- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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
Application of Rocky Mountain Power for a Deferred Accounting Order Regarding Insurance Costs	DOCKET NO. 23-035-40
Rocky Mountain Power's 2023 Wildland Fire Protection Plan	DOCKET NO. 23-035-44 ORDER DENYING REQUEST FOR REVIEW

ISSUED July 3, 2025

On April 25, 2025, the PSC issued an order ("Order"), establishing rates and resolving all outstanding issues in these three consolidated dockets. The PSC refrains from restating the lengthy procedural histories of the respective dockets here, which are discussed in the Order and incorporated here by reference.

On May 27, 2025, Rocky Mountain Power (RMP) filed a Request for Review or, in the Alternative, Rehearing of the Order ("Request"). On June 11, 2025, the following parties each filed responses to RMP's Request: the Division of Public Utilities (DPU), the Office of Consumer Services (OCS), Western Resource Advocates (WRA), the Utah Large Customer Group (UTLCG), and the Utah Association of Energy Users (UAE).

On June 26, 2025, the PSC issued an Order Granting Partial Reconsideration and Notice that Request for Reconsideration Is in All Other Respects Denied ("Order Granting Partial Reconsideration"). The PSC explained that the Request is a 129-page

document, and the parties' responses collectively span nearly 200 pages. The PSC recognized the parties' significant efforts in preparing their filings and that they deserved a full order explaining the bases for the PSC's decision on review. In light of the number and complexity of the arguments, and owing to other exigent circumstances, the PSC gave notice it would require additional time to issue such an order. Therefore, as the Request would otherwise be denied, in its entirety, by operation of statue on June 26, 2025, the PSC issued the Order Granting Partial Reconsideration on that date, granting partial reconsideration on the one issue the PSC had identified required correction. The PSC gave notice the Request is in all other respects denied and indicated a full order would follow by July 3, 2025.

Introduction

At the outset, the PSC wishes to address the hyperbolic, intemperate, and occasionally disrespectful tone of RMP's Request. RMP flings baseless, sweeping accusations that the PSC "cite[s] no evidence at all" for "many" of its "conclusions" and "ignore[s] evidence … when it would lead to a different result."[1] Worse, RMP impugns the integrity of the PSC, insinuating the Order "as a whole, appears [to be] outcome motivated" for the purpose of denying RMP prudently incurred costs "under the guise" of controlling costs.[2] This offensive characterization is untrue, unhelpful in what has been a careful deliberative process, and the PSC is disappointed that RMP would

[1] Request at 9.
[2] *Id*. at 13.

stoop to what can be construed as an attack on the impartiality and integrity of the PSC.

In truth, the Order runs over 170 pages and contains nearly 400 footnotes that endeavor to cite to the record wherever support for a finding or observation appears appropriate. From the last hearing date, the PSC had approximately four weeks to draft the order and, whatever faults it may or may not have, it is the product of a sincere and earnest effort to correctly apply governing law and reach findings of fact based on substantial evidence. The PSC recognizes that RMP may strongly disagree with some of the PSC's findings and conclusions, but they are the product of a substantial and sincere effort to get these issues right. The fact that RMP disagreed with the PSC's analysis and Order was not reason to make unsubstantiated attacks and to so baselessly suggest bias.

The PSC fails to understand RMP's approach to advocacy. If RMP wishes to take such a tone when seeking judicial review, that is RMP's prerogative (though appellate courts generally frown on it). To commence a request for reconsideration, on a matter important to one's client, with several pages of unfocused, generalized aspersions about the competence and integrity of the body whose mind one is ostensibly attempting to change is profoundly unhelpful.

The PSC appreciates that RMP is very disappointed with some of the decision points in the Order. A lot of money is at stake. Consider though, if the PSC had allowed RMP to recover 44 percent of its new and extraordinarily expensive excess liability

insurance premiums from Utah ratepayers even though Utah claims in recent years were de minimis ($5.2 million) relative to cumulative liability in RMP's other states ($1.87 billion).[3] Perhaps Utah customers would be tempted to perceive that decision as "outcome driven." We are confident, however, that most parties who appear before the PSC anticipate that we simply will do our best to fairly weigh the evidence and apply the law, regardless of the outcome.

RMP also mischaracterizes the order in fundamental and unhelpful ways. For example, RMP states the PSC found RMP "seeks to *over*-mitigate fire risks in Utah" with the PSC "relying on the lack of a cost-risk analysis to reject" RMP's 2023 Wildland Fire Mitigation Plan.[4] This is patently false. First, RMP flatly misapprehends and mischaracterizes its burden of proof, a recurring issue. The PSC did not "rely" on anything when declining to approve the fire plan; the PSC *applied* the law, which clearly requires evidence that a plan's costs are proportionate to its benefits. If RMP had responsibly developed meaningful evidence about the cost-effectiveness of its plan, then RMP could have *relied* on that evidence to meet its burden of proof.

Similarly, the notion the PSC found RMP was attempting to "over-mitigate" is completely unfounded and offensive. The PSC approved a higher level of O&M costs for fire mitigation than RMP was seeking.[5] The PSC also approved recovery of more

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[3] *See* Order at 84, n.177.
[4] Request at 10-11.
[5] Order at 144-45 (explaining that while RMP acquiesced to OCS's recommended $24.9 million O&M budget for the Test Year, the PSC is allowing RMP to recover the full

than $50 million in annual capital expenditures. As for the more than $100 million in annual additional capital expenditures RMP sought and the PSC disallowed, RMP provided no evidence or analysis whatsoever allowing the PSC to responsibly evaluate whether those investments would constitute rational, reasonable, and prudent investments in fire mitigation relative to other mitigation measures.

In sum, the PSC is confident the Order undergirds, rather than "undermines[,] the state's long-standing history of regulatory steadiness."[6] Utah lawmakers, regulatory agencies, and stakeholders all have a demonstrated history of working collaboratively with RMP to ensure it has the resources it requires to provide reliable and adequate service to Utahns at a reasonable cost. Steadiness, however, does not require Utahns to tolerate unfairness, which Utah law proscribes in ratemaking. RMP operates in six states subject to six regulatory commissions while serving the interest of its shareholders. Utah customers are not RMP's guarantor of last resort for skyrocketing and imprudent costs that RMP incurs to protect its shareholders from policies and events arising in other states.

$28.4 million RMP initially sought because of the strong public interest in fire mitigation and the substantial evidence supporting the efficacy and efficiency of O&M directed toward fire mitigation).

[6] Request at 9.

Discussion, Findings, and Conclusions on Review

The PSC does not address every contention that RMP raises in its 129-page filing. Unless this order indicates otherwise, any argument or request not expressly addressed in this order is rejected and denied.

A. Legal Standards

A utility unquestionably "bears the burden of presenting the evidence necessary to support the [PSC's] 'essential findings[,]'" i.e., the findings the law requires the PSC to make to provide the relief the utility requests.[7] "In the regulation of public utilities by governmental authority, a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the [PSC] … or any interested party or protestant[,] to prove the contrary."[8]

The PSC is charged with setting rates that are just and reasonable. "The scope of definition 'just and reasonable'" is broad, extending to the impact "on the well-being of the [S]tate of Utah."[9] Generally, a utility is entitled to recover through rates all its prudently-incurred costs provided that such recovery results in just and reasonable rates. The Legislature has enumerated four standards the PSC must consider when evaluating the prudence of a utility's action or expense: (i) "ensure just and reasonable rates for the retail ratepayers … in this state"; (ii) "focus on the reasonableness of the

[7] *Comm. of Consumer Serv. v. PSC*, 2003 UT 29, ¶ 14, 75 P.3d 481.
[8] *Utah Dep't of Bus. Regulation v. PSC*, 614 P.2d 1242, 1245 (1980).
[9] Utah Code § 54-3-1.

expense resulting from the action of the public utility judged as of the time the action was taken"; (iii) "determine whether a reasonable utility, knowing what the utility knew or reasonably should have known at the time of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action"; and (iv) "apply other factors determined by the [PSC] to be relevant, consistent with the [foregoing] standards."[10]

RMP misconstrues findings of fact in prior cases as conclusions of law. Legal conclusions in prior orders function as rules of law. Factual findings do not. It is obvious that the facts and evidence presented here were not the same as presented in prior cases and that, when faced with different circumstances, the PSC may make different findings. Moreover, even a conclusion of law can be changed. "That does not mean, however, that a rule of law established in adjudication can never be changed by the agency that established it."[11] The PSC may overrule a prior decision "when there is a reasonable basis for doing so."[12] As the Utah Supreme Court has explained: "'Certainly an administrative agency which has a duty to protect the public interest ought not be precluded from improving its collective mind should it find that a prior

[10] Utah Code § 54-4-4(4).
[11] *Salt Lake Citizens Congress v. Mountain States Tel. & Tel. Co.*, 846 P.2d 1245, 1253 (Utah 1992); *see also* Utah Code § 63G-4-403(5)(h)(iii) (providing a reviewing court shall grant relief if, inter alia, the agency's action was "contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency").
[12] *Salt Lake Citizens Congress*, 846 P.2d at 1253.

decision is not now in accordance with its present idea of what the public interest requires.'"[13] The PSC is not bound to never vary from past PSC orders. Different circumstances and facts may result in different outcomes.

B. The PSC Affirms Its Findings and Conclusions Regarding RMP's 2023 Wildland Fire Plan.

1. The Utility Bears the Burden of Proof When Seeking Relief from the PSC, and the PSC Categorically May Not Lawfully Approve a Wildland Fire Plan Unless the PSC Finds the Plan Appropriately Balances Cost with Risk.

As discussed in the Order, in 2020, the Legislature enacted the Wildland Fire Planning and Cost Recovery Act ("Act"),[14] which required electric utilities to submit a wildland fire protection plan ("Plan") by June 1, 2020, and to submit future Plans by October 1 of every third year after 2020.[15] The Act, passed in the 2020 General Session, became effective on May 12, 2020. Consistent with the Act and to implement its mandates, the PSC adopted R746-315 ("Rule"), effective December 9, 2020. The Rule establishes a process for the PSC's review of Plans and annual reports the Act requires electric utilities to file regarding implementation of their Plans.

The Act states, as it has from its inception, the PSC "shall approve a [Plan] … if the [P]lan: (i) is reasonable and in the public interest; and (ii) appropriately balances the costs of implementing the [P]lan with the risk of a potential wildland fire."[16] The

[13] *Id.* at 1253 (quoting *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759, 765-66 (1969)).
[14] The Act is codified at Utah Code § 54-24-101, et seq.
[15] Utah Code § 54-24-201(3)(a).
[16] *Id.* at § 54-24-201(3)(c).

Rule restates these requirements for approval and further provides the PSC "shall approve a … [P]lan to the extent that the evidence in the record establishes" the two statutory requirements.[17]

The PSC's approval of a Plan has significant implications because, under the Act, the PSC must authorize an electric utility's deferral and recovery of costs it incurs to implement an approved Plan, provided those costs are not already included in base rates.[18]

In essence, the Act incentivizes electric utilities to invest in wildfire prevention by assuring them that ratepayers will be required to compensate them for the costs they incur to implement their Plans. To protect ratepayers against runaway and inefficient costs, the Legislature wisely mandated that utilities are only entitled to such recovery for an *approved* Plan and directed the PSC to approve a Plan only if it appropriately balances cost and risk.

As the party seeking approval of a Plan that will entitle it to recover enormous sums of money from ratepayers in the future, RMP bears the burden to show the Plan appropriately balances cost and risk and is in the public interest.

[17] Utah Admin. Code R746-315-2(3).
[18] Utah Code § 54-24-202(3).

2. RMP's Assertions that Abiding the Clear, Plain Language of the Law Amounts to Imposing a "Brand New Requirement," Imposes an "Arbitrary Moving Standard," and Requires RMP to "Prove a Negative" are Meritless; the PSC Could Not Lawfully Approve the 2023 Plan Because the Record Does Not Support the Statutorily-Required Findings.

Finding no support for its position that the PSC erred in declining to approve its 2023 Utah Wildfire Mitigation Plan ("2023 Plan") in the text of the Act or Rule, RMP declares the PSC's decision "was improperly based on [RMP's] alleged failure to include a cost-benefit analysis[,]" as though the PSC declined to approve the Plan on a technicality it erroneously perceived to exist.[19]

This argument wildly mischaracterizes the Order and continues to ignore the inescapable language of the Act. The Order states:

> In sum, the PSC cannot and will not approve a wildfire plan that would burden ratepayers with hundreds of millions in new capital spending in the absence of any evidence whatsoever that those investments provide efficient wildfire mitigation. We find the record does not contain substantial evidence that the 2023 Plan appropriately balances the costs of implementing the plan with the risk of potential wildland fires. Similarly, given the dearth of evidence, we cannot find the 2023 Plan to be reasonable and in the public interest.[20]

The Order is clear. The PSC declined to approve the Plan because the record does not contain substantial evidence to support the PSC making the findings that are plainly, unambiguously requisite to its approval under the Act, not because RMP failed to include a cost-benefit analysis when it filed the 2023 Plan.

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[19] Request at 24.
[20] Order at 129-30.

Nevertheless, RMP insists "[t]he Order is replete with references" to RMP's failure to provide a cost-benefit analysis and that this is somehow indicative of the PSC imposing a "brand-new requirement" to include such an analysis in its Plan.[21] RMP points to the PSC's order approving RMP's 2020 Wildland Fire Plan ("2020 Plan").[22] As the Order more thoroughly discusses, RMP's 2020 Plan was the first RMP filed under the Act, and — pursuant to the statutory deadline — RMP filed it mere weeks after the Act became effective and less than six months after the Legislature enacted it.[23] After OCS expressed concern the 2020 Plan failed to include a demonstration the Plan appropriately balanced cost and risk, RMP provided assurance future plans would better address the issue,[24] and the PSC approved the Plan after finding it "appropriately balance[d] the costs of implementing it with the risk of potential wildland fires."[25] As to the OCS's expressed concern, the PSC

[21] Request at 25, 28.
[22] *RMP's Utah Wildland Fire Protection Plan*, Docket No. 20-035-28 ["2020 Plan Docket"], Utah Wildland Fire Protection Plan filed June 1, 2020.
[23] The PSC noted in the Order: "RMP had a full three-year period to develop the 2023 Plan, as opposed to mere months" for the 2020 Plan. Order at 128. In emphasizing this point, the Order, at n.275, mistakenly references the date RMP filed its 2023 Plan when referring to the date RMP filed the 2020 Plan. The error was inadvertent, but the underlying point is correct: RMP had only a few months to prepare the 2020 Plan whereas it had a full three years (plus additional time afforded under the PSC's process) to prepare the 2023 Plan.
[24] 2020 Plan Docket, RMP Reply Comments filed Sept. 9, 2020, at 3; *see also* Order at 119.
[25] 2020 Plan Docket, Order Approving Wildland Fire Protection Plan issued Oct. 13, 2020 ["2020 Plan Order"], at 5. In doing so, the PSC emphasized the 2020 Plan was the first Plan RMP had filed under the Act and that it expected RMP to learn from its

reasoned "'[t]he Act does not require the Plan itself to … demonstrate that costs and risks are appropriately balanced[,]' rather it requires the PSC to make a finding, based on the record, that the [P]lan, in fact, appropriately balances risk and cost."[26]

As the Order concluded: "our interpretation and application of the Act here is and has been entirely consistent with the only legal conclusion we made in the 2020 [Plan] Order, i.e., we did not require the 2023 'Plan itself' to contain a demonstration of its cost-effectiveness."[27] If the PSC were imposing such a "new requirement," the PSC would have simply denied RMP's request to approve the 2023 Plan on June 27, 2024, when the PSC issued its Order for Additional Time and Process. Instead, the PSC explained "[o]n the record before us, the PSC simply cannot find the [2023 Plan] appropriately balances the costs of implementing the plan with the risk of potential wildland fires" and ordered additional time and process was necessary.[28] The PSC then retained an independent evaluator (IE) who "independently attempted to develop evidence outside the 'Plan itself' to determine its cost-effectiveness."[29]

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implementation of the Plan and utilize that experience in designing subsequent Plans. *See* Order at 119-120; 2020 Plan Order at 5.

[26] Order at 119 (quoting 2020 Plan Order).

[27] Order at 127-28.

[28] Docket No. 23-035-44 [hereafter "Fire Plan Docket"], Order for Additional Time and Process issued June 27, 2024. The PSC also notes the Rule expressly states the PSC "shall approve a … [P]lan *to the extent that the evidence in the record establishes* that it: (i) is reasonable and in the public interest; and (ii) appropriately balances the costs of implementing the … [P]lan with the risk of a potential wildland fire." R746-315-2(3) (emphasis added). The Rule was made effective on December 9, 2020. The PSC issued the 2020 Plan Order on October 13, 2020, nearly two months earlier.

[29] Order at 128.

Paradoxically, RMP nevertheless laments the PSC somehow "now imposes a [new] requirement that a plan sponsor provide its own formal evaluation of costs and risks to demonstrate that [a Plan's] costs and risks are appropriately balanced."[30]

While we have imposed no such requirement, it would hardly be unreasonable to expect a utility, especially one proposing to spend hundreds of millions of ratepayers' dollars, to include such an analysis in its proposed Plan. Further, as discussed above, it is ultimately RMP's burden to show the record supports the findings necessary to entitle RMP to relief. However, the PSC has not concluded that RMP must make that demonstration in the initial Plan it files or that RMP cannot rely on evidence that other parties later submit to meet its burden. Again, if the PSC had adopted such a standard, it would have simply denied approval of the 2023 Plan in June of 2024. Instead, recognizing the important public interest in fire mitigation, it ordered additional time and process to afford the utility, any other party who might support the 2023 Plan (though none did),[31] and the IE every opportunity to supplement the record to allow a responsible assessment of its cost-effectiveness.[32]

RMP's arguments that adhering to the Act's plain language creates an "arbitrary moving standard that is impossible to satisfy" and requires RMP to "prove a negative"

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[30] Request at 27.
[31] The State Division of Forestry, Fire, and State Lands ("FFSL") is an arguable exception but expressly refrains from opining as to the 2023 Plan's cost-effectiveness.
[32] The IE attempted to independently perform an analysis for inclusion in its report, but it was unable to perform the analysis "due to key data being unavailable" from RMP. IE's Report at 54, 60.

are seriously flawed. First, the PSC did not create the standard; the Legislature did, and its standard is neither arbitrary nor impossible to satisfy. Ensuring efficiency and cost-effectiveness is a recurring policy objective of the Legislature throughout Title 54.[33] It is not arbitrary that the Legislature has conditioned the PSC's approval of a Plan on an appropriate balance of cost with risk, especially where the Legislature has designed the law to ensure ratepayers ultimately bear the cost of an approved Plan.

Further, comparing expected costs and expected benefits among competing alternatives is neither impossible nor does it require "proving a negative." As the Order observes, "whether RMP could realize comparable or acceptable fire mitigation benefits at a lower cost by investing substantially more in less costly measures … and substantially less in expensive capital projects … is an obvious and important question."[34] The issue is not that RMP has not definitively shown the answer to this question is negative, but that "[t]he record does not [even] allow the PSC, or other parties, to responsibly assess whether the cost of any particular mitigation measure is remotely commensurate with [the] reduced wildfire risk" it entails.[35]

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[33] *See, e.g.,* Utah Code §§ 54-3-1 (requiring utilities furnish service that is "in all respects … efficient, just[,] and reasonable); 54-4a-6(4)(b) (charging the DPU with promoting "efficient management and operation of public utilities").
[34] Order at 126.
[35] *Id*. at 125.

As a large, sophisticated electric utility, RMP routinely advocates for the PSC to adopt, alter, or maintain complex analytical methodologies in numerous contexts.[36] Here, RMP was free to propose and advocate for any method it believed suitable for evaluating the cost of its 2023 Plan relative to the risk it would mitigate. Had it done so, other parties would have had an opportunity to opine on it, and the PSC could have reasonably and responsibly evaluated the issue on the merits. Yet, RMP proposed no methodology whatsoever nor did it provide any meaningful explanation as to how or why it believes the hundreds of millions of additional dollars it seeks to spend on capital projects reflect a cost-effective use of ratepayer money relative to the fire risk those costs will mitigate.

Having proposed no alternative, RMP nevertheless criticizes the IE for "champion[ing] the use of a 'risk-spend efficiency (RSE) analysis,'" arguing this is "far from the industry-standard metric for evaluating the reasonableness of the cost of a wildland fire mitigation program, let alone assessing a cost-risk balance."[37] RMP's Request fails to recognize that, as the Order discusses, RMP's 2023 Plan represents

[36] Examples include the methodology RMP has proposed for calculating avoided costs associated with numerous types of renewable generation resources and the methodology it proposed for calculating the value of the energy distributed generation customers push to the grid. In this docket alone, RMP has advocated for the methodology underlying its DA/RT Adjustment, methodologies for estimating various expenses in the test year, and its estimate of the gross benefits of the Gateway South Project, etc.

[37] Request at 29.

RMP itself is endeavoring to implement RSE analysis.[38] It provides an estimated timeline for RMP's implementation of RSE, indicating RMP would spend the first three quarters of 2024 identifying experts and developing processes and tools and would implement RSE in the last calendar quarter of 2024.[39] However, RMP confirmed at hearing on March 25, 2025, that it still had not implemented RSE, explaining the 2023 Plan's timeframe was not firm and representing RMP decided not to implement it for unclear reasons associated with its "changing nature" and RMP's work with "other jurisdictions."[40]

Having abandoned the methodology its own Plan sought to implement, having proposed no alternative, and having known since *at least* June 27, 2024, that the PSC would not approve the 2023 Plan unless the record contained some analysis or other evidence speaking to its cost-effectiveness, RMP now seems surprised at the PSC's ability to read the Act and abide it. RMP falsely represents it has "repeatedly requested that the [PSC] open a new docket to develop a process and procedures for

[38] Under Section 1.4, titled "Continuous Improvement," RMP includes a subsection titled "Risk Spend Efficiency (RSE) Model Refresh" wherein RMP represents it "is planning to implement Risk Spend Efficiency (RSE) to evaluate the effectiveness of proposed mitigations relative to cost." Fire Plan Docket, 2023 Plan at 30. The 2023 Plan goes on to provide limited details with respect to RMP's planned implementation of RSE, indicating, for example, that RMP "plans to use the average useful asset life and an average cost for select mitigations" and "depicts the high-level inputs to the effectiveness calculation." *Id.* at 27-31.
[39] *Id*. at 38.
[40] March 25, 2025, Hr'g Tr. at 120:15-121:9.

assessing future plans submitted under the Act."[41] RMP initiates dozens of dockets with the PSC every year and it well understands how to initiate a docket by filing a request for agency action under the Administrative Procedures Act and applicable PSC rules. RMP has not filed a petition for agency action for any such docket. Instead, RMP refers to two written testimonies, both filed extremely late in the docket (less than two weeks before the Phase III hearings commenced) and neither of them actually "requested" the PSC open a new docket.[42] Regardless, RMP's suggestion at the eleventh hour in this proceeding that the PSC might open a new docket to establish some unspecified additional process for future plan years is an irrelevant diversion from the PSC's review of the 2023 Plan and the dearth of evidence to support its approval.

At root, all these questions matter little because the dispositive issue does not revolve around whether RSE is an optimal method for assessing cost-effectiveness, whether RMP should or shouldn't have abandoned it, whether RMP should have included a cost-benefit analysis in its initial filing as opposed to supplementing the record later, etc., the issue is simply this: *the record does not contain substantial*

[41] Request at 29.
[42] Request at 29, n.84. Specifically, RMP cites the Phase III Written Rebuttal Test. of J. Jones filed March 12, 2025, and the cited testimony does not request the PSC open a docket, rather it states RMP "would support the [PSC] establishing a separate docket to define [a] methodology." RMP also cites the Phase III Written Surrebuttal Test. of J. Steward, filed March 19, 2025, which "recommends the [PSC] initiate a proceeding to study [a] methodolog[y]."

evidence showing that the 2023 Plan appropriately balances risk and cost. This alone renders RMP's position untenable.

After putting RMP on express notice in June of 2024 that, "[o]n the record before us, the PSC simply [could not] find the [2023] Plan appropriately balances" cost and risk,[43] the PSC afforded RMP ample opportunity, over many months, to supplement the record. RMP made no earnest effort to do so. Rather than addressing the deficiencies identified by the PSC and submitting evidence of balancing costs and risk reductions that might have cured such deficiencies, RMP chose instead to challenge the need for such analyses. While the IE attempted to complete a cost-benefit analysis, it was unable to complete its analysis owing to RMP's inability to provide "key data." The IE simply concluded RMP's "current practices and the [2023 Plan] amount to no meaningful evaluation of mitigation program cost-effectiveness."[44] Even after the PSC's IE reiterated the need for cost-effectiveness evaluation, RMP refused to provide such evidence.

Because the record does not contain substantial evidence that the 2023 Plan appropriately balances cost with risk, the PSC affirms its decision not to approve the 2023 Plan.

[43] Fire Plan Docket, Order for Additional Time and Process at 8.
[44] Order at 122 (citing IE Report at 60).

3. RMP Grossly Mischaracterizes the Testimony of FFSL in Suggesting It Demonstrated the PSC Erred in Declining to Approve the Plan.

The Act itemizes nine items that any Plan must include ("Itemized Statutory Requirements"), such as "a description of areas within [the utility's] service territory … that may be subject to a heightened risk of wildland fire" and "a description of the procedures and standards that the qualified utility will use to perform vegetation management."[45] The Act also requires the PSC, in reviewing a Plan, to consider input from FFSL and any other interested stakeholders that elect to provide input.[46]

As discussed in the Order, RMP withdrew its initial 2023 Plan and refiled it months later after FFSL expressed concern that the initial version relied on outdated information.[47] FFSL later filed written testimony and testified at hearing. RMP now argues the PSC "erred by disregarding [the] evidence from the FFSL" and "depart[ing] from the expert agency's findings."[48]

FFSL testified that RMP's 2023 Plan "include[s] the required statutory elements."[49] FFSL's testimony at hearing was also generally supportive of the efficacy of RMP's selected mitigation measures. However, no party disputes that the 2023 Plan complies with the Act's Itemized Statutory Requirements. In fact, the PSC's IE also concurred on this point.

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[45] Utah Code § 54-24-201(2).
[46] *Id*. § 54-24-201(3)(b).
[47] *See* Order at 2.
[48] Request at 31-32.
[49] Phase III Direct Test. of M. Melton at 7:27-28.

As discussed in the Order and above, the PSC did not decline to approve the 2023 Plan because it failed to comply with the Itemized Statutory Requirements or because it found any of RMP's proposed mitigation measures would prove ineffective at fire mitigation. The PSC declined to approve the 2023 Plan because the Act precludes the PSC from approving a Plan unless the record contains substantial evidence a Plan appropriately balances cost and risk, and the record cannot support such a finding.

FFSL provided no evidence relating to whether the 2023 Plan appropriately balances cost and risk. At hearing, FFSL testified it "has no opinion on the cost-risk analysis [issue]."[50] When asked whether its "evaluation include[d] an evaluation of the relative costs of the mitigation" measures proposed in the 2023 Plan, FFSL responded, "No, it did not."[51] FFSL testified it did not make any recommendation as to how many miles of line should be rebuilt with covered conductors or buried underground or any specific recommendation about an increase in the number of FHCAs.[52] In a remark it later characterized as "tongue-in-cheek," FFSL testified it "would bury all the powerlines" in the state because "put[ting] everything underground, that would take care of 95 percent of the problem that [lines] pose in [relation to] wildfire[s]."[53]

[50] March 26, 2025, Hr'g Tr. at 269:25-270:2.
[51] *Id*. at 280:19-22.
[52] *Id*. at 282:15-25.
[53] *Id*. at 277:2-4; 285:6-11.

The PSC genuinely appreciates FFSL's participation and values the input it provided in this matter, but FFSL provided no evidence whatsoever suggesting the 2023 Plan appropriately balances cost and risk. FFSL unequivocally declined to offer any opinion on the issue of cost or cost relative to mitigated risk, apparently believing those issues to be beyond its purview.

Accordingly, RMP's assertions the PSC "erred by disregarding [the] evidence from the FFSL" and "depart[ing] from the expert agency's findings" are baseless and rely on a gross mischaracterization of FFSL's testimony.[54]

4. The PSC Affirms All Decisions in the Order Relating to RMP's Recovery Associated with Implementing a Fire Plan.

Because it affirms its decision not to approve the 2023 Plan, the PSC affirms the Order in all respects as regards RMP's recovery of costs associated with implementing the 2023 Plan. The PSC notes that, with the adjustment, the Order approves more than $50 million per year in capital expenditures and $28.4 million in O&M, which is approximately $4 million more in O&M than RMP was asking for in its later filed testimony.[55]

[54] Request at 31-32.
[55] Order at 144-45.

C. The PSC Granted RMP's Request with Respect to Correcting One Error in the Order Relating to RMP's Recovery of ELI Premiums; in All Other Respects, the PSC Affirms Its Decisions Relating to ELI Premiums and Denies Rehearing.[56]

1. The Order Does Not Apply Inconsistent Legal and Evidentiary Standards; No Rehearing is Necessary or Appropriate.

As discussed *supra* at 6-7, the PSC is charged with setting rates that are just and reasonable with the Legislature prescribing certain standards the PSC must consider. The Order appropriately applied these well-established standards in evaluating RMP's request to recover its ELI Premiums.[57]

RMP requests rehearing on its recovery of ELI Premiums for the Test Period and deferral of its Prior Period ELI Premiums, citing Utah R. of Civ. P. 59, which identifies the conditions under which a new trial may be granted, which includes "accident or surprise that ordinary prudence could not have guarded against" and "the verdict [being] contrary to law or based on an error in law."[58] RMP asserts both of these conditions apply.

Specifically, RMP first argues the PSC "must reconsider its ELI finding because of its 'surprise' shift in legal and evidentiary standards regarding the prudence of ELI premium expenditures."[59] Here, RMP relies on selective quotes from two procedural orders the PSC issued relating to consolidation of these dockets and the order the

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[56] "ELI Premiums" refers to RMP's excess liability insurance premiums.
[57] *See, e.g.,* Order at 159-60.
[58] Utah R. of Civ. P. 59(a)(3), (7).
[59] Request at 46.

PSC issued granting rehearing in the DAO Docket.[60] RMP inappropriately construes true and obvious statements the PSC made about the impact of *James*[61] being an important issue in both the DAO Docket and GRC[62] when evaluating whether the dockets should be consolidated as somehow "elaborat[ing] the legal standard for establishing the prudence of Test Year and deferred ELI expenses."[63]

These arguments are disingenuous and meritless. The PSC observed that the impact of *James* was a significant issue in both the DAO Docket and GRC in evaluating whether to consolidate the dockets to avoid the potential for inconsistent outcomes and to spare the parties the expense of duplicative expert testimony in the two dockets. The notion that the PSC's correct observations about a common issue of fact in those procedural orders relating to consolidation lawfully superseded all pre-existing, long-standing principles of law governing rate recovery such that the impact of *James* became the only relevant factor, as a matter of law, is beyond serious consideration.

RMP's reliance on the PSC's Order Granting Rehearing in the DAO Docket is equally misleading. There, the PSC had denied RMP's request for deferred accounting treatment because RMP had failed to show it was likely to recover the increased ELI

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[60] *See id*. at 41. "DAO Docket" refers to Docket No. 23-035-40.
[61] "*James*" refers to *James v. PacifiCorp*, No. 20-CV-33885 (Cir. Ct. Multnomah County, Oregon).
[62] "GRC" refers to Docket No. 24-035-04.
[63] Request at 40.

Premiums in a future proceeding. The sentence RMP quotes stems from a section addressing RMP's assertion that it was entitled to deferred accounting because it had "provided substantial evidence demonstrating that its conduct did not cause the increase" in its ELI Premiums.[64] The PSC stated "[t]he pertinent question is whether RMP's tortious conduct in relation to the events underlying *James* … impacted RMP's [ELI Premiums] and to what degree."[65] RMP omits the following sentence, which states: "None of the evidence RMP points to in its Request for Reconsideration meaningfully speaks to that question and, cumulatively, it does not constitute substantial evidence that RMP's conduct is not a primary or significant cause of its increased [ELI Premiums]."[66]

That is, the PSC identified this "pertinent question" in the context of assessing whether RMP had, at that time, provided evidence sufficient to show it was likely to recover the increase in its ELI Premiums in a future proceeding. The record before the PSC was very limited, but it was clear RMP had experienced an unprecedented increase in its ELI Premiums after the jury in *James* issued an unprecedented adverse verdict. The issue was whether a likelihood of future recovery existed based on the then-available record. RMP's assertion that the PSC's statement should be construed

[64] DAO Docket, Order Granting Rehearing at 13, issued May 29, 2024.
[65] *Id*. at 14.
[66] *Id.*

to supersede otherwise governing law and limit the scope of material evidence in a future rate proceeding is absurd.[67]

In the end, RMP works to torture the language of these prior orders because of damaging evidence other parties presented relating to the high insurance rates RMP pays relative to peer utilities. RMP characterizes the PSC giving that evidence weight as a "new prudence standard only announced in the Order."[68] This transparent attempt to conflate "standards" with "material evidence" is wholly unpersuasive.

The "standards" governing prudence review are those identified in the Utah Code.[69] The PSC discussed and relied on those standards in the Order. The evidence other parties introduced concerning RMP's disproportionately high insurance rates relative to its peers is just that, evidence. The PSC giving weight to material, probative evidence does not constitute a "new prudence standard," however inconvenient that evidence may be to RMP's position.

The PSC's giving weight to timely disclosed, properly admitted evidence cannot constitute "surprise that ordinary prudence could not have guarded against."[70] RMP

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[67] The PSC also notes that RMP's assertion the Order "makes no findings" regarding the impact of *James* on its ELI Premiums is patently false. Request at 42. The Order states: "On the evidence available in the record, the PSC finds the historic, adverse verdict in *James* is, in conjunction perhaps with other wildfire-related liabilities that exhausted RMP's coverage … the most likely cause of" RMP's high premium costs relative to peer utilities. Order at 161.
[68] Request at 42.
[69] *See supra* at 6-7.
[70] Utah R. of Civ. P. 59(a)(3).

had ample time and opportunity to rebut the evidence regarding peer utilities' insurance rates. As to the alternative ground for rehearing under Utah R. of Civ. P. 59, RMP simply asserts "the disallowance of ELI [P]remiums and denial of the deferral were not justified by the evidence but rather by erroneous application of the law."[71] The PSC concludes no legal error exists.

2. The Order Set Forth a Nexus Between the *James* Verdict and Risks Evaluated by Underwriters.

RMP asserts in its Request that "insurers did not consider the tortious conduct alleged in *James* when setting the Company's ELI [P]remiums."[72] This is patently incorrect. RMP relied on the fact that *James* was not in its *loss history*. But it ignored in its Request the role that risk exposure plays in premium increases. Risk exposure is a critical factor on which an underwriter relies in determining ELI Premiums, as several experts testified in this proceeding. Even RMP's witness testified that insurance underwriters consider findings of significant liability when determining premium**s,** acknowledging that insurers "consider all factors related to risk exposure, including mass jury verdicts that are very large in size."[73] Underwriters would also likely review RMP's 10-K disclosure filed with the United States Securities and Exchange Commission ("SEC") that addressed risk stemming from the *James* verdict. It is simply implausible for RMP to assert that it is not responsible for premium

[71] Request at 46.
[72] Request at 41.
[73] March 20, 2025, Hr'g Tr. at 200:21-23.

increases because it never filed a claim stemming from *James*. DPU, OCS, and UAE all provide testimony that a confidential exhibit, prepared by one of RMP's insurers and filed with RMP's written testimony, indicates that RMP's insurer would consider the *James* verdict when setting ELI Premiums. In fact, in its Request, RMP undermines its argument with respect to the impact of the *James* verdict, by stating that "[l]oss history is not the only factor in determining ELI Premium increases, and the Company has not claimed it is."[74] While initially asserting that insurers wouldn't consider the *James* verdict in setting ELI Premiums because it was not in its loss history, RMP now tacitly admits that loss history is but one of several factors an insurer considers in the underwriting process.

3. The PSC Corrected the Amount It Approved RMP to Recover for ELI Premiums in the 2020 GRC, which Resulted in a Correction to the Total Revenue Requirement Approved in the Order, Increasing It by $6,978,587.

RMP's Request points out that while RMP initially requested to recover $6,557,841 (system-wide) for ELI Premiums in the 2020 GRC,[75] RMP later amended its

[74] Request at 63.
[75] "2020 GRC" refers to the general rate case that RMP filed in 2020. *See Application of RMP for Authority to Increase Its Retail Electric Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 20-035-04.

request and the PSC, ultimately, approved RMP's recovery of $10,486,564 (system-wide) in the 2020 GRC. Other parties concur the correct figure is $10,486,564.[76]

Given that the PSC affirms its approval of a 400 percent multiplier of the sum approved in the 2020 GRC to establish RMP's recoverable ELI Premiums in the Test Period, the PSC applied the multiplier to the corrected figure. This results in a $6,978,587 increase to RMP's revenue requirement. The PSC granted this adjustment in its previously issued Order Granting Partial Reconsideration.[77]

4. The PSC Clarifies a Reference in the Order's Synopsis that Refers to Utilities in "Nevada and Colorado" Because, as Described in the Controlling Text of the Order, the 400 Percent Multiplier Stems from DPU's Recommendation that Analyzed Peer Utilities Operating in Other Western States.

The Order's synopsis states the PSC is allowing recovery "based on the ELI costs in the 2020 GRC, updated to reflect commensurate recent premium increases of peer utilities in Nevada and Colorado that have liability risk and wildfire history similar to Utah."[78] Here, the PSC inadvertently referenced peer utilities that WRA analyzed rather than DPU, and the PSC's adoption of a 400 percent multiplier is based

[76] *See, e.g.,* DPU's Response to Request at 17 ("[DPU] agrees that the 400% multiplier should be applied to the $10,486,564 amount that was approved in the [PSC's] 2020 GRC Order"); OCS's Response to Request at 14.
[77] *See supra* at 2.
[78] Order at iii.

on DPU's testimony. DPU analyzed comparative growth in peer utilities' insurance rates that operate in other western states.[79]

RMP's written direct testimony provides data concerning the premiums of five other regional electric utilities to support its assertion that "[i]ncreased wildfire risk has led to sharp increases in the cost of wildfire liability insurance for [regional] utilities."[80] DPU's testimony analyzes the same five utilities and explains RMP's "premium growth differs markedly from most of these other companies."[81] DPU recommended the PSC adopt a multiplier in the range of 100 to 400 percent, noting a 100 percent growth rate would be "in line with three of the five companies" RMP referenced.[82] At the high-end, the DPU characterizes application of a 400 percent growth rate as "generous," as it is "greater than all the entities referenced by RMP … except for" Pacific Gas & Electric Company ("PG&E").[83]

The PSC's approval of a 400 percent multiplier reflects its adoption of DPU's high-end recommendation.[84] WRA's testimony discusses peer utilities in Nevada and

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[79] *See* Phase III Direct Test. of J. Einfeldt at 11:182-13:220. Specifically, DPU analyzed the rise in insurance rates for three California utilities, an Idaho utility, and one that operates in several northwestern states (Avista). *See id.*

[80] Direct Test. of F. Graves at 11:231-16:315; *id.* at Ex. RMP_(FG-4) (table titled "Recent Costs of Wildfire Insurance Faced by Regional Utilities").

[81] Phase III Direct Test. of J. Einfeldt at 11:193-95.

[82] *Id.* at 12:206-7.

[83] *Id*. at 12:209-11. Elsewhere the record indicates PG&E "has gone bankrupt twice in the last 25 years and has settled wildfire claims for over $25 billion dollars since 2017." Phase III Direct Test. of K. Boothman at 11:152-3.

[84] Order at 159, n.365, 366.

Colorado, but WRA did not recommend the PSC adopt a multiplier to be applied to the amount approved in the 2020 GRC.

5. The PSC Declines to Reconsider Any Other of RMP's Alleged Factual Errors Because in Each Case the Alleged Error Either Is Not an Error, Relies on New Arguments or Evidence RMP Could Have Timely Brought at Hearing, and/or Does Not Affect the Outcome.

RMP's Request argues the Order makes five factual errors with respect to its application of a 400 percent multiplier to its allowed premiums in the 2020 GRC.[85]

As an initial matter, several parties point out RMP's Request inappropriately attempts to assert new facts and arguments that it failed to previously raise in the proceeding.[86] The PSC addressed this issue in a relatively recent docket, from 2023, and concluded petitioners on review may not rely on factual assertions they failed to raise at hearing, absent a compelling reason.[87] This conclusion is consistent with Utah R. of Civ. P. 59, which permits courts to grant a new trial based on "newly discovered material evidence" only where the evidence "could not, with reasonable diligence, have been discovered and produced at the trial."[88]

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[85] Request at 47-59.
[86] *See, e.g*. OCS's Response to Request at 5; UTLCG's Response to Request at 15.
[87] *See Formal Complaint of Ronda and Martell Menlove against Bridgerland Water Company*, Docket No. 23-001-03, Order on Request for Review issued Dec. 29, 2023, at 3.
[88] The Utah Administrative Code provides that "[t]he Utah Rules of Civil Procedure and case law interpreting these rules are persuasive authority in [PSC] adjudications unless" governing law provides otherwise. Utah Admin. Code R746-1-105. The PSC notes that RMP invokes Utah R. of Civ. P. 59 here in its request for rehearing. *See supra* at 22.

Accordingly, the PSC will not consider any new factual assertions in RMP's Request. The parties engaged in three separate phases of hearings over many days between December of 2024 and March of 2025, litigating myriad complex issues and scrutinizing a tremendous volume of written testimony. RMP fails to acknowledge it asserts any new facts and certainly does not argue that any were not discoverable with reasonable diligence prior to hearing. Absent any such compelling justification, allowing RMP to simply assert new facts in its petition for review would be deeply unfair and prejudicial to the other parties.

Turning to the alleged factual errors, the first regards the amount the PSC approved RMP to recover for its premiums in the 2020 GRC. As discussed *supra at* 27-28, the PSC acknowledges and corrects the figure.

The second alleged error is also addressed above, *supra* at 28-29, and regards the PSC's inadvertent reference in the Order's synopsis to the peer utilities that WRA analyzed, as opposed to the DPU, when summarizing the PSC's approval of applying a 400 percent multiplier. RMP also argues here that the workpaper attached to WRA's written testimony demonstrates that the Colorado and Nevada utilities WRA discusses experienced increases greater than 400 percent from 2020 to 2024. Again, WRA did not recommend the PSC apply the 400 percent multiplier. The 400 percent multiplier the PSC adopted is based on DPU's analysis regarding the five utilities RMP first selected to reference as peers in its testimony.

i. The PSC declines to consider RMP's untimely assertions regarding the accuracy of WRA's calculations relating to PSCo's ROL.

RMP's third alleged factual error does not relate to any specific finding in the Order, rather RMP argues "WRA's 'rate on line' (ROL) calculations … include mathematical errors due to mixing corporate and subsidiary data[,]" focusing on WRA's calculation of Public Service Company of Colorado's ("PSCo") ROL.[89] WRA counters that its calculations relate to "three subsidiary utilities that secure shared insurance policies through their corporate parents[,]" one of which is RMP.[90] WRA argues RMP wrongly assumes PSCo's coverage amount must be lower than the stated policy amount by virtue of the coverage being shared while ignoring that its own coverage is shared when making representations about its coverage. More immediately, WRA points out that it disclosed these calculations in its Phase III written direct testimony, and RMP "had multiple rounds of testimony and an evidentiary hearing to present this critique and attempt to rebut WRA's work product."[91] Yet, RMP never challenged "WRA's testimony or workpaper in its own testimony or on cross examination."[92]

The PSC declines to further consider RMP's late assertions about the accuracy of analysis that WRA disclosed in its written direct testimony. To the extent RMP

[89] Request at 50.
[90] WRA's Response to Request at 14.
[91] *Id*.
[92] *Id*. at 13.

wished to challenge WRA's analysis, it should have done so through timely testimony, not the argument of counsel in a petition seeking reconsideration of the PSC's Order.[93] The PSC recognizes that complications exist when attempting to calculate ROL for a shared policy, but the record is clear: the premiums RMP seeks to recover also relate to coverage that the subsidiaries of RMP's parent company share.[94] To the extent RMP desired to challenge WRA's analysis, therefore, it is especially critical to have done so through testimony, when the record was open, allowing the parties a full and fair opportunity to develop the record.

Regardless, as noted, the problems RMP alleges exist with respect to WRA's ROL calculations for PSCo do not underlie any of the PSC's essential findings or conclusions in the Order.[95] Significantly, RMP does not contest WRA's calculation of *RMP's* ROL, which the Order undoubtedly gives meaningful weight.[96]

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[93] Notably, RMP's argument on this point references and discusses a Form 10-K that PSCo's parent company filed with the SEC and RMP provides no indication the document has been entered into the record of this docket.
[94] *See, e.g.*, Phase I Direct Test. of M. Coleman at 5:98-100.
[95] RMP offers a "corrected" graph that WRA included in its testimony, which the PSC included in its summary of WRA's testimony.
[96] *See* Order at 163 ("RMP's Test Year ELI Premiums purchase only 50 cents for every dollar of coverage …. The PSC finds a reasonable utility would not purchase coverage on such terms unless, by thorough analysis, the utility reasonably expected the purchase to be economic.").

ii. The PSC declines to consider RMP's untimely assertions regarding the accuracy of WRA's calculations relating to NV Energy's ROL.

RMP also argues WRA's calculations relating to NV Energy's ROL "are incomplete and thus also incorrect."[97] Here, RMP argues that NV Energy has been unable to procure sufficient commercial insurance to adequately insure its wildfire risk and initiated a proceeding in Nevada to fund a self-insurance policy to be used in addition to its commercial coverage. RMP is not entirely clear in identifying the error it alleges WRA committed in calculating NV Energy's ROL, but RMP seems to be suggesting that WRA should have included costs associated with self-insurance in its ROL calculation.

Here again, RMP raises new assertions and arguments for the first time in its petition for review. Because RMP made no effort to rebut WRA's calculation through testimony or cross-examination, the PSC will not entertain such an effort from counsel now that the record is closed. The matter is again inconsequential insofar as none of the Order's central findings turn on WRA's calculation of NV Energy's ROL.[98]

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[97] Request at 53.

[98] Even if these arguments were timely and material to the PSC's findings in the Order, RMP is plainly wrong to the extent it suggests WRA should have included costs associated with funding a self-insurance policy that had not even been approved or implemented when it calculated NV Energy's ROL for commercial insurance. As WRA points out, "[t]here is no logic in considering an unapproved $500 million self-insurance program as a component of the ROL for a utility's commercial insurance." WRA's Response to Request at 18. "Generally, self-insurance does not have a term, as the funds typically sit idle and accrue interest until liability is incurred." *Id.* The

6. The PSC Affirms Its Decision to Apply a 400 Percent Multiplier to the Amount It Allowed RMP to Recover for ELI Premiums in the 2020 GRC.

RMP argues the PSC erred in applying a multiplier based on premium increases experienced by peer utilities over the same period. RMP scatters its arguments on this point throughout a large portion of its Request, but the PSC attempts to address the primary arguments in the order RMP offers them.

i. The PSC's Approval in Prior Dockets of ELI Premiums that are a Fraction of Those It Seeks to Recover Here Does Not Set a "Precedent" Requiring RMP's Full Recovery.

First, RMP argues that the PSC's denial of the full cost of its ELI Premiums "departs from [the PSC's] precedent of holding that ELI and other insurance policies are prudent expenditures for [RMP]."[99] While it's true that historically the PSC has allowed RMP to recover these costs, the Order explains "RMP's excess liability premiums were [formerly] a relatively insignificant line item, akin to many uncontroversial operational expenses."[100] RMP paid approximately 3,500 percent more in 2023, than in 2018, with the cost rising to $122.5 million in 2023.[101] Now, it seeks $185.6 million. The ELI Premiums for which RMP seeks recovery in the Test Period are so expensive the ROL is .50, meaning RMP would have customers pay 50 cents for

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premiums are not forfeited at the end of the policy period as with commercial insurance.

[99] Request at 46.

[100] Order at 164.

[101] Phase III Direct Test. of K. Boothman at 20:345-9.

every dollar of coverage it receives.[102] The PSC's statutory charge is to ensure just and reasonable rates by, in part, disallowing recovery of imprudently-incurred expenses. RMP's argument here amounts to an assertion that once a category of expense has been deemed prudent it will forever be prudent no matter the cost, which finds no support in the law or common sense.

ii. The Rates Peer Utilities Pay are Patently Material to the PSC's Prudence Review.

RMP next suggests the PSC erred by considering evidence that compares RMP to other utilities rather than "rely[ing] on data specific to [RMP]."[103] Yet, RMP's written direct testimony testified, at length, to the rising premiums of other regional utilities (the same utilities the DPU considered in its analysis).[104] The reason is obvious, and RMP's position is untenable. Given the drastic nature of the increases in ELI Premiums it has experienced, especially after the landmark *James* verdict, RMP sought to show that the increases were attributable to factors outside of its control by pointing to the broader market, which is, in fact, experiencing significant increases. As DPU's analysis demonstrates, however, RMP's increases are disproportionately greater than those of other regional utilities. RMP's initial impulse was, of course, correct. The rates of other peer utilities are unquestionably a material and important consideration in assessing

[102] *Id.* at 6:87-89.
[103] Request at 46.
[104] Direct Test. of F. Graves at 11:231-16:315; *id.* at Ex. RMP_(FG-4) (table titled "Recent Costs of Wildfire Insurance Faced by Regional Utilities").

whether RMP's premiums are a prudent expense and a just and reasonable use of ratepayers' money.

iii. The Fact the California Utilities Experienced Sharp Increases Earlier in Time to RMP Is Not Indicative of a Flaw in DPU's Analysis; It Is Indicative of a Correlation Between Catastrophic Wildfire Losses and Dramatically Higher Premium Costs.

RMP argues the PSC erred in adopting the (high-end) of DPU's recommended range of potential multipliers because of a flaw in DPU's analysis. Specifically, RMP argues that the three California utilities included in the analysis "started the comparison periods with much higher premium amounts than any of their peers in the Western states" because "California utilities saw their major increases in premium levels earlier in time, which distorts [percentage-based] comparisons between 2020 and 2023."[105]

In response to this argument, DPU is quick to point out the reason the California utilities saw increases earlier in time: they experienced catastrophic wildfire liability and "utilities that experience considerable wildfire liability have large increases in their ELI premiums in future periods."[106] As WRA has testified, the other two utilities included in DPU's analysis, Avista and Idaho Power, "have not been found responsible for catastrophic fires, [and] have not incurred insurance cost increases remotely close to the magnitude of [RMP], despite being subject to substantively identical drivers of

[105] Request at 56-57.
[106] DPU's Response to Request at 15.

increasing wildfire risks such as drought, severe weather, [etc.]"[107] In stark contrast to RMP, "Avista experienced growth of 100 [percent] from 2020/21 to 2022/23, and Idaho Power experienced growth of 100 [percent] for the entire period from 2018/19 to 2022/23."[108] Again, RMP's rates increased 3,500 percent from 2018 to 2023.

iv. RMP Misapprehends Its Burden and the PSC's Order; the 400 Percent Multiplier Is a Proxy the PSC Adopted to Facilitate RMP's Recovery of the Portion of Its ELI Premiums that a Reasonable Utility Would Have Incurred; If Substantial Evidence Does Not Support RMP's Recovery of the Proxy, RMP Is Not Entitled to Recover the Entirety of the Imprudent Sum, It Is Entitled to Recover None of It.

As discussed *supra* at 6, "the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the [PSC] … or any interested party or protestant; to prove the contrary."[109] Further, the Utah Code requires the PSC to "determine whether a reasonable utility, knowing what the utility knew or reasonably should have known at the time of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action."[110] As the PSC emphasized in the Order, it "'may find an expense fully or partially prudent, up to the level that a reasonable utility would reasonably have incurred.'"[111]

[107] Phase III Direct Test. of K. Boothman at 5:69-73.
[108] Phase III Direct Test. of J. Einfeldt at 11:190-2.
[109] *Utah Dep't of Bus. Regulation v. PSC*, 614 P.2d 1242, 1245 (1980).
[110] Utah Code § 54-4-4(4)(a)(iii).
[111] Order at 160 (quoting Utah Code § 54-4-4(4)(b)).

The Order found a reasonable utility would not, like RMP, elect to spend "$185.6 million [on] coverage with policy limits only twice the sum of premiums paid," having conducted "no study to assess statistically expected losses for the Test Year" and having no "'methodology or mathematical method to determine reasonable liability coverage.'"[112] The Order also denies RMP recovery of its ELI Premiums, on the separate and independent basis, that "allocating 44 percent of the ELI Premiums to Utah would be grossly inconsistent with cost-causation principles and would result in unjust and unreasonable rates" where they have skyrocketed to $185.6 million and "Utah claims comprise less than one percent of damages and injuries expenses RMP paid or accrued between 2020 and 2023."[113] To facilitate RMP's recovery of the portion of ELI Premiums that a reasonable utility would have incurred, the PSC adopted DPU's recommendation, allowing RMP to recover the sum it recovered in the 2020 GRC with a 400 percent multiplier "to reflect an increase commensurate with peer utilities that have not experienced catastrophic wildfire events[,]" i.e., Avista and Idaho Power.[114]

Yet, RMP laments that DPU's premiums comparisons for Avista and Idaho Power "do not include information on coverage limits, ROL, or other information [that] is needed to make the raw percentage numbers meaningful."[115] It complains that "[t]he

[112] *Id.* at 162.
[113] *Id.* at 164-66.
[114] *Id.* at 166, n.379.
[115] Request at 59.

actual 400 percent multiplier applied to calculate [RMP's] authorized ELI premiums has no basis in the record other than as part of DPU's recommendation."[116]

Regardless of whether RMP's assessment that the partial recovery the PSC allowed has "no basis" is an overstatement, and the PSC believes it is, no need to quibble exists as to whether portions of other parties' testimony lend support to the DPU's recommendation. The PSC does not doubt that a better proxy might be developed if the record contained more data about regional peers, including more granular information concerning their policies. However, based on the record in this docket, the PSC found DPU's recommendation provides the best available, reasonable, and appropriate proxy to facilitate RMP's recovery of the portion of its ELI Premiums a reasonable utility would have incurred, relying on testimony from the party, DPU, that analyzed the same five utilities whose premium history RMP first raised in its direct testimony.

Given its arguments regarding the insufficiency of the DPU's recommendation and its failure to advocate for an alternative proxy, RMP appears to misapprehend its burden. If substantial evidence does not exist to support a proxy for the portion of ELI Premiums a reasonable utility would have incurred, then no evidence exists to allow recovery of *that portion*. It is not as though the absence of a suitable proxy somehow

[116] *Id.* at 59.

entitles RMP to recover the much larger, full sum that it imprudently spent. RMP would not recover the full amount it seeks; RMP would recover none of it.

v. The Order recognizes insurance rates have increased in the region owing to external factors, and approved the maximum range of DPU's recommendation.

RMP argues the PSC "ignored future risk of catastrophic wildfire" and erred by "requir[ing] [RMP's] recovery of ELI [P]remiums be based on utilities that are fundamentally dissimilar" because they have not incurred catastrophic liability."[117]

First, the Order recognizes "the record undoubtedly shows that rates are meaningfully increasing for peer utilities, [but] the magnitude of those increases is not universal[,]" and "[i]nsurers are plainly identifying risk associated with insuring RMP that the insurers do not identify when insuring … others that have not experienced catastrophic wildfire losses."[118] Second, the PSC rejects, in principle, that ratepayers should bear the cost of premium increases that stem from RMP's tortious conduct, particularly conduct that a jury found to be willful, reckless, and merited tremendous punitive damages.

By approving the maximum range of the DPU's recommendation, the PSC did not, as a technical matter, exclude all utilities that have experienced catastrophic wildfire losses. Again, the DPU's analysis is based on the same five utilities that RMP initially selected as regional peers, and two of those appear not to have incurred

[117] Request at 63, 67.
[118] Order at 161.

catastrophic wildfire liability, Avista and Idaho Power. "Avista experienced growth of 100 [percent] from 2020/21 to 2022/23, and Idaho Power experienced growth of 100 [percent] for the entire period from 2018/19 to 2022/23."[119] DPU testified that applying a 100 percent growth rate would be "in line with three of the five companies referenced by [RMP,]" and a 400 percent growth rate is "greater than all the entities referenced by [RMP] except for PG&E."[120]

In other words, based on the information available in the record, the PSC found that applying the maximum range of the DPU's recommendation provided the best, most reasonable proxy for the amount a reasonable and responsible utility in RMP's position would have incurred but for its catastrophic wildfire liabilities that the record indicates, "by some estimates, could reach … $45 billion."[121] As DPU testified, the 400 percent multiplier is "generous" relative to the growth rates of Avista and Idaho Power, which had not incurred such liabilities.[122]

[119] Phase III Direct Test. of J. Einfeldt at 11:190-2.
[120] *Id*. at 12:206-11.
[121] Order at 40 (citing Dec. 10, 2024, Hr'g Tr. at 261:3-22).
[122] Phase III Direct Test. of J. Einfeldt at 12:209.

vi. The PSC found a reasonable utility faced with the premium increases RMP faced would not have purchased insurance on the exorbitant terms RMP did unless, by thorough analysis, the utility reasonably expected the purchase to be economic; none of the evidence RMP cites merits reconsideration of that finding.

In the Order, we found "a reasonable utility, experiencing premium increases of the magnitude RMP has since 2020, would reasonably and responsibly evaluate its insurance procurement decisions."[123] The PSC then emphasized:

> RMP could not identify the claims it reviewed in determining an appropriate level of coverage, has no 'methodology or mathematical method to determine reasonable liability coverage,' and conducted no study to assess statistically expected losses for the Test Year despite electing to spend $185.6 million (annually) for coverage with policy limits only twice the sum of premiums paid.[124]

RMP maintains these "types of information … would be 'virtually useless' to address the actual issues [RMP] faces in negotiating with insurers."[125]

Here, RMP fundamentally misses the point. Whether such information may have been useful in negotiations with insurers is incidental; the fundamental problem is that RMP provided no evidence showing RMP predicated its decision to spend $185.6 million on ELI Premiums (with a .50 ROL) on an informed, reasonable, and responsible analysis. When WRA inquired whether RMP would continue to purchase coverage "until premiums reach parity with expected losses," RMP responded it "will procure all

[123] Order at 162.
[124] *Id.* 162 (quoting Phase III Direct Test. of K. Boothman at 18:301-2).
[125] Request at 70.

commercial liability insurance available in the market as long as doing so continues to be prudent utility practice."[126]

As the Order points out, this is a tacit admission that RMP planned to "purchase insurance as long as ratepayers are made to pay for it without regard to whether the insurance has significant value relative to its cost."[127] At the price RMP paid, unless RMP reasonably expects to incur insured losses equal to the policy limit at least every two years, ratepayers will pay more in premiums than RMP can possibly recover on the coverage. Thus, the Order found "a reasonable utility would not purchase coverage on such terms unless, by thorough analysis, the utility reasonably expected the purchase to be economic."[128]

RMP nonetheless argues the "overwhelming weight of the record evidence" demonstrates RMP "reasonably and responsibly evaluate[d] its insurance procurement decisions."[129] In support, RMP cites its testimony that it (1) "works with experienced insurance brokers for months as its ELI renewal dates approach"; (2) "strives for the lowest premiums possible at acceptable coverage levels"; (3) negotiates and provides information to brokers; and (4) "negotiated an 18-month

[126] Order at 162-3.
[127] *Id*. at 163.
[128] *Id.*
[129] Request at 69 (quotation omitted).

policy term" because "in a time of increasing premiums and decreasing coverage," the longer term "provides more certainty than the annual policies."[130]

However, RMP's testimony that it worked to negotiate low premiums says nothing about whether its decision to purchase the expensive insurance that it did was prudent. RMP offers evidence suggesting, at best, that cheaper commercial alternatives were not available to it. Under RMP's theory, ratepayers are required to compensate RMP for its premiums no matter the cost so long as RMP could not locate a cheaper commercial alternative. We conclude otherwise. RMP is responsible for its operations and conduct. To the extent RMP's actions have led to a risk-profile that renders commercial insurers unwilling to insure RMP at a reasonable cost, it is neither just nor reasonable to require ratepayers to fund RMP's choice to continue to use commercial insurance to indemnify itself.

RMP bears the burden of demonstrating its decision to spend $185.6 million on ELI Premiums at a .50 ROL was prudent, and the PSC affirms its finding that RMP failed to meet that burden.

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[130] Request at 69-70. While the Order notes WRA's testimony relating to other utilities' "pro-active" approaches to demonstrating risk-worthiness to their underwriters, the PSC did not make any findings about RMP's effort in that regard, save one. The PSC found "RMP's failure to have an approved wildfire mitigation plan is material." Order at 162. The Order does not make any findings as to whether and to what extent RMP's failure to obtain the PSC's approval for its 2023 Plan impacted RMP's ELI Premiums. The Order simply finds that a reasonable utility in RMP's position would have prioritized developing and implementing a high-quality plan.

D. We Decline to Reconsider Our ROE Determination.

RMP asserts certain "conclusions [in our Order] are flawed" relating to the "determin[ation] that [RMP's] ROE should be set at 9.35%."[131] In its arguments that follow, RMP disregards the broad discretion we are granted in setting an ROE, ignores the substantial evidence that supports our ROE determination, often mischaracterizes the record, and reargues facts and issues previously considered, argued, and rebutted. RMP's Request has provided us no basis to modify our ROE determination.

1. The Economic and Regulatory Conditions Relevant to this Docket Support Our Determination.

RMP asserts that because some economic and regulatory conditions have changed since its 2020 GRC that tend to support a higher cost of equity, it is unjust for us to award an ROE lower than RMP's proposed ROE of 9.65 percent. This argument assumes the 9.65 percent ROE we authorized in 2020 was, and remains, the only just and reasonable equity return that should be reflected in RMP's approved cost of capital.

The ROE we authorized in 2020 was lower than RMP's request (which was 9.80 percent) and was based on the evidence in that case and the ratemaking concept of gradualism.[132] Consistently here, based on the record and the established principle of gradualism, we authorized an ROE that is lower than RMP's request. In doing so we

[131] Request at 74-75. RMP's use of "9.35%" is erroneous (and perhaps a typo). We authorized an ROE of 9.375 percent, not 9.35 percent.
[132] Order at 22. *See also* Dec. 13, 2024, Hr'g Tr. at 1117:2-1118:5 & 1170:23-1172:2.

acknowledged that our 2020 ROE award overstated RMP's cost of equity.[133] In this case we received substantial evidence regarding "overstated [EPS] growth rates provided by Wall Street analysts and their effect on authorized ROEs,"[134] and establishing that the 2020 authorized ROE of 9.65 percent "was one of the highest authorized ROEs awarded for electrical utilities in the United States in **the fourth quarter of 2020**."[135] We also received expert analysis of the Werner & Jarvis study[136] that supports our determination that state utility regulators have been approving ROEs that are higher than cost of equity benchmarks. Consequently, our historical consideration of the average ROEs being authorized in other jurisdictions has resulted in ROE awards for RMP that may have been higher than the capital markets required.

Stated another way, even if some current economic conditions produce upward pressure on the cost of equity relative to 2020, it is the evidence in this proceeding that guides our analysis and discretion in setting the authorized ROE, not the historic baseline.

Moreover, our Order identified changed economic and regulatory conditions, considered them,[137] and found that "[t]here is no consensus among the parties as to

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[133] *See* Order at 27-28.
[134] *Id.* at 27.
[135] *Id.* at 28 (emphasis added). RMP's claim that "[t]his statement is … unsupported[]" (Request at 86) is simply wrong. As shown by the emphasized language, the comparative data is not, as argued by RMP, of quarters 1, 2, or 3, and is not of the averages of those quarters, or the average of quarter 4.
[136] Order at 28.
[137] *See id.* at 22-23.

the full impact of the changed economic and regulatory conditions as they relate to this proceeding. However, our consideration of the totality of the effects of these changed conditions supports a lower ROE than is currently authorized."[138] We thus considered the record evidence as to the changed conditions, including that our 2020 ROE determination was made in the midst of the COVID-19 pandemic, and the competing interpretations of their impact "on RMP's authorized ROE going forward."[139]

Our Order also finds that utility stocks are generally less risky than many other stocks. RMP disputes this finding, yet it is accurate and supported by substantial evidence,[140] including by RMP's own expert witness.[141] RMP further criticizes the Order by claiming our citation to the EBA as a regulatory mechanism that reduces RMP's risk "is not new and was also in effect in 2020."[142] However, that criticism is misplaced because our finding on this point was specifically in reference to the effects of Senate

[138] *Id.* at 23.
[139] *Id.* at 22.
[140] *See e.g.*, Dec. 13, 2024, Hr'g Tr. at 1131:10-11; Phase I Redacted Direct Test. of C. Coleman at 42:1079-82; Phase I Direct Test. of D. Garrett at 18:347-52; and Phase I Direct Test. of A. Lin at 15:288-16:299.
[141] *See e.g.*, Phase I Direct Test. of A. Bulkley at 40:814-5 ("beta represents the risk of the security relative to the general market[]"), at 43:860-1 (regulated utilities have low betas), and Request at 88 (RMP admitting that "utilities have a beta of less than 1.0[.]").
[142] Request at 80.

Bill 224 ("SB 224").[143] Our discussion of the EBA, and other risk-reducing mechanisms[144] simply illustrates the general risk climate in which RMP operates.

Our Order also details significant regulatory change since 2020 that reduces RMP's business risk and thus influenced our ROE determination.[145] RMP's attempts to marginalize the risk-mitigating effects of SB 224, the Act, are unconvincing. First, the Act mitigates RMP's business risk by creating a fund of at least several hundred million dollars, funded by RMP customers, to cover liabilities associated with wildfires caused by RMP equipment.[146] Additionally, it caps RMP's liability for both personal injuries and property damage.[147] These are significant risk-mitigation benefits to RMP. Moreover, undisputed evidence shows that RMP understands and appreciates the value of this risk mitigation.[148]

RMP also disputes the credibility of UTLCG's and OCS's respective recommended ROEs.[149] RMP argues that because we rejected certain ROE ranges in

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[143] *See* Order at 23 ("We also find that the regulatory conditions relating to this case have changed significantly since December 2020, including the enactment of Utah legislation designed to mitigate the financial consequences of wildfire liabilities for Utah entities like RMP.").
[144] *See id.* at 29.
[145] *See id.* at 23 and 29.
[146] *See* Order at 34.
[147] *See id.*
[148] *See id.* at 35 (("the CEO of RMP's ultimate parent company has referred to this new law as the gold standard as it relates to limiting utilities' wildfire liabilities.") and (RMP's expert witness acknowledged it is "unambiguously favorable for the financial health of" RMP)); and *id.* (Moody's and S&P view this law as favorable and credit positive).
[149] *See* Request at 86-87.

the 2020 GRC as unreasonably low, the purportedly similarly low ROE ranges of UTLCG and OCS in this case cannot be considered credible and persuasive. However, as explained above, our findings in this case are based on the evidence presented in this case and are not constrained by findings made on a different record more than four years ago. For example, RMP's claims of error ignore evidence in this case of the "credible and objective sources of data inputs" of UTLCG[150] and OCS[151] in their financial modeling. RMP's claims also disregard the importance of the Werner & Jarvis study in establishing that the 2020 GRC ROE award of 9.65 percent was "in hindsight, [an overstatement of] the cost of RMP's equity capital[]" at that time.[152] Moreover, the 9.375 percent ROE we authorized in this case falls within "the full range of ROEs produced by RMP's various financial modelings, which is between 9.20 and 11.67 percent."[153] Finally, although we gave limited weight to the historical ROEs adopted for entities in other jurisdictions, we note the ROE we authorized in this case is within the range of ROEs adopted elsewhere through September 2024 (9.26 to 10.30 percent), and for 2023 (9.25 to 11.45 percent), 2022 (9.30 to 10.50 percent), and 2021 (9.00 to 10.60 percent).[154] The foregoing evidence amply supports the reasonableness of our ROE determination.

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[150] Order at 26, n.44.
[151] *Id.* at 27, n.45.
[152] *Id.* at 27-28.
[153] *See id.* at 21 (citing Phase I Rebuttal Test. of A. Bulkley, AEB-1R Summ.).
[154] Order at 30 (citing Phase I Rebuttal Test. of A. Bulkley at 8 (citing S&P Capital IQ Pro)).

2. RMP's ROE Analysis Was Unreliable.

RMP disagrees with our finding that its financial modeling was unreliable, making numerous arguments that misstate or ignore the evidence, lack evidentiary support, or disregard our broad discretion in setting ROEs. RMP focuses most of its arguments on attacking OCS's expert witness, Dr. Woolridge, and simply ignores the other expert witnesses whose testimony supports our finding that RMP's financial modeling was unreliable.

RMP claims "Dr. Woolridge's analysis relies on the very same EPS projections as Ms. Bulkley from Wall Street analysts[.]"[155] This is inaccurate. Ms. Bulkley relied exclusively on Wall Street analysts, whereas the evidence demonstrates Dr. Woolridge did not.[156] Moreover, RMP ignores that our Order also identified Mr. Garrett's ERP (equity risk premium) estimate inputs as credible and objective.[157] RMP also appears to assert that Dr. Woolridge's DCF growth rate, like Ms. Bulkley's ERP in her CAPM modeling, would exceed GDP and is therefore as unreliable as Ms. Bulkley's. However, RMP cites no record evidence to support this proposition. RMP further mischaracterizes the record when it asserts "Dr. Woolridge conceded the point that the market return is not related to U.S. GDP both in his testimony and on cross-

[155] Request at 82.
[156] *See* Order at 27, n.45.
[157] *See id.* at 26, n.44.

examination."[158] RMP provides no record citation in support of this broad proposition, and the evidence supports the opposite proposition.[159]

Perhaps misunderstanding the Order, RMP asserts "Ms. Bulkley did not testify that her analysis assumed that corporate profits would exceed GDP in the long run as the [PSC] states."[160] The Order does not make this statement. We instead found, based on substantial evidence, that Ms. Bulkley's EPS projections produce an improper upward ROE bias. This bias is revealed in the fact that her projections produce long-term growth rates that are significantly greater than the growth of the overall economy, which is both a logical and mathematical impossibility.[161] Moreover, Ms. Bukley admitted that "over the long term, corporate profit cannot substantially outgrow GDP."[162]

3. Substantial Evidence Supports Our Finding that ROEs Have Been Overstated.

RMP asserts that the Werner & Jarvis study "is neither substantial evidence, nor a proper basis on which to make such a definitive finding [that RMP's authorized 2020

[158] Request at 84.
[159] *See* Phase I Direct Test. of Dr. J. Woolridge at 91:1934-36 ("The bottom line is that, despite the intertemporal short-term differences between S&P 500 EPS and nominal GDP growth, corporate profits and GDP remain inevitably linked over the long-term.") and Dec. 13, 2024, Hr'g Tr. at 1148:14-16 ("And you may disagree with Warren Buffett and others, but GDP and earnings or growth are tied together.").
[160] Request at 83.
[161] *See* Order at 25.
[162] *Id.* at 25 (citing Dec. 10, 2024, Hr'g Tr. at 430:8-10).

ROE was excessive]."[163] However, RMP ignores that we did not simply rely on the study. We received testimony from three expert witnesses supporting this study and defending its basic conclusions through separate analyses: Dr. Woolridge, DPU witness Casey Coleman,[164] and WRA witness Albert Lin.[165] We recognize RMP does not agree with this study and considered RMP's opposition, but we did not find it to be persuasive.[166]

RMP claims we "reject[ed] consideration of evidence regarding contemporaneous authorized ROEs."[167] A simple review of the entirety of our Order on this issue[168] demonstrates that we considered such evidence, gave it the weight we believed it deserved, and noted that the 9.375 percent Test Year ROE falls within the ROE ranges identified in that evidence, albeit at the lower end.[169]

Ultimately, as detailed in our Order, the totality of the evidence, including: 1) expert testimony and financial model results, 2) the relevance of the 9.65 percent ROE authorized in the 2020 GRC, 3) the ratemaking principle of gradualism, 4) RMP's relative risk, and 5) the ROEs that have been authorized in other jurisdictions, amply

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[163] Request at 90.
[164] *See e.g.*, Phase I Redacted Surrebuttal Test. of C. Coleman at 16.
[165] *See e.g.*, Phase I Direct Test. of A. Lin at 18-19, n.15; Dec. 13, 2024, Hr'g Tr. at 1198:7-14.
[166] *See* Order at 29.
[167] Request at 90.
[168] *See* Request at 90-91 (citing Order at 30).
[169] *See* Order at 30.

support our ROE determination that 9.375 percent is just and reasonable. RMP's Request has not convinced us otherwise.

E. We Decline to Reconsider Our Capital Structure Determination.

RMP misstates and ignores the substantial evidence supporting the capital structure we adopt in our Order. Contrary to RMP's position, we did not reject RMP's proposed hypothetical capital structure "because [the PSC] concluded [that RMP's] financial situation is the result of [its] own alleged negligence relative to the Oregon wildfires."[170] On the contrary, our decision to adopt the actual capital structure RMP forecasts for the Test Year is supported by substantial evidence that is accurately and carefully detailed in the Order. This evidence provides a host of reasons for our rejection of RMP's proposed hypothetical capital structure. RMP's Request flatly ignores those reasons.

For example, nowhere does RMP address our findings that its requested hypothetical capital structure would place an unreasonable and unjustifiable burden on RMP's Utah customers,[171] nor its admission that RMP's owner is unwilling to provide further equity investment in RMP, which would be the most effective way to increase the equity portion of its capital structure.[172] RMP also ignores that its Moody's and S&P credit ratings remained investment grade with an actual equity ratio of 43.93 percent

[170] Request at 93.
[171] *See* Order at 36.
[172] *See id.* at 37, n.74.

in 2023 and a forecasted equity ratio of 44.42 percent in 2024.[173] This evidence strongly supports our finding that our approval of a 44.43 percent equity ratio for the Test Year would be unlikely to lead to a credit downgrade of RMP.[174] Moreover, this finding was supported by several expert witnesses.[175] Finally, RMP ignores its own admissions that SB 224 is favorable to the financial health of RMP[176] and has been acknowledged by Moody's and S&P as favorable and credit positive.[177]

To be sure, the Oregon wildfires, the *James* decision, and the consequences of both were important in our consideration of a just and reasonable equity ratio within the adopted capital structure. Moreover, RMP's purely speculative prediction that the *James* verdict is "likely to be reversed" based on a report issued by the Oregon Department of Forestry[178] does not erase the record evidence that the *James* jury found PacifiCorp, of which RMP is an operating division, responsible for the wildfires. Yet, RMP would have us simply ignore the substantial evidence showing the consequences of the Oregon wildfires on RMP's capital structure. For example, RMP fails to acknowledge the effect on its actual equity ratio of the wildfire-related jury verdict payments of $200 million and settlement payouts of over $1 billion.[179] RMP

[173] *See id.* at 33-34.
[174] *See id.* at 34.
[175] *See id.*
[176] *See id.* at 34-35.
[177] *See id.* at 35.
[178] *See* Request at 93.
[179] *See* Order at 33 and 40.

simply does not address our finding that its equity ratio has been strongly impacted by these liability payments.[180]

RMP also misapprehends our Order relating to its payment of dividends to its parent, Berkshire Hathaway Energy.[181] Our Order did not make a "prudence" determination on this issue pursuant to Utah Code § 54-4-4(4),[182] nor is it based on our allegedly unsupported "assumption that the payment of the dividends resulted in [RMP's] financial position."[183] Instead, the Order observes the consequences of RMP's payment of these dividends relative to its extraordinary request for the proposed hypothetical capital structure. Moreover, RMP's Request ignores the substantial evidence that its payment of $550 million in dividend payments between 2021 and 2023 "contributed to its equity ratio decline."[184]

Finally, RMP mischaracterizes our findings relating to precedent for approval of a hypothetical capital structure. RMP claims we "assert[ed] that there is no precedent where the [PSC] approved a hypothetical capital structure to provide regulatory

[180] *See id.* at 37.
[181] *See id.* at 37 and 33, n.62.
[182] RMP's citation to "Utah Code 54-4-4(a)" is presumably a typo.
[183] Request at 95.
[184] *See* Order at 33, n.62 (citing Dec. 9, 2024, Hr'g Tr. at 186:18-187:2; Phase I Redacted Direct Test. of C. Coleman at 15:343-345) and Order at 40 (citing Phase I Redacted Direct Test. of M. Gorman at 6:18-7:2 and Exhibit MPG-2 at 2.).

support and to strengthen a utility's financial position in the absence of an agreement by all parties[.]"[185] This claim is inaccurate at best.[186]

In sum, our Order adopting the forecast actual capital structure for the Test Year is amply supported by substantial evidence. RMP's mischaracterization of our findings and disregard of the supporting evidence does not change this fact.

F. The PSC Affirms Its Denial of WA CCA Costs.

The Order denies RMP recovery of its WA CCA Costs,[187] adopting the PSC's reasoning in a recent order ("EBA Order")[188] that addressed the same category of costs in the context of RMP's energy balancing account. Like the EBA Order, the Order finds the WA CCA Costs must be situs-assigned to Washington under Section 3.1.2.1 of the "2020 Protocol."[189]

Later in the Order, in evaluating RMP's request to allocate 44 percent of its ELI Premiums to Utah, the Order discusses the 2020 Protocol again:

> The 2020 Protocol states: 'The proposed allocation of a particular expense … to a State … is not intended to and will not prejudge the prudence of that cost or the extent to which any particular cost may be reflected in rates.' It further provides: '[n]othing in the 2020 Protocol is intended to abrogate

[185] Request at 96.
[186] *See* Order at 38.
[187] As in the Order, "WA CCA Costs" refers to the approximately $13 million RMP seeks to recover from Utah ratepayers for projected costs it will incur under the Washington Climate Commitment Act ("WA CCA").
[188] Order at 47-48 (quoting *RMP's Application for Approval of the 2024 Energy Balancing Account*, Docket No. 24-035-01, Order issued Feb. 25, 2025, at 23-24).
[189] *Application of RMP for Approval of the 2020 Inter-Jurisdictional Cost Allocation Agreement*, Docket No. 19-035-42, RMP's Application filed Dec. 3, 2019, at Ex. RMP_(JRS-1)(2020 Protocol).

> any Commission's right or obligation to: (1) determine fair, just, and reasonable rates … [or] (2) consider the effect of changes in laws, regulations, or circumstances on inter-jurisdictional allocation policies and procedures when determining fair, just, and reasonable rates.'[190]

Here, having discussed that Utah claims comprise a de minimis fraction of RMP's cumulative claims, the PSC concludes that it would be unjust and unreasonable to allocate 44 percent of the system-wide ELI Premiums to Utah, as RMP requests, under the 2020 Protocol.[191]

For analogous reasons, the PSC affirms its conclusion in the Order that "WA CCA Costs must be situs-assigned to Washington under Section 3.1.2.1 of the 2020 Protocol."[192]

Further, the PSC clarifies that, regardless of how the term "situs-assigned" is construed under the 2020 Protocol, the PSC finds and concludes that allowing RMP to recover WA CCA Costs from Utah ratepayers would not result in fair, just, or reasonable rates. The WA CCA Costs reflect a change in the law that Washington implemented after the 2020 Protocol was adopted. It "is a unique and discriminatory policy the State of Washington has engineered to impose its policy preferences on

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[190] Order at 165 (quoting 2020 Protocol at 3).
[191] The PSC articulated two separate and independent bases for denying RMP recovery of its full, requested ELI Premiums: "(1) RMP has not provided substantial evidence demonstrating that its ELI Premiums are a prudent expense; and (2) allocating 44 percent of the ELI Premiums to Utah would be grossly inconsistent with cost-causation principles and would result in unjust and unreasonable rates." Order at 165-66.
[192] Id. at 48.

utilities' generation mixes while shifting the costs of those policy preferences to customers in other states."[193] As the Order reasons, "[i]f the WA CCA had existed … other states would doubtless have objected to the disparity and no other state's commission could have reasonably approved it."[194] The PSC has a statutory obligation to ensure Utah ratepayers' rates are just and reasonable, and the 2020 Protocol does not abrogate that authority and responsibility.

1. Discussing No Analogous Precedent, RMP's Argument that Denial of WA CCA Costs is Inconsistent with the Dormant Commerce Clause is Not Persuasive.

RMP now raises an argument that somehow by denying RMP recovery of the WA CCA Costs from Utah ratepayers, the PSC is violating the dormant Commerce Clause of the United States Constitution. In the same breath, RMP explains that it has sued the State of Washington, contending that the WA CCA is unconstitutional pursuant to the dormant Commerce Clause. More specifically, RMP contends there that the WA CCA's different "treatment of instate and exported electricity violates the dormant Commerce Clause."[195] A federal district court in Washington dismissed RMP's complaint, and RMP is now appealing to the Ninth Circuit.[196]

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[193] *Id*. (quotation omitted).
[194] *Id*. at 47 (quotation omitted).
[195] *PacifiCorp v. Watson*, No. 3:23-cv-06155-TMC, 2024 U.S. Dist. LEXIS 124266, at *3 (W.D. Wash. July 15, 2024).
[196] *See id*.; Request at 104.

Nevertheless, RMP now contends the Order results in "purposeful discrimination against out-of-state economic interests."[197] The PSC concludes it does no such thing. The PSC has granted no market participant or group of participants favor over another.

RMP identifies no other utility the PSC has authorized to recover costs under the WA CCA. RMP identifies no other state tax that exempts the enacting state's residents for which the PSC has allowed any utility to recover.

As UAE summarizes:

> [RMP] asks Utah customers to pay for a product — CCA Allowances — that are created by a Washington law, sold at auction in Washington, and retired in Washington to satisfy a Washington policy to reduce greenhouse gas emissions to levels set by the Washington Legislature. The Allowances themselves do not enter the interstate stream of commerce. In adopting the CCA, the Washington Legislature has imposed the Allowance requirement for energy exported from Washington. The [PSC] has approved cost recovery for the exported energy, which does travel in interstate commerce. The [PSC] has declined cost recovery for the Allowances, which do not travel in interstate commerce.[198]

Unsurprisingly, the commissions in Oregon, Wyoming, and Idaho have also declined RMP's request that their ratepayers subsidize Washington's customers under the latter's discriminatory tax.[199]

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[197] Request at 105. The PSC cannot discern precisely what "out-of-state economic interests" to which RMP refers here. To the extent RMP refers to the State of Washington and its residents, they can hardly claim the PSC discriminates by declining to pay costs from which Washington has exempted its own residents.
[198] UAE Response to Request at 20.
[199] Order at 47, n. 93; *see also* Request at 104-05.

RMP's argument on this point is relatively vague, and the PSC will not attempt to parse precedents of the United States Supreme Court to repudiate every potential argument. The PSC recognizes that a fair amount of humility is appropriate when it is asked to interpret and apply the dormant Commerce Clause of the United States Constitution. For the PSC's part, we conclude that our actions, like those of our sister states that denied recovery, are consistent with the Constitution. It would be a surprising outcome if Washington's facially discriminatory law does not run afoul of the dormant Commerce Clause, but state commissions somehow offend the Constitution by disallowing recovery of that discriminatory tax from their ratepayers. Until and unless a Utah appellate court directs us to do otherwise, we will not impose these costs on Utah ratepayers.

2. Requiring Utah Customers to Forego "All Benefits" of Generation from the Washington Plant Would Be Unjust and Unreasonable Unless Utah Customers Were Spared All Costs Associated with that Generation.

RMP argues "if Utah customers do not pay compliance costs for Chehalis[,]" then "[c]ustomers in the state of Utah cannot reap the benefits of Chehalis."[200] In the Request, RMP therefore "renews its request made in testimony that Utah customers forgo the benefits of Chehalis's generation."[201] Here, RMP cites two lines from its Phase I written rebuttal testimony where it similarly stated: "And if Utah customers do

[200] Request at 108.
[201] *Id.*

not want to pay compliance costs for Chehalis, then it is reasonable for Utah customers to not receive the benefits of Chehalis' generation."[202]

Significantly, RMP has specifically not requested the PSC remove all of the costs associated with generation at Chehalis from its revenue requirement. That is, if we were to grant RMP's Request, which RMP does not attempt to quantify, Utah customers would still be paying all Utah-allocated costs associated with Chehalis, e.g., O&M, fuel costs, depreciation, etc. RMP has not requested we do so or provided testimony demonstrating the adjustments that would be required.

RMP's request that Utah ratepayers continue to pay all costs associated with Chehalis' generation, save for the WA CCA Costs we declined to allow, while denying Utah ratepayers *any* benefit associated with its generation is patently unreasonable. The PSC appreciates that RMP is frustrated by Washington's discriminatory law. However, RMP chooses to operate a single system over six separate states, which entails certain risks as regards cost recovery. To the extent RMP faces any under-recovery owing to the WA CCA Costs, the matter is between Washington and RMP's shareholders.

[202] *Id.* (citing Phase I Rebuttal Test. of J. Steward at 41:917-18).

G. The PSC Affirms Its Findings and Conclusions Regarding Annual Incentive Plan Costs.

The Order approved RMP to recover most costs associated with its Annual Incentive Plan (AIP), but the PSC approved FEA's recommended adjustment that removed targets tied to RMP's financial performance ("Financial Target Incentives").

In the Request, RMP argues the PSC's decision to adopt FEA's adjustment was "erroneous" because (1) the PSC allowed recovery of the Financial Target Incentives in the 2020 GRC; and the Order "provides no basis" to find the Financial Target Incentives "now primarily benefit RMP's parent company and its shareholders[,]" as opposed to customers; and (2) RMP provided evidence that "AIP is not a bonus and, even when paid, reflects only the average market compensation any entity would have to pay in the industry to maintain such employees."[203]

The Order found "it is neither just nor reasonable for ratepayers to bear the cost of AIP compensation directed to incentivizing achievement of financial objectives that primarily serve the interest of RMP's parent company and its shareholders."[204] RMP cites no specific testimony to support its assertion that "AIP is not a bonus and, even when paid, reflects only the average market compensation any entity would have to pay in the industry to maintain such employees."[205] The PSC is aware of RMP having testified that, as a whole, the AIP is designed to reflect market compensation, but RMP

[203] Request at 112.
[204] Order at 80.
[205] Request at 112.

points to no evidence providing any specific information about the Financial Target Incentives, what kind of employees qualify for them, and those employees' base compensation relative to market.

More to the point, regardless of whether RMP actually "underpays" the employees who would be eligible for the Financial Target Incentives in years the financial targets are not met, the point stands that shareholders should bear the cost of Financial Target Incentives as they are the intended and primary beneficiaries of these costs. As we stated in the Order, "RMP's argument that denial of those costs [may] result in under-market compensation can only be true to the extent shareholders are unwilling to reward employees for achieving financial targets that benefit them."[206]

While the PSC allowed RMP to recover all categories of its AIP in the 2020 GRC, the PSC subsequently addressed the issue in Dominion Energy Utah's ("Dominion") general rate case in 2022. There, the PSC acknowledged its decades-long history of concluding that "costs associated with an incentive compensation program related to financial goals should not be recovered from ratepayers" and denied recovery of those costs.[207]

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[206] Order at 80.

[207] *Application of Dominion to Increase Distribution Rates and Charges and Make Tariff Modifications*, Docket No. 22-057-03, Order issued Dec. 23, 2022, at 21-22.

While the PSC reaches a different conclusion here than in RMP's 2020 GRC, the rational basis for doing so is clear: the PSC concluded shareholders should pay for Financial Target Incentives because they are the intended and primary beneficiaries; concluding otherwise would have been inconsistent with decades-old decisions of the PSC and the standard it applied to Dominion in 2022.

The PSC declines to reconsider its denial of costs associated with Financial Target Incentives.[208]

H. The PSC Declines to Reconsider its Decision Regarding Recoverable Legal and Expert Expenses.

In the Order, the PSC adjusted RMP's recoverable legal and expert costs ("LEC") for the Test Year based on substantial evidence and analysis that OCS and DPU introduced showing RMP's projected LEC were unlikely to reflect actual Test Year LEC. RMP's estimate is not based on any attempt to forecast LEC and relies entirely on base period actuals, i.e., costs RMP incurred in 2023. RMP claims the costs it incurred in 2023 provide "the best proxy of Test Year" LEC.[209]

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[208] RMP also asserts FEA's adjustment erroneously "remove[d] the financial portion of AIP twice." Request at 113. RMP elected not to cross-examine FEA's witness at hearing, and the record is unclear as to how FEA would respond to RMP's criticism. *See* Dec. 12, 2024, Hr'g Tr. at 1069:10-13. Regardless, FEA's testimony is the only evidence in the record that provides an estimate of Test Year AIP after removal of all four Financial Target Incentives. RMP has not offered an alternative calculation, and UAE's testimony excludes only one of the four categories we have found must be excluded. Therefore, the PSC affirms its finding because FEA's recommendation provides the most reasonable and accurate estimate available of recoverable AIP in the Test Year.

[209] Order at 80-81 (quoting Phase I Rebuttal Test. of S. McCoy at 42:830-2).

However, the evidence indicated the LEC in 2023 were not reflective of RMP's typical past experience or of likely ongoing expenses. RMP experienced a "significant spike in 2023" because of "wildfire-related legal costs."[210] Consequently, the PSC approved OCS's recommended adjustment, which incorporated data from an additional three years preceding 2023, and found that the resulting recoverable sum would "more accurately represent typical ongoing expenditures."[211]

As OCS points out, numerous categories of RMP's recoverable Test Year costs rely on examining multiple years of historical data.[212] This is essential to ensure that historically anomalous base period costs are not built into rates that will persist until the next general rate case. While base period LEC may have been a suitable proxy for Test Year LEC in past general rate cases, the PSC found the base period, alone, was not a suitable proxy here because, owing to *James* and other wildfire litigation, RMP's LEC in 2023 were unusually high.[213] The PSC denies reconsideration with respect to recoverable LEC.

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[210] *Id*. at 83.
[211] *Id*. at 85.
[212] OCS's Response to Request at 44, n.111 (citing Order at 30 (ROE), 74-75 (property taxes), 88-89 (generation overhaul expenses).
[213] The PSC's decision on this point stems from its finding that, after making OCS's recommended adjustment, the recoverable LEC in the Test Year will better approximate RMP's likely LEC in the Test Year. The PSC made no finding related to the recoverability of 2023 *prior period* expenses based on RMP's liability in *James*. Nonetheless, RMP's assertion that it "was not at fault" in *James* and this is "confirmed" by "a years-long government investigation" is grossly at odds with the record. Request at 115. An Oregon jury found RMP liable for negligent, reckless, and willful tortious conduct, imposing massive punitive damages. Whether the Oregon jury erred is not for

I. The PSC Declines to Reconsider Its Decision Regarding Recoverable Injury and Damages Costs.

For injuries and damages expenses ("ID Expenses"), in contrast to LEC, RMP advocates using a three-year historical average. The three-year average (2017-2019) used to project IE Expenses in the 2020 GRC was $4.62 million. RMP now asks for $17.1 million based on a three-year average from 2021 through 2023, a 276 percent increase. The Order found RMP's projection of [these] Test Year ID Expenses "is heavily influenced by payments made to settle wildfire claims where serious questions exist as to whether RMP's tortious conduct has given rise to the significant increase" in these costs.[214]

The Order further provides: "On the record before us, the PSC cannot find RMP has provided substantial evidence that its projected Test Year ID Expenses reasonably estimate expenses it is likely to [prudently] incur in the Test Year, given the significant anomalies in recent years."[215] Additionally, "[n]o party presented record evidence of a reasonable and appropriate amount to set 2025 Test Year ID [E]xpenses."[216]

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the PSC to decide nor is the record remotely sufficient to contemplate such a question. However, the fact that RMP introduced a report at the eleventh-hour (which other parties did not have a reasonable opportunity to investigate or scrutinize through expert testimony) in this proceeding from a state agency in Oregon that appears to come to one or more different conclusions than the jury does not change its verdict or RMP's liability, at present, under the law.

[214] Order at 88.

[215] *Id.*

[216] *Id.*

Acknowledging RMP's past recovery of limited ID Expenses in prior general rate cases, the PSC recognized that some portion of RMP's projected ID Expenses are not related to extraordinary wildfire claims. Consequently, the PSC allowed recovery of the same amount of ID Expenses approved in the 2020 GRC, $4.62 million (system-wide).

RMP now argues "it is improper for the [PSC] to reduce [RMP's] recovery of ID [E]xpenses on the basis of [RMP's] alleged negligence."[217] RMP asserts it was "not at fault," "has been deemed not at fault[,]" and this is "confirmed" by "a years-long government investigation."[218]

RMP misrepresents the record. RMP's fault in *James* is not merely "alleged." After considering all evidence presented at trial, a jury in Oregon found RMP was, in fact, at fault, deeming its conduct not only negligent but reckless and willful and imposing massive punitive damages.[219] The PSC recognizes RMP has filed an appeal, but whether the Oregon jury erred is not for the PSC to decide nor is the record here remotely sufficient to attempt an answer.

Further, the *James* fires are not the only wildfires impacting RMP's ID Expenses in recent years. RMP testified it paid "across all settlements … about $1.1 billion."[220]

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[217] Request at 119.
[218] *Id.* 115, 119.
[219] The report RMP introduced at the eleventh-hour, as a cross-exhibit, from the Oregon Department of Forestry and Fire, does not change the jury's verdict or RMP's liability, at present, under the law.
[220] Dec. 10, 2024, Hr'g Tr. at 258:18-22.

The PSC declines to reconsider its decision to allow RMP to recover the sum of ID Expenses the PSC approved in the 2020 GRC. The PSC could not reasonably approve RMP's proposal to use the 2021-2023 historical average because it contained historically anomalous, large claims, some significant portion of which a jury found to involve negligence or worse. Substantial evidence did not exist to support a finding that these unusually high costs were likely to reflect actual ID Expenses in the Test Year. Additionally, substantial evidence did not exist to support a finding that the historical 2021-2023 ID Expenses were prudent or that RMP's requested 278 percent increase in ID Expenses reflected prudent expenditures in the Test Year.

J. The PSC Declines to Reconsider Allowing RMP to Recover Costs Relating to the Fall Creek Hatchery.

RMP sought to recover from Utah ratepayers costs associated with construction and operation of a fish hatchery in Oregon. RMP undertook the project to fulfill an obligation under the Klamath Hydroelectric Settlement Agreement (KHSA), initially executed in 2010, which is an agreement RMP entered "to remove certain hydroelectric dams on the Klamath River owing to policy concerns of stakeholders in Oregon and California."[221] RMP is obliged to provide fish hatchery production under the KHSA. Because of planned dam removals, the hatchery RMP previously relied on to fulfill this obligation lost its water supply. In RMP's 2012 GRC, the PSC approved a

[221] Order at 66.

settlement that provided RMP would not recover "dam removal or removal related costs associated with the [KHSA]" from Utah ratepayers.[222]

The Order concluded "the basic intent of the 2012 GRC Settlement is clear: Utah ratepayers are not responsible for the costs RMP incurs to fulfill its obligations under the KHSA save for those costs that are expressly identified or are generally related to generation."[223] The PSC further found "it is not just or reasonable to require Utah ratepayers to fund a plurality of the costs RMP incurs to construct and operate a fish hatchery in another state for the purpose of fulfilling RMP's obligations to California and Oregon under the KHSA."[224]

We deny RMP's request to reconsider our denial of the $2,495,883 it seeks to recover from Utah ratepayers associated with the fish hatchery in Oregon.

K. RMP's Request for Reconsideration under Utah Code § 54-7-12 is Untimely as It Asks the PSC to Reconsider an Order from November 15, 2024.

On November 15, 2024, the PSC issued its Order Adopting Alternative Process ("OAAP"). After soliciting input from the parties, the OAAP consolidated the Fire Plan Docket and the DAO Docket into the instant GRC. The Order also concluded that, pursuant to Utah Code § 54-7-12, the PSC had 240 days from the date RMP filed its

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[222] *See id*. at 66, n.132 (citing *In the Matter of the 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. 11-035-200, Report and Order issued Sept. 19, 2012, at Attachment 1 ["2012 GRC Settlement"]).
[223] *Id.* at 68.
[224] *Id.*

Amended Application to issue a final order resolving the consolidated dockets. The OAAP indicated the PSC was simultaneously issuing a scheduling order for the consolidated dockets that set hearing dates in late March 2025 to facilitate the PSC issuing a final order by April 25, 2025.[225]

The Request argues Utah Code § 54-7-12 required an order within 240 days of RMP's Initial Application (proposing an altogether different rate increase), i.e., an order by February 23, 2025. The Request asks the PSC to reconsider the Order because it was issued on April 25, 2025 (consistent with the schedule set on November 15, 2024, five months earlier). RMP asks the PSC to grant all relief requested in its Amended Application because the Order was issued on April 25, 2025.

On this point, RMP's Request does not seek reconsideration of any finding of fact or conclusion of law in the Order; instead, RMP asks the PSC to reconsider the conclusion of law it made on November 15, 2024, in the OAAP regarding the date by which a final order must issue on RMP's Amended Application.

RMP's request the PSC reconsider its conclusion is obviously untimely and meritless. The proceeding has, effectively, concluded. Like all parties, RMP has known of the PSC's conclusion of law on this point since November 15, 2024, and all parties proceeded to litigate the matter in good faith through noticed hearing dates that did

[225] *See* Scheduling Order for Consolidated Phase III and Notice of Hearing issued Nov. 15, 2024.

not conclude until March 26, 2025. RMP's request the PSC now conclude a final order was due one month before the final day of hearing is baseless.

A request for review must be filed within 30 days "after the issuance of the order."[226] To the extent RMP earnestly sought review of the PSC's legal conclusion regarding the date by which the law required a final order on the Amended Application, it should have filed it by December 13, 2024. Having filed its Request on May 27, 2025, two months after hearings concluded and a month after the final order issued, RMP's Request is unquestionably late.[227] The PSC denies RMP's request for review of the OAAP.

[226] Utah Code § 63G-4-301; *see also* Utah Code § 54-7-15; Utah Admin. Code R746-1-801.

[227] OCS argues the delinquency of RMP's Request renders this issue waived on appeal. OCS's Response to Request at 47 (citing Utah Code § 54-7-15(2)(b)). That is plainly a question for the Utah Supreme Court or Utah Court of Appeals to answer. The PSC concurs with OCS, however, that timely requests for review provide an important opportunity to correct any manifest errors, expeditiously resolve problems, and to conserve judicial resources. Whether the issue is waived on appeal or not, RMP's extremely delinquent request for review on this point served no constructive purpose. After the PSC issued its OAAP in November of 2024, the many parties in this docket proceeded to invest substantial resources in litigating the matter over the course of the next five months. If RMP believed it had a meritorious argument on review that would obviate all those efforts, it should have filed a timely request the PSC reconsider it.

DATED at Salt Lake City, Utah, July 3, 2025.

/s/ Jerry D. Fenn, Chair

/s/ David R. Clark, Commissioner

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

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#340553

Notice of Opportunity for Judicial Review

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 July 3, 2025, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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