PAUL H. PROCTOR (#2657)
Assistant Attorney General
Utah Committee of Consumer Services
MARK L. SHURTLEFF (#4666)
Attorney General
160 East 300 South
P.O. Box 140857
Salt Lake City, Utah 84114-0857
Telephone (801) 366-0552

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 **UTAH COMMITTEE OF CONSUMER SERVICES' REPLY TO ROCKY MOUNTAIN POWER'S AUGUST 28, 2008 RESPONSE**

This Reply by the Utah Committee of Consumer Services to Rocky Mountain Power's Response to the motions filed by the Committee, the Division of Public Utilities, the UAE Intervention Group, and the Utah Industrial Energy Consumers, is permitted by Utah Administrative Rule R746-100-4 and by the Commission's August 1, 2008 Scheduling Order.

Rocky Mountain Power makes two assertions that set the tone of the Response. Rocky Mountain Power knowingly attributes to the Committee an admission that the 2008 Application overlap with the 2007 general rate case is

entirely proper. RMP Response, page 23, ft. note 6. In order to make this characterization and record, Rocky Mountain Power's counsel chose to alter a quote to materially alter the meaning. Counsel removed the phrase "The mere fact that" which conditioned the sentence, and isolated the sentence from the statements why the 2008 Application was not proper. The plain intent, meaning and position stated by the first sentence in the first paragraph of the Summary to Committee's Response is that the 2008 Application violates fundamental principles of Utah public utility jurisprudence, procedural and substantively.

Second, Rocky Mountain Power supports its position that the 240-day period for Commission action began and may not be stayed or restarted by stating in the Response at page 30, ft. note 8:

> During the scheduling conference in this case held on July 29, 2008, the Commission informed the parties that for the 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.

Rocky Mountain Power implies that an oral statement by the Commission Secretary operates as a preliminary resolution of the motions or evidence of the Commission's position and is a "significant direction" binding upon the parties and presumably the Commission. This implication is demonstrably incorrect because the written August 1, 2008 Scheduling Order says nothing about the 240-day period and schedules the filing and hearing of such motions. This implication

is clearly in error because Rocky Mountain Power's counsel omits mention of the discussion about the Commission Secretary's statement and her assurance that the statement from the Commission she was relaying held no significance or meaning to the anticipated motions.

These assertions trouble the Committee, and we believe should trouble the Commission, because they represent the failure by Rocky Mountain Power to comply in a candid and forthright manner with the basic requirements of Utah's public utility laws and regulations. *See Salt Lake Citizens Congress v. Mountain States Telephone & Telegraph*, 846 P.2d 1245, 1255 (Utah 1992). The 2008 Application does not comply with Utah law. For example, Rocky Mountain Power anticipated the pending decision in Docket 07-035-93, but disregards the outcome; submits speculative and inaccurate rate schedules; and, collaterally attacks the Commission's test period order in Docket 07-035-93. The Committee's Initial Response at page 12, and the other moving parties' motions and memoranda detail the 2008 Application's substantive deficiencies and omissions.

In the 2008 Application, and in recent pleadings[1], Rocky Mountain Power depicts Commission decisions and its anticipated report and order in Docket No.

[1] On September 2, 2008, Rocky Mountain Power filed a request for review, reconsideration and rehearing of much of the August 11, 2008 Report and Order in

07-035-93 as having no relevance to the 2008 Application, and states its intent to not conform in a meaningful and timely way with Commission requirements for any general rate case following Docket 07-035-93. The substance and the timing of the 2008 Application and the April 7, 2008 notice of the intent to file it, evidences only a dissatisfaction with the 2007 test period order and the intent to again file the same case no matter the outcome of the 2007 case. The 2008 Application does not judiciously consider the factors outlined in the test period order, the August 11, 2008 Report and Order, or the legal requirements for a general rate relief filing stated in Utah Code §54-4-4.

The substantive and procedural defects in the 2008 Application are exaggerated by Rocky Mountain Power's insistence that the 240-day time period begins and runs uninterrupted and independent of any other regulatory statute or Commission order. Rocky Mountain Power's 2008 Application and August 28, 2008 Response evidences its view that the content and quality of financial information, projections, forecasts, current rates and schedules, among other data,

---

Docket 07-035-93, including the test period order. This pleading is further evidence that the 2008 Application is an impermissible collateral attack on that Report and Order. It also further supports dismissing the 2008 Application as a duplicate filing and for failure to comply with Utah Code §54-4-4(1)(a), as a matter of law. On the other hand, the Commission may conclude that the 2008 Application renders the Petition for Reconsideration moot for all purposes. Reconsidering Rocky Mountain Power's request in Docket No. 07-035-93 for the same rates and rate effective period that it requests in the 2008 Application is an academic exercise. *See Cingolani v. Utah Power*, 790 P2d. 1219 (Utah App 1990).

submitted to support a $161 million rate increase is meaningless to the Commission's obligation to act within 240 days from July 17, 2008.

Rocky Mountain Power states: "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." RMP Response, page 13. This is the effect of the statute, not its purpose. The purpose of the 240-day period is to require the utility requesting a general rate increase to file a complete application containing sufficiently certain financial and operational data and analysis for the Commission to determine whether current rates are insufficient, what test period best reflects the conditions encountered in the rate effective period, what rates will consumers in each classification pay, and to demonstrate in the application that the proposed rates are just and reasonable. *Utah Code §54-3-1*. This information must "plainly" state the changes to be made to current rates. *See Utah Code §54-3-3*. The Commission must look to the schedules filed with the application to initially determine whether the application for a rate increase has a fair and rational basis. *See Committee of Consumer Services v. Public Service Commission*, 2003 UT 29.

A filing that complies with Utah law starts the 240-day period so that the utility is not subject to improper delay or uncertainty as to what rates may be charged and when they are in effect. However, it is quite clear that the Commission in its discretion need not act on a rate application that does not

proffer sufficient evidence upon which the Commission can act. *Mountain Fuel Supply Co. v. Public Service Commission of Utah*, 861 P.2d 414, 424 (Utah 1993), citing *Utah Code §63-46b-8(1)(b)(i)*. It is equally clear that the sufficient evidence must appear in the initial application. *Utah Code §54-7-12, and see Utah Code §54-3-3*.

Based upon *stare decisis*,[2] Rocky Mountain Power argues that this general rate case is no different than other general rate cases filed while earlier cases were pending or based upon overlapping test periods. The argument misunderstands the nature of such rate cases and the Commission's responses to them. The Commission has expressed concern about overlapping test periods, has studied them, and has permitted their use. Such actions clearly indicate that the Commission has the authority and objective to prevent the misguided or abusive pancaked rate case and overlapping test period that characterize the 2008 Application.

Allowing such cases in the past does not compel the Commission to permit this case to go forward unconditionally while ignoring the fact and degree of conflict between the 2008 Application and the August 11, 2007 Report and Order

[2] See Rocky Mountain Power Response, Argument A. page 11, and Argument F. page 31. As it pertains to pancaked rate cases, Rocky Mountain Power asserts that precedent is unequivocally binding. But with respect to the August 11, 2008 Report and Order, Rocky Mountain Power asserts *stare decisis* is irrelevant.

in Docket No. 07-035-93, as the moving parties have documented. A necessary concomitant of *stare decisis* is that a precedent is not always expanded to the limit of its logic. Nor must it be overruled if a court chooses not to enforce it to the extreme. *See Hein v. Freedom From Religion foundation, Inc*., 551 U.S. ____, 127 S. Ct. 2553 (2007). To be faithful to prior Commission decisions in pancaked rate cases and overlapping test years, the Commission must address the regulatory difficulties in using overlapping test periods and "take steps to protect the regulatory process." *In the Matter of the Application of Utah Power & Light Co.*, Docket 84-035-01, September 13, 1984 Report and Order, Findings of Fact and Conclusions of Law 2., page 6.

Time and time again, the Utah Supreme Court has reaffirmed its reliance upon Commission expertise, affirmed that the utility bears a heavy burden of proof, and has defined the nature and quality of the evidence that the Commission must have to determine if a rate is just and reasonable. The Court has affirmed that ratemaking proceedings are not conducted on the basis of gamesmanship or by undermining the Commission's proceedings in a manner inconsistent with a utility's duty to be forthright and candid. The Court has also affirmed that it is this Commission's duty not to ignore such practices but to carefully scrutinize utility filings. These are fundamental principles of Utah public utility jurisprudence. Because Rocky Mountain Power's 2008 Application as filed is so deficient that it

does not and cannot comply with those fundamental principles, the appropriate relief for ratepayers is to dismiss the Application.

RESPECTFULLY SUBMITTED this 8th day of September 2008.

_____

Paul H. Proctor
Assistant Attorney General
Utah Committee of Consumer Services

CERTIFICATE OF SERVICE

I certify that on September 8, 2008 the foregoing Utah Committee of Consumer Services' Reply was served by electronic mail upon the parties listed below.

DATED this 8th day of September 2008.

_____

Paul H. Proctor
Assistant Attorney General
Utah Committee of Consumer Services

Mark C. Moench, Utah Bar No. 02284
Yvonne R. Hogle, Utah Bar No. 07550
Daniel E. Solander, Utah Bar No. 11467
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone No. (801) 220-4459
Facsimile No. (801) 220-4058
mark.moench@pacificorp.com
yvonne.hogle@pacificorp.com
daniel.solander@pacificorp.com

Katherine A. McDowell
McDowell & Rackner P.C.
520 SW 6th Avenue, Suite 830
Portland, OR 97204
503-595-3924 - telephone
503-595-3928 - facsimile
katherine@mcd-law.com

Lisa F. Rackner
McDowell & Rackner P.C.
520 SW 6th Avenue, Suite 830

Portland, OR 97204
503-595-3925 - telephone
503-595-3928 - facsimile
lisa@mcd-law.com

Colleen Larkin Bell (5253)
Jenniffer N. Byde (7947)
Questar Gas Company
180 East First South
P.O. Box 45360
Salt Lake City, Utah 84145-0360
(801) 324-5556
(801) 324-5935 (fax)
colleen.bell@questar.com
jenniffer.byde@questar.com

Gregory B. Monson (2294)
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111
(801) 578-6946
(801) 578-6999 (fax)
gbmonson@stoel.com

Gary A. Dodge
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: 801.363.6363
Facsimile: 801.363.6666
Email: gdodge@hjdlaw.com

Kevin Higgins
Neal Townsend
ENERGY STRATEGIES
39 Market Street, Suite 200
Salt Lake City, UT 84101
Telephone: 801.355.4365
Facsimile: 801.521.9142
E-mail: khiggins@energystrat.com
ntownsend@energystrat.com

Mike Ginsberg
Assistant Attorney General
Division of Public Utilities
Heber Wells Building, Suite 500
160 East 300 South
Salt Lake City, UT 84111
mginsberg@utah.gov

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

Roger J Ball
1375 Vintry Lane
Salt Lake City, Utah 84121
(801) 277-1375
ball.roger@gmail.com

F. Robert Reeder
William J. Evans
Vicki M. Baldwin
Parsons Behle &, Latimer
201 South Main Street, Suite 1800
Salt Lake city, Utah 84111
bobreeder@parsonsbehle.com
bevans@,parsonsbehle.com
vbaldwin@parsonsbehle.com

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513-421-2255 Fax: 513-421-2764
E-mail: mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com

Holly Rachel Smith, Esq.
Russell W. Ray, PLLC

For Wal-Mart
6212-A Old Franconia Road
Alexandria, VA 22310
(703) 313-9401
holly@raysmithlaw.com

Mr. Ryan L. Kelly
Kelly & Bramwell, PC
For Wal-Mart
11576 South State Street Bldg. 203 Draper, UT 84020
(801) 495-2559
ryan@kellybramwell.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
Telephone: (202) 342-0800
Facsimile: (202) 342-0807
pjm@bbrslaw.com
ejl@bbrslaw.com

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