Mark C. Moench, Utah Bar No. 2284
Yvonne R. Hogle, Utah Bar No. 7550
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, UT 84111
Telephone No. (801) 220-4059 (Moench)
Telephone No. (801) 220-4050 (Hogle)
Facsimile No. (801) 220-3299
mark.moench@pacificorp.com
yvonne.hogle@pacificorp.com

Katherine A. McDowell
Lisa F. Rackner
Admitted Pro Hac Vice
McDowell & Rackner, P.C.
520 SW 6th Avenue, Suite 830
Portland, OR 97204
Telephone No. (503) 595-3924
Facsimile No. (503) 595-3928
katherine@mcd-law.com
lisa@mcd-law.com

Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations.	DOCKET NO. 08-035-38 **RESPONSE**

RESPONSE OF ROCKY MOUNTAIN POWER TO MOTIONS TO DISMISS OR TO RESTART THE 240-DAY STATUTORY TIME PERIOD

TABLE OF CONTENTS

Pursuant to the Scheduling Order issued by the Commission in this docket on August 1, 2008 and Utah Admin. Code R746-100-4.D, Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or "Company"), hereby responds to the "Motion on the 240-day Statutory Time Frame and Other Issues" of the Division of Public Utilities ("Division"), the "First Response to Application" of the Committee of Consumer Services ("Committee"), the "Motion for Determination that Rocky Mountain Power's Application Schedules Are Incomplete and Inadequate" of the Utah Association of Energy Intervention Group ("UAE"), and the "Motion to Dismiss the Application of Rocky Mountain Power" of the Utah Industrial Energy Consumers ("UIEC"). The foregoing pleadings were filed on August 18, 2008, except the Division's pleading was filed on August 19, 2008. While the pleadings are differently styled, all are essentially motions to dismiss the July 17, 2008 Application for General Rate Increase ("Application") of the Company or alternatively to restart the 240-day statutory time period within which the Commission must act on the Application once Rocky Mountain Power files updated schedules based on the Commission's Report and Order on Revenue Requirement ("Revenue Requirement Order") issued August 11, 2008 in Docket No. 07-035-93 ("2007 Rate Case").

The motions are inconsistent with prior Commission practice and are based on an incorrect reading of Utah Code Ann. § 54-7-12(2)(a) and (3)(c), an incorrect understanding of the purpose of use of a test period in setting rates and retroactive ratemaking, and a misunderstanding of the principles of stare decisis and res judicata as applied to ratemaking. Accordingly, the motions should be denied.

I. INTRODUCTION

Rocky Mountain Power filed its Application in this docket on July 17, 2008. The Application included as Exhibit RMP __ (WRG-2) to the Testimony of William R. Griffith *tariff pages showing all changes in the tariff sought in the Application, including the proposed rates for each class of customers*. The Application also included Exhibit RMP __ (SRM-2) to the Testimony of Steven R. McDougal showing the total revenue requirement sought and a table in the Application showing the change in rates proposed for each customer class from the rates currently approved and effective *as of the date the Application was filed* (without reference to revenue increases requested in the 2007 Rate Case). Application at ¶ 17.

The Commission noticed a scheduling conference in the case for July 29, 2008. At the scheduling conference, some parties suggested that the Application should be dismissed because the Commission had not yet issued its Revenue Requirement Order in the 2007 Rate Case. Alternatively, some parties suggested that the 240-day period during which the Commission must act on a requested rate increase or the rate increase becomes effective under Utah Code Ann. § 54-7-12(3)(c) cannot commence until the Company files schedules showing the increase proposed by the Application from the rates approved in the Revenue Requirement Order or that the 240-period will recommence when the Company files such schedules. Rocky Mountain Power disagreed with each of these suggestions. Accordingly, the Commission established a schedule under which parties were required to file dispositive motions by August 18, 2008, responses by August 28, 2008, and replies by September 8, 2008. The Commission set a hearing on the motions for September 10, 2008.

On August 18 and 19, 2008, the Division, the Committee, UAE and UIEC (collectively "Moving Parties") filed what are essentially motions to dismiss or to restart the 240-day period when revised schedules are filed. This Response will demonstrate that:

1. the filing of an application for an increase in rates prior to the issuance of final orders in a pending rate case has been a common and accepted practice before the Commission,

2. changes in position during the course of a rate case by the applicant and other parties requiring the filing of updated or supplemental exhibits or schedules is a common and accepted practice that does not restart the 240-day period for the Commission to act on a requested rate increase,

3. the use of a test period in one rate case does not foreclose the use of the same or an overlapping test period in a subsequent rate case and does not constitute retroactive ratemaking,

4. the Moving Parties' arguments are inconsistent with the legislative intent in Utah Code Ann. § 54-4-4(3), the Commission's Order on Test Period in the 2007 Rate Case and the testimony of at least one of the parties (UIEC) in the 2007 Rate Case,

5. the schedules filed with the Application on July 17, 2008 comply with the requirements of section 54-7-12,

6. stare decisis does not foreclose any effort by the Company to seek a change of position by the Commission on disallowance of costs, and

7 res judicata does not apply to the types of ratemaking decisions at issue in this case.

The motions should be denied for all of these reasons.

II. STATEMENT OF FACTS

The following facts are based on information from Commission orders in prior dockets and information available from the record in this docket.

In the late 1970s and early 1980s, major public utilities in Utah were essentially in continuous rate cases.[1] The Commission typically bifurcated the cases between revenue requirement and cost of service, rate design and rate spread ("cost of service") issues so that it could comply with the requirement that it issue an order within 240 days. In those circumstances, the Commission often did not resolve the cost of service issues for lengthy periods after it issued the revenue requirement order. There are numerous examples of new rate cases being filed before the cost of service orders were issued in pending cases and a few examples in which new rate cases were filed before the final revenue requirement order was issued in a pending case. There are also examples of cases being filed using overlapping test periods with those used in prior cases. Appendix 1 is a table showing the date of the application, final revenue requirement order and final cost of service order and the test period used in rate cases for the three major utilities in Utah during this period.

Rocky Mountain Power has not been able to locate complete files on all of the cases listed in Appendix 1. However, based on the best information available to Rocky

[1] Given the great volatility in energy markets, growth in customers, need for new resources, and significantly increasing prices or raw materials and labor, conditions now are similar to those in the late 1970s and early 1980s. In addition, utilities now are facing mandates to increase the use of renewable resources that do not contribute to global warming.

Mountain Power, including review of the orders listed in the Appendix, no party ever moved to dismiss any of these cases on the grounds the Moving Parties are urging here. In addition, based on the orders issued in the cases, the Commission never dismissed a case on the ground that the case was filed prior to the conclusion of a currently pending rate case or was based on a test period overlapping the test period in a prior case.

It is common and accepted practice in rate cases for the public utility or another party to change its position based on information provided in discovery, testimony of other parties or settlement negotiations. Parties voluntarily or involuntarily change positions during the course of rate cases when circumstances change for a variety of reasons.

In the 2007 Rate Case, over 75 adjustments to the Company's rate request were proposed by various parties. Following discovery and the exchange of information, over 20 of those adjustments were accepted, compromised or withdrawn by the parties. Thus, while the Company initially sought a $161.2 million rate increase when it filed its application in the 2007 Rate Case, by the time the case was submitted on revenue requirement issues, the rate increase proposed by the Company had decreased to $74.5 million. The Division initially recommended a rate increase of $46.1 million, but after discovery and review of other testimony, it modified its position to recommend a rate increase of $44.3 million. The Committee initially recommended a rate increase of $8.5 million; however, after the process described above, its recommended rate increase was $5.0 million.

The utility or another party may also need to change its position based on a ruling of the Commission or some other regulatory agency or a reviewing court on a legal issue that has previously been undecided. For example:

1. In the 2007 Rate Case, decisions were made in Rocky Mountain Power's pending depreciation and deferred accounting dockets (Docket Nos. 06-035-163, 07-035-04, 07-035-14 and 07-035-13) after the application in that case was filed. Accordingly, Rocky Mountain Power modified the rate increase sought and revised its exhibits in the case.

2. In Docket No. 06-035-21, Rocky Mountain Power filed its application on March 6, 2006. The pending acquisition of Rocky Mountain Power by MidAmerican Energy Holdings Company ("MEHC") closed on March 22, 2006. The Company filed updated information to reflect the MEHC acquisition on April 5, 2006. Rocky Mountain Power later modified its revenue requirement and exhibits consistent with that information.

3. The Company filed its application for a rate increase in Docket No. 97-035-04 while Docket No. 97-035-01 concerning the allocation of costs among the Company's various jurisdictions was pending. After the Commission issued its decision in Docket No. 97-035-01, the Company filed new exhibits in Docket No. 97-035-04 changing the rate request by approximately $50 million.

4. In Questar Gas Company's ("QGC") current rate case, Docket No. 07-057-13, it projected the cost of debt for the test period based on a planned debt offering. When the issuance occurred, it was on different terms than forecast in QGC's filing. The testimony filed by other parties and QGC's rebuttal

testimony updated the rate request and exhibits to reflect the actual costs of the debt offering.

5. Rocky Mountain Power was required by the Commission's Order on Test Period in the 2007 Rate Case to file updated exhibits to reflect the Commission's decision on the test period that would be used in that case. Likewise, QGC was required by the similar order in Docket No. 07-057-13 to file updated exhibits.

Based upon the best information available to the Company, Rocky Mountain Power believes no party objected to the changes in exhibits involved in the foregoing examples or claimed that the 240-day period for the Commission to issue a decision recommenced when the updated exhibits were filed.

An audit is a review of the books and records of the Company for a past period of time. The Division's auditors commenced their audit of the Company's books and records in the 2007 Rate Case prior to the Order on Test Period and the filing of updated exhibits. Their audit was not impacted by that order because it was for the same base period, July 1, 2006 – June 30, 2007, regardless of the test period.[2] Likewise, in this docket, the Division will be auditing the Company's books and records for the 2007 calendar-year base period. The Commission's decision on test period or the updating of testimony and exhibits to reflect the Revenue Requirement Order will not impact the audit of the base-period data.

[2] There have been occasions in the past when the Division's auditors commenced their audit even before a rate application was filed.

III. ARGUMENT

A. THE COMMISSION HAS CONSISTENTLY ALLOWED OVERLAPPING OR PANCAKED RATE CASES IN THE PAST AND DOES NOT HAVE A SOUND REASON TO CHANGE THAT PRECEDENT.

The Moving Parties argue that the Application must be dismissed because the Company cannot file a rate case prior to issuance of the Revenue Requirement Order because the parties cannot analyze the Application or prepare their own positions without knowing the results in that case. These arguments ignore long-established practice before the Commission.

As reviewed in the statement of facts, it was a common, well-established practice in the late 1970s and early to mid 1980s for the Commission to bifurcate rate cases between revenue requirement and cost of service issues so that it could comply with the requirement that it grant the rate increase requested or order a different increase within 240 days. In those circumstances, the Commission often did not resolve the cost of service issues for lengthy periods after it issued the revenue requirement order. Appendix 1 provides numerous examples of new rate cases being filed before the final cost of service orders were issued in pending cases and a few examples in which new rate cases were filed before final revenue requirement orders were issued in a pending case. No party ever moved to dismiss any of these cases on the grounds the Moving Parties are urging here. In addition, based on the orders issued in the cases, it is apparent that the Commission never dismissed a case on the ground that the case was filed prior to the conclusion of a currently pending rate case.

The Commission should not depart from past practice without enunciating a reasonable basis for doing so and without following proper procedures. *See Williams v. Pub. Serv. Comm'n*, 720 P.2d 773, 777 (Utah 1986) ("[T]he Commission cannot reverse

its long-settled position ... and announce a fundamental policy change without following the requirements of the Utah Administrative Rulemaking Act."). *See also Salt Lake Citizens Congress v. Mountain States Tel. & Tel. Co.*, 846 P.2d 1245, 1253 (Utah 1992) ("Administrative agencies must, and do, have the power to overrule a prior decision when there is a *reasonable basis* for doing so.") (emphasis added). This Response will demonstrate that there is no good reason to depart from prior practice here and that, to the contrary, the 2000 and 2003 amendments to section 54-4-4 clearly articulate a policy of setting rates on the basis of the best information available about the rate-effective period.

The Moving Parties argue that stare decisis barred the Company from filing the Application prior to the Revenue Requirement Order. Rocky Mountain Power will demonstrate the flaws with that argument in part III.F, below. However, it is ironic that the Moving Parties make this argument while failing to acknowledge that they are the ones urging the Commission to abandon long-established rate case procedures.

B. CHANGES IN POSITION DURING THE COURSE OF A RATE CASE REQUIRING CHANGES IN THE REVENUE REQUIREMENT IS A COMMON AND ACCEPTED PRACTICE THAT DOES NOT RESTART THE 240-DAY PERIOD.

Taken to their logical conclusion, the Moving Parties' arguments are that updating or supplementing the revenue requirement for essentially any reason during the course of a rate case would restart the 240-day period for the Commission to act on a rate increase request. In fact, the Division and UIEC argue that if refiling of the revenue requirement exhibit is required following the test period order in this case as it was in the 2007 Rate Case, that should restart the 240-day period. Division Motion at 13; *see* UIEC Motion at 22. This argument ignores common and accepted practice in rate cases in which the public utility or another party changes position based on information provided in

discovery, testimony of other parties or settlement negotiations. It also ignores the fact that parties voluntarily or involuntarily change positions during the course of rate cases when circumstances change for a variety of reasons.[3] Finally, it ignores fundamental fairness.

The statement of facts provides several examples of the common and accepted practice of updating exhibits and changing positions during the course of a rate case. If the Moving Parties' arguments were correct, each time Rocky Mountain Power supplemented its testimony or provided updated exhibits showing a modified position, the 240-day period would restart. No one has taken that position in the past for obvious reasons. The process of modifying positions based on additional information or negotiation is consistent with the Legislative policy in favor of settlement of all or part of the issues, *see* Utah Code Ann. § 54-7-1(1), and is consistent with sound practice in the public interest.

The utility or another party may also need to change its position based on a ruling of the Commission or some other regulatory agency or a reviewing court on a legal issue that has previously been undecided. In addition to the actual examples provided in statement of facts, above, for example, where the Company updated its exhibits in the 2007 Rate Case based on the Commission's decisions in four pending dockets on deferred accounting orders and depreciation rates, assume the Utah Supreme Court issues a decision on a matter appealed from a prior rate case during the course of a current rate

[3] Public utilities typically do not refile their schedules or proposed tariff pages during the course of a rate case when positions change because they know that they would likely refile them several times during the course of the case. They typically only file them with the application and then file them again after the final order on revenue requirement or the final order on cost of service and rate design.

case. Parties who have taken a position contrary to the holding of the court would most likely need to change their positions based on the ruling. Likewise, if an accounting rule is clarified or modified during the course of a case or a tax position is resolved by a letter ruling or a case decision, parties whose positions are contrary to the resolution would be expected to change those positions.

Finally, events projected to occur during a future test period may actually take place during the pendency of the case. If so, parties will likely update their positions consistent with the actual as opposed to projected facts. For example, as noted in the statement of facts, in QGC's current rate case, it updated its projected cost of debt for the test period when a debt issuance actually occurred. No one objected to an update to the rate request to reflect the actual costs even though the actual costs were somewhat higher than anticipated.

It goes without saying that the Commission's rate decisions should always be based on the most accurate information available. If this requires updating, that is a positive thing. It should not be discouraged by penalizing the utility by restarting the 240-day period any time an update is made.

More fundamentally, the purpose of the 240-day period would be frustrated and rendered meaningless if the Moving Parties arguments are accepted. The Commission may require a public utility to file updated exhibits because the Commission finds that a different test period than the one used by the utility in preparing its application best reflects conditions that will exist during the rate-effective period. The purpose of the 240-day period is to limit the time that a requested rate increase may be under consideration before it goes into effect. If the Commission can restart the clock each time

it orders a change in schedules in a case, the limitation becomes meaningless. While rendering the 240-day period meaningless may be the unspoken desire of some of the Moving Parties, doing so is inconsistent with the intent of the Legislature as discussed in part III.D, below.

C. USE OF A TEST PERIOD IN ONE RATE CASE DOES NOT FORECLOSE THE USE OF THE SAME OR A PARTIALLY OVERLAPPING TEST PERIOD IN A SUBSEQUENT RATE CASE AND IS NOT RETROACTIVE RATEMAKING.

The Moving Parties argue that Rocky Mountain Power's Application is defective because it is based on a test period in this case that overlaps the test period used in the 2007 Rate Case. They argue that use of an overlapping test period amounts to retroactive ratemaking. This argument misunderstands the purpose of a test period and what constitutes retroactive ratemaking.

Section 54-4-4(3) makes clear that the purpose of a test period in setting rates is to attempt to represent conditions that will be in effect during the rate-effective period. *See also Dep't of Bus. Regulation v. Pub. Serv. Comm'n*, 614 P.2d 1242, 1248 (Utah 1980) ("The test period results are adjusted to allow for reasonably anticipated changes in revenues, expenses, or other conditions in order that the test-period results of operations will be as nearly representative of *future conditions* as possible.") (emphasis added). Thus, the Commission is authorized to use a historic test period with known and measurable changes, a mixed test period consisting of some historical and some projected data or a fully-forecast test period. *Id.* § 54-4-4(3)(b). The Commission is required to select the period from among the alternatives that will best reflect conditions during the rate-effective period, *id.* § 54-4-4(3)(a), and, if it chooses other than a fully-forecast test period, to consider changes outside the test period that are known and measurable. *Id.*

54-4-4(3)(c). Thus, it is clear that the test period and the rate-effective period are not necessarily the same and that the same or overlapping test periods may be used in more than one rate case. For example, the Commission might conclude that a test period ending 20-months in the future is the proper test period in one rate case. It may then determine that the same test period or one including some of the same period, which would then be either fully forecast or partially actual and partially forecast, would be the proper test period in a subsequent case. The use of the same or a partially overlapping test period does not in any way suggest that rate recovery from the two cases will be duplicative in any manner. Rather, it suggests that the Commission found in both cases that the same or a partially overlapping period best reflected conditions that would be in effect in the different rate-effective periods in both cases.

The Committee relies on orders from two old Utah Power & Light Company dockets (Docket Nos. 83-035-06 and 84-035-01) in support of its argument. Committee Response at 5-6. Neither of those orders support the Moving Parties' position. The first order cited by the Committee refers to is Finding No. 9 in the Commission's Report and Order on Interim Rates in Docket No. 84-035-01 (May 31, 1984). That finding is worth quoting in full:

> The Commission finds that Utah Power has not met the burden of showing a substantial and significant change in circumstance so as to justify an award of interim relief in an overlap period. Deteriorating earnings, while always of concern to the Commission, do not by themselves require an award of interim relief in an overlap period. The Company was aware of the Commission's policy concerning overlap periods when it settled its last case. The Commission's policy is required not only in order to allow for adequate calendaring of cases (Utah law requires that the majority of the Commissioners participate in major rate cases, see Section 54-1-3(2)(a) ..., but also in order to prevent a utility from receiving interim relief, settling the case and then starting

> immediately thereafter with another rate case. *Such a practice, if allowed, could result in several rate cases being decided on interim standards rather [than] those applied in a full, evidentiary hearing.* There was also inadequate evidence of Company action, aside from interim requests, to deal with the problem of deteriorating earnings. *Therefore, we find* ***interim relief*** *inappropriate in this case during the overlap period.*

(Emphasis, including bolding, added.) Thus, the entire discussion upon which the Committee relies arose in the context of a request for an interim rate increase. Second, nothing in the language suggests that the Commission was in any manner declaring overlapping test periods to be unlawful. Indeed, the Commission's own words demonstrate that the heart of its concern was not so much the overlap as the fact that the looser "interim standards," as opposed to the "full, evidentiary" standards that apply to a full hearing, applied to the interim issue before it. Of course, in the current docket, the Company has not asked for interim relief and rate relief will be granted in this case only after the "full, evidentiary" standards that apply to a permanent rate increase have been applied. In other words, the Company's request in this case will be handled with full due process accorded all parties, including the right to assure that any issue arising from an overlapping test period is fully examined on the record.[4]

[4] In the Report and Order in Docket No. 84-035-01 (Utah PSC Sep. 13, 1984), the Commission once again expressed concerns about overlapping test periods, but, critically, found "the proposed test period in this proceeding appropriate for purposes of this case *and in compliance with the requirements of Section 54-4-4(3).*" *Id.* at 6 (emphasis added). The Commission then expressed some of its concerns about overlapping test periods and noted that it would "require the parties [including other utilities] to convene a task force to study this problem ...." To the best of the Company's knowledge, no changes (including rule changes) resulted from this task force; certainly, the Commission has adopted no rule or other policy banning overlapping test periods. They were lawful in the mid-1980s and have not been declared unlawful thereafter. Further, as discussed in part III.D, declaring overlapping test years to be unlawful would directly contravene the policy underlying section 54-4-4(3).

The Report and Order on Interim Rates in Docket No. 83-035-06 issued October 4, 1983, also cited by the Committee, presents nothing different (and in much less comprehensive fashion) on the "overlap" issue than the orders in Docket No. 84-035-01. While the Commission accepted an adjustment to the "interim increase" proposed by the Division related to the overlapping test periods, the Commission noted that it was doing so "[f]or purpose of interim only," and that the Commission "will not preclude the Company from presenting additional evidence on the issue in the full revenue requirement proceeding." *Id.* at 10.

Contrary to the Moving Parties' argument, use of overlapping test periods has nothing to do with retroactive ratemaking. The Moving Parties correctly note that ratemaking is prospective in effect and that rates cannot be set in the future to make up for past mistakes in the ratemaking process. *See* UIEC Motion at 13-14, *citing Utah Dep't. of Bus. Regulation v. Pub. Serv. Comm'n*, 720 P.2d 420, 423 (Utah 1986). However, they then mistakenly argue that if the test period in this case overlaps with the test period in the 2007 Rate Case, any increase in rates will necessarily involve retroactive ratemaking.[5] The problem with the Moving Parties' argument is that it is based on the incorrect premise that when the Commission set rates to go into effect August 13, 2008 based on a 2008 calendar-year test period in the 2007 Rate Case, it was somehow determining the costs that would be incurred or would be allowed to be

[5] Under the rule against retroactive ratemaking, utilities are "generally not permitted to adjust their rates retroactively to compensate for unanticipated costs or unrealized revenues." *Utah Dept. of Bus. Reg. v. Pub. Serv. Comm'n*, 720 P.2d 420, 420 (Utah 1986). There are exceptions to the rule for "extraordinary and unforeseeable expenses or revenues" or for fraud. *MCI Telecomm. Corp. v. Pub. Serv. Comm'n*, 840 P.2d 765, 771 (Utah 1992). The rule has no application to rates being set for the future unless those rates are set higher or lower to compensate for over or under earnings under past rates.

recovered in rates for the period from July 1, 2008 through December 31, 2008 and that if it allows a different rate in the future based in part on the same period, it is somehow correcting errors in the ratemaking process. The Commission did not do this. The Commission simply determined the rates it believed were just and reasonable for the period commencing August 13, 2008. In this case, the Commission will be determining just and reasonable rates for the period commencing March 14, 2009. It will not be allowing Rocky Mountain Power to recover more because it made a mistake in setting rates in effect during the earlier period, it will be allowing Rocky Mountain Power to recover more because it believes costs are reasonably anticipated to be higher during the future rate-effective period, a period different from and not overlapping with the period during which rates will be in effect based on the 2007 Rate Case.

Moreover, "the adjustment of *future* rates to take into account past events is not technically a *retroactive* process at all. In truth, the rates are set on a wholly prospective basis." *Stewart v. Pub. Serv. Comm'n*, 885 P.2d 759, 778 (Utah 1994). Thus, the rule against retroactive ratemaking is not implicated in this situation.

Based on their erroneous view of the purpose of test periods, the Moving Parties argue that the Company cannot file a new rate case until near the end of 2008 when it will have sufficient information to make a filing based on a 2009 calendar-year test period. The Commission has already rejected that argument. In the Order on Test Period in the 2007 Rate Case, the Commission said, "The purpose of establishing a test period is not to ensure any particular period of time between rate cases, but rather to set just and reasonable rates for the Company and its ratepayers." The test period is a tool used in setting just and reasonable rates for the future, not a period of time during which actual

costs are deemed recovered in rates set. Therefore, the potential for the same or partially overlapping test periods has nothing to do with when a rate case may be filed.

It would be unfair if Rocky Mountain Power's conservative decision in this case to use a July 1, 2008 to June 30, 2009 test period rather than a 2009 calendar-year test period resulted in a dismissal because the test periods in this case and the 2007 Rate Case overlap. If that were the result, Rocky Mountain Power would be punished for its effort to avoid contention by adopting a more conservative test period.

In a similar argument, the Committee and UIEC erroneously argue that the Application is barred because it includes expenses that are "account[ed] for or ke[pt] track of ... past their incurrence for the purpose of a future ratemaking proceeding if future recovery is not likely," Committee Response at 14, or costs for the Chehalis Plant that will be incurred during 2008 that were known before updated schedules were filed in the 2007 Rate Case. UIEC Motion at 16. These arguments demonstrate why overlapping test periods may be appropriate, not why they are inappropriate, for three reasons. First, the expenses submitted in the Application were not known or reasonably foreseeable at the time of the filing of the 2007 Rate Case. *See, e.g.*, Division Motion at 11 (admitting that the Company experienced "significant additions of costs in the June 2008 to December 2008 time period in the current case that were not present in the past case, i.e. mainly Chehalis"). Second, acquisition of the Chehalis Plant was not approved until August 1, 2008. When the Company filed the 2007 Rate Case, when it later updated its exhibits following the Order on Test Period, and even when it submitted its post-hearing brief in that case, it was not known whether the Company would be acquiring the Chehalis Plant. Had the Company attempted to include costs for the Plant at any stage

during the 2007 Rate Case, the Committee and UIEC and the other Moving Parties would have objected. Yet now UIEC has the audacity to argue that failure to include those costs in the 2007 Rate Case was a misstep in the ratemaking process that bars the Company from seeking to recover them in the Application. The argument has no merit.

D. THE MOVING PARTIES' ARGUMENTS ARE INCONSISTENT WITH LEGISLATIVE INTENT, THE COMMISSION'S ORDER ON TEST PERIOD AND THE TESTIMONY OF AT LEAST ONE OF THE MOVING PARTIES.

Section 54-4-4 was amended in the 2000 and 2003 General Sessions of the Utah Legislature to make clear that the Commission is allowed to use future test periods and to require the Commission to select a test period that "best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect." Utah Code Ann. § 54-4-4(3)(a). The authorization to use a test period ending up to 20 months out from the date of filing an application was based on the fact that if a revenue requirement order takes 240 days or eight months to issue, the first year of the rate-effective period will, therefore, end 20 months after the application is filed. Thus, in allowing the possibility of a test period ending 20 months after the date of application, the Legislature was responding directly to concerns that utilities did not have a reasonable opportunity to earn their authorized rate of return because of regulatory lag.

Under the Moving Parties' argument, the potential benefit of the future test period is eliminated by extending the time for a revenue requirement decision beyond 240 days from the date of filing an application for rate relief. This is inconsistent with the Legislature's intent in amending section 54-4-4(3) to reduce the effect of regulatory lag.

In addition, in its Order on Test Period in the 2007 Rate Case, the Commission responded to the Company's concern about restricting the test period to a period ending substantially less than 20 months after the application in a period of substantial capital investment and increasing costs by acknowledging that its decision on test period was not intended to ensure any particular period between rate cases and would likely result in more frequent rate case filings. The Commission said:

> The purpose of establishing a test period is not to ensure any particular period of time between rate cases, but rather to set just and reasonable rates for the Company and its ratepayers. In this time of expanded utility investment, potentially increasing costs, and greater uncertainty of economic conditions, more frequent rate cases may be necessary to ensure just and reasonable rates.

Order on Test Period at 3-4.

While the Commission's Order on Test Period did not specifically recognize the possibility of filing a new rate case before the revenue requirement or final rates are determined in a prior case, its order certainly acknowledged that the response to using a test period that ends earlier could be more frequent filings.

In addition, UIEC witness Michael Lemmon acknowledged in his test-period testimony in the 2007 Rate Case that the way the Company should deal with regulatory lag is to use its discretion to file rate cases as frequently as necessary, not use forecast test periods ending 20 months after the application is filed. He testified:

> As the law has been explained to me, RMP has the discretion of when and how often it can file for a rate increase. Therefore, it seems to me that if RMP has a concern about regulatory lag, it should file as frequently as necessary to alleviate that concern.

Prefiled Test Year Rebuttal Testimony of Michael L. Lemmon, Ph.D., Docket No. 07-035-93 (Feb. 4, 2008) at 4:24 – 5:1.

The Commission's requirement that the parties use of a test period ending approximately 12 months rather than 20 months after the application in the 2007 Rate Case is a primary reason the Company was required to file this case when it did. Rocky Mountain Power's revenue requirement was over $60 million lower in the 2007 Rate Case when its test period was moved six months earlier. It is inconsistent with the Commission's Order on Test Period to argue that this loss should be absorbed by shareholders simply because the Company could not file this case until the Commission issued its Revenue Requirement Order in the 2007 Rate Case.

The procedure of ongoing updates to rate requests has been used in many rate cases by many different utilities in Utah. In none of them, including in the 2007 Rate Case, has a party claimed that such an update means the 240-day period must begin again. A rate case, particularly one involving a wholly or partially projected test period, is naturally subject to changes in projections, particularly in the light of actual data that becomes available during the 240-day period. As noted in part III.B, above, it is virtually a universal event that a utility will, during the course of a rate case, make minor, and sometimes major, adjustments to its revenue increase request based on information that was not available when the case was filed or to correct errors. This procedure is entirely consistent with the legislative goal of presenting evidence that will allow the Commission make a revenue determination that "best reflects the conditions" that will exist in the rate-effective period. The theories advanced by the Moving Parties are hyper-technical efforts to produce a result that is directly contrary to that policy. They are also designed to ensure that rates are not just and reasonable. Accordingly, they should be rejected.

E. THE SCHEDULES FILED WITH THE APPLICATION COMPLY WITH THE REQUIREMENTS OF SECTION 54-7-12.

The Moving Parties contend that the schedules filed with the Application do not comply with the schedules required to be filed by section 54-7-12 because they do not show the increase in proposed rates over the rates in effect following the Commission's Revenue Requirement Order. *See, e.g.*, Committee Response at 10–13.[6] The Moving Parties are misinterpreting section 54-7-12 and reading requirements into it that are not there and are not necessary to fulfill the public interest.

Section 54-7-12(2)(a) is the primary section describing the type of "schedules" that a utility must file with its rate application:

> Any public utility or other party that proposes to increase or decrease rates shall file appropriate schedules with the commission setting forth the proposed rate increase or decrease.

Utah Code Ann. § 54-7-12(2)(a). Subsection (3)(a) refers to the filing of schedules in the context of interim rate relief. It states that the Commission may allow all or a reasonable part of a proposed rate increase or decrease to take effect on an interim basis "upon the filing of the utility's schedules or at any time during the pendency of the commission's hearing proceedings." *Id.* § 54-7-12(3)(a). Subsection (3)(c) states:

> If the commission fails to enter the commission's order granting or revising a revenue increase within 240 days after the utility's schedules are filed, the rate increase proposed by the utility is final and the commission may not order a refund of any amount already collected by the utility under its filed rate increase.

Id. § 54-7-12(3)(c). Other references to schedule in the section, refer to "schedule, classification, practice or rule." *See id.* § 54-7-12(4)(a), (b), (c), (5)(a).

[6] The Committee's position is unclear because contrary to the other Moving Parties, the Committee admits that the overlap of "two general rate cases ... pending before the Commission at the same time is not a compelling argument for dismissing Rocky Mountain Power's 2008 Application." Committee Response at 1–2.

In determining what the phrase "schedules … setting forth the proposed rate increase" means in the section, the Commission must apply well-established principles of statutory construction. In *State v. Tooele County*, 2002 UT 8, ¶ 10, 44 P.3d 680, the Utah Supreme Court stated those principles as follows:

> When interpreting statutes, our primary goal is to evince the true intent and purpose of the Legislature. To discern the legislature's intent and purpose, we look first to the best evidence of a statute's meaning, the plain language of the act. In reading the language of an act, moreover, we seek to render all parts [of the statute] relevant and meaningful, and we therefore presume the legislature use[d] each term advisedly and ... according to its ordinary meaning. Consequently, we avoid interpretations that will render portions of a statute superfluous or inoperative.

(Citations and quotation marks omitted.)

The plain and ordinary meaning of "schedules" as used in the context of section 54-7-12 is "written or printed list[s], catalog[s], or inventor[ies]." *Merriam Webster's Collegiate Dictionary*, Tenth Edition (1993). In the context of section 54-7-12, the phrase "schedules … setting forth the proposed rate increase" refers to a list, catalog or inventory of rates that will be in effect based on the proposed increase in rates.

This interpretation is consistent with the use of the term in other portions of the Public Utility Code. For example, section 54-3-2 requires public utilities to file with the Commission "schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, … together with all rules, regulations, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, charges, classification, or service." *Id.* § 54-3-2(1). Section 54-3-3 does not allow a utility to change its rates, charges, classifications or rules without first filing "new schedules stating plainly the change or changes to be made in the schedule or schedules then in force." *Id.* § 54-3-3. Section 54-3-7 states:

> [N]o public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity … or for any service rendered …, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time ….

Id. § 54-3-7. Section 54-4-4 refers to "schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, or practices. *Id.* § 54-4-4(2)(a)(ii). Each of these usages refers to the utility's tariffs filed with the Commission, which include its rates. Thus, the schedules to be filed with an application for a rate increase or decrease are the tariff pages listing the rates that will be in effect if the proposed rate increase or decrease is approved. The exhibits filed with the Application meet this requirement. They included the proposed changes in the tariff pages that would be in effect if the Application were granted, showing the rates and charges proposed for each class of customers necessary to meet that revenue requirement. *See* Exhibit WRG-2.

In effect, the Moving Parties argue that setting forth the proposed rate increase or decrease requires schedules showing a comparison between the rates in effect after the Revenue Requirement Order in the 2007 Rate Case and the rates proposed in this case. These arguments are incorrect for four reasons.

First, the statute does not require that the increase or decrease in rates be expressed as a comparison with existing rates. It simply says that the schedules will set forth the proposed increase or decrease. Schedules showing the rates that will be in effect after the proposed increase or decrease "set[] forth the proposed increase or decrease." Thus, the Moving Parties' argument would add words to an already clear statute.

Second, the Commission's rules require revised tariff pages to be filed in a manner that does not show the difference between existing and proposed rates. Rather

proposed tariff pages simply contain the new rates with an "I" in the margin indicating that the rates are increased from the rates in the current tariff. Utah Admin. Code R746-405-2.A.3.c. If the statute required that the schedules show a comparison between the current and proposed rates, the rule would so provide. It does not.

Third, even if it is assumed that the statute contemplates that the schedules will provide a comparison with current rates, the statute does not specify that the comparison must be from rates that will be in effect at some time in the future. Rocky Mountain Power's Application in this case showed the percentage increases in rates proposed for all classes of customers. Those increases are with respect to the rates that were in effect when the Application was filed, the rates established by the Commission in Docket No. 06-035-21. Those rates were the rates the Company was required to charge on July 17, 2008, the date the Application was filed. *Id.* § 54-3-7. The fact that those rates may be changed by an order in the 2007 Rate Case is the subject of that case, not this one. Therefore, even if it is deemed necessary to include in the schedules required under section 54-7-12 a comparison between the rates currently in effect and the rates proposed in the Application, the table included in the Application filed by Rocky Mountain Power fulfilled that requirement. Application at ¶ 17.

Fourth, the apparent purpose of the requirement in section 54-7-12(2)(a) that tariff changes be filed with a proposed rate increase or decrease is two-fold. First, the tariffs inform the Commission, the Division, the Committee and other interested parties of the rates that will be in effect if the proposed rate increase or decrease is granted. Knowing this information enables parties to determine whether they wish to participate in the proceeding. The exhibits filed with the Application and the table included in the

Application satisfy this purpose despite the Moving Parties' argument that without knowing the difference between the proposed rates and the rates in effect after the Revenue Requirement Order a party cannot determine whether it is interested in the Application. *See* Division Motion at 4-5; UAE Motion at 3-4. Such an argument rings hollow in light of the fact that "all the usual suspects" participate in every general rate case whether the rate increase or decrease is large or small. It is not a significant imposition for a party to intervene and participate in the initial stages of this case to protect its interests before knowing the result of the 2007 Rate Case. If it turns out in light of those results that the rate change proposed in this case is no longer of significance to the party, the party can simply withdraw from the case or monitor proceedings without additional direct participation consistent with its interests.[7]

[7] UIEC attempts to raise this issue to a constitutional one claiming that the Application violates the due process rights of customers because they do not know the amount of rate increase being sought and will not have the full 240-days to investigate the rate increase once they know what it is. UIEC Motion at 21. There is no question the Company's Application provided notice to customers that the Company is seeking a rate increase and of the rates proposed in the Application. As discussed in part III.B, above, it is common in rate cases for parties to adjust their positions during the course of a case. Such adjustments are not a violation of due process. Due process requires notice and a reasonable opportunity to be heard before a fair and impartial tribunal, *V-1 Oil Co. v. Dept. of Envtl. Quality*, 939 P.2d 1192, 1197 (Utah 1997), not that a party must have 240 days to examine an unchanging and unchangeable position. There is no doubt that customers have notice and that they will have a reasonable opportunity to be heard in this case.

In a similar vein, the Division argues that the 240-day period should not run from the filing of the Application because the Division auditors are unable to begin their work until they know the rate increase the Company is seeking after the Revenue Requirement Order. Division Motion at 4. This argument is incorrect. The Division's auditors will be auditing the Company's books and records for the base period, calendar-year 2007. That historical period will not change based on the Revenue Requirement Order. Just as the Division's auditors started their audit before the Order on Test Period was issued in the 2007 Rate Case, they may start their audit now in this case. In addition, review of the significant aspects of the Application involving loads and allocations during the base period are not affected by the Revenue Requirement Order. If the Division has difficulty dealing with this situation with its greatly expanded staff and the availability of more powerful data processing capabilities now, one can only wonder how the Division managed to fulfill its responsibilities during the late 1970s and early to mid 1980s when it had a much smaller staff, did not have access to computers and electronic spreadsheets, etc., and was dealing with almost continuous rate cases for three major utilities as well as other

Furthermore, the Moving Parties' arguments ignore the fact that the same issues exists with respect to the final order on rates in the 2007 Rate Case. The Revenue Requirement Order has not determined the final rates that will be in effect for any particular customer. Those rates will not be determined until conclusion of the cost of service portion of the 2007 Rate Case. Therefore, until the final cost of service decision is issued, Rocky Mountain Power cannot file schedules comparing the proposed rates for each class of customers that will result from the Application in this case, information that the Moving Parties believe is necessary before they can adequately participate in this case. However, the Moving Parties accept, as they must in light of the common practice before the Commission of bifurcated cases discussed in part III.A above, that schedules comparing the proposed rates with rates resulting from the Revenue Requirement Order would be sufficient. This comparison could potentially be significantly affected by the order on the cost of service portion of the 2007 Rate Case.

Second, the schedules provide the rates that will be in effect if the Commission fails to act on the Application within 240 days. The Moving Parties portray a "parade of horribles" based on this purpose for the schedules. For example, they argue that since the Application seeks a $160.6 million rate increase, failure of the Commission to act within 240-days will result in a $160.6 million rate increase over the rates then in effect, the rates resulting from the 2007 Rate Case. They argue that this would be duplicative. *See, e.g.*, Division Motion at 6. This argument is incorrect because it ignores the fact that the schedules set forth rates that will be in effect. The rates that will be in effect are not $160.6 million over those in effect at the conclusion of the 2007 Rate Case; they are

---

miscellaneous regulatory issues.

$160.6 million over those in effect on July 17, 2008. Thus, if the Commission fails to act within 240-days, the rate increase will not be $160.6 million; it will be $124.4 million ($160.6 million - $36.2 million increase granted in the Erratum Report and Order on Revenue Requirement issued August 21, 2008).

The Moving Parties also argue that the rate increase sought in the Application is illegal because it ignores adjustments made by the Commission in the Revenue Requirement Order. This argument will be discussed more fully in part III.F, below. However, the argument ignores two things. First, the Company did not ignore the Revenue Requirement Order when it filed the Application contrary to some of the Moving Parties' suggestions that the Company has shown disrespect for the Commission's ruling. *See, e.g.*, Committee Response at n.5; UIEC Motion at 18. The fact is that the Company could not ignore something that did not exist. Second, the Company has already stated in response to discovery requests that it will file updated schedules based on the Revenue Requirement Order. *See* UIEC Motion at 21 and Exhibit H. The Moving Parties misinterpret various statements apparently made during the scheduling conference and statements made in the Application and supporting testimony regarding the effect of filing the Application before the Revenue Requirement Order was issued. The Company's statements were simply that it was seeking the rates set forth in the Application independently of the not yet issued Revenue Requirement Order. As its discovery responses indicate, it always intended to review the Revenue Requirement Order when issued and to provide updates based on the order. Therefore, the rates that will go into effect if the Commission fails to act on the Application within 240 days are

the rates that are then proposed by the Company based on the Revenue Requirement Order and other developments that will undoubtedly occur during the course of this case.

The schedules filed with the Application comply with the requirements of section 54-7-12. Therefore, the Application is effective and the 240-day period provided in the section began to run on July 17, 2008.[8]

F. STARE DECISIS DOES NOT PREVENT THE COMPANY FROM SEEKING A CHANGE IN POSITION BY THE COMMISSION ON COSTS DISALLOWED IN THE 2007 RATE CASE.

The Moving Parties argue that the Application violates the doctrine of stare decisis because the Company knew "orders were forthcoming," UIEC Motion at 18, and because the Application fails to adopt all of the adjustments that were adopted in the Revenue Requirement Order. *Id.* at 17; Division Motion at 11. This argument is incorrect for a number of reasons. First, it goes without saying that the Company could not incorporate adjustments in the Revenue Requirement Order into the Application because the order was not issued until after the Application was filed. Second, the doctrine of stare decisis has limited application in the ratemaking context and does not in any way prohibit the Company from asking the Commission to change its position based on the facts presented in this case. Third, the argument assumes that the Company will not either make adjustments to its rate request or specifically identify aspects of its request that differ with adjustments adopted in the Revenue Requirement Order. As discussed in part III.E, above, the Company will make a supplemental filing doing those things as soon as reasonably possible.

[8] During the scheduling conference in this case held on July 29, 2008, the Commission informed the parties that for purposes of scheduling, the 240-day time period commenced on July 17, 2008. The Moving Parties fail to note this significant direction from the Commission that is contrary to their motions.

The Moving Parties correctly note that the doctrine of stare decisis has some application in the ratemaking context. *Salt Lake Citizens*, 846 P.2d at 1251. However, they fail to emphasize the court's recognition that it "has limited applicability to administrative agency cases," *id.* at 1252, and that the court specifically noted that the utility is free to seek modifications of any rule established in a rate case because "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 decision is not now in accordance with its present idea of what the public interest requires." *Id.* at 1253 (quoting *Reaveley v. Pub. Serv. Comm'n*, 436 P.2d 797, 800 (Utah 1968)).

The court in *Salt Lake Citizens* was also careful to distinguish between determinations in rate cases that involve levels of costs and rulings that a type of expense, such as charitable contributions, may not be recovered in rates. It characterized the latter as rules of law that are binding until overruled. *Id.* at 1253. Whether the adjustments made in the Revenue Requirement Order are in the former or latter category remains to be determined. However, even if some of them are "rules of law," Rocky Mountain Power is free to ask the Commission to overrule them in this case whether it appeals them or not.[9]

In a related argument, UIEC argues that the Application is a collateral attack on the Revenue Requirement Order. UIEC Motion at 18-19. The Company is well aware

[9] UIEC characterizes the filing of the Application as "gamesmanship" on the part of Rocky Mountain Power because if Rocky Mountain Power does not agree with the adjustments in the Revenue Requirement Order it should challenge them on appeal. UIEC Motion at 18. Rocky Mountain Power fully intends to seek reconsideration of the Revenue Requirement Order and to appeal aspects of the order it believes are in error. It also intends to clearly identify any aspect of its Application that does not comply with an adjustment in the Revenue Requirement Order on which it is asking the Commission to modify its position. Thus, the suggestion that the Company is engaging in gamesmanship is incorrect.

that collateral attacks on Commission orders are prohibited by Utah Code Ann. § 54-7-14. The Company will seek review of any significant aspect of the Revenue Requirement Order that it believes remains in error after reconsideration However, the Application is not a collateral attack on the order. Rather, the Application is a request for a rate increase to which the Company is entitled under law. Accordingly, no basis exists for dismissal of the Application on the misperceived allegation that it is a collateral attack on the Revenue Requirement Order.

G. RES JUDICATA DOES NOT APPLY TO THE TYPES OF RATEMAKING DECISIONS AT ISSUE IN THIS CASE.

The Moving Parties argue that the Application is barred by res judicata. *See, e.g.*, Division Motion at 9; Committee Response at 16; UIEC Motion at 10. The argument is incorrect because res judicata does not apply to rate orders.

Res judicata has been applied "to enforce repose when an administrative agency has acted in a judicial capacity in an adversary proceeding to resolve a controversy over legal rights and to apply a remedy." *Salt Lake Citizens*, 846 P.2d at 1251 (quoting *Utah Dept. of Admin. Services v. Pub. Serv. Comm'n*; 658 P.2d 601, 621 (Utah 1983)). However, the court went on to state:

> Of course, res judicata has only limited applicability to some agency proceedings, such as rate cases where the predominant issue is what constitutes a just and reasonable rate for a future period. What constitutes a just and reasonable rate of return, the cost of capital, and the various expense and revenue amounts cannot be decided on the basis of a prior rate proceeding, but must be determined anew in each rate case.

Salt Lake Citizens at 1251 (citing *Utah Dept. of Admin. Services*). The court made the distinction even more clear in *Utah Dept. of Admin. Services,* contrasting the property

rights rulings there to which res judicata applied "to the lack of finality that exists as to orders fixing public utility rates." *Utah Dept. of Admin. Services*, 658 P.2d at 621.

The doctrine of res judicata does not apply to the Application as argued by UIEC. As the Division acknowledged, "Factual differences do exist between the two rate cases based at least in part on the Chehalis plant purchase recently approved by the Commission and some new wind plants not included in the last rate case." Division Motion at 12. Nonetheless, UIEC includes the argument that any rate increase regarding the Chehalis Plant is barred under res judicata because it "could have been litigated" in the 2007 Rate Case. UIEC Motion at 13. As has already been discussed in Part III.C, above, the factual predicate for this argument is incorrect. The Company could not have asked for recovery of costs related to the Chehalis Plant in the 2007 Rate Case, and the Moving Parties would have objected had it done so.

Furthermore, even assuming the Company could have sought recovery of Chehalis Plant costs in the 2007 Rate Case, an order denying recovery at that time based on the facts presented in that case would not bar a subsequent request for recovery based on different facts and circumstances. *See* Report and Order, Docket No. 05-057-01 (Utah PSC Jan. 6, 2006) at 44 (rejecting claim that allowing recovery of gas processing costs was barred by res judicata based on prior order disallowing recovery of the same costs during a prior period).

IV. CONCLUSION

The Moving Parties' arguments in support of their motions to dismiss Rocky Mountain Power's Application in this docket or to restart the 240-day time period for Commission action ignore prior practice before the Commission, are based on a misunderstanding of the purposes of test periods and an erroneous interpretation of

relevant statutes, and are inconsistent with sound legislative and regulatory policy. The Commission has regularly granted rate increases in situations where the application was filed before conclusion of a prior rate case and where the test period overlapped with the one used in a prior rate case. The schedules filed with the Application comply with the requirements of section 54-7-12(2)(a). Therefore, the motions should be denied, and the Commission should proceed to decide Rocky Mountain Power's revenue requirement in this case within 240 days from July 17, 2008, as contemplated by section 54-7-12(3)(c).

DATED this 28th day of August, 2008.

Respectfully submitted,

ROCKY MOUNTAIN POWER

_____

Mark C. Moench, Utah Bar No. 2284
Yvonne R. Hogle, Utah Bar No. 7550
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone No. (801) 220-4459 (Moench)
Telephone No. (801) 220-4050 (Hogle)
Facsimile No. (801) 220-3299
mark.moench@pacificorp.com
yvonne.hogle@pacificorp.com

Katherine A. McDowell
Lisa F. Rackner
Admitted Pro Hac Vice
McDowell & Rackner, P.C.
520 SW 6th Avenue, Suite 830
Portland, OR 97204
Telephone No. (503) 595-3924
Facsimile No. (503) 595-3928
katherine@mcd-law.com
lisa@mcd-law.com

Attorneys for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 28th day of August, 2008, to the following:

Gary A. Dodge
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101
Telephone: 801-363-6363
Facsimile: 801-363-6666
Email: gdodge@hjdlaw.com
Attorneys for UAE

Michael Ginsberg
Patricia Schmid
Assistant Attorney General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111
mginsberg@utah.gov
pschmid@utah.gov

Paul Proctor
Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, UT 84111
pproctor@utah.gov

F. Robert Reeder
William J. Evans
Vicki M. Baldwin
Parsons Behle & Latimer
One Utah Center, Suite 1800
201 S Main St.
Salt Lake City, UT 84111
BobReeder@pblutah.com
BEvans@pblutah.com
VBaldwin@pblutah.com

Roger J. Ball
1375 Vintry Lane
Salt Lake City, Utah 84121
ura@utahratepayers.org

Lee R. Brown
US Magnesium LLC
238 N. 2200 W
Salt Lake City, UT 84116
Lbrown@usmagnesium.com
Utah Farm Bureau Federation

ARTHUR F. SANDACK
8 East Broadway, Ste 510
Salt Lake City, Utah 84111
asandack@msn.com

Peter J. Mattheis
Eric J. Lacey
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
800 West Tower
Washington, D.C. 20007
pjm@bbrslaw.com
elacey@bbrslaw.com

Gerald H. Kinghorn
Jeremy R. Cook
Parsons Kinghorn Harris, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
ghk@pkhlawyers.com

Steven S. Michel
Western Resource Advocates
2025 Senda de Andres
Santa Fe, NM 87501
smichel@wcstcrnresources.org

Michael L. Kurtz
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com

Betsy Wolf
Utah Ratepayers Alliance
Salt Lake Community Action Program
764 South 200 West
Salt Lake City, Utah 84101
bwolf@slcap.org

Stephen R. Randle
Sarah Wright
Utah Clean Energy

664 N Liston Cir.
Kaysville, UT 84037
s.randle@yahoo.com

Holly Rachel Smith, Esq.
Russell W. Ray, PLLC
6212-A Old Franconia Road
Alexandria, VA 22310
holly@raysmithlaw.com

Mr. Ryan L. Kelly
Kelly & Bramwell, PC
11576 South State Street Bldg. 203
Draper, UT 84020
ryan@kellybramwell.com

1014 2nd Avenue
Salt Lake City, UT 84103
sarah@utahcleanenergy.org

Colleen Larkin Bell
Jenniffer N. Byde
Questar Gas Company
180 East First South
P.O. Box 45360
Salt Lake City, Utah 84145-0360
colleen.bell@questar.com
jenniffer.byde@questar.com

Gregory B. Monson
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111
gbmonson@stoel.com