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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Request of ROCKY MOUNTAIN POWER for Waiver of Solicitation Process and for Approval of Significant Energy Resource Decision	Docket No. 08-035-35 **REBUTTAL COMMENTS OF ROCKY MOUNTAIN POWER**

Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or "Company"), submits these rebuttal comments in response to the testimony and comments on legal and policy issues submitted by various parties on the Company's request for approval of significant energy resource decision ("Acquisition Approval Request") to acquire the Chehalis Plant ("Chehalis"). The rebuttal comments, and rebuttal testimony being simultaneously filed by the Company, are submitted in accordance with Utah Administrative Code R746-430-2(2)(d) and the Commission's Procedural Order and Notice of Hearing issued April 15, 2008, and Amended Procedural Order issued June 13, 2008.

Given that this is the first Acquisition Approval Request under the Energy Resource Procurement Act, Utah Code Ann. §§ 54-17-101, *et seq*. ("Act"), there is some disagreement about the requirements and appropriate procedures to be followed in this process. In addition, the Committee of Consumer Services ("Committee") has urged the Commission to rule that the Commission cannot pre-approve the prudence of the acquisition of Chehalis when a request for waiver of the solicitation process ("Solicitation Waiver Request") has been granted. Alternatively, the Committee recommends that the Commission grant the Acquisition Approval Request but defer issues of prudence and cost recovery to a subsequent rate case. The Committee has also suggested conditions to approval that are irrelevant to approval or are premature or unnecessary. The rebuttal comments will (1) demonstrate that the Committee's arguments are contrary to the plain provisions of the Act, (2) respond to conditions to granting the Approval Request proposed by various parties, (3) provide the Company's perspective on the requirements and procedures to be followed in this process, and (4) demonstrate that the Commission should grant the "Motion of Rocky Mountain Power for an Accounting Order to Establish a Regulatory Asset and Acquisition Premium" ("Motion") as part of this proceeding.

INTRODUCTION

Rocky Mountain Power filed its "Verified Request for Waiver of Solicitation Process and for Approval of Significant Energy Resource Decision" ("Verified Request") on April 1, 2008. The Request was two-fold: (1) a Solicitation Waiver Request under Utah Code Ann. §§ 54-17-201(3) and 54-17-501 and (2) an Acquisition Approval Request under Utah Code Ann. § 54-17-302. Rocky Mountain Power thereafter filed its Motion to seek an accounting order authorizing the Company to record an $8.7 million payment associated with the exclusive right to acquire

Chehalis for a period of time ("Exclusivity Payment") in Account 182.3, a regulatory asset account, until the transaction closes.[1]

Pursuant to a schedule established by the Commission, a technical conference was held, discovery took place and comments on the Solicitation Waiver Request were submitted by Merrimack Energy Group, Inc. as Independent Evaluator ('IE"), the Division of Public Utilities ("Division"), the Committee, and the Utah Association of Energy Users ("UAE"). The IE, Division and UAE supported the Solicitation Waiver Request. The Committee did not oppose it. The Commission issued its Order Granting Request for Waiver of Solicitation ("Solicitation Waiver Order") on April 30, 2008. In the Solicitation Waiver Order, the Commission noted that certain issues raised by parties in their comments on the Solicitation Waiver Request "address RMP's request for approval of a significant energy resource decision, pursuant to Utah Code 54-17-302, and the recovery of costs associated with the acquisition of this significant energy resource pursuant to Utah Code 54-17-303, not the Solicitation Waiver itself." Solicitation Waiver Order at 2-3.

Extensive discovery has taken place on the Acquisition Approval Request. On June 20, 2008, the IE and Division submitted testimony, and the Committee and UAE filed comments, on the Acquisition Approval Request and the Motion. The IE, Division and UAE recommend that the Commission grant the Acquisition Approval Request. The Committee recommended that it be denied or, if granted, be limited by deferring approval of the prudence of the acquisition or cost recovery to a future rate case. The rebuttal comments address the testimony and comments

[1] The Motion also originally sought approval of accounting for an acquisition premium. The Company is no longer pursuing that portion of the Motion because there is no dispute that the entire purchase price may be included in rate base. *See* Testimony of Shauna Benvegnu-Springer ("Benvegnu-Springer Testimony"), lines 70-75.

filed on June 20 2008. Confidential Rebuttal Testimony of Stefan A. Bird and Gregory N. Duvall will also be filed addressing issues raised in the testimony and comments of other parties.

SUMMARY OF TESTIMONY AND COMMENTS

IE and Division

The IE's testimony raised questions about whether the Acquisition Approval Request was consistent with Utah Administrative Code R746-430-4, but testified that, subject to verification of assumptions in analyses provided by Rocky Mountain Power in response to discovery requests, he was satisfied that acquisition of Chehalis is in the public interest. Confidential Direct Testimony of Wayne Oliver ("Oliver Testimony"), lines 348-351, 372-375. Rocky Mountain Power understands that the IE has now verified the analyses and is recommending approval. The Division concluded that the purchase price for Chehalis is fair, Chehalis has been well maintained and purchase of Chehalis now rather than waiting approximately four years for a similar plant to come on line results in net positive benefits to ratepayers. Testimony of Charles E. Peterson (Confidential Version) ("Peterson Testimony"), lines 402-408. On the basis of these conclusions, the Division recommended that the Commission approve the Acquisition Approval Request. *Id.*, lines 408-410. The Division also testified that it was unnecessary to address the Motion because it was recommending approval of the acquisition of Chehalis. Benvegnu-Springer Testimony, lines 79-82.

Committee

Michele Beck and Phil Hayet, of Hayet Power Systems Consulting, each submitted comments on behalf of the Committee. (Ms. Beck's comments will be referred to as the "Committee Comments" and Mr. Hayet's comments as the "Hayet Comments"). The Committee argued that the Commission could not approve the prudence of the acquisition of a resource under the Act if a waiver of the solicitation process were granted. Committee

Comments at 2. It noted that "in the past the Committee has criticized the Company's over-reliance on the market and questioned its policies that resulted in delays in acquiring new resources," apparently favoring the acquisition of Chehalis, but stated that this must be balanced with "a respect for process." *Id*. The Committee stated that "the resource appears to be a reasonable acquisition from the overall perspective of cost and impact on the Company's total portfolio of resources over the life of the plant. However, the Committee notes that it is not without risk." *Id.* The Committee made comments on what it called "substantive issues" related to the process. *Id.* at 2-5.

The Committee recommended that "[a]lthough this resource appears to be a reasonable option from the perspective of overall cost and impact on the portfolio …, [t]he threshold decisions concerning the amount of acquisition and operation costs; the used and usefulness of the plant as a system resource; the timing of the inclusion of costs into rates; and the prudence of the transaction should be addressed in a general rate case." *Id.* at 5. Alternatively, the Committee requested that "[i]f this resource is either approved in this case or found to be a prudent resource in a subsequent rate case, the manner in which it is treated in rates should be determined in the appropriate rate case." *Id.* The Committee recommended that "[c]ustomers should not bear the cost of paying for the Exclusivity Payment in the event the Company backs away from the deal." *Id.* The Committee recommended that if and when the acquisition is approved, the Commission impose conditions that would deny rate recovery of certain costs that might arise in the future, predetermine ratemaking for one aspect of operation of Chehalis and require testing of dispatch of Chehalis relative to ratemaking models. *Id.* at 5-6. Finally, the Committee recommended that the Commission clearly outline[] the process by which the deferred accounting issue will be considered." *Id.* at 6.

The Hayet Comments concluded "that while the Chehalis plant appears to be a reasonably good opportunity given that the plant can be acquired at a substantial discount to the cost to construct a new combined cycle unit, there are many issues that raise 'red flags' and cause [him] to be concerned that the value of the plant is not quite the bargain that PacifiCorp purports it to be." Hayet Comments at 2. After reviewing the issues raised in his review, Mr. Hayet recommended "that Chehalis may well be a sound purchase, however, I have identified enough issues concerning Chehalis that cause me to recommend that the Committee should take a cautious approach towards this acquisition." *Id.* at 21. He then made recommendations for conditions which were adopted in the Committee Comments. *Id.* at 21-23.

UAE

UAE recommended approval of the acquisition, but raised concerns that confidentiality restrictions may limit the ability of some entities to provide critical and relevant information to the Commission. UAE Comments at 2. UAE believes the Commission may not have the flexibility under the Act to defer prudence review of acquisitions. UAE believes that the Act should be amended to offer additional discretion to the Commission if the solicitation requirement is waived and if other aspects of the process interfere with a thorough, open and public process. *Id.* at 3-4. As it did in its comments on the Solicitation Waiver Request, UAE recommended that the Commission condition its approval on the substantial accuracy of the information provided by the Company, the absence of any failure to disclose material information, the absence of any attempt by the Company to evade the Act, and the absence of any failure by the Company to adequately disclose information in its previous requests for proposals ("RFPs") about the availability of transmission or other resources that it intends to utilize in delivering the output of Chehalis into the Company's service territory. *Id.* at 4-5.

REBUTTAL COMMENTS

I. THE COMMITTEE'S ARGUMENT ON COST RECOVERY WHERE SOLICITATION HAS BEEN WAIVED IS CONTRARY TO THE ACT.

In the "Utah Committee of Consumer Services Response to Rocky Mountain Power's Request for Approval of Significant Energy Resource Decision" ("Committee Response") filed April 23, 2008 in connection with the Solicitation Waiver Request, the Committee argued that the cost recovery mechanism of the Act is inapplicable where a utility obtains a waiver of either the solicitation or approval process under the Act. Committee Response at 1-3. The Committee premised its argument on Utah Code Annotated § 54-17-501(10), which states that if a utility is granted a waiver to acquire or construct a significant energy resource, the provisions of section 54-17-303, providing for rate recovery of the approved cost of the resource, do not apply. The Committee argued that the waiver referenced in section 54-17-501(10) was a waiver of either the solicitation or approval process because other portions of section 54-17-501 refer to both. Committee Response at 2-5.

In support of its interpretation of section 54-17-501(10), the Committee stated that the Legislature's intent is to be discerned from the plain language of the statute and that all parts of the statute are to be given effect and terms are to be read in accordance with their ordinary meaning. *Id.* at 3, n. 1. While Rocky Mountain Power agrees with these legal principles, the Committee has not correctly applied them to the statute. It has interpreted the word "waiver" in section 54-17-501(10) in a way that is inconsistent with the history of the Act and with other provisions of the Act.

When the Act was first enacted in 2005, it allowed a utility to seek a waiver of the solicitation process, but not a waiver of the approval process. *See* L. Utah 2005, ch. 11, §§ 6, 10. Although the Act allowed a solicitation waiver, it required that rate recovery be allowed even if

the utility obtained a waiver of the solicitation process. *Id.* §§ 10, 11. Thus, the Committee's argument could not have been made before the 2007 amendment because section 54-17-501(10) did not exist. Yet all of the practical considerations cited by the Committee in support of its argument were present under the earlier version of the Act just as much as they are present after the 2007 amendment.

The Act was amended in 2007 to allow waiver of the approval process to further extend, as circumstances warranted, the existing waiver of the solicitation process so that a utility could attempt to pursue acquisition of a plant in circumstances where the seller would only allow a very short time from when an opportunity arose to close the purchase. Surely, the addition of the opportunity to obtain waiver of *approval* of acquisition in 2007 in those circumstances, *see* L. Utah 2007, ch. 289, §§ 2, 3, cannot be the basis for arguing a change in the effect of waiver of *solicitation* which was always available. Rather, it is clear that the Legislature intended section 54-17-501(10), added in 2007, to clarify that if a waiver of the approval process were obtained, the rate recovery treatment provided by section 54-17-303 would not apply.

In addition, the Committee's argument is inconsistent with the Act as now enacted when all provisions are read together and all are given effect. Section 54-17-302(1) states in part:

> If … an affected electrical utility … obtains a waiver of the requirement to conduct a solicitation under Section 54-17-501, but does not obtain a waiver of the requirement to obtain approval of the significant energy resource decision under Section 54-17-501, the affected electrical utility *shall* obtain approval of its significant energy resource decision.

Utah Code Ann. § 54-17-302(1) (emphasis added). Thus, even though Rocky Mountain Power was able to obtain a waiver of solicitation in this case because of the time-limited commercial opportunity, it was required to obtain approval of the acquisition because it could not demonstrate under section 54-17-501 that it was entitled to a waiver of the approval process. The owner of Chehalis was willing to allow the Company several months to obtain regulatory

approvals. This did not allow sufficient time to obtain approval of and conduct a solicitation, but did allow time to obtain approval of acquisition under the Act. Verified Request at 2, 7 (¶ 12); [Verified] Supplement to Verified Request for Waiver of Solicitation Process and for Approval of Significant Energy Resource Decision at 2-3.

In the required proceeding for approval of the significant energy resource decision,

> [t]he commission *shall* include in its order under this section:
>
> (a) *findings as to the total projected costs* for … acquisition of the resource; and
>
> (b) the basis upon which the findings described in Subsection (6)(a) are made.

Utah Code Ann. § 54-17-302(6) (emphasis added). Section 54-17-303(1)(a) then provides in part:

> Except as otherwise provided in this section, if the commission approves a significant energy resource decision under Section 54-17-302, the commission *shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs*:
>
> (i) relevant to the proceeding;
>
> (ii) *incurred by the affected electrical utility in … acquiring the approved significant energy resource*; and
>
> (iii) *up to the projected costs specified in the commission's order issued under Section 54-17-302*.

Id., § 54-17-303(1)(a) (emphasis added).

The foregoing statutes plainly state that (1) Rocky Mountain Power is required to pursue approval of the acquisition under the circumstances of this case, (2) the Commission is required to find the total cost of Chehalis and (3) the cost so found is to be included in the Company's rates in its next rate case unless an exception in section 54-17-303 applies. None of the exceptions in section 54-17-303 refer to waiver of the solicitation process. Accordingly, if

section 54-17-501(10) is interpreted as urged by the Committee, there is an inconsistency between sections 54-17-302 and 303 on the one hand and section 54-17-501 on the other.

Based on its plain language, the only way that section 54-17-501(10) can be read, without being inconsistent with sections 54-17-302 and 303, is that a "waiver to acquire or construct a significant energy resource" refers only to a waiver of the approval of the significant energy resource decision and not to a waiver of the solicitation process. This interpretation is supported by the plain meaning of "waiver to acquire or construct a significant energy resource"—a waiver of the approval of acquisition or construction of the resource, not a waiver of the solicitation process. Solicitation does not involve acquisition or construction of the resource, it involves obtaining proposals for acquisition or construction.

The Committee's interpretation of section 54-17-501(10) is not consistent with the principles of statutory construction cited by the Committee. The Commission not only may, but is required to, approve the cost of Chehalis as part of its approval of the acquisition and to allow rate recovery of the approved cost.

II. THE COMMITTEE'S ALTERNATIVE ARGUMENT THAT THE COMMISSION MAY APPROVE THE ACQUISITION, BUT WITHHOLD RATE RECOVERY IS CONTRARY TO THE ACT AND INCONSISTENT WITH THE PRUDENCE STANDARD.

In a slight variation of its first argument, the Committee alternatively suggests that the Commission may approve the acquisition, but defer the rate recovery contemplated by the Act. Mr. Hayet goes so far as to suggest that if the Commission approves the acquisition because "it is a prudent investment," it should still deny rate recovery until the acquisition is thoroughly reviewed in the next rate case because of potential risks associated with Chehalis. Hayet Comments at 23. This argument is contrary to the Act and is inconsistent with the prudence standard.

As demonstrated above, section 54-17-303 requires the Commission to include the cost of a resource in the utility's next rate case if its acquisition has been approved under section 54-17-302. In order for the Commission to approve acquisition of Chehalis, it must conclude that its acquisition is in the public interest after considering "whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of [the Company] located in [Utah]; the long-term and short-term impacts; risk, reliability; financial impacts on the [Company]; and other factors determined by the Commission to be relevant." Utah Code Ann. § 54-17-302(3)(c).

The definition of prudence, now codified in section 54-4-4(4)(a), and specifically adopted into the Act in section 54-17-303(2)(b), is as follows:

> If, in the commission's determination of just, reasonable, or sufficient rates, the commission considers the prudence of an action taken by a public utility …, the commission shall apply the following standards in making its prudence determination:
>
> (i) ensure just and reasonable rates for the retail ratepayers of the public utility in this state;
>
> (ii) focus on the reasonableness of the expense resulting from the action of the public utility judged at 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 commission to be relevant, consistent with the standards specified in this section.

Id. § 54-4-4(4)(a). In other words, to approve the acquisition of Chehalis the Commission must conclude that the acquisition is prudent despite the known risks. Risks are to be evaluated in the acquisition approval decision, not to be used as a reason to deny rate recovery despite approval of the acquisition. The Act does not permit the result urged by the Committee.

The Company faces the real-world decision whether to acquire Chehalis taking into account information known about the plant, including known risks associated with the plant. It does not have the luxury of acquiring it, but returning it if one of the known risks in fact occurs. If based on the information available to the Company (which has been reviewed by the parties) it is prudent for the Company to acquire Chehalis, the Company should be allowed rate recovery for its prudent decision. The Company's prudent decision to acquire Chehalis based on information known today will not be rendered imprudent by future events. That is the definition and standard of prudence. The acquisition is either prudent or it is not. If it is prudent, which the evidence shows it is, it would be contrary to the prudence standard in section 54-4-4(4)(a) to deny rate recovery for the prudent costs of the plant.

III. THE CONDITIONS RECOMMENDED BY THE COMMITTEE ARE NOT REASONABLE OR CONSISTENT WITH THE ACT.

A. It Is Inappropriate and Unfair to Allow Customers to Benefit from the Favorable Acquisition of Chehalis, But to Require the Company to Shield Them From Risks Associated with the Plant.

It is undisputed that acquisition of Chehalis will likely be beneficial for the Company and its customers. Despite this fact, and wishing to have it both ways, the Committee urges the Commission to impose conditions on approval of the acquisition that would require the Company to shield customers from known risks associated with the acquisition related to potential compressor blade failure and environmental conditions that may currently exist but are undiscovered. Committee Comments at 5-6; Hayet Comments at 22-23. This is inappropriate.

As the rebuttal testimony of Mr. Bird demonstrates, the risks identified by the Committee are the same type of risks associated with the acquisition of any combined cycle gas turbine resource similar to the plant; they are not unique to Chehalis. There is always a risk of compressor blade failure. There is always a risk that some environmental condition that has not

been discovered through diligent review may arise. If the Company is to be expected to acquire resources, it will be exposed to risks. The question is whether the risks are sufficiently great that the Company should not acquire the resource. If the benefits of acquiring Chehalis outweigh its risks, the Company should proceed to acquire the resource for the benefit of its customers. If the customers are to enjoy the benefits of that acquisition, they cannot expect to be shielded from the risks associated with the acquisition.

The Committee's recommendations to hold customers harmless punishes the Company for being innovative and aggressively pursuing all available assets. From a policy perspective, this is a bad idea. If the shareholders face additional risks from acquiring a highly cost-effective asset, the Company will be discouraged from thinking outside the box. As noted in the testimony of Mr. Bird, by acquiring an existing plant, the Company is avoiding risks that are associated with cost escalation, permitting, construction delays and equipment availability. Customers benefit from avoidance of these risks.

The unfairness of the Committee's recommended conditions requiring the Company to shield customers from risks is illustrated by the fact that the Committee wishes the customers to enjoy the substantial present value of the reduction in revenue requirement associated with Chehalis, but be shielded from any normal risks of the plant. Perhaps the Committee's position might have some merit if the Company were allowed to include the cost plus the value of the present value reduction in revenue requirement in rate base. It is manifestly unfair when the Company is not allowed to recover that value in rates.

In addition, if and when incidents occur related to these risks, the parties will be able to investigate them and present their positions on cost recovery for costs associated with them in

rates. That is the appropriate time to address these issues, not now when there is no factual basis for any decision about the cause and responsibility for the incidents.

B. Approval of the Acquisition, But Deferral of a Decision on Rate Recovery Based on Limited Time for Review Is Not an Option Under the Act.

The Committee recommends that if the Commission approves the acquisition of Chehalis that it nonetheless postpone the issue of rate recovery for a future rate case. Committee Comments at 5; Hayet Comments at 23. In support of this recommendation, the Committee cites the limited time available for evaluation of the acquisition. Committee Comments at 5; Hayet Comments at 23. As demonstrated in Point II, above, this is not an option under the Act.

The Act authorizes the Commission to do one of three things: (1) approve the acquisition, (2) approve the acquisition subject to conditions, and (3) disapprove the acquisition. Utah Code Ann. § 54-17-302(5). The Commission can extend the time to complete the review if it determines "that additional time to analyze a significant energy resource decision is warranted and is in the public interest," *id.*, but it cannot condition the approval or deny it because there was insufficient time for a thorough evaluation.

No party has requested additional time to complete the evaluation in this case. In fact, although discussing a lack of time, the Committee acknowledges that because information was provided promptly and because of the availability of information from the 2012 RFP, the parties were able to complete a reasonable evaluation in this case. Committee Comments at 5. The Committee is not actually concerned with a lack of time here, only that time was tight and that if the process "didn't work smoothly" there could be a problem. *Id.* Thus, the Committee acknowledges that lack of time cannot serve as the basis for conditional approval here.

As discussed in Point II, the Act provides that if the Commission approves the acquisition of Chehalis, it must find the appropriate costs and it must allow the costs to be included in rates

unless conditions occur that are not applicable here. *See* Utah Code Ann. § 54-17-303(1)(b), (2) and (3). The Commission cannot repeal sections 54-17-302(6) and 54-17-303 through adopting the condition the Committee recommends. Therefore, while the Commission may impose conditions on its approval of the acquisition of Chehalis, deferring ratemaking treatment for a future rate case is not one of the conditions the Commission may impose.

This result is consistent with the legislative history of the Act. Parties proposed that utilities be required to acquire significant resources through a monitored solicitation process subject to waiver in certain instances. In exchange, utilities were allowed to have prior prudence review of the acquisitions. The Committee's recommended condition is inconsistent with this deal and is not allowed under the Act.

C. Conditions Proposed by the Committee Related to Limiting Recovery of Future Costs Are Premature and Inconsistent with Sound Principles of Ratemaking.

The Committee proposes that if and when the acquisition is approved, the Company should not be allowed to recover capital improvement costs that may be incurred in the future in excess of the purchase price for Chehalis. Committee Comments at 5; Hayet Comments at 21-22. This recommendation is premature and inconsistent with sound principles of ratemaking.

Mr. Bird's rebuttal testimony demonstrates that capital improvement costs are anticipated with any generation plant owned and operated by the Company. Furthermore, it establishes that the potential capital improvement costs referenced by Mr. Hayet are not certain at this time, but remain to be evaluated by the Company after it begins operation of Chehalis. As Mr. Bird testifies, Chehalis is operational without these capital improvements, and the improvements will only be made if they are prudent and economically justified.

The Act requires that the Commission include in its order "findings as to the total projected costs for construction or acquisition of an approved significant energy resource." Utah

Code Ann. § 54-17-302(6)(a). The Company has appropriately identified the costs of acquisition of Chehalis for the Commission's consideration in approving the acquisition. The Act deals with initial construction or acquisition and does not address ongoing capital investment requirements. If Rocky Mountain Power were to attempt to include possible future capital improvement costs in the acquisition price, the Committee would undoubtedly object to them as speculative and for assets not yet used and useful. Therefore, the Company is not including them now, but will include them in future rate requests if and when they are incurred. At that time, parties will have the opportunity to review the capital improvements to determine whether they are prudent and economically justified. There is no basis for the Commission to prejudge the issue by deciding now that such costs will not be allowed regardless of justification that may be provided for them in the future.

D. The Commission Need Not Address the Issues of Use of Foggers or Possible Uneconomic Dispatch at this Time.

Related to the Committee's argument that customers be shielded from known risks associated with the acquisition related to potential compressor blade failure, the Committee urges the Commission to use seasonal maximum capacity ratings in ratemaking without accounting for the duration of fogger operation. Committee Comments at 6; Hayet Comments at 22. Based on its position asserted in the Company's current general rate case, Docket No. 07-035-93, the Committee urges the Commission to impose a requirement that the Company must test to make sure that Chehalis is dispatched in the Company's ratemaking models such that no uneconomic generation occurs. Committee Comments at 6; Hayet Comments at 22-23.

Like other conditions recommended by the Committee, these conditions are premature and irrelevant to the Acquisition Approval Request. Whether the Company may determine to decrease use of foggers to reduce the risk of compressor blade failures is unknown at this time.

Whether such a decision would be prudent under future conditions is impossible to determine. Therefore, it is clearly premature to attempt to decide how rates will be set in the future based on operational decisions that may or may not be made.

Likewise, whether the Company should be required to test the dispatch of its generation plants in its models is an issue applicable to all of the Company's natural gas plants and call options in the current version of the Generation and Regulation Initiatives Decision Tools ("GRID") model, is not unique to Chehalis and can be raised by any party at anytime in the future when facts exist upon which the claim can be substantiated or refuted. The Commission need not address this issue at this time.

IV. ROCKY MOUNTAIN POWER'S PERSPECTIVE ON PROCESS ISSUES.

A. Rule R746-430-4 Requirements Apply to a Request for Waiver, Not a Request for Approval.

Although the IE ultimately concludes on the basis of analyses submitted in response to discovery requests that acquisition of Chehalis is in the public interest, he devotes several pages of his testimony to a review of the acquisition of Chehalis under the requirements of Rule R746-430-4 and concludes that the Verified Request did not comply with those requirements because it did not include an evaluation of Chehalis relative to the pending integrated resource plan ("IRP") or the bids submitted in response to the 2012 RFP. Rocky Mountain Power disagrees that the Acquisition Approval Request was required to comply with Rule R746-430-4 or that the Company failed to evaluate the acquisition of Chehalis in comparison with its pending IRP or with acquisition of a resource under the 2012 RFP.

R746-430-4 applies to a request for waiver of solicitation or waiver of approval under section 54-17-501, not a request for approval under section 54-17-302. Utah Admin. Code R746-430-4(1). Therefore, whatever its requirements, they have no application to the

Acquisition Approval Request. More importantly, and the foregoing notwithstanding, Rocky Mountain Power has complied with the rule requiring evidence that the particular resource is consistent with the utility's IRP and any pending RFP, *see* Utah Admin. Code R746-430-4(1)(f), even assuming it were applicable. The rebuttal testimony of Mr. Bird and Mr. Duvall explains how the Company complied with those requirements.

Rocky Mountain Power appreciates the input of the IE in this process and will certainly consider possible modifications to its approach in the future should it request a waiver under the Act. However, it reasonably complied with the requirements of Rule R746-430-4 in this first filing under the Act.

B. Because the Timing of the Process Undertaken by the Company Was Consistent with the Act, the Committee's Complaints about the Shortness of the Process Are Irrelevant.

The Committee acknowledges that the parties had sufficient information to review the Acquisition Approval Request in this case, but nonetheless suggests that the timing of inclusion of the costs of Chehalis in rates and the prudence of the transaction should be addressed in a future rate case where the issues may be fully evaluated. Committee Comments at 5; Hayet Comments at 23. Furthermore, the Committee suggests that the Company should be put on notice that it must present a more fully developed record earlier in the process. Committee Comments at 5.

The Act prescribes the timeframes for the Acquisition Approval Request to be reviewed. As amended by Senate Bill 202 in the 2008 General Session, the Act allows the Commission 120 days from the date on which an application is filed to act on it unless the Commission determines that additional time is warranted and in the public interest. Utah Code Ann. § 54-17-302(5). As discussed in Point III.B, above, no one has asked the Commission for more time in this case, and it is unlikely that more time would result in any greater willingness on the part of the Committee

to accept approval as requiring inclusion of the cost of Chehalis in rates. Rather, the Committee wants the Company to acquire Chehalis, but wishes to keep the option to challenge the acquisition in the future. The Committee's position is inconsistent with the Act's intent to require prior review of asset acquisitions, but to have the results of that review be binding in ratemaking absent changed circumstances or fraud. *See id.* §§ 54-17-302 and 54-17-303.

The Company presented a fully developed analysis of the acquisition of Chehalis early in this proceeding. It filed testimony in support of the acquisition contemporaneously with filing the Acquisition Approval Request. Within two days, it had provided the details and workpapers supporting the analysis. Within 11 days, it had provided the fully executed Purchase and Sale Agreement. The Company has responded promptly to discovery requests and has cooperated with the parties in scheduling inspections and providing analyses and information requested on an expedited basis. When a time-limited commercial opportunity is presented, there will always be a need to work quickly as contemplated in the Act.

The Company is willing to consider modifications to the process in discussion with other parties. However, the timelines under which this process has taken place are established in the Act and may not be unilaterally changed by the parties.

C. Confidentiality of Information Did Not Prevent Disclosure of Adequate Information to the Commission in this Case.

UAE acknowledges that there may be valid business reasons for keeping the essential terms of Rocky Mountain Power's proposed acquisition of Chehalis confidential, but expresses concern that the confidentiality restrictions may limit the ability of some entities to provide critical and relevant information to the Commission. UAE Comments at 2. By way of example, UAE suggests that competitive market participants likely have the best information on whether the pricing of Chehalis is competitive, but are effectively prevented from providing that

information because the terms and conditions of the acquisition of Chehalis are confidential. *Id.* UAE acknowledges that it has been unable to formulate conditions that would effectively address these concerns. *Id.* at 3.

The process of competitive bidding and acquisition of resources contemplated by the Act inherently involves competitively-sensitive information. In recognition of this fact, the Act and the rules adopted by the Commission under the Act provide that information provided in the process may be treated as confidential and even require that some of the information be screened from some employees of the utility involved in the process. *See, e.g.* Utah Code Ann. § 54-17-501(8); Utah Admin. Code R746-420-3(4)(d), (g), and (8)(a),(d), R746-420-4(4)(a), R746-430-2(1)(j), R746-430-3(1)(f), R746-440-1(3), R746-440-2(1)(b). The fact that information is confidential is contemplated by the Act and the Commission's rules and is a fact of life that must be dealt with when dealing with acquisition of resources in the competitive marketplace.

More importantly, the fact that competitors were not permitted access to confidential information regarding the terms and conditions for acquisition of Chehalis in this case need not have prevented them from retaining independent consultants and experts who could have had access to the confidential information under the terms of the protective order entered by the Commission for their analysis and recommendations. Indeed, a competitor in Oregon used this process to obtain access to confidential information under the protective order in the Oregon Chehalis proceeding. Competitors could have also introduced competitive opportunities if they wished to do so.

In any event, as stated by UAE in its comments, Rocky Mountain Power has agreed to review the process with UAE and other interested parties to determine whether amendments to the Act regarding this confidentiality issue may be appropriate.

V. THE ACCOUNTING ORDER MOTION IS RELEVANT, IS SUPPORTED BY EVIDENCE AND SHOULD BE DECIDED NOW.

The Motion sought an accounting order approving the Company's recording of the Exclusivity Payment in Account 182.3 (Other Regulatory Assets). Motion at 4.

The Division believes the Motion need not be addressed until it is determined whether the acquisition will be approved. Benvegnu-Springer Testimony, lines 70-88. The Committee argues that customers should not bear the Exclusivity Payment if the Company backs away from the deal because this resource was pursued outside the normal process. Committee Comments at 5; Hayet Comments at 21. The Committee also states that the Company did not file testimony in support of its request for deferred accounting treatment for the Exclusivity Payment, Committee Comments at 4, and recommends that the Commission identify the process by which the deferred accounting part of the case will be evaluated. Committee Comments at 4, 6.

Rocky Mountain Power will pay the Exclusivity Payment as soon as the seller fulfills a condition precedent. This is expected to occur soon. The Company provided the rationale for paying the Exclusivity Payment and the reasons it should be treated as a regulatory asset for deferred accounting in the Bird Testimony and the Motion. Bird Testimony, lines 109-111, 152-157; Motion at 2-4. The Company is buttressing this rationale in the rebuttal testimony of Mr. Bird. The Company is unaware of any factual issue associated with the payment or its accounting. The Exclusivity Payment is clearly an extraordinary and nonrecurring type of payment that is significant and material in amount. While the Exclusivity Payment will be treated as part of the purchase price if the acquisition is approved and closes, that does not obviate the necessity of obtaining approval for the accounting of the payment prior to closing. Therefore, Rocky Mountain Power has both provided the evidence and rationale necessary for authorization of the accounting proposed and is entitled to an order authorizing the accounting of

the Exclusivity Payment. Authorizing the deferred accounting does not determine the ratemaking treatment of the regulatory asset in a subsequent rate case.

With regard to the Committee's claim that this acquisition is outside the normal process, the Company assumes that the "normal process" referred to by the Committee is the solicitation and approval process contemplated by the Act. Rocky Mountain Power acknowledges that this acquisition is not part of that process. However, it is part of the process contemplated by the Act, which recognizes that there must be flexibility to deal with opportunities that arise outside the context of an approved RFP.

The Committee's recommendation also refers to the "Company back[ing] away from the deal." Committee Comments at 5; Hayet Comments at 21. If the Commission approves the acquisition of Chehalis, but the Company abandons the acquisition, the Company anticipates that it will be required to demonstrate good cause for its abandonment in the general rate case in which it seeks recovery of the regulatory asset. Therefore, that unlikely possibility is not a good reason to deny deferred accounting at this time.

CONCLUSION

Rocky Mountain Power respectfully requests that the Commission grant the Acquisition Approval Request based on the evidence submitted. The evidence demonstrates that acquisition of Chehalis is likely to provide substantial value to the customers of Rocky Mountain Power and is in the public interest. The Committee's alternative recommendation that the acquisition be approved, but rate recovery be deferred is not authorized under the Act. Granting approval of the acquisition requires the Commission to approve the costs of acquisition and to include those costs in the Company's rates. Likewise, the conditions to approval recommended by the Committee are inconsistent with the Act, with prudence standards and with fundamental fairness. Some of them are also premature and irrelevant to approval of the acquisition.

The process concerns raised by the IE, the Committee and UAE, while meriting continuing consideration as to possible future amendments to the Act, are not a basis for conditioning or denying the Acquisition Approval Request. The Acquisition Approval Request has been processed consistently with the requirements of the Act and the Commission's rules and should be granted.

Rocky Mountain Power also respectfully requests that the Commission grant the Motion for accounting treatment for the Exclusivity Payment.

RESPECTFULLY SUBMITTED: July 11, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **REBUTTAL COMMENTS OF ROCKY MOUNTAIN POWER** to be served upon the following by electronic mail to the addresses shown below on July 11, 2008:

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