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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism	Docket No. 09-035-15 <b>UTAH OFFICE OF CONSUMER SERVICES' RESPONSE TO ROCKY MOUNTAIN POWER'S PETITION FOR RECONSIDERATION OR REHEARING</b>
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The Utah Office of Consumer Services responds to two parts of Rocky Mountain Power's Petition for Clarification and Reconsideration or Rehearing of the March 3, 2011 Corrected Report and Order.<sup>1</sup> The Office contends that a rehearing of the issue surrounding swap transactions should be granted. The Office contends that the order for a risk sharing mechanism is an obligatory component of a lawful energy balancing account (Utah EBA).

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<sup>1</sup> Because Utah Code Ann. § 54-7-15 and Utah Code Ann. § 63G-4-302 do not provide for clarification petitions, and petitions for rehearing are a prerequisite for judicial review, the Office requests the Commission treat the petition in its entirety, as one for rehearing.

I. THE COMMISSION SHOULD RECONSIDER WHETHER TO EXCLUDE OR INCLUDE SWAP TRANSACTIONS FROM THE BROADER CONTEXT OF WHAT CONSTITUTES AN APPROPRIATE OVERALL HEDGING STRATEGY THAT BENEFITS UTAH CUSTOMERS.

With respect to financial swaps, the Commission order states:

We include the Company's recommended FERC accounts in the balancing account with the following changes. First, we are persuaded by UIEC, swap transactions should be excluded from the calculation of both base and actual net power cost. We agree swap transactions do not track well with the statutory definition of energy costs. Swap transactions currently approved will remain in base customer rates. We also conclude these transactions must be reviewed and approved in each general rate case, which is an appropriate proceeding for determining the prudence of Company decisions. *Corrected Report and Order, March 3, 2011, page 72.*

Whether to include or exclude fixed for floating price financial swaps into the pilot Utah EBA is an issue that has yet to be methodically examined despite the fact that either course of action may produce unintended and adverse consequences to the Office's constituents; the vast majority of Rocky Mountain Power's Utah customers.

The Office does not agree with Rocky Mountain Power's interpretation of Utah Code Ann. § 54-7-13.5 (1) (b), or with the merit of Rocky Mountain Power's hypothetical parade of horrors should swaps be excluded. However, what is apparent in the weight of evidence throughout all phases of this docket is that there is no common understanding of a workable and acceptable system to account for swaps and other potential hedging instruments, whether included or excluded from

the Utah EBA, that accurately and reliably exhibits their actual cost and rate impact.

Throughout this proceeding, the Office has demonstrated that swaps may not accurately reflect the actual costs of the transactions. *See OCS 4D Wielgus, June 16, 2010, line 160 to 166.* Because of the dynamic nature of Rocky Mountain Power's hedging program it is not prudent to include or exclude swaps from the pilot Utah EBA until the Commission comprehensively investigates Rocky Mountain Power's hedging practices. *See OCS 4SR Wielgus, August 10, 2010, line 33 to 47.* The Office described the areas of inquiry that had they been pursued, would have provided substantial evidence for the role of swaps and other hedging instruments in traditional ratemaking and an energy balancing mechanism. *See OCS 5 Gimble, June 16, 2010, line 60 to 85.* However, the Report and Order addresses these issues in a cursory manner or not at all.

By excluding swaps from the Utah EBA, the Commission is effectively signaling a preference against hedging. The costs and revenues estimated at the time that the net power cost is set through general rates will not reflect the actual costs and revenues. Recent experience has shown that this practice adversely affects Rocky Mountain Power as net hedging values have been higher than market costs and thus it would not recover any additional differential between that which was estimated at the time of the rate case and actual. However, in general, the risk is not symmetrical. Prices have the potential to rise much higher than they have the potential to fall. Thus, if market conditions change, the exclusion of

swaps from the EBA could be to the detriment of customers. The Office is not at this time advocating for or against the inclusion of swaps.

These issues require additional examination to ensure that the practical operation matches the Commission intent and to prevent unintended consequences that harm customers. Certainly for the purpose of a pilot Utah EBA, exclusion or inclusion of financial swaps will benefit from a reconsidered view of Rocky Mountain Power's financial swap transactions. To complete this review in a thorough and fair manner, the Commission should examine the reasonableness of Rocky Mountain Power's hedging policies in total. Reconsideration is necessary to set the standard by which to test the reasonableness and accuracy of the results of a pilot Utah EBA.

The Office requests that the Commission grant a rehearing not only to consider the narrow issue of whether to include or exclude fixed for floating price financial swaps into the pilot Utah EBA, but to more broadly investigate what constitutes an appropriate hedging strategy that will benefit Utah ratepayers. It is not in the public interest to reconsider the issues solely on the basis of Rocky Mountain Power's motion and examples.

## II. RISK-SHARING AS A CONDITION TO AN ENERGY BALANCING ACCOUNT IS BOTH AUTHORIZED AND REQUIRED.

The Commission included risk sharing as a necessary component to the Utah EBA design, without which "it does not meet the statutory requirements for our approval of an energy balancing account." *Corrected Report and Order, page*

63. The Commission recognizes that a “primary objective in the design of an energy balancing account in the public interest is to ensure sufficient incentive for the Company to continue to make and implement prudent resource decisions to benefit customers going forward.” *Corrected Report and Order, page 67.* Regulatory review of the prudence of net power cost decisions alone is not sufficient. *Id.* The Commission identifies a “more effective” and “superior” means of providing the required incentives; risk sharing. *Corrected Report and Order, page 69.*

An energy balancing account may only include “prudently-incurred costs.” *Utah Code Ann. § 54-7-13.5 (2) (b).* The Commission cited to the substantial evidence demonstrating that “relying solely on prudence reviews will shift too much of the risk for suboptimal [*sic*] planning and operation currently borne by the Company, who is in the best position to manage this risk, to customers, who are not.” *Corrected Report and Order, page 69.* To address this design flaw in Rocky Mountain Power’s proposal, the Commission decided: “Therefore, the balancing account we adopt requires both Company customers and shareholders to remain at risk for a portion of the actual net power cost which deviates from approved forecasts.” *Id.* By providing meaningful financial incentives to minimize short and long-term net power costs, “a sharing mechanism is the best method, at this point, to ensure customer and shareholder interests are aligned and the public interest is maintained.” *Corrected Report and Order at page 69 – 70.*

Rocky Mountain Power contends that any risk allocation in the Utah EBA is inconsistent with Utah Code Ann. § 54-7-13.5, inconsistent with any energy balancing account, inconsistent with the evidence, and inconsistent with public policy and the public interest. To the contrary, the Commission's order establishes the balance that is necessary not only to ensure that only prudently incurred costs are included in the Utah EBA, but also ensure that incentives remain in place for management to make prudent investment and operating decisions that serve the public interest.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of May 2011.

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## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above Response to Request for Reconsideration was served upon the following by electronic mail sent on May 2, 2011:

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