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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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| 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 | Response of the Division of Public Utilities to Motion of Rocky Mountain Power to Strike Pre-Filed Supplement Direct Testimony of Michael J. McGarry, Sr., Matthew Croft, and Thomas C. Brill and for an Extension of Time to File Rebuttal Testimony and Request for Expedited Schedule on Motion<br><br>**Docket No. 09-035-23** |

The following is a response by the Division of Public Utilities (DPU or Division) to the Motion to Strike the Supplemental Direct testimony of Thomas Brill, Michael McGarry and Matthew Croft, an extension for time to file rebuttal testimony and an expedited schedule to decide the Motion.

On November 9, 2009 Rocky Mountain Power (RMP or Company) filed a Motion to Strike the Supplemental Direct testimony of three Division witnesses: Mathew Croft, Michael McGarry and Thomas Brill. The testimony of McGarry and Croft contained two supplemental adjustments that had been explained in their Direct testimony but were not finalized because of outstanding data requests. Their testimony also explains corrections to their Direct testimony and an explanation of other issues that have now been resolved without any further adjustments. The testimony of Thomas Brill contains no adjustments but only summarizes six corrections to the

Division's Direct testimony, includes the SMUD adjustment which was erroneously left out of an exhibit to the Direct testimony, summarizes the Supplemental adjustments made by Croft, McGarry and Evans and provides the impact of the recent tax stipulation. Finally Brill provides the impact of these corrections and adjustments on the spread recommendation. The Company does not object to the Supplemental Direct testimony of George Evans which was filed at the same time as the other DPU Supplemental testimony. The Company indicates it did not object to this testimony because it acknowledges that Mr. Evans had difficulty in discovery obtaining spreadsheets and other information related to his coal adjustment from the Company and agrees that this placeholder is appropriate. (Motion p. 2)

The Division believes the Commission should distinguish between corrections and Supplemental testimony in its decision. The corrections and the updates for the stipulation made by the Division should not be stricken. Parties have an obligation not only to the tribunal but also to the Company to advise of corrections in a timely way. Second, the DPU does not believe the Commission should strike the two adjustments made by Croft and McGarry. Those adjustments were explained in their Direct testimony and were only awaiting some information from the Company before they were finalized. Third, no further supplemental adjustments will be made by the Division for placeholders that were included in testimony but not addressed in the Supplemental testimony.

The Division does not object to the Commission resolving this Motion quickly. In fact, if it can be resolved before November 19, 2009 the date included in the Company's Motion, it should be. Finally, it was always the intention of the DPU to allow the Company the time needed to respond to these issues. Therefore, the DPU does not object to allowing a reasonable time to respond to these three issues. However, the DPU believes a more reasonable response date would be by noon on November 23, 2009 rather then November 25, 2009. The slightly earlier date

would allow all final surrebuttal testimony, including on these issues, to be filed on November 30, 2009.

THE CORRECTIONS SHOULD NOT BE STRICKEN

Footnote 1 of the Company's Motion correctly points out that the Supplemental testimony includes corrections and an update for a stipulation. The Company indicates that the DPU should make these corrections in its Rebuttal testimony due November 12, 2009 in accordance with "normal practice" and, therefore, the Supplemental testimony should be stricken. Dr. Brill's testimony discusses six corrections (line 28-44), includes the SMUD correction (line 19-27), and includes the update for the tax settlement (line 71-82). The DPU believes these corrections and updates should not be stricken. The parties, including the Company, have an obligation to advise the Commission and parties of corrections as soon as they can reasonably make those known. Normal practice, as the Company claims, does not exist. Normal practice should be to make corrections known as soon as any party knows there are errors. Doing so in this case allows parties to incorporate such corrections into their rebuttal positions. Indeed, the Division feels that parties have an obligation to disclose errors or corrections when they become known, rather than attempting to "hide the ball" until a later stage in the case. Providing those corrections to the Company today should save the Company time by not having to point them out in its Rebuttal filing. The Company cannot claim it is disadvantaged by having corrections made at this point or updating the results for the stipulation on the tax issues. The rest of Dr. Brill's testimony summarizes the Supplemental testimony of Croft, McGarry and Evans. The Company does not object to the Evans testimony so it should have no bases for any objections to the Brill summary. Finally, Dr. Brill provides the effect of the corrections, updates and supplemental adjustments on the Division's recommended rate spread.

THE SUPPLEMENTAL TESTIMONY OF CROFT AND McGARRY SHOULD NOT BE STRICKEN

The Supplemental testimony of Mr. Croft and Mr. McGarry contain two adjustments that were described in detail in their Direct testimonies and were only awaiting answers to data requests to quantify the exact level of adjustment. This type of adjustment is completely different from a new adjustment that was not adequately described in the Direct testimony but raised for the first time in the Supplemental testimony. In this instance the DPU was faced with two choices. It could have described the issue in Direct testimony in enough detail as to make clear the conceptual basis of an adjustment (thus allowing parties to begin their analysis of the issue) while not providing a specific dollar mount for the adjustment and then update the adjustment when the data request was answered. Alternately, it could have simply provided a similar explanation, propose an adjustment with a specific dollar amount by simply proposing to exclude the entire line item (i.e. propose the largest possible adjustment), and then provide a corrected number after receipt of data request responses. The latter practice is not uncommon in rate cases, and several examples can be seen in the present case. Typically, the refinement or correction of such adjustments does not take place until Rebuttal testimony. This practice has not been challenged in the Company's motion. In the case of these adjustments, the Division felt that it was not appropriate to make the maximum possible adjustment and then wait until rebuttal to reveal an accurate number. Instead, it determined that fairness to the Company dictated Supplemental Direct testimony that provided the Company with the opportunity to respond in rebuttal testimony rather than having to wait until surrebuttal.

Contrary to the Company's argument, the Division was not errant in making its discovery requests. In the cases of both the Croft and McGarry Supplemental testimonies, timely data

requests had been made on both issues several weeks ahead of the direct testimony filing deadline. Although the data responses to the Croft adjustment were received approximately three days and one day prior to the day testimony was due, there was insufficient time for evaluation prior to the due date for filing testimony. However, in both cases, initial requests for information yielded responses that lacked sufficient information or specificity with which to derive dollar figures for adjustments. Follow-up data requests were thus made necessary.

Mr. McGarry proposed one adjustment that was revised in Supplemental testimony. It was described in detail in his Direct testimony, DPU Exhibit 3.0, lines 317-360. The information upon which the adjustment was based was contained in data request 29.11, which was received from the Company on September 16, 2009. The answer provided several reasons for CWIP write offs but did not indicate whether the write offs were within the control of the Company. The follow-up data request (48.1) was answered on October 12, 2009, four days after the filing deadline. That answer provided the information needed to complete the adjustment that is first described in Mr. McGarry's Direct testimony and then quantified in his Supplemental testimony (that if CWIP was abandoned at the Company's discretion with no other reason, then those write offs should be accounted for in FERC account No. 426.5). (See McGarry Direct testimony, lines 354-360)

Mr. Croft also has one supplemental adjustment. This adjustment is described in his Direct testimony, DPU Exhibit 7.0, lines 296-312. The adjustment relates to the Cline Falls hydro facility and the Keno hydro development. As a result of data request 5.2, the Company indicated that the Keno development no longer generates power. Mr. Croft followed this data response with data request 25.1 that asked for information about any other hydro facilities that were no longer being operated by the Company. It did not, however, indicate what, if any costs were associated with the facility. DPU data request 25.2 requested the rate base dollar amounts associated with the Keno development. In order to determine if there are any ratepayer benefits and to determine

further dollar amounts associated with the responses to data request 25.1 and 25.2, data requests 47.1 and 45 were sent to the Company. Again these were follow-ups on earlier data requests that raised the question of ratepayer benefit from these projects. Again, as with the CWIP adjustment, the DPU could have excluded all of the dollars associated with these projects at the time of its Direct testimony, or, it could have as, it did, await the answer to a data request that would finalize an amount for the adjustment. The rest of Mr. Croft's testimony describes issues that did not result in any adjustment or effectively withdrew potential adjustments and therefore in no way prejudices or harms the company.

In the cases of both of these adjustments, the Division has tried to be transparent and avoid disadvantaging the Company. Initial data requests were asked in a timely fashion and follow-up requests seeking complete information were promptly issued. Direct testimony included a description of the proposed adjustment and the conceptual basis for it. Supplemental testimony was filed two weeks prior to rebuttal in order to provide the Company with an opportunity to respond in rebuttal. And the alternative of initially proposing maximum, potentially preposterous, adjustments and then waiting until rebuttal to refine or complete them was deliberately avoided.

Finally, it is important to point out that neither of these adjustments has resulted in any data requests from the Company. The Company did not see a need to ask any data requests when the Direct testimony was filed that described the bases for the adjustments, nor has the Company seen a need to ask any data requests of the DPU since the Supplemental testimony was filed. The DPU does not believe the Company has been prejudiced by these adjustments. The adjustments were adequately described in the Direct testimony and sufficient time exists for the Company to respond to these issues.

THE DIVISION DOES NOT OBJECT TO THIS MOTION BEING DECIDED RAPIDLY OR FOR ALLOWING A TIMELY RESPONSE BY THE COMPANY TO RESPOND TO THE CROFT, EVANS AND McGARRY ADJUSTMENTS

The Company has asked that responses to its Motion be filed by November 16, and that the Commission decide this issue by November 19. The DPU has no objections to the shorten time schedule for response. In fact, the DPU would encourage the Commission to answer this Motion prior to November 19, 2009 if possible.

Second, the DPU has no objections to allowing the Company time to respond to the issues in the supplemental testimony. However, the Division would ask that the Company respond to this testimony by noon on November 23. The Company has no objections to the Evans testimony and can surely respond to the other issues by that date. Any Surrebuttal can then be addressed by the November 30, 2009 date that is in the current schedule.

CONCLUSION

There are no bases for objecting to corrections and updates. The Company is not prejudiced in any way by making these corrections known to the Company earlier then rebuttal. In fact, parties have an obligation to make corrections known in a reasonable fashion. As with the Evans adjustment that the Company does not object to, the Commission should not strike the two adjustments made by Mr. Croft and Mr. McGarry. These adjustments were described adequately in their Direct testimony, good faith and timely efforts had been made to discover complete information, and final adjustment figures were awaiting data request responses at the time of the direct filing deadline.

Respectfully submitted this _____ day of November 2009.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the Response of the Division of Public Utilities to Motion of Rocky Mountain Power to Strike Pre-Filed Supplement Direct Testimony of Michael J. McGarry, Sr., Matthew Croft, and Thomas C. Brill and for an Extension of Time to File Rebuttal Testimony and Request for Expedited Schedule on Motion was sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on November _____, 2009:

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