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***VIA ELECTRONIC FILING***

Utah Public Service Commission  
Heber M. Wells Building, 4<sup>th</sup> 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 Post-hearing Brief*

In accordance with the Notice of Opportunity to Submit Post-Hearing Briefs issued by the Public Service Commission of Utah on January 29, 2024, Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or the “Company”), submits its post-hearing brief in the above referenced matter.

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

Sincerely,

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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  
POST-HEARING BRIEF**

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## I. INTRODUCTION

In accordance with the January 29, 2024, Notice of Opportunity to Submit Post-Hearing Briefs, PacifiCorp d/b/a Rocky Mountain Power (“Company”) submits this Post-Hearing Brief to the Public Service Commission of Utah (“Commission”). Consistent with the Commission’s guidance,<sup>1</sup> the Company does not repeat the analysis and arguments in the Company’s Pre-Hearing Brief and instead provides additional detail on issues raised at the January 17, 2024, hearing and responds to arguments raised in other parties’ prehearing briefs.

In this case, the Company seeks an order allowing it to defer \$112.1 million, or \$49.2 million Utah-allocated, reflecting the increase in excess liability insurance costs from the \$10.5 million (total-Company) approved in the Company’s last general rate case in 2020 to the 2023-2024 costs of \$122.6 million (total-Company).<sup>2</sup> There is little dispute on the key issue in this case, which is whether the Company has satisfied the criteria for the issuance of a deferred accounting order. Instead, most of the arguments challenge whether the Company should ultimately recover the costs it seeks to defer, arguments that are outside the scope of this case. The Commission should grant the application and reserve cost recovery issues for the Company’s next general rate case, now set to be filed on or about April 30, 2024.<sup>3</sup>

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<sup>1</sup> Notice of Opportunity to Submit Post-Hearing Briefs at 1 (Jan. 29, 2024) (“Parties need not reiterate legal arguments already articulated in their respective prehearing briefs.”); *see also* Hr’g. Tr. at 118:15-119:3 (statement from Commissioner Clark encouraging parties to provide in their post-hearing briefs “anything additional that you feel is necessary, any legal argument in relation to facts that have been discussed here at hearing that either are different than what you initially anticipated or something you feel you need to either respond to or elaborate upon”).

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

<sup>3</sup> Hr’g. Tr. at 14:4-10; *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. 24-035-04, Notice of Intent to File General Rate Case and Request for Approval of a Test Period (Jan. 24, 2024).

## II. DISCUSSION

### A. The Company has established the elements required for approval of a deferred accounting order.

In *MCI Telecommunications Company v. Public Service Commission* (“MCI”), the Utah Supreme Court recognized an exception to the prohibition on retroactive ratemaking for increases or decreases in a utility’s revenue that were both (1) unforeseeable at the time that the Commission set the utility’s rates; and (2) have an extraordinary impact on the utility’s earnings.<sup>4</sup> Since *MCI*, the Commission has relied on these two factors in determining whether to approve a deferral.<sup>5</sup>

There is virtually no argument from the parties that the Company has failed to meet the *MCI* criteria.<sup>6</sup> Only the Division of Public Utilities (“DPU”) continues to make such an argument and does so on very narrow grounds. DPU no longer challenges whether the Company’s increased excess liability insurance premium expenses were extraordinary,<sup>7</sup> and concedes that

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<sup>4</sup> 840 P.2d 765, 772 (Utah 1992).

<sup>5</sup> *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 15 (Jan. 3, 2008); *Application of Rocky Mountain Power for a Deferred Accounting Order Regarding Costs Incurred Due to the COVID-19 Public Health Emergency*, Docket No. 20-035-17, Order Approving Accounting Order at 7 (Sept. 15, 2020); *Application of Rocky Mountain Power for an Accounting Order for Settlement Charges Related to its Pension Plans*, Docket No. 18-035-48, Order at 3-4 (May 22, 2019).

<sup>6</sup> The Utah Association of Energy Users does not oppose issuance of the deferred accounting order. Direct Testimony of Kevin C. Higgins at 3 (Nov. 29, 2023). Similarly, the Office of Consumer Services acknowledged in its Surrebuttal Testimony that the Company had demonstrated satisfaction of both criteria. Surrebuttal Testimony of Alyson Anderson at 2 (Jan. 9, 2024).

<sup>7</sup> Utah Division of Public Utilities’ Prehearing Brief Opposing Approval of the Deferred Accounting Application at 17 (Jan. 10, 2024) [hereinafter “DPU Prehearing Brief”].

the increases were not foreseeable at the time of the last rate case.<sup>8</sup> But DPU creates a new standard for foreseeability in this case—one that measures foreseeability closer in time to the point when the expenses are incurred—and asserts that the cost increases were foreseeable under its new standard.<sup>9</sup>

Specifically, DPU asserts in its brief that the foreseeability criterion does not consider what was foreseeable at the time of the Company’s last rate case but rather “whether the Company could have foreseen the increase in enough time to use normal ratemaking mechanisms to protect itself from coming cost increases and regulatory lag.”<sup>10</sup> But DPU does not cite any case to support its novel position, and at hearing, DPU could not identify any instance in which the Commission applied the foreseeability criterion in this manner.<sup>11</sup>

The Commission has always considered whether costs were foreseeable “at the time of a rate-making proceeding[.]”<sup>12</sup> DPU acknowledges that the scale of the increase in insurance premiums since 2020 was not foreseeable when the Commission last set the Company’s rates.<sup>13</sup> The Company’s excess liability insurance premiums increased by 1,067 percent between 2020

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<sup>8</sup> Direct Testimony of Jeffrey S. Einfeldt at 7 (Nov. 29, 2023).

<sup>9</sup> DPU Prehearing Brief at 15-16.

<sup>10</sup> *Id.* at 16.

<sup>11</sup> Hr’g. Tr. at 89:1-11.

<sup>12</sup> *See MCI*, 840 P.2d 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.”).

<sup>13</sup> Direct Testimony of Jeffrey S. Einfeldt at 7 (“[O]ne could not have guessed in 2020 that rates would rise to where they are now[.]”). While DPU asserts that the Company was aware of pending litigation relating to the Labor Day wildfires in 2020 during the Company’s last rate case, as explained at the hearing, the litigation that DPU references all commenced after the Company had already purchased its excess liability insurance in August 2020, Hr’g. Tr. at 55:12-23, which was the basis of \$10.5 million total-Company included for excess liability insurance in the Company’s rates. Direct Testimony of Shelley E. McCoy at 3.

and 2023,<sup>14</sup> despite the fact that the Company obtained comparable coverage levels in 2023 as it did in 2020.<sup>15</sup> In fact, the extraordinary increase in excess liability insurance premium expenses that the Company experienced in 2023 was not foreseeable as recently as 2022.<sup>16</sup>

DPU's position on how to measure foreseeability in this case is inconsistent with DPU's position in previous deferred accounting dockets. DPU has guidelines it uses to determine whether a requested deferral is in the public interest ("Deferral Guidelines").<sup>17</sup> The Deferral Guidelines provide that an event is unforeseen "where the impacts could not be anticipated in the ratemaking process."<sup>18</sup> While DPU admitted that it considered its Deferral Guidelines when preparing testimony in this docket,<sup>19</sup> DPU's position on foreseeability is directly at odds with the Deferral Guidelines. DPU explained that the Deferral Guidelines should be read in context with the testimony DPU provided in the Powerdale case, Docket Nos. 06-035-163, 07-035-04, and 07-035-14 ("Powerdale").<sup>20</sup> But in Powerdale, DPU took the position that certain costs were not eligible for deferred accounting because they "could have been foreseen and included *in a past rate case*."<sup>21</sup> DPU's position in Powerdale further undermines its novel position here.

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<sup>14</sup> Rebuttal Testimony of Shelley E. McCoy at 3.

<sup>15</sup> Hr'g. Tr. at 42:12-14.

<sup>16</sup> *Id.* at 42:20-25.

<sup>17</sup> RMP Cross-Exhibit 1 at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 1.

<sup>20</sup> *Id.* at 2; Hr'g. Tr. at 77:22-78:17.

<sup>21</sup> RMP Cross-Exhibit 2 at 4 (emphasis added); *see also id.* at 4-5 ("The Division believes that [the Company] had adequate time and knowledge of the Grid West situation to present this information in its last rate case filing or at least during the proceedings of the last rate case which was filed March 2006."); *see also id.* at 11 ([DPU] believes there should be no deferral of cost because they would or could have been foreseen or should have been included in the last rate case.").

At the hearing, DPU attempted to explain the differences in its application of the foreseeability criterion in this case compared to its position in Powerdale by stating that the Company sought the Powerdale deferral only one year after the Company's most recent rate case, and deferred accounting orders become more impactful as the time from the previous rate case increases.<sup>22</sup> However, the fact that more time has passed since the Company's last rate case only strengthens the Company's position that these costs were not foreseeable when the Commission last set the Company's rates. For example, in Powerdale the Commission denied deferred accounting orders for certain costs because those costs "had occurred or were occurring[]" at the time of its last ratemaking proceeding."<sup>23</sup> By contrast, the excess liability insurance premium expenses included in the Company's rates in the last rate case were based on the costs of the Company's test year, and it was not foreseeable that the Company's current expenses would increase so dramatically.

Consistent with Commission and Utah court precedent, the positions DPU has taken in previous deferral proceedings, and DPU's Deferral Guidelines, the Commission should consider whether the increase in excess liability insurance premiums was foreseeable *at the time of the Company's last rate case*. On that question the record is clear and undisputed—no party contends that the increase was foreseeable in 2020.<sup>24</sup> Because there is similarly no dispute on whether the expense is extraordinary, the Commission should approve the Company's application.

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<sup>22</sup> Hr'g. Tr. at 82:14-83:3.

<sup>23</sup> Docket Nos. 06-035-163, 07-035-04, and 07-035-14, Report and Order at 19.

<sup>24</sup> Direct Testimony of Jeffrey S. Einfeldt at 7; *see also* Hr'g. Tr. at 81:13-20 (acknowledging that DPU would have objected if the Company requested \$122.6 million in excess liability insurance premium expenses in the 2020 rate case).



**B. The Company has satisfied its burden of proof in this case and will demonstrate prudence when seeking rate recovery.**

In their briefs, both DPU and the Office of Consumer Services (“OCS”) argue that the Commission should reject the Company’s application because the Company has not satisfied its burden of proof. However, DPU and OCS incorrectly apply the burden of proof for rate recovery, which the Company does not seek in this case, rather than the burden of proof the Commission has identified for utilities seeking deferred accounting orders.

DPU argues that the Company must provide more than just prima facie evidence to carry its burden.<sup>25</sup> DPU supports this argument citing to a Utah Supreme Court case in which the court stated that “the burden rests heavily upon a utility to prove it is entitled to rate relief” and that neither intervenors nor the Commission have a burden “to prove the contrary.”<sup>26</sup> DPU acknowledges that the case it cites is a rate case in which the utility sought rate recovery, but argues that applying this standard to a request for deferred accounting “is appropriate.”<sup>27</sup>

OCS similarly argues that the Company has not provided evidence that the excess liability insurance premium expenses were prudently incurred, and that the request for deferred accounting should be denied because an unidentified portion of the costs may have resulted from recent litigation in Oregon, *James v. PacifiCorp*,<sup>28</sup> in which the Company was found liable for wildfires in 2020.<sup>29</sup> To support this argument, OCS relies on Commission orders in rate case proceedings and Utah court decisions reviewing those orders for the assertion that “when

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<sup>25</sup> DPU Prehearing Brief at 5-6.

<sup>26</sup> DPU Prehearing Brief at 5 (quoting *Utah Dep’t of Bus. Regul., Div. of Pub. Utils. v. Pub. Serv. Comm’n*, 614 P.2d 1242, 1245 (Utah 1980)).

<sup>27</sup> DPU Prehearing Brief at 5 n.16.

<sup>28</sup> No. 20-CV-33885 (Cir. Ct. Multnomah Cnty., June 12, 2023).

<sup>29</sup> OCS Prehearing Brief at 3, 6-7 (Jan. 9, 2024).

evidence concerning prudence has not, and cannot, be identified, the utility fails to carry its burden of proof[.]”<sup>30</sup>

Both DPU’s and OCS’s arguments apply the incorrect burden of proof because the Company does not seek rate recovery or a prudence determination in this case. In proceedings for approval of deferred accounting, the Commission requires a utility seeking a deferral to meet “its burden to demonstrate the [expenses] were unforeseeable and are extraordinary.”<sup>31</sup> As discussed above, the Company has demonstrated that its increased excess liability insurance premium expenses satisfy that standard. Therefore, the Company has met its burden of proof in this case.

The Company acknowledges that, when it seeks rate recovery, it must provide evidence that its increased insurance costs were prudently incurred. However, DPU’s and OCS’s assertion that the Company must prove prudence of the expenses before the Commission issues a deferred accounting order is incorrect. In fact, at the hearing DPU acknowledged that the Company’s approach of seeking a deferred accounting order but reserving issues of recovery and prudence for a subsequent rate case is “consistent with [DPU’s] understanding of a deferred accounting order”<sup>32</sup> and with DPU’s Deferral Guidelines, which require that a “[r]ate case must be filed for recovery of the deferral to be considered[.]”<sup>33</sup> As DPU’s Deferral Guidelines make clear, issues regarding “[p]rudence and reasonableness of [deferred] expenditures” will be addressed at the subsequent rate case when the Company seeks rate recovery.<sup>34</sup> Citing these guidelines, DPU

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<sup>30</sup> *Id.* (citing *Comm. of Consumer Servs. v. Pub. Serv. Comm’n*, 75 P.3d 481, 486 (Utah 2003)).

<sup>31</sup> Docket No. 18-035-48, Order at 5-6.

<sup>32</sup> Hr’g. Tr. at 84:18-85:7.

<sup>33</sup> RMP Cross-Exhibit 1 at 3.

<sup>34</sup> *Id.*

acknowledged at the hearing that DPU and other parties will raise their prudence concerns in the upcoming rate case.<sup>35</sup>

As in past cases,<sup>36</sup> the Commission should approve deferred accounting for these unforeseeable and extraordinary expenses now and, in the upcoming rate case, require the Company to bear the burden to demonstrate prudence before allowing cost recovery.

**C. Deferred accounting is appropriate for the Company's unforeseeable and extraordinary expenses, which could not be fully recovered in a general rate case.**

DPU argues that the Company should have filed a general rate case to recover the increased excess liability insurance premiums instead of seeking deferred accounting.<sup>37</sup> DPU asserts that a general rate case would allow parties an opportunity to comprehensively review all revenues and costs, while a deferral and subsequent proceeding to include deferred expenses in rates would be “truncated.”<sup>38</sup> In its Pre-Hearing Brief, the Company explained in detail that Utah law does not require the Company to complete a general rate case proceeding instead of seeking deferred accounting for unforeseeable and extraordinary costs like the Company's increased

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<sup>35</sup> Hr'g. Tr. at 86:17-87:5.

<sup>36</sup> *See, e.g.*, Docket Nos. 06-035-163, 07-035-04, and 07-035-14, Report and Order at 16 (“Authorizing certain expenses to be accounted for through an accounting order does not ‘pre-approve’ them for inclusion in the determination of a utility’s revenue requirement in some future ratemaking proceeding. They are still subject to analysis and adjustment at the time a revenue requirement determination is to be made.”); *see also In the Matter of the 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; In the Matter of the Application of Rocky Mountain Power for an Accounting Order to Defer the Costs Related to the Decommissioning of the Carbon Plan; In the Matter of the Application of Rocky Mountain Power for a Deferred Accounting Order Regarding Costs Incurred for Naughton Unit 3 Selective Catalytic Reduction System, Pulse Jet Fabric Filter System and Related Environmental Upgrades*, Docket Nos. 11-035-200, 12-035-79, and 12-035-80, Report and Order at 16 (Sept. 19, 2012) (“[A] Commission order authorizing deferred accounting for any deferred Carbon Removal Costs should be construed as determining prudence, recovery or ratemaking treatment of such costs.”).

<sup>37</sup> DPU Prehearing Brief at 6-9.

<sup>38</sup> *Id.* at 7.

excess liability insurance premiums.<sup>39</sup> Additionally, DPU appears to oppose the Company's request for deferred accounting on the basis that deferrals may result in single-issue ratemaking. However, while single-issue ratemaking is generally prohibited, the Commission has recognized that *MCI* allows single-issue ratemaking for expenses that are unforeseen and extraordinary.<sup>40</sup> As discussed above, the Company has demonstrated compliance with the *MCI* criteria, and for that reason, DPU's single-issue ratemaking concerns do not provide a basis to reject the Company's application.

At the hearing, DPU clarified its position to state that the Company should file a rate case instead of seeking a deferred accounting order "when the Company could reasonably have filed a general rate case to address the issue[.]"<sup>41</sup> However, DPU acknowledged that it was not aware of any case in Utah where the Commission or a court had prohibited a utility from seeking deferred accounting on the basis that other regulatory tools were available to recover the costs at issue.<sup>42</sup> DPU further acknowledged that this standard does not appear in DPU's own Deferral Guidelines and is instead a criterion that DPU created and proposed only in this deferral proceeding.<sup>43</sup> The Commission should reject DPU's new criterion limiting utilities' ability to request deferred

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<sup>39</sup> Rocky Mountain Power's Pre-Hearing Brief at 14-16 (Jan. 10, 2024).

<sup>40</sup> See *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, Redacted Order at 30 (Dec. 30, 2020) (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, Docket No. 18-035-48, Order at 5 ("[P]rinciples of both retroactive ratemaking and single-issue ratemaking require [the Commission] to apply the legal standard articulated in *MCI*.").

<sup>41</sup> Hr'g. Tr. at 87:20-24.

<sup>42</sup> *Id.* at 89:21-90:1.

<sup>43</sup> *Id.* at 88:9-89:5.

accounting because DPU's proposal is not supported by previous decisions from the Commission or Utah courts.

Additionally, DPU asserts that the Company could have recovered most of its insurance premium expenses through a general rate case with interim rates.<sup>44</sup> As an initial matter, DPU argued in its testimony that the Company could have recovered all its increased excess liability insurance premiums by filing a general rate case as it learned of these increased expenses,<sup>45</sup> but at the hearing, DPU acknowledged that the Company could not have recovered the entirety of these extraordinary expenses.<sup>46</sup> Even with this clarification, DPU's assertion that the Company could have recovered these increased expenses through interim rates is incorrect for multiple reasons.

First, DPU acknowledges that its assertion is predicated on an assumption that the Company would have been able to use a future test period in a potential general rate case.<sup>47</sup> But the Commission determines an appropriate test year to be used in a general rate case.<sup>48</sup> As a result, there is no guarantee that the Company could have received interim rates to recover some portion of its unforeseeable and extraordinary insurance premium expenses.

Second, even if the Commission were to approve a future test year for a general rate case, the proceedings to select that test year increase the time necessary to prepare a general rate

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<sup>44</sup> DPU Prehearing Brief at 9.

<sup>45</sup> Direct Testimony of Jeffrey S. Einfeldt at 4.

<sup>46</sup> Hr'g. Tr. at 104:22-105:1 (acknowledging that if the Company had sought a general rate case there would be a "gap for a few months" for which they would not recover the increased excess liability insurance premium expenses).

<sup>47</sup> *Id.* at 90:14-18.

<sup>48</sup> Utah Code Ann. § 54-4-4(3).

case.<sup>49</sup> At the hearing, DPU acknowledged that selecting the test year in a rate case is “a fairly long and bureaucratic process,”<sup>50</sup> which would further increase the “gap”<sup>51</sup> for which the Company could not recover through a rate case its unforeseeable and extraordinary excess liability insurance premiums.

Relatedly, DPU argues that a general rate case is necessary to ensure a “holistic” consideration of costs and revenues, including potential revenue increases that may offset the extraordinary increase in excess liability insurance premiums.<sup>52</sup> However, if the Commission approves the Company’s request for a deferred accounting order, the Company would then seek to recover the deferred costs in a general rate case,<sup>53</sup> which the Company intends to file in late April 2024.<sup>54</sup> In that rate case, the Commission will consider recovery of the deferred amounts in the context of a holistic update to the Company’s costs and revenues.

**D. Issues relating to offsets and partial disallowance of insurance premium expenses are outside the scope of this deferral proceeding.**

DPU and OCS raise in their briefs several arguments regarding offsets and disallowances that they assert the Commission should consider relating to recovery of the Company’s excess liability insurance premiums. Most notably, both DPU and OCS argue that an unspecified portion of the Company’s insurance costs may have resulted from the recent litigation in *James*,

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<sup>49</sup> See generally Utah Administrative Code R746-700-22 (identifying the additional information requirements that must be included in a general rate case application when the utility uses a forecasted test period).

<sup>50</sup> Hr’g. Tr. at 90:19-24.

<sup>51</sup> *Id.* at 104:22-105:1.

<sup>52</sup> DPU Prehearing Brief at 7-8.

<sup>53</sup> Direct Testimony of Kevin C. Higgins at 3.

<sup>54</sup> Hr’g. Tr. at 13:22-14:1; Docket No. 24-035-04, Notice of Intent to File General Rate Case and Request for Approval of a Test Period.

which found the Company liable for damages resulting from wildfires in Oregon.<sup>55</sup> While DPU and OCS may raise these arguments when the Company seeks to recover the deferred expenses in its upcoming rate case, they are not implicated by the threshold question presented here regarding whether the Company's application meets the *MCI* standards.

In its prehearing brief, OCS further argues that, because the Company has not quantified the potential impact from *James*, the Company has not calculated what percentage of its excess liability insurance premium expenses is eligible for deferral, and therefore cannot demonstrate that the deferred expenses are extraordinary.<sup>56</sup> Approval of deferred accounting is based on the amount the party seeks to defer, not the amount that may ultimately be recovered. OCS's argument would prevent the Commission from approving deferred accounting for any expenses, since the utility cannot know what the Commission will include in rates until it seeks recovery in a future rate case.<sup>57</sup> Even assuming that some portion of the Company's excess liability insurance premium expenses is ultimately disallowed, that does not change the fact that the premium expenses have had an extraordinary impact on the Company's earnings—a fact that OCS acknowledges.<sup>58</sup>

OCS also argues that the Company must demonstrate that the increased expenses did not result from Company mismanagement before the Commission may approve a deferred accounting order.<sup>59</sup> As an initial matter, any argument alleging mismanagement effectively

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<sup>55</sup> DPU Prehearing Brief at 12; OCS Prehearing Brief at 9-10.

<sup>56</sup> OCS Prehearing Brief at 6.

<sup>57</sup> See Docket Nos. 06-035-163, 07-035-04, and 07-035-14, Report and Order at 16 (“In a future ratemaking proceeding, the Commission could ultimately conclude that [the deferred expenses] will not be included at all in making a revenue requirement determination upon which rates would be set.”).

<sup>58</sup> Surrebuttal Testimony of Alyson Anderson at 2.

<sup>59</sup> OCS Prehearing Brief at 5.

argues that the costs were imprudently incurred, and for that reason, should be raised when the Company seeks cost recovery. Moreover, while OCS has not provided any evidence of Company mismanagement, the Company has provided substantial evidence demonstrating that its increased excess liability insurance premium expenses result from the rising costs of insurance tied to larger and more destructive wildfires across the western United States.<sup>60</sup> These destructive wildfires have caused insurers to decrease the level of coverage they will provide at certain price points.<sup>61</sup> As a result, even though the Company purchases comparable levels of insurance,<sup>62</sup> the cost of that insurance has increased substantially. The evidence shows that changes in the insurance market caused the increased insurance costs, not Company mismanagement.

Relatedly, OCS argues that, if the Commission issues a deferred accounting order for the Company's excess liability insurance premium expenses, the Commission should not allow full recovery of the deferred amount but should instead share these expenses between customers and shareholders.<sup>63</sup> At the hearing, OCS acknowledged that a determination of the appropriate share of the excess liability insurance premium expenses to be allocated to shareholders could be determined in the Company's next general rate case if the Commission approves the Company's request for a deferred accounting order.<sup>64</sup> This is consistent with the Company's position that cost recovery issues should be addressed in the Company's upcoming rate case.

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<sup>60</sup> Direct Testimony of Mariya V. Coleman at 6 (Oct. 13, 2023).

<sup>61</sup> Hr'g. Tr. at 59:12-16 ("So what has -- what has happened is the amount of insurance that insurers might normally sell, for example, in \$25 million pieces, has significantly shrunk, where many insurers will now sell only -- only a small piece.").

<sup>62</sup> *Id.* at 42:12-14.

<sup>63</sup> *Id.* at 108:20-22.

<sup>64</sup> *Id.* at 111:7-11.



**E. The Company requests deferred accounting orders in good faith and appropriately seeks to defer only expenses that are unforeseeable and extraordinary.**

In its surrebuttal testimony, DPU raised a concern that “[f]requent and improper use of deferred accounting” could lead to “diluting the general ratemaking process and turning ratemaking into a reimbursement exercise instead of a prospective process[.]”<sup>65</sup> However, at the hearing DPU clarified that the Company has not filed excessive deferral requests in recent years.<sup>66</sup> In fact, since the Commission last set the Company’s rates in 2020, the Company has filed only one other request for deferral, which the Company withdrew.<sup>67</sup> Since the Company does not frequently seek deferrals, DPU’s concern regarding a potential dilution of rate case proceedings is unwarranted.

Relatedly, a concern arose at the hearing that deferred accounting enables a utility to set its prospective rates based on both future costs and retroactive recovery of the deferred balance.<sup>68</sup> While retroactive and single-issue ratemaking are generally prohibited, the Utah Supreme Court recognizes a limited exception to those prohibitions for costs that are unforeseeable and extraordinary.<sup>69</sup> As the Company explained at the hearing, the requirement that expenses must have an extraordinary impact on a utility’s earnings appropriately limits utilities to seeking

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<sup>65</sup> Surrebuttal Testimony of Jeffrey S. Einfeldt at 3 (Jan. 9, 2024).

<sup>66</sup> Hr’g. Tr. at 94:23-95:3.

<sup>67</sup> *Application of Rocky Mountain Power for a Deferred Accounting Order Regarding Wildfire Claims*, Docket No. 23-035-30, Notice at 1 (Sept. 15, 2023). At the hearing, DPU mentioned two additional deferral dockets, one relating to the Company’s pension expenses and another relating to expenses accrued during the COVID-19 pandemic. Hr’g. Tr. at 96:13-21. However, both those deferral orders were approved before the final order in the Company’s last rate case, which was issued December 30, 2020. Docket No. 18-035-48, Order (May 22, 2019); Docket No. 20-035-17, Order Approving Accounting Order (Sept. 15, 2020).

<sup>68</sup> Hr’g. Tr. at 30:12-25.

<sup>69</sup> *MCI*, 840 P.2d at 772; *see also* Docket No. 18-035-48, Order at 5 (applying *MCI* criteria as exceptions to prohibitions against both retroactive and single-issue ratemaking).

deferred accounting only for very large, unforeseeable changes in expenses.<sup>70</sup> No party in these proceedings challenges whether the Company's increased excess liability premium expenses are extraordinary.<sup>71</sup>

Finally, DPU raises a concern in its prehearing brief that a deferral account would continue to accrue until the Company seeks a prudence review in a future rate case, which could result in the deferred excess liability insurance premium expenses "possibly accruing for years" and "grow[ing] to be quite large before a prudence examination is undertaken."<sup>72</sup> However, the Company explained at the hearing that it intends to file a general rate case in Utah later this year.<sup>73</sup> The Company proposes that the deferral remain in place only until the Company's increased insurance costs are reflected in base rates.<sup>74</sup> The Company's plan to file a general rate case in April 2024 addresses DPU's concern that the deferral is open-ended and could remain pending for the foreseeable future.

**F. The Company has sought, and in some cases already received, similar relief for its increased excess liability insurance premium expenses in other states.**

The Company has requested similar deferral or recovery of these increased costs in Idaho, Oregon, California, Washington, and Wyoming.<sup>75</sup> As the Company explained in its Prehearing Brief, the Idaho Public Utilities Commission approved the Company's deferral request

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<sup>70</sup> Hr'g. Tr. at 30:19-25.

<sup>71</sup> Direct Testimony of Kevin Higgins at 3; Surrebuttal Testimony of Alyson Anderson at 2; DPU Prehearing Brief at 17.

<sup>72</sup> DPU Prehearing Brief at 3 n.10.

<sup>73</sup> Hr'g. Tr. at 13:22-14:1.

<sup>74</sup> *Id.* at 14:4-10.

<sup>75</sup> Direct Testimony of Shelley E. McCoy at 5 (Oct. 13, 2023).

on December 29, 2023.<sup>76</sup> Several of the remaining dockets have progressed since the Company filed its Pre-Hearing Brief.

The Public Utility Commission of Oregon approved the Company's request for a deferred accounting order,<sup>77</sup> based in part on its conclusion that the 90-basis-point impact to the Company's earnings is material.<sup>78</sup> In California, the Administrative Law Judge presiding over the Company's request issued a proposed decision that would allow the Company to track, among other things, "[p]ayments made for wildfire insurance premiums[.]"<sup>79</sup> The proposed decision may be considered at the California Public Utilities Commission's March 21, 2024, Business Meeting.<sup>80</sup> Finally, in Washington, the Utilities and Transportation Commission ("WUTC") held a hearing on January 12, 2024, reviewing the multi-party stipulation in the Company's rate case, which would resolve issues relating to recovery of the Company's insurance premiums. The parties in that proceeding have submitted their final briefs to the WUTC and await a final decision.

### III. CONCLUSION

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 the general rate case that the Company intends to file in April 2024.

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<sup>76</sup> *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).

<sup>77</sup> *In the Matter of PacifiCorp, dba Pacific Power, Application for Authorization of Deferred Accounting Related to Insurance Costs for Wildfires*, OPUC Docket UM 2301, Order No. 24-021 (Jan. 24, 2024).

<sup>78</sup> *Id.* at Appendix A at 4.

<sup>79</sup> *Application of PacifiCorp (U901E) for Authority to Establish the Wildfire Expense Memorandum Account*, Application 23-06-017, Proposed Decision at 8-9 (Feb. 14, 2024).

<sup>80</sup> *Id.* at 1.

Dated: February 26, 2024.

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**CERTIFICATE OF SERVICE**

Docket No. 23-035-40

I hereby certify that on February 26, 2024, a true and correct copy of the foregoing was served by electronic mail to the following:

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