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*Attorneys for Rocky Mountain Power*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p>In the Matter of the Complaint of Rocky Mountain Power, a Division of PacifiCorp, Against Heber Light &amp; Power Regarding Unauthorized Service by Heber Light &amp; Power in Areas Certificated to Rocky Mountain Power</p>	<p>Docket No. 07-035-22</p> <p><b>AMENDED COMPLAINT AND REQUEST FOR EXPEDITED TREATMENT</b></p>
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Rocky Mountain Power (“Rocky Mountain Power”), pursuant to Utah Code Ann. § 63-46b-3 and Utah Admin. Code R746-100-3, hereby complains against Heber Light & Power (“HL&P”), alleging as follows:

**PARTIES**

1. Rocky Mountain Power, a division of PacifiCorp, an Oregon corporation, is authorized to do business in the state of Utah. Rocky Mountain Power is an electrical corporation holding a certificate of public convenience and necessity (“Certificate”) issued by

the Commission authorizing it to provide electric service to customers in many parts of the state of Utah, including Wasatch County. Rocky Mountain Power is the successor in interest to Utah Power & Light Company, which previously provided electric service for decades pursuant to the Certificate and prior certificates of public convenience and necessity issued by the Commission. Hereinafter references to Rocky Mountain Power will include as applicable Utah Power & Light Company.

2. On information and belief, HL&P is an energy services interlocal entity formed under the Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101, et seq., by Heber City, Midway, and the Town of Charleston (“Member Cities”) for the purpose of providing electric service to residents of the Member Cities.

### **JURISDICTION**

3. The Commission has jurisdiction over this Amended Complaint because HL&P is providing retail electrical service to customers outside the municipal boundaries of its Member Cities (“Municipal Boundaries”) in violation of Rocky Mountain Power’s Certificate and Utah law. The electrical service provided by HL&P is not the temporary wholesale of surplus product or service capacity, but is rather part of a pattern of providing permanent, continuous, and expanding retail service in the normal course of business to customers outside the Municipal Boundaries.

4. Although the Commission does not have jurisdiction over municipalities providing utility service within their municipal boundaries or making legitimate temporary wholesale sales of surplus product or service capacity outside of their municipal boundaries, the Commission is authorized to prohibit continuous retail service by municipalities outside of their municipal boundaries because in so doing the municipalities are not engaged in a municipal

function authorized by Utah Code Ann. § 10-8-14 and because customers of the municipalities located outside of their municipal boundaries have no control over the policies and actions of the municipalities because they are not able to vote for the elected public officials who set such policies and authorize such actions.

5. The Commission also has jurisdiction over this Amended Complaint because, on information and belief, HL&P has constructed generating plants and transmission lines without obtaining a certificate of public convenience and necessity from the Commission in accordance with Utah Code Ann. § 11-13-304.

### **GENERAL ALLEGATIONS**

6. Rocky Mountain Power provides electric service to approximately 1,000 customers in unincorporated Wasatch County.

7. In furtherance of its duty to serve customers in Wasatch County, Rocky Mountain Power has sought and obtained franchises from Wasatch County at least as early as 1917 authorizing it to install its facilities in public rights-of-way in Wasatch County and to do other things necessary to provide electric service to customers in Wasatch County. The most current franchise from Wasatch County was granted to Rocky Mountain Power in 1960 and expires in 2010.

8. Rocky Mountain Power was granted the Certificate authorizing it to provide electric service in Wasatch County and requiring it to provide service to customers in Wasatch County in accordance with the terms and conditions of its tariffs and regulations on file with and approved by the Commission.

9. Rocky Mountain Power has made substantial investments in facilities, including the Jordanelle Substation, in anticipation of fulfilling its obligation to provide electric service to customers in its service area.

10. On information and belief, HL&P has significantly expanded its retail service to customers outside the Municipal Boundaries. On information and belief, HL&P currently provides electric service to approximately 8,800 customers. Of that number, approximately 2,700 customers are located outside the Municipal Boundaries.

11. HL&P is currently aggressively competing with Rocky Mountain Power for service to major new land developments outside the Municipal Boundaries with the stated desire to serve all residents within the Heber Valley.

12. For example, HL&P is currently seeking to provide retail electric service to a major proposed development of approximately 4,000 homes in the area known as the North Village in unincorporated Wasatch County. This is an area that can readily be served by Rocky Mountain Power and lies squarely within its service territory.

13. Certain developers planning developments in unincorporated Wasatch County have requested electric service from Rocky Mountain Power, but on information and belief have been told by HL&P that their proposed developments must take electric service from HL&P, notwithstanding that the developments are outside the Municipal Boundaries.

14. HL&P's actions in providing service to customers outside the Municipal Boundaries and in seeking to further expand its service to customers outside the Municipal Boundaries are in violation of the Certificate and state law.

15. Through its actions, HL&P is attempting to determine Rocky Mountain Power's service area.

16. The Commission has exclusive jurisdiction to determine the service area of a public utility.

17. The Utah Municipal Code, Utah Code Ann. §§ 10-1-101, et seq., provides that “(1) [a] city may (a) construct, maintain and operate waterworks, sewer collection, sewer treatment systems, gas works, *electric light works*, telecommunications lines, cable television lines, or public transportation systems; ... and (d) *sell and deliver surplus product or service capacity* of any works or system listed in Subsection (1)(a) ... not required by the city or the city’s inhabitants, to others *beyond the limits of the city.*” Utah Code Ann. § 10-8-14 (emphasis added).

18. The Utah Municipal Code expressly limits a municipality’s authority to sell electricity to customers within the boundaries of the municipality, unless sold and delivered under the “surplus product or service capacity” exception.

19. On information and belief, HL&P is currently providing retail electric service to customers located outside the Municipal Boundaries from capacity in HL&P’s system that does not constitute “surplus product or service capacity.”

20. The Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101, et seq., requires that “before proceeding with construction of any electrical generating plant or transmission line, each interlocal entity ... shall first obtain from the public service commission a certificate, after hearing, that public convenience and necessity requires such construction and in addition that such construction will in no way impair the public convenience and necessity of electrical consumers of the state of Utah at the present time or in the future.” Utah Code Ann. § 11-13-304(1).

21. On information and belief, HL&P has constructed electrical generating plant and transmission lines to provide service without obtaining a certificate of public convenience and necessity from the Commission as required by the Interlocal Cooperation Act.

22. Under the Certificate, Rocky Mountain Power has a legally cognizable right and expectation to exclusively provide electric service within its service area.

23. The Utah Constitution requires just compensation for taking private property for a public purpose. Utah Const. art. 1, § 22. A municipality or interlocal energy services entity cannot exercise its powers in derogation of specific rights protected under Article 1, Section 22 of the Utah Constitution.

24. HL&P's service to retail customers outside of the Municipal Boundaries and within Rocky Mountain Power's service area unlawfully encroaches on the exclusive right to serve granted Rocky Mountain Power under the Certificate in violation of Article 1, Section 22 of the Utah Constitution.

25. On April 13, 2007, Wasatch County notified Rocky Mountain Power that the Wasatch County Council would consider and may take action on the following matter at its meeting on Wednesday, April 18, 2007, at 3:00 p.m.: "Modification and partial revocation of franchise granted April 14, 1960 to Utah Power & Light, its successors and assigns."

26. On information and belief, during the same Wasatch County Council meeting, the County Council was to consider whether to approve an ordinance granting to HL&P a franchise to install facilities to provide electric service covering the same area for which it was considering revoking Rocky Mountain Power's current franchise.

27. On April 17, 2007, Rocky Mountain Power filed a complaint against HL&P in this docket. The complaint sought, among other things, an order of the Commission that HL&P must cease providing retail electric service to customers outside the Municipal Boundaries.

28. On April 18, 2007, during the meeting of the Wasatch County Council, Rocky Mountain Power, HL&P and Wasatch County agreed that the Wasatch County Council would stay action on the franchise issues and that Rocky Mountain Power and HL&P would stay action in this docket while the parties attempted to resolve their disputes. Pursuant to this agreement, a stipulated motion seeking a stay of this docket was filed. The Commission granted the motion for stay on April 25, 2007. The Parties have since agreed to extensions of this stay, and the Commission has granted further extensions. The stay expired on October 9, 2007.

29. Since April 18, 2007, Rocky Mountain Power has had numerous discussions and meetings with HL&P and Wasatch County in an effort to resolve the foregoing and other disputes.

30. On November 7, 2007, the Wasatch County Council held an executive session to review the matter. As a result of that session, Rocky Mountain Power and Wasatch County have resolved their disputes, including agreeing that Wasatch County will not revoke Rocky Mountain Power's franchise.

31. Rocky Mountain Power and Wasatch County have been unable to reach an agreement with HL&P to settle any disputed issue.

32. As a result of the inability of Rocky Mountain Power and Wasatch County to resolve their disputes with HL&P, a dispute exists whether HL&P has the legal right and authority to provide electric service to customers outside the Municipal Boundaries. In

addition, a dispute exists whether Rocky Mountain Power may provide service to customers in its service territory that HL&P desires to serve.

33. Potential customers, including major developments, are being delayed pending a resolution of the disputes. Therefore, expedited resolution of this matter is essential in the public interest.

### **REQUEST FOR RELIEF**

WHEREFORE, Rocky Mountain Power requests relief as follows:

1. That the Commission immediately notice a scheduling conference to establish an expedited schedule of proceedings to address and resolve the issues raised by this Amended Complaint consistent with the public interest.

2. That the Commission determine, among other things:

a. Whether HL&P has “surplus product or service capacity” and, if so, the amount of HL&P’s “surplus product or service capacity.”

b. Whether the sale of “surplus product or service capacity” must be restricted to temporary wholesale sales or may be to retail customers on a continuing basis.

c. If the Commission determines HL&P has authority to provide retail electric service to customers outside the Municipal Boundaries from “surplus product or service capacity,” the geographic area in which Rocky Mountain Power is obligated to serve.

3. If the Commission determines that HL&P has authority to provide retail electric service to customers outside the Municipal Boundaries from “surplus product or service capacity,” that the Commission amend Rocky Mountain Power’s Certificate to exclude the



geographic area outside the area that the Commission determines Rocky Mountain Power is obligated to serve.

4. For such further relief as is deemed by the Commission to be just and equitable in the premises.

### COMMUNICATIONS AND DISCOVERY

1. Communications, including pleadings and other filings, regarding this Amended Complaint should be addressed to:

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2. Rocky Mountain Power requests that all data requests regarding this Amended Complaint be addressed to:

By email (preferred)

[datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail

Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, OR 97232

By facsimile

(503) 813-6060

DATED: February 5, 2008.

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Mark C. Moench  
R. Jeff Richards  
Rocky Mountain Power Power

Gregory B. Monson  
Stoel Rives LLP

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **AMENDED COMPLAINT AND REQUEST FOR EXPEDITED TREATMENT** to be served upon the following by electronic mail and by mailing a copy of the same in the United States Mail to the addresses shown below on February 5, 2008:

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