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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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DOCKET NO. 09-035-15

In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism

**RESPONSE TO OPPOSITION TO  
ROCKY MOUNTAIN POWER’S  
MOTION FOR A DEFERRED  
ACCOUNTING ORDER BY DIVISION  
OF PUBLIC UTILITIES, UTAH  
INDUSTRIAL ENERGY  
CONSUMERS, UTAH OFFICE OF  
CONSUMER SERVICES, AND UTAH  
ASSOCIATION OF ENERGY USERS**

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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), pursuant to Utah Administrative Code R746-100-3.H, hereby replies to the Division of Public Utilities’ (“Division”) Opposition to Rocky Mountain Power’s Motion for a Deferred Accounting Order (“Division Opposition”), the Utah Industrial Energy Consumers (“UIEC”) Opposition to Motion for Deferred Accounting Order (“UIEC Opposition”), Utah Office of Consumer Services’ (“Office”) Memorandum in Opposition to Motion for a Deferred Accounting Order (“Office Opposition”), and Utah Association of Energy Users Memorandum (“UAE”) in Opposition to Rocky Mountain Power’s Motion for Deferred Accounting Order (“UAE Opposition”).

## **BACKGROUND**

1. On March 16, 2009, pursuant to Utah Code Ann. § 54-7-13.5, Rocky Mountain Power filed with the Public Service Commission of Utah (“Commission”) an application for a proposed energy cost adjustment mechanism (“ECAM”) as a way to recover its actual and prudently incurred net power costs (“NPC”) for service in the state of Utah. It did so consistent with its understanding of Commitment U 23 approved in the Commission’s Report and Order issued June 5, 2006 in Docket No. 05-035-54 that an application for an ECAM would be filed at least three months in advance of a general rate case filing and that intervenor testimony deadlines on the application would be the same as those established in the general rate case. Several technical conferences were held regarding the scope and scheduling in this proceeding and its relationship with the Company’s general rate case.

2. The Company filed its general rate case on June 23, 2009 (“2009 General Rate Case”). After several meetings and conferences, the Commission issued scheduling orders both in this proceeding and in the 2009 General Rate Case.

3. On January 12, 2010, the Commission concluded hearings in Phase I of this proceeding and on February 8, 2010, the Commission issued an order in the case concluding it will proceed to Phase II to address the difficulties the Company raises about its power costs and their impact on the Company’s operations and ratemaking in the State of Utah and design an ECAM.

4. Based on that finding, the Company filed with the Commission on February 9, 2010, a Motion for a Deferred Accounting (“Motion”) requesting that it be allowed to begin deferring the difference between NPC approved in the 2009 General

Rate Case, and actual NPC incurred and that deferral begin coincident with the effective date of new rates from the 2009 General Rate Case, or February 18, 2010.

5. On February 23, 2010, UIEC filed with the Commission the UIEC Opposition, opposing the Company's Motion on several grounds.

6. On February 24, 2010, the Division, UAE and the Office filed with the Commission the Division Opposition, the UAE Opposition, and the Office Opposition, respectively, each also opposing the Company's Motion on several grounds.

## ARGUMENT

### **A. The Company's Motion for a Deferred Accounting Order (the "Company's Motion") is Appropriate Because Utah Law Authorizes the Recovery Through an Energy Cost Adjustment Mechanism of the Types of Costs the Company Is Seeking to Defer**

Utah Code Ann. § 54-7-13.5 ("ECAM Statute") states, in part, "[t]he commission may authorize an electrical corporation to establish an energy balancing account." The types of costs that may be included in the account are "some or all components of the electrical corporation's incurred *actual power costs*" including fuel, purchased power, wheeling expenses and the sum of the foregoing components less wholesale revenues. Id. (emphasis added). The Company's Motion seeks to defer the difference between the base NPC established in the 2009 General Rate Case and actual NPC. The Company is not requesting deferral and recovery of costs outside of those allowed under the ECAM Statute, contrary to UIEC's position in the UIEC Opposition.<sup>1</sup> The Company is uncertain what the basis for UIEC's argument is but can only guess that UIEC misunderstands the Company's proposal. The fact that the ECAM Statute does not address the details of the

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<sup>1</sup> UIEC Opposition, page 6.

appropriate design of an ECAM does not mean the Company's proposed ECAM, or any other party's proposed ECAM, for that matter, is inconsistent with the ECAM Statute.

**1. The Proposed Deferral Is Appropriate Because Recovery of Costs is Probable**

In the Division Opposition, the Division argues that the Company has not shown that future recovery of the costs it seeks to defer is probable and, on that basis, recommends that the Commission deny the Company's Motion.<sup>2</sup> As noted in the Division Opposition, the Statement of Financial Accounting Standards No. 71 ("FAS71") requires that costs incurred during one time period be capitalized if recovery in rates in a future time period is probable. The Division Opposition states that evidence that could support future recovery includes previous rate orders from the regulator allowing recovery for substantially similar costs.<sup>3</sup> The Company acknowledges that currently there is no energy balancing account in place because the Commission has not approved the Company's proposed ECAM. However, it is *probable* that the Company can recover at least some of the costs it seeks to defer for the following reasons.<sup>4</sup>

First, the Division completely fails to understand the intent and application of FAS 71. FAS 71 applies to general-purpose external financial statements of an enterprise that has regulated operations. FAS 71 provides guidance in the proper reporting and valuation of the enterprise for the economic impacts of regulated operations. It does not preclude the issuance of accounting orders by authoritative bodies, but does set the standard for the proper valuation related to the impact of such accounting orders and the

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<sup>2</sup> Division Opposition, Docket No. 09-035-15, (February 23, 2010) pages 2-3.

<sup>3</sup>Id., Attachment 1, page 2.

<sup>4</sup> Parties assume in the oppositions that deferred accounting will result in an increase in rates in the future. Assuming that NPC were forecasted fairly and reasonably in the 2009 General Rate Case, it is just as likely that deferred accounting will result in a rate decrease as a rate increase. The point is that NPC are extremely difficult to forecast. Therefore, an ECAM is needed for the benefit of both the Company and its customers.

reporting to external investors and financial audiences. Once a company has received an order allowing the deferral of costs under FAS 71, it must make a determination of the probability of future recovery of those costs through a future revenue stream. To the extent or level that a company does not believe a portion of the costs are probable of recovery, it will either need to not book those costs as an asset or will need to establish a provision against the deferred regulatory asset. The probability determination is a management test that is carried out based on facts and circumstances that would support the fair valuation of the assets on the financial statements. The granting of an accounting order by the Commission is separate and apart from the management determination on the value of the asset that would be created on its financial books related to the accounting order.

Second, there are a number of orders from this Commission during the 1980s allowing the recovery of substantially similar costs through an energy balancing account. In addition, Questar Gas Company has had an energy balancing account in place for approximately 30 years in which it is allowed to recover similar costs.

Third, as explained above, the ECAM Statute provides authorization for the creation of an energy balancing account for the recovery of actual power costs.

Fourth, in the Commission's Report and Order issued February 8, 2010 ("Order") in this docket, the Commission found that, contrary to the parties' positions, an ECAM could be designed and used "consistent with public interest," and, on such basis, approved the continuation of the case to Phase II. In other words, the Company met its burden in Phase I of the case, as the Commission would not have proceeded to Phase II otherwise. The Commission was persuaded that, assuming an ECAM is designed

appropriately, an ECAM can be in the public interest. *Id.* Thus, even though “the parties object to an ECAM under *any* circumstances,” as the Commission noted in its Order, Phase II is currently underway to design an ECAM that will be in the public interest.

Fifth, because there is no express standard under the ECAM Statute for establishing a deferred account, the Commission has broad discretion and judgment in the exercise of its authority to do so. Utah Code Ann. § 54-4-23 states that the Commission has the discretion to prescribe the forms of accounts “which in the judgment of the commission may be necessary to carry out any of the provisions of this title.” The Company submits that it is necessary in this case to establish the deferred account because in order to implement an ECAM, base NPC must be compared to the actual power costs that are to be recorded in the deferred account.

Sixth “authorizing certain expenses to be accounted for through an accounting order does not pre-approve them for inclusion in the determination of a utility’s revenue requirement in some future ratemaking proceeding.”<sup>5</sup> In fact, “[i]n a future ratemaking proceeding, the Commission could ultimately conclude that they will not be included at all in making a revenue requirement determination upon which rates would be set. *Id.* The Company recognizes that, assuming the Commission approves an ECAM, the cost components that will be allowed for recovery may be different from those the Company proposed in its proposed ECAM. Further, the Company acknowledges that, depending on

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<sup>5</sup> In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order to Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization; In the Matter of the Application of Rocky Mountain Power for an Accounting Order to Defer the Costs Related to the MidAmerican Energy Holdings Company Transaction; In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order to Defer the Costs related to the Flooding of Powerdale Hydro Facility, Docket Nos. 06-035-163, 07-035-04, 07-035-14, (“Grid West Case”), Report and Order, page 16 (January 3, 2008) (“Deferred Accounting Order”).

the design of the ECAM, certain revenue components may also be included in the ECAM. Finally, in the event no ECAM is approved in this docket, the deferred accounting of actual power costs will be moot and no longer necessary.

Seventh, if the Company waits for an order approving an ECAM before it begins to track and defer actual power costs, other parties may argue that the Company must wait until a base is established at the conclusion of the next general rate case before it can begin to track and defer actual power costs. While other parties may find that acceptable, it would be unfair to the Company considering the Company filed with the Commission its application for approval of an ECAM in March 2009. It would also be inconsistent with the Commission's Scheduling Order issued in this docket on August 4, 2009. As discussed in more detail below, the Commission scheduled this docket and the Company's 2009 General Rate Case together to accommodate the need to have the ECAM "implemented at the conclusion of a general rate case." Utah Code Ann. § 54-7-13.5(2)(b)(iii). Granting the Company's Motion is consistent with that accommodation.

## **2. The Company's Motion Does Not Violate the Rule Against Retroactive Ratemaking**

The rule against retroactive ratemaking, exceptions to the rule and their underlying rationales have little application to this case.<sup>6</sup> Some of the parties contend that the Company's Motion requests permission for the Company to engage in retroactive ratemaking.<sup>7</sup> The Company is seeking an order that will permit it to collect from rate payers at a later point in time amounts by which the Company's actual power costs exceed the level of NPC assumed in current rates, *with no expectation of collecting such*

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<sup>6</sup>Deferred Accounting Order, page 16.

<sup>7</sup> UAE Opposition, UIEC Opposition.

*amounts outside of an ECAM.* If there is no ECAM, no amounts will be collected. Only if there is an ECAM will the Company have the *opportunity* to collect any such amounts. While the Company is seeking approval for a deferred account prior to Commission approval of an ECAM, the deferred account is directly related to and contingent on approval of an ECAM. Therefore, although some of the same principles apply in analyzing whether a deferred account is appropriate and whether retroactive ratemaking may be permitted, a deferred account established in connection with an ECAM is not tantamount to retroactive ratemaking.<sup>8</sup>

In addition, the circumstances under which the Company is seeking the deferred account meet an exception to the rule against retroactive ratemaking set forth by the Commission in the Grid West Case. The Commission found that an exception to the rule against retroactive ratemaking is “for events which may be known or foreseeable, but whose impact upon the revenues or expenses of the utility are unforeseeable and extraordinary or whose actual manifestations vary from their projections in an unforeseeable and extraordinary way.” Id. at 19. The Company filed with the Commission its application for approval of an ECAM because the Company’s NPC are volatile, large and largely outside of the Company’s control. This is not a case where the Company is seeking to collect revenues that it didn’t collect in the rate case because of forecasting errors or Company mismanagement. The Commission has recognized that these distinctions are important in analyzing whether the rule against retroactive ratemaking has been violated. Therefore, approving the deferred account in this case does not amount to retroactive ratemaking because (i) the deferred account is in connection with an ECAM for which an exception to retroactive ratemaking exists and

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<sup>8</sup> Questar Gas Co. vs. Utah Public Service Commission, 34 P.3d 218, 223 (Utah 2001).



(ii) the actual power costs to be tracked in the account are volatile, large and largely outside of the Company's control, the impact of which are unforeseeable and extraordinary.

**B. The Company's Motion for Deferred Accounting Will Allow the Commission and the Parties to Litigate Phase II of the ECAM Without Haste**

On July 30, 2009, the Company filed its Motion of Rocky Mountain Power For Ruling on an Implementation of ECAM in this case (July 30, 2009 Motion). The Company requested that the Commission enter an order concluding that an ECAM approved in this proceeding may be implemented within a reasonable period following the final order the Company's 2009 General Rate Case. The Company's concern was that if that were not the case, the schedule in this proceeding should be expedited to allow conclusion of this docket concurrently with the final order in the 2009 General Rate Case. In response to the July 30, 2009 Motion and mindful of the Company's concerns, the Commission issued simultaneous scheduling orders in the 2009 general rate case and in this proceeding. The Commission acknowledged the interplay between this proceeding and the 2009 General Rate Case stating that it believed it could "accommodate parties' interests in both dockets through the schedule set forth in this docket and the contemporaneous orders ... in Docket No. 09-035-23."<sup>9</sup> The Commission bifurcated both cases into two separate phases and both cases are currently in their respective second phases.

By approving the Company's Motion, the Commission and the parties can continue to litigate the case consistent with the intent of the scheduling orders. Upon the conclusion of this proceeding, assuming an ECAM is approved, there will be actual

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<sup>9</sup> In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism", Docket No. 09-035-15 Scheduling Order (August 4, 2009).

power costs to which the base power costs established in the 2009 General Rate Case can be compared. If the Company's Motion is denied, however, the parties will undoubtedly argue, assuming an ECAM is approved, that the ECAM cannot be implemented until after the conclusion of the next general rate case because there are no actual power costs to which base power costs can be compared and therefore the ECAM is not being implemented at the conclusion of the 2009 General Rate Case.

**C. The Company's Motion for Deferred Accounting Is Appropriate Because It Would Not Be Detrimental to the Public Interest**

There would be no detriment to the public interest if the Commission approves the Company's Motion. In the unlikely event the Commission finds that there is no ECAM that could possibly be designed that would be in the public interest in Phase II of this case, then the deferred accounting order becomes moot. Customers will pay nothing related to the actual power costs in the deferred account. On the other hand, denial of the Company's Motion, assuming an ECAM is approved, could potentially be detrimental to the Company or its customers, depending on whether actual NPC incurred are higher or lower than those included in base rates in the 2009 General Rate Case. As explained above, the parties would inevitably argue that, for several reasons which have already been explained, the ECAM cannot be implemented until the conclusion of the next general rate case (approximately September 2011).

The parties argue that it is the Company's fault if the ECAM is not implemented until the conclusion of the next general rate case. The Company filed this case in March 2009. Although parties argued then and continue to argue that the filing was inadequate, a substantially identical filing in Idaho led to a stipulation and order approving the ECAM

in that state.<sup>10</sup> In addition, the Commission did not grant other parties' motions that it dismiss the application. Following the Commission's decision to bifurcate proceedings in this docket, the Company initially proposed a schedule under which the hearings in Phase II in this docket would be held early February 2010. Other parties opposed this schedule, asking for more time. The Company has acted prudently and methodically throughout its litigation of this docket, for obvious reasons. The Company submits, and the Commission has noted, that the parties will object to an ECAM under *any* circumstances. They will take every opportunity to continue to obstruct the Company's ability to implement an ECAM. Therefore, the Company requests that, because there is no detriment to the public interest, it is appropriate for the Commission to approve the Company's Motion.

### CONCLUSION

Based on the foregoing, the Company respectfully requests that the Commission approve the Company's Motion.

DATED: March 8, 2010.

Respectfully submitted,  
ROCKY MOUNTAIN POWER

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<sup>10</sup> In the Matter of the Application of Rocky Mountain Power for Approval of an Energy Cost Adjustment Mechanism (ECAM), Order No. 30904 (September 29, 2009).

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 8th day of March, 2010, on the following:

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