

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF UTAH**

<p>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.</p> <p>In the Docket on Rocky Mountain Power's Deferred Income Tax Normalization Method</p>	<p>DOCKET NO. 09-035-23</p> <p>DOCKET NO. 09-035-03</p> <p><b>STIPULATION REGARDING CHANGE IN INCOME TAX TREATMENT OF REPAIR DEDUCTIONS AND BASIS NORMALIZATION.</b></p>
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**I. INTRODUCTION**

1. This Stipulation (“Stipulation”) in the Revenue Requirement Phase of Docket 09-035-23 and in resolution of Docket 09-035-03 related to a deferred income tax review is entered into by and among the parties whose signatures appear on the signature pages hereof (collectively referred to herein as the “Parties”).

2. The terms and conditions of this Stipulation are set forth herein. The Parties contend that this Stipulation is in the public interest and recommend that the Public Service Commission of Utah (the “Commission”) approve the Stipulation and all of its terms and conditions. The Parties request that the Commission make findings of fact and reach conclusions of law based on this Stipulation and issue an appropriate order thereon.

## **II. REGULATORY TREATMENT OF DEFERRED INCOME TAXES ON TEMPORARY BOOK-TAX DIFFERENCES**

3. With the exception of deferred income taxes on certain property related book-tax basis differences, the Company accounts for deferred income taxes on a fully normalized basis on its regulated books of account, meaning that the Company recovers deferred income taxes through the cost-of-service component of ratemaking with a corresponding rate base reduction or addition for the related accumulated deferred income tax liability or asset, respectively.

4. In the Company's 1982 general rate case (Docket No. 82-035-13), the Company began the process of normalizing deferred income taxes on property-related book-tax basis differences. For various reasons, the book-tax differences giving rise to deferred income taxes on property-related book-tax differences were never normalized beyond forty percent and they remain at that level in the 2009 general rate case (Docket No. 09-035-23) as originally filed by the Company.

5. The Company filed its 2007 general rate case (Docket No. 07-035-93) using a normalized level one-hundred percent for all deferred income taxes, including property related book-tax basis differences. Ultimately, in that case, this approach was deferred for future consideration. The Commission subsequently opened Docket No. 08-999-02 and Docket No. 09-035-03 to audit the Company's regulatory treatment of deferred income taxes and to analyze the effects of a future change to full normalization.

6. As the result of the recent activity and exchange of information in the 2007, 2008, and 2009 general rate case dockets and several detailed discussions by and among the parties, an ongoing policy recommendation has been agreed to for the regulatory treatment of income taxes in Utah. The recommended regulatory policy calls for the normalized treatment of all book-tax timing differences giving rise to deferred income taxes on the Company's

regulated books, with the exception of book-tax differences reported on the Allowance for Equity Funds Used During Construction (“Equity AFUDC”) which will be accounted for on a flow-through basis. Under flow-through accounting, deferred income tax is not recovered through the cost-of-service component of ratemaking, nor is the related accumulated deferred income tax liability or asset included as rate base reduction or addition, respectively. The proposed regulatory policy is compliant with the normalization requirements of the Internal Revenue Code (IRC).

### **III. UPDATE FOR CHANGE IN METHOD OF ACCOUNTING FOR INCOME TAX PURPOSES: REPAIRS DEDUCTION**

7. On December 30, 2008, the Company filed Form 3115, Application for Change in Accounting Method, with the Internal Revenue Service (IRS) requesting permission to change its method of accounting for routine repairs and maintenance costs associated with electric generation, transmission, and distribution assets. The new accounting method (“repairs deduction”) will permit PacifiCorp to expense costs associated with the repair and maintenance of generation, transmission, and distribution assets in the taxable year paid or incurred. Currently these costs are being capitalized for both book and tax purposes and are recovered through depreciation. The IRS granted consent to the Company’s proposed change in accounting method on October 2 and 7, 2009.

8. The change in accounting method is reflected in the Company’s 2008 federal income tax return. The Company’s 2008 federal income tax return contains a repairs deduction for the calendar year ended December 31, 2008 and a one-time adjustment (tax deduction) known as an IRC Section 481(a) adjustment. The IRC Section 481(a) adjustment is meant to prevent amounts from being duplicated or omitted in transition from the old

method of accounting to the new method of accounting, and is generally determined as if the new method of accounting had always been used.

9. The repairs deduction was not included with the initial filing of the Company's 2009 Utah general rate case due to a combination of significant uncertainties regarding: 1) whether or not the IRS would consent to the Company's proposed change in accounting method; 2) whether or not the new method and the IRC Section 481(a) adjustment would be reflected in the Company's 2008 federal income tax return; and 3) how much of the originally filed 2008 repairs deduction and IRC Section 481(a) adjustment will be sustained upon final examination by the IRS. As noted in paragraph 7, the Company has subsequently received IRS consent for the change in accounting method, and as noted in paragraph 8, the IRC Section 481(a) adjustment and a repairs deduction for the calendar year ended December 31, 2008 were taken in the Company's 2008 federal income tax return. These subsequent events do not eliminate the uncertainty associated with the IRS examination.

#### **IV. TERMS OF STIPULATION**

10. The Parties agree that the recommended ongoing regulatory policy for deferred income taxes in the Company's Utah jurisdiction is: 1) normalized treatment of all book-tax differences giving rise to the Company's deferred income taxes, with the exception of book-tax differences associated with Equity AFUDC; and, 2) flow-through treatment of book-tax differences associated with Equity AFUDC. The Parties request that the Commission approve the implementation of this policy coincident with the test period in this Docket beginning July 1, 2009. The estimated amount of this adjustment is \$2.18 million as provided for in Attachment 1 of the Stipulation and based on the Company's filed weighted average cost of capital "WACC". This adjustment will be updated based on the Commission ordered WACC in Docket No. 09-035-23.

11. The Parties agree that the 2009 Utah general rate case, Docket No. 09-035-23, shall be updated to reflect the IRC Section 481(a) adjustment and the 2008 repairs deduction taken in the Company's 2008 federal income tax return and an estimate of the repairs deduction from January 1, 2009, through June 30, 2010, consistent with the test year ended June 30, 2010. The estimated amount of this adjustment is \$7.35 million as provided for in Attachment 2 of the stipulation and based on the company's filed WACC. This adjustment will be updated based on the Commission ordered WACC in this Docket, No. 09-035-23.

12. The Parties agree that customers and the Company shall be held harmless from the impacts of over/under estimates of the repairs deduction projected for tax years 2009 and 2010 that are incorporated in Attachment 2 of the Stipulation. Accordingly, differences between the Utah revenue requirement calculation made for the repairs deduction as ordered by the Commission in this Docket, as calculated in Attachment 2 of this Stipulation, updated for the actual repairs deductions taken in the Company's 2009 and 2010 originally filed federal income tax returns, will be recorded as a regulatory asset or liability and included in rate base. The same calculation methodology as that presented in Attachment 2 will be employed in deriving the amount of the regulatory asset or liability, with the WACC estimate included in Attachment 2 of 11.979% being replaced with the WACC approved by the Commission in this docket. The Company will begin amortization of the regulatory asset or liability in its next general rate case over a period not to exceed five years.

13. The Parties agree that customers and the Company shall be held harmless from interest paid to the IRS upon the final determination of the repairs deduction. Final determination means the final determination by the IRS of the IRC Section 481(a) adjustment and 2008 repairs deduction as filed in the 2008 federal income tax return. Accordingly, after final determination by the IRS, a regulatory asset or liability will be established for the

interest paid to the IRS with respect to the adjustments made by the IRS to the IRC Section 481(a) adjustments for 2008 and the 2008 repairs deduction (as conceptually illustrated in Attachment 3, Table 1). With respect to that portion of the IRC Section 481(a) adjustment related to retirements, and spread equally over the four-year period beginning December 31, 2008, a regulatory asset or liability will be established for the product of: 1) the difference between the annual spread as reported in the Company's 2009 and 2010 federal income tax returns and the annual spread for 2009 and 2010 as finally determined by the IRS, and 2) the statutory interest rate assessed by the IRS on tax deficiencies for the respective tax years through the duration of the projected assessment period (as conceptually illustrated in Attachment 3, Table 2). Additionally, a regulatory asset or liability will be established for the product of: 1) the disallowance ratio on the 2008 repairs deductions as finally determined by the IRS, 2) the 2009 and 2010 repairs deduction updated and described in Paragraph 12, above, and 3) the statutory interest rate assessed by the IRS on tax deficiencies for the respective tax years through the duration of the projected assessment period (as conceptually illustrated in Attachment 3, Table 3). The disallowance ratio is the amount of the 2008 repairs deduction disallowed by the IRS upon final determination as a ratio of the 2008 repairs deduction as originally filed in the 2008 federal income tax return (as conceptually illustrated in Attachment 3, Table 3). After final determination by the IRS, the Company will begin amortization of the regulatory asset or liability in its next general rate case over a period not to exceed five years.

14. If the Stipulation is approved by the Commission, the Company will update the revenue requirement in the 2009 rate case, Docket No. 09-035-23, to reflect the impacts of the Stipulation as described in paragraphs 10 and 11, the computations for which are provided in Attachments 1 and 2 to this Stipulation. In the event the Stipulation is rejected by the

Commission, the parties request that they be allowed the opportunity to file additional direct testimony in this docket to present recommendations regarding (1) the tax normalization issue, (2) the IRC Section 481(a) adjustment, (3) the 2008 repairs deduction taken on the Company's 2008 federal income tax return, and (4) projected 2009 and 2010 repairs deductions. This will include updates to the parties overall revenue requirement recommendations as impacted by the above identified four (4) items. In addition, the Commission's approval of this Stipulation will result in the resolution and conclusion of Docket 08-999-02 and Docket 09-035-03 related to a deferred income tax review.

#### **V. GENERAL TERMS AND CONDITIONS**

15. All negotiations related to this Stipulation are privileged and confidential and no Party shall be bound by any position asserted in negotiations. Neither the execution of this Stipulation nor the order adopting this Stipulation shall be deemed to constitute an admission or acknowledgment by any Party of any liability, the validity or invalidity of any claim or defense, the validity or invalidity of any principle or practice, or the basis of an estoppel or waiver by any Party other than with respect to issues resolved by this Stipulation; nor shall they be introduced or used as evidence for any other purpose in a future proceeding by any Party except a proceeding to enforce the approval or terms of this Stipulation.

16. The Company, the Division and the Office each agree to make one or more witnesses available to explain and support this Stipulation to the Commission. Such witnesses will be available for examination. So that the record in this Docket is complete, the Parties may move for admission of evidence, comments, position statements or exhibits that have been filed on the issues resolved by this Stipulation; however, notwithstanding the admission of such documents, the Parties shall support the Commission's approval of the

Stipulation and the Commission order approving the Stipulation. As applied to the Division and the Office, the explanation and support shall be consistent with their statutory authority and responsibility.

17. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of the Stipulation. As applied to the Division and Office, the phrase “use its best efforts” means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review opposed to the Stipulation.

18. Except with regard to the obligations of the Parties under the two immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on the Parties until it has been approved without material change or condition by the Commission. This Stipulation is an integrated whole, and any Party may withdraw from it if it is not approved without material change or condition by the Commission or if the Commission’s approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission’s approval of this Stipulation is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with respect to



issues addressed by the Stipulation and no Party shall be bound or prejudiced by the terms and conditions of the Stipulation.

19. The Parties may execute this Stipulation in counterparts each of which is deemed an original and all of which only constitute one original.

20. The Parties agree that this Stipulation is in the public interest and that all of its terms and conditions, considered together as a whole, will assist in producing fair, just and reasonable Utah retail electric utility rates in the 2009 general rate case that provide Rocky Mountain Power a reasonable opportunity to earn its authorized return.

BASED ON THE FOREGOING, the Parties request that the Commission issue an order approving this Stipulation and adopting the terms and conditions of this Stipulation.

Respectfully submitted this \_\_\_ day of October , 2009.

ROCKY MOUNTAIN POWER

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