is a likelihood that the particular expense can be included in a future revenue requirement determination.”⁶⁵ Relying on this statement, OCS argues that the Company “must make an initial showing that the increase in its excess insurance costs is likely to be recoverable in rates” before the Commission approves deferral of those costs.⁶⁶ OCS further cites *Powerdale* for the assertion that “ratemaking rules and principles have application and may be given greater weight than accounting rules and principles in considering whether to issue an accounting order.”⁶⁷ DPU similarly cites *Powerdale* to support its assertion approval of a deferral “is an early indication of recoverability,” which DPU argues the Commission should not give in this docket.⁶⁸

⁶² *MCI* at 772.

⁶³ See, e.g., *In the Matter of the Formal Complaint of Beaver County, Box Elder County, Cache County, Carbon County, Davis County, Duchesne County, Emery County, Garfield County, Grand County, Iron County, Juab County, Kane County, Morgan County, Piute County, Rich County, Salt Lake County, Millard County, San Pete County, Sevier County, Summit County, Tooele County, Uintah County, Utah County, Wasatch County, Washington County, Wayne County, Weber County, and all other Persons or Entities Similarly Situated vs. Qwest Corporation fka US West Communications, Inc., fka Mountain States Telephone & Telegraph Services Inc.*, Docket No. 01-049-75, Order Granting Motion for Summary Judgment at 32 (June 17, 2005) (“While that may or may not be true [that *MCI* is not exhaustive], the Commission will not depart from the exceptions recognized in *MCI*.”).

⁶⁴ Direct Testimony of Kevin C. Higgins at 3.

⁶⁵ Docket Nos. 06-035-163, 07-035-04, and 07-035-14, Report and Order at 16-17.

⁶⁶ OCS Prehearing Brief at 5.

⁶⁷ *Id.*; Docket Nos. 06-035-163, 07-035-04, and 07-035-14, Report and Order at 17.

⁶⁸ Direct Testimony of Jeffrey S. Einfeldt at 8-9.

However, any suggestion that Powerdale requires a utility to demonstrate prudence before the Commission issues an order for deferred accounting is inconsistent with the Commission's treatment of the deferred costs in that order. In Powerdale, the Commission explained that granting a deferral does not "pre-approve" any costs for recovery because those costs "are still subject to analysis and adjustment at the time a revenue requirement determination is to be made."⁶⁹ Powerdale indicates that the Commission will allow deferred accounting only for expenses that *may be* recoverable in a future proceeding, pending a demonstration of prudence. Consistent with that interpretation, the Commission approved deferral of the Powerdale expenses but did not resolve the parties' disputes over how the deferred expenses should be amortized.⁷⁰ The Commission explained that these concerns would be addressed "in some future proceeding where more and clearer evidence can be provided" before the utility included those expenses in its revenue requirement.⁷¹ Similarly, the Commission should address OCS's and DPU's arguments regarding prudence in a future proceeding when the Company seeks to amortize and recover the deferred expenses and provides evidence demonstrating that the expenses were prudently incurred.

OCS also cites Powerdale to support its request that the Commission consider whether excess liability insurance premium expenses should be shared between shareholders and customers.⁷² However, excess liability insurance is a necessary component of operating a utility business that protects customers from excess costs resulting from third-party claims against the utility. As discussed above, the Commission has typically included these costs in the Company's revenue requirement.⁷³ Similar to OCS's other arguments relating to the prudence of the

⁶⁹ Docket Nos. 06-035-163, 07-035-04, and 07-035-14, Report and Order at 16.

⁷⁰ *Id.* at 17-18.

⁷¹ *Id.* at 18.

⁷² Direct Testimony of Alyson Anderson at 5-6.

⁷³ Direct Testimony of Shelley E. McCoy at 3.

Company's insurance expenses, any analysis of the proper "share" of these expenses allocated to customers is outside the scope of this docket.⁷⁴

Relatedly, the intervening parties all reference recent litigation in Oregon in which the Company was found liable for certain wildfire damages ("*James*").⁷⁵ The parties suggest that the verdict in *James* may have affected whether the premium expenses that the Company seeks to defer were prudently incurred.⁷⁶ However, while the timing of the *James* verdict was coincidental to the renewal of the Company's excess liability insurance, the Company's insurers did not communicate the impact, specific or general, of the *James* verdict.⁷⁷ Insurers did indicate in renewal discussions that increased wildfire risk resulting from climate change, in addition to claims against multiple utilities in the western United States, was influencing their decisions to withdraw from selling wildfire insurance or to charge more to insure wildfire risk.⁷⁸ Additionally, excess liability insurance covers damages that the Company pays to parties and reimburses only after the Company pays a claim.⁷⁹ The Company has not yet paid any damages resulting from the *James* lawsuit and, as a result, has not filed any *James*-related claims with its insurers.⁸⁰ Therefore, while overall experience of worsening industry claims, including underlying events associated with the Company's assets, have contributed to commercial insurance carriers concluding that overall risk is higher, thus leading to higher premiums costs, there is no direct correlation between

⁷⁴ See Direct Testimony of Kevin C. Higgins at 3 ("The specific amount that is ultimately recoverable should be determined in [the Company's] next general rate case and should be based on a Commission finding that the amount of costs being allocated to customers is just and reasonable.").

⁷⁵ *James v. PacifiCorp*, No. 20-CV-33885 (Cir. Ct. Multnomah Cnty., June 12, 2023).

⁷⁶ Direct Testimony of Jeffrey S. Einfeldt at 7-8; Direct Testimony of Alyson Anderson at 5-6; Direct Testimony of Kevin C. Higgins at 5-6; OCS Prehearing Brief at 2.

⁷⁷ Rebuttal Testimony of Mariya V. Coleman at 5.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 5-6.

insurance claims resulting from *James* and the increase in insurance premiums for which the Company seeks deferred accounting.

Moreover, as a general matter, insurance companies base their policies on the total risk being insured in consideration of the industry and geographic regions covered and do not assign certain percentages of that risk to specific events of their insureds.⁸¹ As a result, it would be difficult, if not impossible, to quantify the effect that a single specific event would have on a company's insurance premiums.

D. The Company appropriately seeks deferred accounting for these unforeseeable and extraordinary expenses and there was no requirement that the Company instead initiate a general rate case.

DPU asserts that the Commission should deny the Company's request for a deferral because the Company could have instead filed a general rate case to recover these costs.⁸² DPU appears to base this argument on its assertion that a deferral is appropriate only "in limited circumstances where other regulatory tools do not exist to allow reasonable recovery."⁸³ However, DPU relies on a single case from Pennsylvania to support this assertion, which appears to limit deferred accounting in that state to non-recurring costs only.⁸⁴ No Utah court has adopted such a narrow standard for deferred accounting. Rather, as discussed above, the Supreme Court of Utah has held that a utility may seek deferred accounting for unforeseeable and extraordinary increases in expenses,⁸⁵ like the increased excess liability insurance expenses at issue here. Utah law does not require the Company to complete a general rate case proceeding instead of seeking deferred

⁸¹ *Id.* at 5.

⁸² Direct Testimony of Jeffrey S. Einfeldt at 3-4.

⁸³ *Id.* at 3.

⁸⁴ *Id.* (citing *Popowsky v. Pa. Pub. Util. Comm'n*, 869 A.2d 1144, 1153 n.24 (Pa. Commw. Ct. 2005)).

⁸⁵ *MCI* at 772.

accounting for unforeseeable and extraordinary costs like the Company’s increased excess liability insurance premiums.

Moreover, a deferral is an appropriate means of accounting for these increased costs without burdening the Company and its customers. The Company works hard to file rate cases infrequently to avoid repeated rate changes.⁸⁶ As detailed in the Company’s testimony, preparing and presenting a general rate case takes over a year and requires substantial resources from the Company, the Commission, and any intervenors.⁸⁷ Given these timelines, as a practical matter, the only opportunity for the Company to fully recover its unforeseeable and extraordinary 2023-2024 insurance cost increase is through deferred accounting.

DPU asserts that the Company could have recovered the increased excess liability insurance premium expenses by filing a general rate case once the Company learned of the anticipated increase and requesting interim rates.⁸⁸ This assertion is not accurate. In a rate case, the Commission may exclude from the Company’s revenue requirement costs that are not known and measurable.⁸⁹ By the time the Company learned the price and coverage levels of the available insurance policies, it was too late to obtain full cost recovery through a general rate case filing and interim rates, since that process itself requires months to complete.⁹⁰

DPU similarly suggests that the Company should be required to complete a general rate case to avoid impermissible single-issue ratemaking.⁹¹ However, the Commission has interpreted

⁸⁶ Rebuttal Testimony of Shelley E. McCoy at 9.

⁸⁷ *Id.* at 7-8.

⁸⁸ Surrebuttal Testimony of Jeffrey S. Einfeldt at 3 (Jan. 9, 2024).

⁸⁹ *See, e.g.*, Docket No. 20-035-04, Order at 33-34 (adopting DPU’s recommendation to omit certain royalties “because those amounts are not yet known and measurable”).

⁹⁰ *See* Rebuttal Testimony of Shelley E. McCoy at 8 (explaining that a general rate case, even with interim rates, “would leave the Company with, at best, only partial recovery of these extraordinary and necessary expenses”).

⁹¹ *See* Surrebuttal Testimony of Jeffrey S. Einfeldt at 2 (asserting that the Company’s request “could lead to rates that are not just and reasonable” and “is the exact reason why . . . single-issue ratemaking [is] generally prohibited”).

MCI as an exception to the prohibition against single-issue ratemaking.⁹² As discussed above, the increase in the Company's excess liability insurance premium expenses falls within the exception identified in *MCI* because the increase was unforeseeable and extraordinary.

V. CONCLUSION

For these reasons, the Company respectfully requests an accounting order authorizing it to record a regulatory asset for its unforeseeable and extraordinary increased excess liability insurance premium costs. The Company will seek recovery of the deferred insurance costs in a subsequent rate proceeding.

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⁹² Docket No. 18-035-48, Order at 5.