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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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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

**UIEC'S OPPOSITION TO ROCKY MOUNTAIN POWER'S MOTION FOR APPROVAL OF TEST-PERIOD**

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Pursuant to the Utah Public Service Commission's ("Commission") Scheduling Order issued August 1, 2008, the "Utah Industrial Energy Consumers" ("UIEC"), by and through their counsel, hereby oppose Rocky Mountain Power's ("RMP" or the "Company") Motion for Approval of Test-Period.

**ARGUMENT**

On August 18, 2008, RMP filed its Motion for Approval of Test-Period ("Test Period Motion"), requesting that the Commission approve the test period used by RMP in its filing for this case. That test period is the twelve-month period ending June 30, 2009, using end-of-period rate base.

**A. Test Year Period**

As set forth in the UIEC's Motion to Dismiss the Application of Rocky Mountain Power, which is incorporated in full herein by reference, RMP's Application violates the principles of res judicata, retroactive ratemaking, and stare decisis; it is a collateral attack of the Commission's decisions in Docket No. 07-035-93; violates the filing requirements of Utah Code Annotated § 54-7-12; denies Utah ratepayers their right to procedural due process; and is an unreasonable burden on regulatory resources. Because it is based on a legally insufficient filing, RMP's Test Period Motion must therefore be denied.

When filing an application in compliance with the Commission's ruling of Docket No. 07-035-93, issued August 11, the Company should look to the guidance given on test year in that order, as well as the guidance given in the Order on Test Period issued February 14, 2008. In the Order on Test Period, the Commission concurred with UAE's position that a forecasted test period nearer in time to the application filing would render greater confidence in the matching of costs and revenues, and a more appropriate balancing of Company and ratepayer interests. Order on Test Period at 3. The Commission has indicated that the decision of a test year should be based, at least in part, on the factors included in the October 20, 2004, Order in Docket No. 04-035-42. *Id.* at 2; Report & Order at 102. The test year should be based on "informed judgment regarding relevant factors based upon the most currently available information." Report & Order at 103.

Accordingly, assuming that once the Commission dismisses the Application in this case, RMP is able to file a new application near the end of 2008 that conforms with the Commission's

ruling of Docket No. 07-035-93, the earliest appropriate rate case test period for again adjusting RMP's rates is calendar year 2009.

**B. Averaging versus End-of-Year Period**

In its Test Period Motion, in addition to requesting that the Commission accept the test period as filed, RMP also requested that it be permitted to use the end-of-period rate base. The Company confirmed at the test year scheduling conference held August 20 that it is requesting that this decision, which is contrary to common practice especially in light of a future test year, be made as an initial matter along with the decision for the timing of the test period. The UIEC disagree with this position.

First, “[w]hat annual rate will constitute just compensation [for RMP] depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to *all relevant facts*.” *Bluefield Waterworks & I. Co. v. Public Serv. Co.*, 262 U.S. 679, 692 (1923) (emphasis added). To make a piecemeal determination of issues in isolation, without determining whether that factor itself needs evaluation or adjustment, or without concurrently assessing other related factors, is contrary to the over-arching requirement that rates set by the Commission must be just and reasonable. The Utah Supreme Court has echoed this sentiment in the *Wage Case*. *Utah Dep’t of Bus. Regulation v. Pub. Serv. Comm’n*, 614 P.2d 1242, 1250 (Utah 1980).

There has not been sufficient justification for why this one issue should be decided early and in isolation. Doing so, without the context of all the other revenue requirement adjustments, is likely to result in rates that are not just and reasonable.

Also, due to the timing during a test period that capital costs become used and useful, due to the manner in which depreciation is accounted for, and due to the inherent uncertainty of a future test year, the practice has been to use an average rather than an end-of-period method. The Company's proposal to use an end-of-period method in this filing is just another way in which RMP is gaming the system to extend the effect of the test period to more than twelve months.

If the Company wishes to change the current practice, it should, when it re-files an application in conformance with the Commission's Order in Docket No. 07-035-93, be required to provide supporting testimony justifying the change and explaining the affect of the change on revenue requirement.<sup>1</sup> It should also be required to include full information for both methods: averaging and end-of-period. This issue should then be heard as a part of the case in whole, not separately. Otherwise, the parties are unable to make a fair judgment of the impacts of such a change, and the Commission is unable to set just and reasonable rates.

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<sup>1</sup> A similar requirement was ordered by the Commission with respect to any proposed substantive accounting changes. Report & Order at 101.

## CONCLUSION

Based on the foregoing, the UIEC respectfully request that the Commission deny RMP's Test Period Motion.

A hearing is scheduled for September 10, on this motion, as well as the dispositive motions filed by the UIEC, UAE, Division of Public Utilities, and Committee of Consumer Services. In case the Commission does not dismiss RMP's Application (and this motion) as a result of that hearing and the briefs filed thereto, a schedule for determining the test period for this case was issued on August 26, 2008. If RMP's Application is not dismissed, the UIEC plan to participate in that test year proceeding supporting the positions stated herein.

DATED this 28th day of August, 2008.

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/s/ Vicki M. Baldwin

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**CERTIFICATE OF SERVICE**

(Docket No. 08-035-38)

I hereby certify that on this 28th day of August 2008, I caused to be e-mailed, a true and correct copy of the foregoing **UIEC'S OPPOSITION TO ROCKY MOUNTAIN POWER'S MOTION FOR APPROVAL OF TEST-PERIOD** to:

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