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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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<b>In the Matter of the Application of Rocky Mountain Power for Approval of Its Proposed Energy Cost Adjustment Mechanism</b>	<b>Docket No. 09-035-15</b>
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**UAE'S RESPONSE TO ROCKY MOUNTAIN POWER'S PETITION FOR  
CLARIFICATION OR REHEARING**

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The Utah Association of Energy Users (“UAE”) submits this response to the Petition of Rocky Mountain Power (“RMP”) for Clarification or Rehearing (“RMP Petition”) of the Commission’s Corrected Report and Order in this docket issued March 16, 2011 (“EBA Order”). The Rehearing Petition requests rehearing on certain issues and clarification on other issues. In this memorandum, UAE opposes rehearing on the utility/customer risk-sharing mechanism properly adopted by the Commission, and offers comments on how to avoid unreasonable consequences if swaps are excluded from the EBA.

**I. Reconsideration should be Denied as to the Utility/Customer Risk-Sharing Component.**

RMP currently bears 100% of the risk of deviations between Commission-approved projections of net power costs (NPC) used to set rates and actual NPC between rate cases. RMP asked the Commission to shift 100% of that risk to customers. The Commission accepted the testimony of virtually every party to this proceeding (other than the Company) that the Company's risk-shifting proposal was unreasonable and would not be in the public interest. It thus approved a utility/customer risk-sharing mechanism that shifts 70% of this risk to customers, leaving a mere 30% of the existing risk with the utility. RMP's dogged insistence to the contrary, Utah law and sound public policy strongly support the Commission's ruling.

Testimony in this case overwhelmingly demonstrates that a pass-through of 100% of the deviations in NPC between rate cases would seriously reduce RMP's incentive to manage its fuel and purchased power costs, that only RMP--and not its customers--can control energy costs, and that after-the-fact prudence audits are insufficient to ensure sound energy cost-management.<sup>1</sup>

RMP continues to assert its inaccurate and illogical argument that a risk-sharing mechanism will prevent the utility from recovering all of its prudently incurred net power costs. As much as RMP wants to earn an after-tax return in the 10% range without taking any risk, proper ratemaking is not a simple matter of cost reimbursement. Rates established in a rate case are designed to give the utility a reasonable opportunity to earn up to its authorized return and recover its prudently-incurred costs. Once such rates are set, however, the utility is expected to operate within the framework of approved rates and to cope with normal business risks and

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<sup>1</sup> RMP's claim that a sharing mechanism is "inconsistent with the great weight of credible evidence" (Petition at 23) is laughable. RMP has apparently managed to convince itself that no witnesses other than those paid by it can provide "credible evidence." Contrary to RMP's unsupported and outrageous claim, the record is replete with testimony from witnesses for virtually every party to the case other than the Company supporting a sharing mechanism and providing abundant evidence that such a mechanism is necessary to incent proper utility behavior and controls, and is critical to a public interest determination.

economic forces. Only by bearing such risks can a utility legitimately expect returns anywhere in the currently allowed range. If a utility fails to earn its full authorized return as a result of business risk, it does not constitute a disallowance of prudently-incurred costs.

RMP also continues to assert the incorrect and illogical argument that Utah statutes prohibit the Commission's cost sharing arrangement. To the contrary, Utah statutes properly leave design and operating details of an EBA to the discretion of the Commission. They do not in any manner purport to require or prevent a cost sharing mechanism.

If the Commission can properly assign 100% of the risk of NPC deviations to RMP between rate cases--as it has done for many years--the Commission can, *a priori*, assign just 30% of those risks to RMP. Moreover, the statute expressly permits "some or all" components of power costs to be included in an EBA (Utah Code § 54-7-13.5(1)(b)).

RMP contorts the statutory reference to "actual costs" (Utah Code § 54-7-13.5(2)(h)). That reference does not, by any reasonable reading of the statute, purport to impose any kind of limitation on the Commission's ability to design an EBA that is in the public interest. Nor does it purport to limit the Commission's ability to determine in the first instance what portion of NPC deviations will be subject to recapture. The sole purpose of the sentence containing the referenced language is to confirm that a utility may recover through an EBA surcharge only those costs that it actually and prudently incurs. It does not mandate that it recover all such costs.

More importantly, Utah statutes specifically require a Commission determination that an EBA is in the public interest (Utah Code § 54-7-13.5(2)(b)(ii)). Explicit in the testimony of numerous witnesses, and in the Commission's EBA Order (Report and Order at 63), is that an EBA as proposed by RMP without a significant utility/customer sharing mechanism is not in the

public interest. Under current circumstances, the Commission thus *cannot* approve the EBA demanded by RMP.

Given RMP's persistent and unreasonable interpretation of Utah statutes, UAE respectfully asks the Commission to confirm in its rehearing order that, without the 70/30 risk-sharing mechanism, the EBA would not be in the public interest and that, if RMP's interpretation of the statute is ultimately determined to be correct, the EBA is not in the public interest under Utah Code § 54-7-13.5(2)(b)(i) and will not be implemented.

**II. If Swaps are Excluded from the EBA, the EBA Workgroup Should be Expected to Evaluate How to Avoid Unintended or Perverse Consequences.**

RMP also requests rehearing as to the exclusion of "swaps" from the EBA. RMP's Petition cites potential "adverse and unintended consequences" that might occur if swaps are excluded (RMP Petition at 16-18). UAE agrees that unreasonable adverse consequences stemming from exclusion of swaps should not be permitted to occur. To the extent swaps remain excluded, UAE thus suggests that the Commission should expect the EBA Workgroup to identify, address and remedy any such unreasonable consequences through a proper EBA design. Indeed, the EBA Workgroup has already identified and discussed some such potential consequences, as well as possible means of remedying the same.<sup>2</sup>

**Conclusion**

UAE respectfully submits that the Commission's decision to utilize a utility/customer sharing mechanism for deviations in NPC between rate cases, similar to mechanisms used in many other states, is reasonable, consistent with Utah law, and indispensable to its finding that an EBA may be in the public interest of the State of Utah.

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<sup>2</sup> For example, it has been suggested that unreasonable consequences might be avoided by removing from the EBA not only the cost of financial swaps, but also the corresponding physical commodity volumes hedged by such swaps. The EBA Workgroup has not yet had adequate time to explore in detail all potential concerns and resolutions, but it should be expected to do so prior to implementation of the EBA in October.

Dated this 29<sup>th</sup> day of April, 2011.

Hatch, James & Dodge

/s/ \_\_\_\_\_  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 29<sup>th</sup> day of April, 2011, on the following:

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