

R. Jeff Richards (7294)  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, UT 84111  
(801) 220-4734  
(801) 220-3299 (fax)  
[Jeff.Richards@pacificorp.com](mailto:Jeff.Richards@pacificorp.com)

Gregory B. Monson (2294)  
Stoel Rives LLP  
201 South Main Street, Suite 1100  
Salt Lake City, UT 84111  
(801) 578-6946  
(801) 578-6999 (fax)  
[gbmonson@stoel.com](mailto:gbmonson@stoel.com)

*Attorneys for Rocky Mountain Power*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Application of Rocky Mountain Power for Approval of Settlement Agreement with Heber Light & Power Company and Amendment of Certificate of Public Convenience and Necessity	Docket No. 10-035-117  <b>APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT AND AMENDMENT OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY</b>  <b>NON-CONFIDENTIAL VERSION</b>
---	--

Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), pursuant to Utah Code Ann. §§ 11-13-204(7)(b) and Utah Admin. Code R746-100-3.A, respectfully requests that the Commission (1) approve the Settlement Agreement and General Release (“Settlement Agreement”) between Heber Light & Power Company (“Heber Light & Power”) and Rocky Mountain Power attached as Exhibit RMP 1 and incorporated herein, and (2) amend Certificate of Public Convenience and Necessity No. 1343 (“Current Certificate”) issued to Rocky Mountain Power to delete the geographic area in Wasatch County

in which Heber Light & Power has agreed in the Settlement Agreement to be responsible to provide electric service as described and shown in Appendices 5 and 6 to the Settlement Agreement (“HLP Service Area”).<sup>1</sup> Given (1) the time needed to transfer facilities and customers and construct and install necessary facilities during the 2011 construction season, (2) the pendency of requests for service from new customers and (3) the likelihood of additional requests for service as the economy begins to recover, Rocky Mountain Power requests expedited treatment for this Application. Rocky Mountain Power also requests that the Commission set a schedule for a public hearing on this Application as required by Utah Code Ann. § 11-13-204(7)(b)(i)<sup>2</sup> and such other proceedings as may be required.<sup>3</sup>

## **I. INTRODUCTION**

### **A. Involved Parties**

1. Rocky Mountain Power is a public utility and an electrical corporation in the state of Utah. It and its predecessors in interest (hereinafter references to Rocky Mountain Power will include its predecessors in interest as applicable), have provided electric service to customers in many parts of the state of Utah pursuant to certificates of public convenience and necessity issued by the Commission, and its predecessor, the Public Utilities Commission of Utah, for over 100 years.

2. Rocky Mountain Power has provided service to customers in Wasatch County for approximately 100 years pursuant to franchises granted by Wasatch County and corresponding

---

<sup>1</sup> A copy of the Current Certificate is attached as Exhibit RMP 2 for the convenience of the Commission.

<sup>2</sup> A copy of Utah Code Ann. § 11-13-204(7) is attached as Exhibit RMP 3 for the convenience of the Commission.

<sup>3</sup> Rocky Mountain Power respectfully provides a proposed schedule for the consideration of the Commission as Exhibit RMP 4.

certificates granted by the Commission. Rocky Mountain Power's current franchise ("Current Franchise") was granted by Wasatch County on April 4, 1960. The Current Franchise authorizes Rocky Mountain Power to use public rights of way in Wasatch County to provide electric service to customers in Wasatch County. The Current Franchise was scheduled to expire on April 4, 2010, but, as described more fully below, Wasatch County has extended the franchise during the pendency of this Application. On June 9, 1960, Rocky Mountain Power was granted the Current Certificate by the Commission to provide electric service to customers in Wasatch County. Rocky Mountain Power currently provides service to approximately 3,000 customers in Wasatch County pursuant to the Current Certificate.

3. Heber Light & Power was formed in 1909 by Heber City, Midway City and the Town of Charleston ("Member Cities") to provide electric service to customers in the Member Cities and surrounding areas. It has provided electric service to customers in the Member Cities and to other customers in Wasatch County for over 100 years. On or about September 9, 2002, Heber Light & Power became an energy services interlocal entity under Utah Code Ann. § 11-13-203(4). Heber Light & Power is currently providing service to nearly 9,000 customers of which nearly 3,000 are located outside the municipal boundaries of the Member Cities.

4. Heber Light & Power and Rocky Mountain Power have had a longstanding dispute regarding (a) the authority of Heber Light & Power to provide retail service to customers located outside the municipal boundaries of the Member Cities and (b) the authority of Rocky Mountain Power to serve customers in the area that Heber Light & Power regards as its historical service area. This dispute came to a head on April 14, 2007, when Wasatch County notified Rocky Mountain Power that the Wasatch County Council would consider a partial revocation of

the Current Franchise to exclude areas Heber Light & Power considered to be within its service area.

**B. Procedural History of Prior Litigation**

5. On April 17, 2007, Rocky Mountain Power filed a complaint and a motion for a temporary restraining order against Wasatch County in the Fourth District Court.<sup>4</sup> On the same day, Rocky Mountain Power filed a complaint with the Commission against Heber Light & Power, initiating Docket No. 07-035-22. The district court complaint was ultimately dismissed on May 5, 2008 after Wasatch County agreed not to modify or revoke Rocky Mountain Power's Current Franchise.

6. In Docket No. 07-035-22, the Commission granted the parties' request to stay the proceedings to allow them to attempt to settle their dispute. When settlement was unsuccessful, Rocky Mountain Power filed an amended complaint on February 5, 2008, and Heber Light & Power filed an answer and motion to dismiss for lack of jurisdiction on April 4, 2008. The Division of Public Utilities ("Division") filed a response opposing Heber Light & Power's motion on April 18, 2008. On the same day, Rocky Mountain Power filed a motion to stay the procedural schedule to allow the parties to engage in further settlement discussions. The Commission granted the Company's motion, and the schedule was vacated and stayed for several months. Settlement was again unsuccessful, so the parties requested the Commission to set a new schedule.

7. Pursuant to the new schedule, additional pleadings were filed on Heber Light & Power's motion to dismiss, and a hearing was held on the motion on October 8, 2008. The Commission issued its order denying the motion to dismiss on November 3, 2008. On December

---

<sup>4</sup> *Rocky Mountain Power v. Wasatch County*, Case No. 070500152, Fourth Judicial District Court in and for Wasatch County, State of Utah.

3, 2008, Heber Light & Power requested the Commission to reconsider its order denying the motion to dismiss for lack of jurisdiction. Rocky Mountain Power responded opposing the request on December 18, 2008. The Commission took no action on Heber Light & Power's request, so it was deemed denied by operation of law on December 23, 2008. Utah Code Ann. § 54-7-15(2)(c).

8. On January 21, 2009, Heber Light & Power filed a petition for review of the Commission's order denying its motion to dismiss with the Utah Supreme Court ("Petition"). The parties briefed the issues and presented oral argument to the Supreme Court at a hearing on September 29, 2009. Although the parties reached agreement on a settlement in principle thereafter and filed a suggestion of mootness with the Supreme Court on March 18, 2010, the Supreme Court issued its decision on April 30, 2010.<sup>5</sup> The Supreme Court held that the Utah Legislature had not granted the Commission jurisdiction to regulate Heber Light & Power and that questions regarding Heber Light & Power's authority to serve customers outside the municipal boundaries of the Member Cities must be addressed in district court.

9. On July 7, 2010, the Commission issued an order dismissing Rocky Mountain Power's amended complaint in Docket No. 07-035-22 based on the Supreme Court's decision.

### **C. Settlement**

10. Prior to the 2010 General Session of the Utah Legislature, Heber Light & Power and Rocky Mountain Power resumed settlement discussions and reached agreement on a settlement in principle. Pursuant to that agreement, the parties supported passage of Senate Bill 227, 1st Substitute, as amended ("SB 227"), which was introduced in the 2010 General Session of the Utah State Legislature. SB 227 amended section 11-13-204 to allow an energy services

---

<sup>5</sup> *Heber Light & Power Co. v. Utah Public Service Comm'n*, 2010 UT 27, 231 P.3d 1203.

interlocal entity such as Heber Light & Power to provide service to customers located in a geographic area outside the municipal boundaries of its member cities (“Area”) pursuant to agreement with the public utility authorized and obligated to provide service in the Area that the energy services interlocal entity would be responsible to provide service in accordance with conditions in the legislation and subject to approval of the agreement by the Commission and deletion of the Area from the geographic area in which the public utility is obligated to provide service. SB 227 was passed by the Legislature on March 11, 2010 and signed by Governor Herbert on March 29, 2010. The amendment to section 11-13-204 became effective on May 10, 2010. Utah Constitution, art. VI, § 25.

11. Heber Light & Power and Rocky Mountain Power entered into the Settlement Agreement on October 15, 2010. The Settlement Agreement resolves the dispute between the parties that led to Docket No. 07-035-22 and other litigation, including the Petition. It provides that Heber Light & Power will be responsible to provide service to customers in the HLP Service Area, which is described and shown in Appendices 5 and 6 to the Settlement Agreement, in accordance with the requirements of section 11-13-204(7)(c).

12. Wasatch County has extended Rocky Mountain Power’s Current Franchise. On March 3, 2010, Wasatch County extended the Current Franchise by 120 days. On July 21, 2010, Wasatch County extended the Current Franchise by an additional 60 days. On September 28, 2010, Wasatch County extended the Current Franchise by an additional six months.

13. Wasatch County has granted a new franchise to Rocky Mountain Power to be effective on approval of the Settlement Agreement and this Application and has amended Heber Light & Power’s franchise, to be effective at the same time, consistent with the HLP Service Area. In addition, the Town of Daniel (“Daniel”) has amended Heber Light & Power’s franchise

to be effective upon approval of the Settlement Agreement and this Application, and the Town of Independence (“Independence”) has granted a franchise to Heber Light & Power.

14. The Settlement Agreement provides terms and conditions for the transfer of facilities and customers between Heber Light & Power and Rocky Mountain Power, provides other terms and conditions for settlement of their service area dispute and provides other consideration for the settlement. The Settlement Agreement is subject to approval by the Commission and deletion of the HLP Service Area from Rocky Mountain Power’s Current Certificate.

## **II. STATEMENT OF FACTS**

15. On September 28, 2010, Wasatch County granted Rocky Mountain Power a franchise authorizing Rocky Mountain Power to use public rights of way in Wasatch County to provide electric service to customers in Wasatch County outside the HLP Service Area subject to the terms and conditions of the franchise (“RMP Franchise”). The RMP Franchise is effective when an order of the Commission approving this Application (“Order”) becomes a final order as defined in the Settlement Agreement (“Final Order”). A copy of the RMP Franchise is attached to the Settlement Agreement as Appendix 1.

16. Heber Light & Power is an energy services interlocal entity. It was created on or about September 9, 2002, and is comprised solely of Utah municipalities. Heber Light & Power has been providing retail electric service to customers outside the municipal boundaries of its Member Cities for more than 50 years prior to July 1, 2010.

17. On May 21, 2008, Wasatch County granted Heber Light & Power a franchise authorizing Heber Light & Power to use public rights of way in portions of Wasatch County for the purpose of providing electric service in a designated area subject to the terms and conditions of the franchise. The franchise generally complied with the conditions that would be included in

section 11-13-204(7). On September 28, 2010, the franchise was amended to conform the service area to the HLP Service Area effective when an order of the Commission approving this Application becomes a Final Order (“HLP Wasatch County Franchise”). A copy of the HLP Wasatch County Franchise is attached to the Settlement Agreement as Appendix 2.

18. On October 6, 2008, Daniel granted Heber Light & Power a franchise authorizing Heber Light & Power to use public rights of way within the town for the purpose of providing electric service to residents of the town subject to the terms and conditions of the franchise. On October 4, 2010, the franchise was amended to comply with section 11-13-204(7) effective when an order of the Commission approving this Application becomes a Final Order (“Daniel Franchise”). A copy of the Daniel Franchise is attached to the Settlement Agreement as Appendix 3.

19. On November 2, 2010, Independence granted Heber Light & Power a franchise, compliant with section 11-13-204(7), authorizing Heber Light & Power to use public rights of way within the town for the purpose of providing electric service to residents of the town subject to the terms and conditions of the franchise (“Independence Franchise”). A copy of the Independence Franchise is attached to the Settlement Agreement as Appendix 4.

20. Rocky Mountain Power and Heber Light & Power have had a longstanding dispute regarding: (a) the authority of Heber Light & Power to provide retail service to customers located outside the municipal boundaries of its Member Cities, (b) the authority of Rocky Mountain Power to serve customers within the area that Heber Light & Power regards as its historical service area, (c) the obligation of Rocky Mountain Power to pay impact fees for electricity in excess of the amount specified in the Power Sale Agreement between Heber Light & Power Company and Utah Power & Light dated December 17, 1993 (“Power Sale

Agreement”), and (d) whether Rocky Mountain Power’s transmission and distribution line proceeding in a southerly direction from Rocky Mountain Power’s Jordanelle Substation on the east side of Highway 40 trespasses on property of Heber Light & Power (collectively “Disputes”).

21. The parties have had numerous meetings and communications to attempt to settle their Disputes.

22. SB 227 created a framework for resolution of their Disputes regarding provision of service in areas outside the municipal boundaries of the Member Cities.

23. On October 15, 2010, the parties entered into the Settlement Agreement. The Settlement Agreement resolves the disputes between the parties in a manner consistent with the public interest.

a. The HLP Service Area in which Heber Light & Power has agreed to be responsible to provide service, and the corresponding Rocky Mountain Power service area, are the result of difficult negotiations and balanced compromise between Rocky Mountain Power and Heber Light & Power to resolve their dispute regarding overlapping service territories. The agreement of Rocky Mountain Power and Heber Light & Power to these service territories is an integrated package. Any modifications to the HLP Service Area and the corresponding Rocky Mountain Power service area would upset this difficult and carefully-crafted and interdependent compromise.

b. By eliminating overlapping service territories, the parties will be able to improve customer service for current customers, prevent duplication of services and facilities, limit the environmental impact of facilities, enhance public safety and

community aesthetics and ensure that future customers can easily determine which company will provide service to them as growth occurs in Wasatch County.

c. The HLP Service Area includes many areas currently served by Heber Light & Power, including Daniel, an area known as Lake Creek and Timber Lakes currently served by Rocky Mountain Power using power supplied by Heber Light & Power under the Power Sale Agreement, areas known as Swiss Mountain Estates and Oak Haven currently served by Rocky Mountain Power and areas in which little or no service is currently provided by either party but that are adjacent to areas served or to be served by Heber Light & Power. Given Heber Light & Power's traditional service area, with the exception of the Lake Creek and Timber Lakes, Swiss Mountain and Oak Haven areas, Rocky Mountain Power has generally not installed facilities to provide service in the HLP Service Area and would be required to make substantial capital investments to provide service in those portions of the HLP Service Area. Rocky Mountain Power will not need to make these substantial capital investments if the Settlement Agreement is approved and the Current Certificate is modified to remove the HLP Service Area. This will benefit all of Rocky Mountain Power's customers.

d. The portions of Wasatch County excluded from the HLP Service Area are areas in which Rocky Mountain Power already provides service to customers or which are reasonable extensions of those locations given engineering and cost considerations, including terrain. Rocky Mountain Power's service territory includes the North Village, North Fields and Snake Creek areas, in which Heber Light & Power currently provides service. Rocky Mountain Power has pending requests for service from customers in

those areas and, as noted above, extension of Rocky Mountain Power's facilities into those areas is reasonable.

e. Rocky Mountain Power will be transferring approximately 1,000 existing customers to Heber Light & Power, and Heber Light & Power will be transferring approximately 130 existing customers to Rocky Mountain Power. The potential for growth in new customers in the North Village area to be transferred to Rocky Mountain Power is substantial with two major developments planned in the North Village area.

f. Rocky Mountain Power's current residential rates have a substantially lower customer charge and an energy charge that on average is slightly higher than Heber Light & Power's. As a result and because many of the customers to be transferred from Rocky Mountain Power to Heber Light & Power are seasonal home customers, the customers transferred from Rocky Mountain Power to Heber Light & Power will experience an overall average increase in monthly charges of less than \$5.00 assuming past usage patterns continue in the future.

g. For purposes of this Application and conditioned on (1) the Commission issuing an order approving this Application that becomes a Final Order, (2) the Final Order not being reversed on appeal in a manner that the parties are unable to address in a mutually satisfactory manner that the Commission approves, and (3) Rocky Mountain Power and Heber Light & Power completing the transfers contemplated in paragraph 4 of the Settlement Agreement and the Agreement for the Transfer of Distribution Facilities and Customers ("Transfer Agreement") attached as Appendix 7 to the Settlement Agreement, Rocky Mountain Power and Heber Light & Power stipulate that it is in the

public interest for the Commission to approve the Settlement Agreement and to amend the Current Certificate to exclude the HLP Service Area.

h. With regard to service to customers in the HLP Service Area outside the municipal boundaries of the Member Cities, Heber Light & Power will comply with the conditions in section 11-13-204(7)(c) as follows:

(i) the rates and conditions of service for customers outside the municipal boundaries of the members shall be at least as favorable as the rates and conditions of service for similarly situated customers within the municipal boundaries of the members;

(ii) the energy services interlocal entity shall operate as a single entity providing service both inside and outside of the municipal boundaries of its members;

(iii) a general rebate, refund, or other payment made to customers located within the municipal boundaries of the members shall also be provided to similarly situated customers located outside the municipal boundaries of its members;

(iv) a schedule of rates and conditions of service, or any change to the rates and conditions of service, shall be approved by the governing body of the energy services interlocal entity;

(v) before implementation of any rate increase, the governing body of the energy services interlocal entity shall first hold a public meeting to take public comment on the proposed increase, after providing at least 20 days and not more than 60 days' advance written notice to its customers on the ordinary billing and on the Utah Public Notice Website, created by Section 63F-1-701; and

(vi) the energy services interlocal entity shall file with the Public Service Commission its current schedule of rates and conditions of service.

i. Heber Light & Power's franchise agreements with Wasatch County, Daniel and Independence provide additional protections for customers in the HLP Service Area by providing a means for customers to bring complaints regarding service from Heber Light & Power to a neutral arbiter or ombudsman for resolution. *See Utah Code Ann. § 11-13-204(7)(b)(i).*

j. The Transfer Agreement provides reasonable terms and conditions for transfers of facilities between Heber Light & Power and Rocky Mountain Power and construction or installation of facilities by Heber Light & Power and Rocky Mountain Power necessary to provide service to the customers within their respective service areas. The Transfer Agreement also provides reasonable terms and conditions for transfers of customer service obligations in a manner designed to protect the interests of customers in continuous, safe and reliable service.

k. The Joint Ownership and Operation Agreement, attached to the Transfer Agreement as Appendix 7.12, provides reasonable terms and conditions for joint ownership and operation of facilities on which both Heber Light & Power and Rocky Mountain Power will have facilities necessary to provide service to their respective customers after completion of the transfers of customers contemplated by the Transfer Agreement. Joint use of certain facilities is an economic and efficient way to provide the service in the public interest and is consistent with prudent utility practices.

l. The Settlement Agreement provides a reasonable mechanism to deal with requests for service pending the granting of this Application. *See Confidential Appendix 8 to the Settlement Agreement.*

m. The Settlement Agreement provides flexibility for modifications to the HLP Service Area in the future if requested by customers should both Heber Light & Power and Rocky Mountain Power agree that modifications are in the interests of providing economical service to customers, the parties are able to receive any necessary amendments to their franchises and the Commission approves such modifications.

n. The Settlement Agreement resolves the disputes between the parties regarding whether Rocky Mountain Power is obligated to pay impact fees to Heber Light & Power for power in excess of the amount provided in the Power Supply Agreement and whether Rocky Mountain Power's transmission and distribution line from Jordanelle Substation trespasses on Heber Light & Power property.

o. The Settlement Agreement provides additional consideration for the settlement including confidential agreements in which Rocky Mountain Power grants an option to Heber Light & Power and enters into an agreement regarding a study and in which Heber Light & Power grants Rocky Mountain Power a right of first refusal. These agreements are integral components of the settlement package. They are reasonable and will not impair the ability of Rocky Mountain Power to provide service to its customers or have any significant effect on its rates and charges.

p. The Settlement Agreement avoids the necessity of further extensive and costly litigation between Heber Light & Power and Rocky Mountain Power. The Supreme Court decision in *Heber Light & Power* has determined only that the Commission does not have jurisdiction to resolve the dispute between the parties. The parties have not yet presented evidence and argument on the underlying basis of their dispute. Absent settlement, the parties would be required to engage in substantial additional litigation with the likelihood of further appeals to resolve their dispute. The outcome of such litigation is uncertain.

24. The foregoing facts are supported by the Testimony of Mark C. Moench attached as Exhibit RMP 5 and incorporated herein, the Testimony of Blaine Stewart attached as Exhibit

RMP 6 and incorporated herein, and the Testimony of Craig Broussard attached as Exhibit RMP 7 and incorporated herein.

### **III. STATEMENT OF LAW**

SB 227 is directed at an energy services interlocal entity created before July 1, 2003, comprised solely of Utah municipalities, that has been providing retail electric service to customers outside the boundaries of its members for at least fifty years as of July 1, 2010. Utah Code Ann. § 11-13-204(7)(a). Heber Light & Power is such an entity. SB 227 authorizes a qualifying energy services interlocal entity to continue providing service in a designated Area outside its members boundaries if it agrees with the public utility certificated by the Commission to provide service in the Area, in this case Rocky Mountain Power, that the energy services interlocal entity will be responsible to provide service in the Area. *Id.* § 11-13-204(7)(a)(i)(A). The Settlement Agreement is such an agreement. SB 227 also requires that the energy services interlocal entity enter into a franchise agreement with the county and municipal governments with jurisdiction over the Area. *Id.* § 11-13-204(7)(a)(i)(B). The HLP Wasatch County Franchise, Daniel Franchise and Independence Franchise satisfy this requirement.

SB 227 requires that the Commission approve the agreement and delete the Area from the public utility's certificated area in order for the agreement to be effective. *Id.* § 11-13-204(7)(a)(ii). SB 227 further provides that the Commission *shall* approve the agreement after public hearing if it determines that the agreement is in the public interest. *Id.* § 11-13-204(7)(b)(i). Unlike some other statutes that simply specify the public interest standard as the basis for Commission action, *see, e.g. id.* §§ 54-4-28, 54-4-29 and 54-4-30, SB 227 provides the basis for the public interest determination. It states that:

The agreement is in the public interest in that it incorporates the customer protections described in Subsection (7)(c) and the franchise agreement described in Subsection (7)(a)(i)(B) provides a reasonable mechanism

using a neutral arbiter or ombudsman for resolving potential future complaints by customers of the energy services interlocal entity.

*Id.* § 11-13-204(7)(b)(i). Heber Light & Power has agreed in the Settlement Agreement to comply with the customer protections described in Subsection (7)(c) of the statute. The franchise agreements with Wasatch County, Daniel and Independence include a reasonable mechanism using a neutral ombudsman to resolve potential future complaints by customers in the Area regarding service from Heber Light & Power. Heber Light & Power's franchise with Wasatch County, which was granted on May 21, 2008 and is currently in effect pending the Commission's approval of the Settlement Agreement, already includes the ombudsman mechanism.

Although the Commission is not required by the statute to consider the impact on customers of the service areas of the respective providers, the agreement between the parties regarding service areas will avoid wasteful duplication of facilities, limit the environmental impact of facilities, enhance public safety and community aesthetics, enable the parties to better plan to meet their future service obligations and provide customers with certainty regarding the provider authorized and obligated to provide service to them consistent with the state policy underlying SB 227. The immediate rate impact on customers will be minimal, and where there is a rate impact it results principally from the fact that Rocky Mountain Power has a substantially lower customer charge than Heber Light & Power which does not fairly recover infrastructure costs from seasonal customers. In addition, the agreement regarding service areas will allow Rocky Mountain Power to avoid substantial capital investments that would be otherwise required to provide service in portions of Wasatch County in which it currently has no facilities to the benefit of all of its customers. Thus, customers' interest in efficient and economical service will be served by approval of the Settlement Agreement.

At the same time, the Settlement Agreement allows flexibility to modify the Area in the future should a customer request service from the provider that is not obligated to provide service. If a customer makes such a request, the requested provider is willing to provide service to the customer, the other provider agrees and any necessary amendments to franchises are obtained, Rocky Mountain Power may seek Commission approval of the agreement and amendment of its certificated area. Thus, any deviations from the service areas provided in the Settlement Agreement will require a request by a customer, the agreement of the providers, any necessary franchise modifications by the affected local governments and approval by the Commission. Thus, the circumstances that have led to the current dispute between Rocky Mountain Power and Heber Light & Power will not recur in the future.

SB 227 provides a means for Heber Light & Power and Rocky Mountain Power to settle their longstanding dispute with Commission approval. Absent the state policy expressed in the statute, Rocky Mountain Power would not be able to enter into an agreement allowing another provider to provide service in the area in which it is obligated to serve. With the statute and the Commission's review of the Settlement Agreement and its continuing regulation of Rocky Mountain Power, Rocky Mountain Power is willing to enter into the Settlement Agreement. In addition, SB 227 clarifies Heber Light & Power's authority to provide service outside the municipal boundaries of its Member Cities in the HLP Service Area without concern that it may possibly be subjecting itself to jurisdiction of the Commission as a public utility.

The law favors the settlement of disputes. *See, e.g.* Utah Code Ann. § 54-7-1; *Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 613 (Utah 1983) ("*Wexpro II*"). "One reason public policy favors the settlement of disputes by compromise is that this avoids the delay and the public and private expense of litigation." *Wexpro II* at 613. The Disputes between

Heber Light & Power and Rocky Mountain Power have been in place for many years and have resulted in both parties incurring expenses in preparing and presenting proposals for service to customers that ultimately did not result in service. In addition, the parties have had difficulty planning for the future needs of customers when there was no certainty regarding the areas in which they would serve. Finally, the parties have been involved in litigation in an attempt to resolve their Disputes for over three years at great expense both in attorneys fees and costs and expenditure of other resources. Approval of the Settlement Agreement will resolve their Disputes. If the Settlement Agreement is not approved, the parties will be required to engage in further extensive and costly litigation to resolve their Disputes. They will be required to develop and present evidence and legal argument on their underlying service territory dispute. There will likely be further appeals of any decision of the district court, and the outcome of the litigation is uncertain.

#### **IV. CONCLUSION AND RELIEF REQUESTED**

For the reasons set forth herein, Rocky Mountain Power respectfully requests that the Commission:

1. Grant this Application to (a) approve the Settlement Agreement between Heber Light & Power and Rocky Mountain Power attached as Exhibit RMP 1 and incorporated herein and (b) amend the Current Certificate to delete the Area described and shown in Appendices 5 and 6 to the Settlement Agreement. The Commission's order granting this Application and amending the Current Certificate should be expressly conditioned on: (a) the Commission's order becoming a Final Order, (b) the Final Order not being reversed on appeal in a manner that the parties are unable to address in a mutually satisfactory manner that the Commission approves, and (c) Rocky Mountain Power and Heber Light & Power completing the transfers

contemplated in the Transfer Agreement as provided in the Transfer Agreement. In the event the foregoing conditions are not satisfied, the Commission's order should be vacated.

2. Given the time needed to transfer facilities and customers and to construct and install facilities during the 2011 construction season, the pendency of requests for service from new customers and the likelihood of additional requests for service as the economy begins to recover, Rocky Mountain Power requests expedited treatment for this Application.

3. SB 227 requires that the Commission hold a public hearing prior to approval of the Settlement Agreement and amendment to Rocky Mountain Power's certificated service territory. Utah Code Ann. § 11-13-204(7)(b)(i). Accordingly, Rocky Mountain Power also requests that the Commission hold a scheduling conference as soon as possible to schedule a hearing at the earliest possible date and schedule such other proceedings as may be required. Rocky Mountain Power respectfully suggests the proposed schedule provided in Exhibit RMP 4 for the Commission's consideration.

DATED: November 4, 2010.

Respectfully submitted,

---

R. Jeff Richards  
Rocky Mountain Power

Gregory B. Monson  
Scott S. Newman  
Stoel Rives LLP

*Attorneys for Rocky Mountain Power*

## **CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT AND AMENDMENT OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY – NON-CONFIDENTIAL VERSION** to be served upon the following by email to the email addresses shown below on November 4, 2010:

Joseph T. Dunbeck  
Heber Light & Power Company  
31 South 100 West  
Heber City, UT 84032  
[jtd@dunbeckmoss.com](mailto:jtd@dunbeckmoss.com)

Patricia E. Schmid  
Assistant Attorney Generals  
500 Heber M. Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

Paul H. Proctor  
Assistant Attorney General  
500 Heber M. Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
[pproctor@utah.gov](mailto:pproctor@utah.gov)

Scott Sweat  
Wasatch County Attorney  
805 West 100 South  
Heber City, UT 84032  
[ssweat@co.wasatch.ut.us](mailto:ssweat@co.wasatch.ut.us)

70016597.9 0085000-02003

---