

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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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
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**TESTIMONY OF  
MARK C. MOENCH  
FOR  
ROCKY MOUNTAIN POWER**

**EXHIBIT RMP 5**

**November 4, 2010**

1 **Witness Identification, Qualifications and Purpose and Summary of Testimony**

2 **Q. Please state your name, business address and present position with Rocky**  
3 **Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or the**  
4 **“Company”).**

5 A. My name is Mark C. Moench. My business address is 201 South Main Street, Suite  
6 2400, Salt Lake City, Utah 84111. I am the Senior Vice President and General Counsel  
7 of PacifiCorp and am a member of the board of directors of PacifiCorp.

8 **Q. Please briefly describe your education and business experience.**

9 A. I received a Bachelor of Arts Degree from the University of Utah in 1978, and a Juris  
10 Doctor Degree from California Western School of Law in 1981. In addition to formal  
11 education, I have attended various educational, professional and electric industry  
12 seminars and regular continuing education courses as required by the Utah State Bar  
13 Association.

14 I am a licensed attorney in the state of Utah and have been admitted to practice in  
15 Utah and Colorado and the United States Court of Appeals for the District of Columbia  
16 and Tenth Circuits.

17 My experience in the energy industry has covered a 27-year time span. After  
18 graduating from law school in 1981, I became an Assistant Attorney General. I provided  
19 legal services to the Division of Public Utilities, the Committee of Consumer Services  
20 and the Utah Board of Oil, Gas and Mining, Department of Natural Resources,  
21 representing them in a variety of regulatory proceedings and litigation. In 1987, I joined  
22 the Williams Companies, Inc., where I held positions as senior attorney for Northwest  
23 Pipeline Corporation, general counsel for Kern River Gas Transmission Company (“Kern  
24 River”) and finally senior counsel for the pipeline holding company, Williams Gas

25 Pipeline Company. Upon the acquisition of Kern River by MidAmerican Energy  
26 Holdings Company (“MEHC”) in 2002, I served as Vice President and General Counsel  
27 at Kern River. When MEHC agreed to acquire PacifiCorp in 2005, I was appointed as  
28 Senior Vice President Law for MEHC with responsibility for obtaining approval of the  
29 acquisition by the six state utility commissions with jurisdiction over PacifiCorp. In 2006  
30 when the acquisition was consummated, I was appointed Senior Vice President and  
31 General Counsel of Rocky Mountain Power and a director of PacifiCorp. In 2007, I was  
32 appointed to my current position.

33 **Q. Please describe your present duties.**

34 A. I am responsible for the Company’s legal affairs. In addition, I am a director and  
35 member of the senior management team of the Company. In those positions, I am  
36 familiar with and provide both legal and policy advice on all significant matters that  
37 come before the Company. My duties include management of service territory issues,  
38 and I am responsible, along with the Vice President of Regulatory Affairs, for all  
39 regulatory proceedings of the Company before this Commission as well as the Wyoming  
40 and Idaho Commissions. I also participate in overseeing the Company’s participation in  
41 regulatory proceedings in other jurisdictions and in litigation in which the Company is a  
42 party.

43 **Q. Have you previously testified before this Commission?**

44 A. Yes. I provided testimony in Docket No. 05-035-54 in support of the stipulation of the  
45 parties for approval of the acquisition of PacifiCorp by MEHC. Additionally, I provided  
46 testimony to the Public Utilities Commission of Idaho and the Wyoming Public Service  
47 Commission in their dockets to approve the acquisition.

48 **Q. What is the purpose of your testimony in this proceeding?**

49 A. The purpose of my testimony is to support approval by the Commission of the  
50 Application for Approval of Settlement Agreement and Amendment of Certificate of  
51 Public Convenience and Necessity (“Application”) filed with this testimony. The  
52 Application seeks approval of the Settlement Agreement and General Release  
53 (“Settlement Agreement”) entered into by the Company and Heber Light & Power  
54 Company (“Heber Light & Power”) and amendment of the Company’s Certificate of  
55 Public Convenience and Necessity No. 1343 to delete the geographic area in Wasatch  
56 County in which Heber Light & Power has agreed to be responsible to provide service  
57 (“HLP Service Area”). The HLP Service Area is described in Appendix 5 to the  
58 Settlement Agreement, and an illustrative map of the HLP Service Area is provided in  
59 Appendix 6 to the Settlement Agreement.

60 **Q. Please summarize your testimony.**

61 A. Rocky Mountain Power and Heber Light & Power have both been providing service in  
62 Wasatch County for approximately 100 years. The issue of their overlapping service  
63 territories did not become critical until the early 2000s. Prior to that time, Heber Light &  
64 Power was generally serving customers outside the boundaries of its members that would  
65 have been required to pay a substantial line extension charge had they been served by  
66 Rocky Mountain Power. This circumstance is not unusual; it occurs quite often with  
67 municipal providers around the state. Typically, either the area is eventually annexed  
68 into the municipality or as further growth occurs Rocky Mountain Power is able to extend  
69 service to the customers without imposing a substantial line extension charge. The  
70 difference here is that the extraterritorial service has continued for many years and, as

71 significant growth occurred in Wasatch County and the companies extended their  
72 systems to meet that growth, resulted in conflicts regarding which company would  
73 provide service to particular customers. In addition, because of the unusual way this  
74 developed in Wasatch County, at least one anomalous situation arose in which Rocky  
75 Mountain Power provides service to the Timber Lakes and Lake Creek area using power  
76 supplied by Heber Light & Power because Rocky Mountain Power does not have  
77 interconnection with the area. At the same time, Rocky Mountain Power provides power  
78 to Heber Light & Power through an arrangement with the Utah Association of Municipal  
79 Power Systems (“UAMPS”) to meet some of Heber Light & Power’s load requirements.

80 The companies have attempted for several years to resolve the issue, but have  
81 always been prevented from doing so by their different view of the law. For example,  
82 Rocky Mountain Power was unwilling to agree that Heber Light & Power could  
83 permanently provide service to customers in Rocky Mountain Power’s certificated area.

84 The dispute between the companies came to a head in 2007 when the Wasatch  
85 County Council indicated that it was considering an amendment to Rocky Mountain  
86 Power’s franchise to exclude the area which Heber Light & Power regarded as its  
87 historical service area. This led to litigation in both the district court and before the  
88 Commission. The parties devoted significant resources to that litigation and to  
89 continuing efforts to resolve their dispute during the litigation. Although the  
90 Commission litigation ultimately went to the Utah Supreme Court, the parties have yet to  
91 present evidence or argument on the basic issue underlying their dispute because the  
92 court ultimately concluded only that the Commission lacks jurisdiction over the dispute.

93 Absent settlement, the parties would be required to engage in extensive and costly  
94 continuing litigation, the outcome of which is uncertain.

95 Prior to the 2010 legislative session, the parties were able to reach an agreement  
96 in principle to resolve their dispute dependent on passage of legislation. The parties  
97 supported passage of Senate Bill 227, 1st Substitute, as amended (“SB 227”). SB 227  
98 amended section 11-13-204 of the Utah Code to allow an energy services interlocal entity  
99 such as Heber Light & Power to provide service to customers located in a geographic  
100 area outside the municipal boundaries of its member cities (“Area”) pursuant to  
101 agreement with the public utility authorized and obligated to provide service in the Area  
102 in accordance with conditions in the legislation and subject to approval of the agreement  
103 by the Commission and deletion of the Area from the geographic area in which the public  
104 utility is obligated to provide service. The passage of SB 227 allowed the parties to enter  
105 into an agreement to settle their long-standing dispute.

106 Since SB 227 became law, the parties have engaged in extensive and difficult  
107 arms’-length negotiations to enter into the Settlement Agreement. Consistent with SB  
108 227, Heber Light & Power has obtained franchises from Wasatch County, the Town of  
109 Daniel (“Daniel”) and the Town of Independence (“Independence”) that comply with  
110 requirements in SB 227. Rocky Mountain Power has also obtained extension of its  
111 current franchise with Wasatch County pending resolution of the issue and has obtained a  
112 new franchise from Wasatch County that will be effective when the settlement is  
113 approved by the Commission. The settlement has involved a difficult and delicate  
114 compromise and balancing process in which the parties have agreed upon service area  
115 boundaries, facility and customer transfers, joint ownership of certain facilities and

116 construction and installation of new facilities and other consideration. The agreements  
117 are interdependent.

118 Approval of the settlement is in the public interest for several reasons. First, by  
119 eliminating overlapping service territories, the parties will be able to improve customer  
120 service for current customers, eliminate wasteful duplication of services and facilities,  
121 limit the environmental impact of facilities, enhance public safety and community  
122 aesthetics and provide customers with certainty regarding the provider authorized and  
123 obligated to provide service to them.

124 Second, Rocky Mountain Power has generally not installed facilities to provide  
125 service in the HLP Service Area and would be required to make substantial capital  
126 investments to provide service to customers in the HLP Service Area. Avoiding these  
127 capital investments will benefit all of Rocky Mountain Power's customers.

128 Third, the interests of customers in the HLP Service Area outside the municipal  
129 boundaries of its members will be protected by Heber Light & Power's compliance with  
130 the conditions in section 11-13-204(7)(c) of the Utah Code and the requirements in its  
131 franchise agreements with Wasatch County, Daniel and Independence that provide a  
132 means for customers to bring complaints regarding service from Heber Light & Power to  
133 a neutral arbiter or ombudsman for resolution.

134 Fourth, the Agreement for the Transfer of Distribution Facilities and Customers  
135 ("Transfer Agreement") provides reasonable terms and conditions for transfers of  
136 facilities and customers and construction and installation of facilities in a manner  
137 designed to protect the interests of customers in continuous, safe and reliable service.

138 The Joint Ownership and Operation Agreement provides reasonable terms and conditions

139 for joint ownership and operation of facilities in an economic and efficient way to  
140 provide service in the public interest consistent with prudent utility practices.

141 Fifth, the Settlement Agreement provides a reasonable mechanism to deal with  
142 requests for service pending the granting of the Application and flexibility for  
143 modifications to the HLP Service Area in the future in the interests of customers.

144 Sixth, the Settlement Agreement resolves other disputes between the parties and  
145 provides additional consideration for the settlement.

146 Seventh, the Settlement Agreement avoids the necessity of further extensive  
147 litigation between Heber Light & Power and Rocky Mountain Power.

148 Accordingly, Rocky Mountain Power recommends that the Commission approve  
149 the Settlement Agreement and amend its Certificate of Public Convenience and Necessity  
150 No. 1343 to delete the HLP Service Area. Rocky Mountain Power requests that the  
151 Commission deal with the Application on an expedited basis to facilitate transfers and  
152 construction during the 2011 construction season and to allow pending and anticipated  
153 requests for service to be handled in accordance with the service territory boundaries  
154 established by the Settlement Agreement.

155 **Background**

156 **Q. Please briefly describe the history of Rocky Mountain Power's service in Wasatch**  
157 **County.**

158 A. Rocky Mountain Power's predecessor Knight Power Company received a franchise from  
159 Wasatch County in 1910 allowing it to construct electric facilities within public streets  
160 and highways of Wasatch County.

161 A franchise was issued to Rocky Mountain Power's predecessor Utah Power &  
162 Light Company by Wasatch County on April 4, 1960 ("Current Franchise"). The Current



163 Franchise had a term of 50 years and authorized Utah Power & Light Company and its  
164 successors and assigns

165 to construct, maintain and operate in, along, upon and across the  
166 present and future roads, highways and public places in Wasatch  
167 County . . . electric light and power lines together with all the  
168 necessary or desirable appurtenances . . . for the purpose of  
169 transmitting and supplying electricity to said County, the  
170 inhabitants thereof, and persons and corporations beyond the limits  
171 thereof, for light, heat, power and other purposes.

172 The Commission issued Certificate of Convenience and Necessity No. 1343 to the  
173 Company in June 1960 (“Current Certificate”) authorizing the Company to continue to  
174 provide service in Wasatch County. A copy of the Current Certificate is provided as  
175 Exhibit RMP 2 to the Application.

176 **Q. Please briefly describe the Company’s service in Wasatch County?**

177 A. The Company has provided service in Wasatch County since approximately 1910. The  
178 service has principally been concentrated in the portion of the County north of River  
179 Road and Highway 32, the area known as Lake Creek and Timber Lakes east of Heber  
180 City, the areas known as Swiss Mountain Estates and Oak Haven west of Midway City,  
181 and in and around the Town of Wallsburg in the southwestern portion of the County.  
182 Service to these areas was commenced at various times during this period as areas were  
183 developed. For example, service to Swiss Mountain Estates and Oak Haven commenced  
184 in the 1960s and early 1970s and service to Timber Lakes commenced in 1993.

185 The Company currently services approximately 3,000 customers in Wasatch  
186 County.

187 **Q. Why didn't the Company provide service to all customers in areas in Wasatch**  
188 **County outside the municipal boundaries of Heber Light & Power's members?**

189 A. As far as we can determine at this time, the Company was not requested to provide  
190 service to customers in areas near the municipal boundaries of the members of Heber  
191 Light & Power or areas in which Heber Light & Power was already providing service  
192 outside the municipal boundaries of its members. As stated in the Testimony of Blaine  
193 Stewart and the Testimony of Craig Broussard, which has also been filed in support of  
194 the Application, Heber Light & Power has been providing service to customers in both  
195 areas since 1909. There may also have been situations in which customers contacted the  
196 Company to provide service. If so, we believe the Company would have agreed to  
197 provide service in accordance with the terms of its tariff in effect at the time of the  
198 request. We know that this has been the case in recent years, and we are not aware of any  
199 decision or policy of the Company to reject a service request from a customer in Wasatch  
200 County.

201 Under the Company's tariff, potential new customers in unincorporated Wasatch  
202 County who may have requested service would have been required to pay a line  
203 extension charge. Given the location of the Company's facilities, a line extension charge  
204 may have been quite substantial. Thus, if a customer requesting service from the  
205 Company learned of these line extension charges, the customer may have opted to receive  
206 service from Heber Light & Power. Again, we know that this has been the case in recent  
207 years, and assume it was the case previously.

208 **Q. How is service provided to the Lake Creek and Timber Lakes area?**

209 A. When the developers of the Lake Creek and Timber Lakes area initially requested that the  
210 Company provide service to the area, the Company informed them that providing the  
211 service would require a significant investment in new facilities and a substantial line  
212 extension charge. This caused the developers to request service from Heber Light &  
213 Power. However, Heber Light & Power did not wish to provide service in the area at that  
214 time. Eventually, the problem was resolved by the Power Sale Agreement Between  
215 Heber Light & Power Company and Utah Power & Light dated December 17, 1993  
216 (“Power Sale Agreement”), under which Heber Light & Power provides power to the  
217 Company to provide this service. The Company constructed a distribution system from  
218 its point of interconnection with Heber Light & Power into the Lake Creek and Timber  
219 Lakes area.

220 **Q. What about Swiss Mountain Estates and Oak Haven?**

221 A. These two developments are located on the west side of the Heber Valley relatively near  
222 the Company’s Wasatch Substation. In these circumstances, the Company was not  
223 required to charge substantial line extension charges to provide service in these areas.

224 **Q. What about Wallsburg and the area north of River Road and Highway 32?**

225 A. The Company already had facilities in both areas as a result of the Wallsburg Substation  
226 and the Jordanelle Substation. Therefore, line extension charges were either covered by  
227 allowances or were acceptable to the customers.

228 **Q. Why didn't the Company extend its facilities to provide power to the Lake Creek**  
229 **and Timber Lakes area and other areas outside the municipal boundaries of the**  
230 **members of Heber Light & Power that are served by Heber Light & Power?**

231 A. The Company has not extended its facilities for several reasons. First, it would have been  
232 uneconomical for the Company to extend its facilities into these areas to serve the small  
233 number of customers initially in these areas without customers paying substantial line  
234 extension charges which customers were not willing to pay. Second, it would have been  
235 uneconomical for the Company to extend facilities into areas already being served by  
236 Heber Light & Power unless the Company had some assurance that existing and new  
237 customers in those areas would agree to receive service from the Company. Third, it is  
238 fairly common for customers located just outside the municipal boundaries of a municipal  
239 power company to receive service from the municipal power company if the certificated  
240 public utility does not already have facilities in the area. In most of these cases, the areas  
241 served by the municipality are eventually annexed into the municipality or, when there is  
242 a sufficient customer base, the certificated utility extends service into the area and the  
243 customers are transferred to the utility. Fourth, in some cases, it has appeared unlikely  
244 that the members of Heber Light & Power or Wasatch County would grant conditional  
245 use permits to allow the Company to extend facilities in an efficient way to serve these  
246 areas.

247 **Q. This circumstance apparently existed for many years. What caused the Company**  
248 **to wish to resolve this issue?**

249 A. Starting in the early 2000s, situations arose in which the Company and Heber Light &  
250 Power found themselves competing for service to the same customer. For example, the

251 Company was requested to provide proposals for service to Utah Valley State College  
252 (now Utah Valley University (“UVU”)) at its new campus to be constructed north of  
253 Heber City and east of Highway 40, to the Soldier Hollow venue for the 2002 Winter  
254 Olympics, and to the Wasatch Commons development north of the UVU campus. Heber  
255 Light & Power eventually provided service to UVU and Soldiers Hollow. Service to  
256 Wasatch Commons and other developments in the North Village area was still in dispute  
257 prior to the Settlement Agreement and may have been the basis for action of the Wasatch  
258 County Council in 2007.

259 Substantial growth in load in Wasatch County has occurred during the past  
260 several years and most of this increase in load has been outside of the municipal  
261 boundaries of the members of Heber Light & Power. In addition, as each company has  
262 expanded its facilities, it has made further expansion more reasonable. For example, had  
263 Heber Light & Power not expanded its facilities to serve the UVU campus, it is unlikely  
264 that it would have been interested in the further expansion necessary to serve Wasatch  
265 Commons.

266 Finally, after MEHC acquired the Company in 2006, the Company determined  
267 that it was inappropriate to allow this situation to continue given existing laws and  
268 regulations.

#### 269 **Prior Efforts at Settlement**

270 **Q. Why did the Company want to resolve the dispute?**

271 A. The current situation, prior to the Settlement Agreement, causes several problems. First,  
272 it has caused confusion for customers about who their service provider will be. Second,  
273 Heber Light & Power has no legal obligation to provide service to customers outside its  
274 members’ municipal boundaries. Therefore, if Heber Light & Power were unable to

275 continue to provide service to any of these customers, it could discontinue service,  
276 potentially imposing a significant burden on the Company to quickly provide service to  
277 those customers.

278 In addition, without resolution of the service territory boundary dispute, it was  
279 inefficient and uneconomic for the Company to invest in facilities necessary to serve  
280 customers in areas in Wasatch County outside the municipal boundaries of the members  
281 of Heber Light & Power. Thus, customers continued to be faced with substantial line  
282 extension charges to take service from the Company. Had the Company been assured of  
283 providing service to all customers in these areas, the line extension charges would have  
284 been shared by larger groups of customers or would have been eliminated through  
285 allowances in the Company's tariff.

286 Finally, without resolution of the service territory boundary dispute, it was  
287 difficult for the Company to plan for how it would meet its obligation to serve and it was  
288 possible that wasteful duplication of facilities could take place.

289 **Q. You mentioned earlier about how service is provided in the Lake Creek and**  
290 **Timber Lakes area. Has this created any problems?**

291 A. Yes. Because all of the power supplied to the Lake Creek and Timber Lakes area comes  
292 from Heber Light & Power, issues periodically arise regarding which company is  
293 responsible for outages. In addition, as the Lake Creek and Timber Lakes area has  
294 grown, the load has exceeded the load specified in the Power Sale Agreement. Heber  
295 Light & Power has demanded that the Company pay an impact fee for this excess  
296 demand, but the Company has disputed Heber Light & Power's right to charge the impact  
297 fee in these circumstances. Further, it is not clear that the Company's average statewide

298 rates for service cover the cost of service for customers in Lake Creek and Timber Lakes  
299 area given the unusual arrangements. Rocky Mountain Power provides part of Heber  
300 Light & Power's load requirements through an agreement between Rocky Mountain  
301 Power and UAMPS. In turn, Heber Light & Power provides the power needed by Rocky  
302 Mountain Power to serve the Lake Creek and Timber Lakes area. This arrangement is  
303 the equivalent of an inefficient wheeling arrangement.

304 **Q. Are there any other disputes between the Company and Heber Light & Power?**

305 A. Yes. Rocky Mountain Power has a 138 kiloVolt ("kV") transmission line that proceeds  
306 in a southerly direction from its Jordanelle Substation on the east side of Highway 40.  
307 Heber Light & Power has claimed that this line trespasses on its property, but Rocky  
308 Mountain Power does not agree.

309 **Q. What has happened as a result of the service territory and other disputes with**  
310 **Heber Light & Power?**

311 A. The companies have had several meetings over the years to discuss and attempt to resolve  
312 their disputes. However, these meetings have been unsuccessful for several reasons. The  
313 Company was unwilling to agree either that it would not serve customers in its  
314 certificated service area or that Heber Light & Power could assume responsibility to  
315 serve customers in that area. On the other hand, Heber Light & Power was unwilling to  
316 agree either that it would not serve customers outside the municipal boundaries of its  
317 members or that the Company could serve customers in what it regards as its historical  
318 service area. Therefore, although the parties have both recognized that the problem  
319 needed to be resolved, the parties have been at impasse as to how to resolve it.

320 **Litigation**

321 **Q. What led to the litigation between the parties?**

322 A. On April 14, 2007, Wasatch County gave the Company notice that the Wasatch County  
323 Council would consider a partial revocation of the Current Franchise to exclude areas  
324 Heber Light & Power considered to be within its historical service area. As a result of  
325 this notice, on April 17, 2007, Rocky Mountain Power filed a complaint and a motion for  
326 a temporary restraining order against Wasatch County in the Fourth District Court, *Rocky*  
327 *Mountain Power v. Wasatch County*, Case No. 070500152, and a complaint with the  
328 Commission against Heber Light & Power, initiating Docket No. 07-035-22.

329 **Q. What happened in the district court litigation?**

330 A. The district court initially denied the Company's request for a temporary restraining  
331 order, but ordered Wasatch County not to take any action that might impair service by the  
332 Company to its customers pending the preliminary injunction hearing. The litigation was  
333 then stayed while the parties attempted to resolve their dispute. The district court  
334 complaint was ultimately dismissed on May 5, 2008 after Wasatch County agreed not to  
335 modify or revoke Rocky Mountain Power's Current Franchise.

336 **Q. What happened in the litigation before the Commission?**

337 A. In Docket No. 07-035-22, the Commission granted the parties' request to stay the  
338 proceedings to allow them to attempt to settle their dispute. After several months of  
339 discussions and progress on some issues, the settlement discussions were again  
340 unsuccessful, so the litigation was resumed. Rocky Mountain Power filed an amended  
341 complaint on February 5, 2008, and Heber Light & Power filed an answer and motion to  
342 dismiss for lack of jurisdiction on April 4, 2008. The Division of Public Utilities  
343 ("Division") filed a response opposing Heber Light & Power's motion on April 18, 2008.



344 On the same day, Rocky Mountain Power filed a motion to stay the procedural schedule  
345 to allow the parties to engage in further settlement discussions. The Commission granted  
346 the Company's motion, and the schedule was vacated and stayed for several months  
347 while the parties continued to attempt to resolve their dispute. Settlement was again  
348 unsuccessful, so the parties requested the Commission to set a new schedule.

349 Pursuant to the new schedule, additional pleadings were filed on Heber Light &  
350 Power's motion to dismiss for lack of jurisdiction, and a hearing was held on the motion  
351 on October 8, 2008. The Commission issued its order denying the motion to dismiss on  
352 November 3, 2008. On December 3, 2008, Heber Light & Power requested the  
353 Commission to reconsider its order denying the motion to dismiss for lack of jurisdiction.  
354 Rocky Mountain Power responded opposing the request on December 18, 2008. The  
355 Commission took no action on Heber Light & Power's request, so it was deemed denied  
356 by operation of law on December 23, 2008. Utah Code Ann. § 54-7-15(2)(c).

357 On January 21, 2009, Heber Light & Power filed a petition for review of the  
358 Commission's order denying its motion to dismiss with the Utah Supreme Court  
359 ("Petition"). The parties briefed the issues and presented oral argument to the Supreme  
360 Court at a hearing on September 29, 2009. Although the parties reached agreement on a  
361 settlement in principle thereafter and filed a suggestion of mootness with the Supreme  
362 Court on March 18, 2010, the Supreme Court issued its decision on April 30, 2010,  
363 *Heber Light & Power Co. v. Utah Public Service Comm'n*, 2010 UT 27, 231 P.3d 1203.  
364 The Supreme Court held that the Utah Legislature had not granted the Commission  
365 jurisdiction to regulate Heber Light & Power and that questions regarding Heber Light &

366 Power's authority to serve customers outside the municipal boundaries of the member  
367 cities must be addressed in district court.

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

371 **Current Settlement Process**

372 **Q. You mentioned that the parties reached agreement on a settlement in principle.**  
373 **Please explain the circumstances surrounding that agreement.**

374 A. Prior to the 2010 General Session of the Utah Legislature, Heber Light & Power and  
375 Rocky Mountain Power resumed settlement discussions and reached agreement on a  
376 settlement in principle. Pursuant to that agreement, the parties supported passage of SB  
377 227, which was introduced in the 2010 General Session of the Utah State Legislature. SB  
378 227 amended section 11-13-204 of the Utah Code to allow an energy services interlocal  
379 entity such as Heber Light & Power to provide service to customers located in a  
380 geographic Area outside the municipal boundaries of its member cities pursuant to  
381 agreement with the public utility authorized and obligated to provide service in the Area  
382 that the energy services interlocal entity would be responsible to provide service in  
383 accordance with conditions in the legislation and subject to approval of the agreement by  
384 the Commission and deletion of the Area from the geographic area in which the public  
385 utility is obligated to provide service. SB 227 was passed by the Legislature on March  
386 11, 2010 and signed by Governor Herbert on March 29, 2010. The amendment to section  
387 11-13-204 became effective on May 10, 2010. Utah Constitution, art. VI, § 25.

388 SB 227 removed a major impediment to the ability of the parties to resolve their  
389 long-standing dispute and provided the framework for them to proceed with settlement.

390 **Q. What has happened since SB 227 became law?**

391 A. The companies have been in extensive negotiations to define the precise terms and  
392 conditions of their settlement in principle. These negotiations have been arms length,  
393 adversarial and very difficult. In addition, the parties have been working with Wasatch  
394 County, the Town of Daniel (“Daniel”) and the Town of Independence (“Independence”)  
395 to obtain franchises necessary to allow their settlement to comply with the conditions in  
396 SB 227.

397 Pending the effectiveness of SB 227 and during the negotiations leading to the  
398 Settlement Agreement, Wasatch County has granted three extensions to Rocky Mountain  
399 Power’s Current Franchise. The first extension was granted on March 3, 2010, and was  
400 for 120 days. The second extension was granted on July 21, 2010, and was for an  
401 additional 60 days. The third extension was granted on September 28, 2010, and was for  
402 an additional six months. With these extensions, the Current Franchise extends through  
403 early April of 2011. By then, the parties are hopeful that the Commission will have  
404 issued an order approving the Settlement Agreement and amending the Company’s  
405 Current Certificate and that the order will have become a final order.

406 In addition, on September 28, 2010, Wasatch County granted a new franchise to  
407 Rocky Mountain Power authorizing the Company to use public rights of way in Wasatch  
408 County to provide electric service to customers in designated portions of Wasatch County  
409 outside the HLP Service Area subject to the terms and conditions of the franchise (“RMP  
410 Franchise”). The RMP Franchise is effective when an order of the Commission

411 approving this Application (“Order”) becomes a final order as defined in the Settlement  
412 Agreement (“Final Order”). A copy of the RMP Franchise is attached to the Settlement  
413 Agreement as Appendix 1.

414 On September 28, 2010, Wasatch County amended Heber Light & Power’s  
415 franchise authorizing Heber Light & Power to use public rights of way in Wasatch  
416 County to provide electric service to customers in designated portions of Wasatch County  
417 subject to the terms and conditions of the franchise to conform the service area to the  
418 HLP Service Area effective when an order of the Commission approving this Application  
419 becomes a Final Order (“HLP Wasatch County Franchise”). A copy of the HLP Wasatch  
420 County Franchise is attached to the Settlement Agreement as Appendix 2.

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

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

434 **Description of Settlement**

435 **Q. Please describe the Settlement Agreement.**

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

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

448 **Q. Please generally describe the HLP Service Area and the Company's service area**  
449 **in Wasatch County should the Settlement Agreement be approved.**

450 A. The HLP Service Area in which Heber Light & Power has agreed to be responsible to  
451 provide service and the corresponding Rocky Mountain Power service area are the result  
452 of difficult negotiations and balanced compromise between Rocky Mountain Power and  
453 Heber Light & Power to resolve their dispute regarding overlapping service territories.  
454 The agreement of Rocky Mountain Power and Heber Light & Power to these service  
455 territories and to other terms and conditions of the Settlement Agreement is an integrated  
456 package. Any modifications to the HLP Service Area and the corresponding Rocky

457 Mountain Power service area or to other aspects of the Settlement Agreement would  
458 upset this carefully-crafted and interdependent compromise.

459 The HLP Service Area includes many areas currently served by Heber Light &  
460 Power, including Daniel, developments to the east of Heber City and developments  
461 located between the municipal boundaries of the members of Heber Light & Power. It  
462 also includes the Lake Creek and Timber Lakes area currently served by Rocky Mountain  
463 Power using power supplied by Heber Light & Power under the Power Sale Agreement  
464 and the Swiss Mountain Estates and Oak Haven areas currently served by Rocky  
465 Mountain Power. Finally, it includes areas in which little or no service is currently  
466 provided by either party but that are adjacent to areas served or to be served by Heber  
467 Light & Power.

468 The portions of Wasatch County to be served by Rocky Mountain Power are areas  
469 in which the Company already provides service to customers or which are reasonable  
470 extensions of those locations given engineering and cost considerations, including terrain.  
471 Rocky Mountain Power's proposed service area includes the North Village, North Fields  
472 and Snake Creek areas, in which Heber Light & Power currently provides service. Rocky  
473 Mountain Power has pending requests for service from customers in those areas and, as  
474 noted, extension of Rocky Mountain Power's facilities into those areas is reasonable.  
475 Finally, Rocky Mountain Power's proposed service territory includes other areas in  
476 which little or no service is currently provided, but that are adjacent to other areas  
477 currently served or to be served by the Company. These areas are generally in the north  
478 and southwest portion of the County and are in the area Rocky Mountain Power is  
479 currently certificated to serve.

480                   It should be noted that service in areas in the extreme southeast portion of  
481                   Wasatch County is already provided by Moon Lake Electric Association, Inc. (“Moon  
482                   Lake”). The Settlement Agreement does not affect Moon Lake’s service territory.

483   **Q.   Please describe the Transfer Agreement, which is Appendix 7 to the Settlement**  
484   **Agreement.**

485   A.   The Transfer Agreement provides the terms and conditions for implementation of the  
486   Settlement Agreement. It requires the parties to work cooperatively together for a period  
487   of 90 days following execution to mutually identify the distribution facilities and  
488   customers that each will transfer to the other, including associated easements to be quit  
489   claimed or apportioned, and to coordinate logistical and operational considerations  
490   related to separation of the facilities to be transferred from each of their electrical  
491   systems. The parties will identify third parties attaching to poles to be transferred. They  
492   will develop a plan for providing service to customers in the Lake Creek and Timber  
493   Lakes area during the period from when customer transfers in that area start and  
494   conclude. They will consider and develop a timeline for transition, which will include  
495   construction or installation of facilities needed as a result of the transfers of facilities and  
496   customers.

497                   Although the Transfer Agreement allows the parties 90 days to identify facilities  
498                   and customers and to complete their plans for transition of service, the parties have  
499                   already been working on these tasks while in the process of negotiation of the Settlement  
500                   Agreement and Transfer Agreement and are well down the road in this process. In fact,  
501                   the Transfer Agreement identifies five sets of facilities that the Company will transfer to  
502                   Heber Light & Power and six sets of facilities that Heber Light & Power will transfer to

503 the Company. These are facilities that are used to provide service to customers to be  
504 transferred from one party to the other.

505 The Transfer Agreement also identifies three lines on which facilities will be  
506 owned by both parties after the transfers have taken place. Appendix 7.12 to the Transfer  
507 Agreement is a Joint Ownership and Operation Agreement which provides the terms and  
508 conditions for joint ownership and operation of these facilities.

509 Finally, the Transfer Agreement identifies facilities that the parties have already  
510 agreed will need to be constructed to facilitate operation of their systems following the  
511 transfers of facilities and customers provided for in the Transfer Agreement. Each party  
512 has agreed to construct three new facilities ranging from short lines to connect facilities  
513 transferred to underground distribution feeders to replace facilities to be transferred.

514 The Transfer Agreement provides that the parties will make the transfers of  
515 facilities and customers and construct and install the new facilities in accordance with  
516 their jointly developed plan during a transition period. The transition period will  
517 commence when the Commission's order approving the Settlement Agreement ("Order")  
518 becomes a final order ("Final Order") because it is no longer subject to challenge or its  
519 effectiveness has not been stayed pending a challenge. If the Order becomes a Final  
520 Order, but judicial review is sought of the Order, the parties may elect to proceed with the  
521 transition period, or they may elect to hold off on commencement of the transition period  
522 until the Order has been affirmed on appeal. If the Order is reversed, the parties agree to  
523 attempt in good faith to negotiate modifications to the Settlement Agreement consistent  
524 with the court's order or to have the Commission approve the Settlement Agreement  
525 again on remand if that may be accomplished consistent with the court's order. In either



526 case, the transition period would commence if the Commission issues a further order  
527 approving a settlement that is mutually acceptable to the parties.

528 The parties believe that the transition period will last approximately seven  
529 months. Either party may request a 150-day extension of the transition period if  
530 necessary to complete the transfers or construction or installation of facilities. Assuming  
531 the Commission approves the Settlement Agreement by late February or early March of  
532 2011, the parties are hopeful that the transition can be completed by the fall of 2011. If  
533 there is a delay in approval of the Settlement Agreement, the transition period may  
534 extend much longer because the construction and installation of facilities may be delayed  
535 beyond the construction season in 2011.

536 **Q. How will customer learn of transfers and how will they take place?**

537 A. The parties have agreed to develop a coordinated communication plan for customers who  
538 will be transferred and have already been working on the plan. Pursuant to that plan,  
539 notices will be sent to customers proposed to be transferred after filing the Application,  
540 notifying them of the settlement and the Application. Customers will also be notified of  
541 the hearings in this docket. Finally, customers will receive a specific notification of the  
542 transfer of their service at least 30 days in advance of the planned transfer date.

543 The parties have agreed in the Transfer Agreement to cooperate in transferring  
544 service for customers transferred. They will schedule a time for cut over that minimizes  
545 disruption of service. The meters of the party transferring service will be read and  
546 removed and the meters of the party to whom service is transferred will be immediately  
547 installed thereafter. The transferring party will issue a final billing to each customer

548 transferred and the party receiving the transferred customer will assume responsibility to  
549 provide service and start billing the customer for service thereafter.

550 **Q. How many customers will be transferred between the parties?**

551 A. Rocky Mountain Power will be transferring approximately 1,000 existing customers to  
552 Heber Light & Power, and Heber Light & Power will be transferring approximately 130  
553 existing customers to Rocky Mountain Power. New customers that may be added in the  
554 areas to be transferred prior to the transfer will also be transferred. Although Rocky  
555 Mountain Power is transferring many more customers, the potential for growth in new  
556 customers in the North Village area to be transferred to Rocky Mountain Power is  
557 substantial with two major developments planned in the North Village area.

558 **Q. How will the transfers affect rates charged to customers?**

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

566 **Public Interest**

567 **Q. Is the Settlement Agreement and the Transfer Agreement in the public interest?**

568 A. Yes, for several reasons. By eliminating overlapping service territories, the parties will  
569 be able to improve customer service for current customers, eliminate wasteful duplication  
570 of services and facilities, limit the environmental impact of facilities, enhance public  
571 safety and community aesthetics and provide customers with certainty regarding the

572 provider authorized and obligated to provide service to them consistent with the state  
573 policy underlying SB 227. This is particularly important given the likely substantial  
574 future growth of customers and loads in Wasatch County, which before the current  
575 economic slowdown was one of the fastest growing areas in the state.

576 Given Heber Light & Power's historical service area, with the exception of the  
577 Lake Creek and Timber Lakes, Swiss Mountain and Oak Haven areas, Rocky Mountain  
578 Power has generally not installed facilities to provide service in the HLP Service Area  
579 and would be required to make substantial capital investments to provide service to  
580 customers in the HLP Service Area. Rocky Mountain Power will not need to make these  
581 substantial capital investments if the Settlement Agreement is approved and the Current  
582 Certificate is modified to remove the HLP Service Area. This will benefit all of Rocky  
583 Mountain Power's customers.

584 With regard to service to customers in the HLP Service Area outside the  
585 municipal boundaries of its members, Heber Light & Power will comply with the  
586 conditions in section 11-13-204(7)(c) as follows:

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

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

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

599 (iv) a schedule of rates and conditions of service, or any  
600 change to the rates and conditions of service, shall be approved by

601 the governing body of the energy services interlocal entity;

602 (v) before implementation of any rate increase, the  
603 governing body of the energy services interlocal entity shall first  
604 hold a public meeting to take public comment on the proposed  
605 increase, after providing at least 20 days and not more than 60  
606 days' advance written notice to its customers on the ordinary  
607 billing and on the Utah Public Notice Website, created by Section  
608 63F-1-701; and

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

612 Heber Light & Power's franchise agreements with Wasatch County, Daniel and  
613 Independence provide additional protections for customers in the HLP Service Area by  
614 providing for customers to bring complaints regarding service from Heber Light & Power  
615 to a neutral arbiter or ombudsman for resolution consistent with Utah Code Ann. § 11-13-  
616 204(7)(b)(i).

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

624 The Joint Ownership and Operation Agreement, attached to the Transfer  
625 Agreement as Appendix 7.12, provides reasonable terms and conditions for joint  
626 ownership and operation of facilities on which both Heber Light & Power and Rocky  
627 Mountain Power will have facilities necessary to provide service to their respective  
628 customers after completion of the transfers of customers contemplated by the Transfer

629 Agreement. Joint use of certain facilities is an economic and efficient way to provide the  
630 service in the public interest and is consistent with prudent utility practices.

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

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

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

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

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

658 **Q. In the Application, you request that the Commission’s Order approving the**  
659 **Settlement Agreement and amending the Current Certificate be conditioned on the**  
660 **Order not being reversed on appeal and completion of the transfers of facilities and**  
661 **customers contemplated in the Settlement Agreement and the Transfer Agreement.**  
662 **Why have you included that request?**

663 A. The parties have made substantial compromises in reaching the Settlement Agreement. If  
664 the Settlement Agreement is not fully implemented, the parties wish to be returned to the  
665 current status quo so that they are free to litigate a resolution of their disputes without the  
666 prejudice of changed boundaries or otherwise. They have agreed in the Settlement  
667 Agreement to unwind the transfers of facilities and customers that have taken place if the  
668 Settlement Agreement is not fully implemented and they are unable to negotiate  
669 amendments based on the circumstances that the Commission approves. For example,  
670 Rocky Mountain Power would not wish to have its service territory reduced to eliminate  
671 the HLP Service Area if the Settlement Agreement is not fully implemented. Likewise,  
672 Heber Light & Power would not wish to be restricted to serving in the HLP Service Area  
673 in that eventuality.

674 **Conclusion**

675 **Q. What do you conclude?**

676 A. The Settlement Agreement is a fair and reasonable resolution of a long-standing dispute  
677 between Rocky Mountain Power and Heber Light & Power. It provides a definite  
678 boundary between the service territories of the parties to the benefit of both companies  
679 and their customers. By eliminating overlapping service territories, the parties will be  
680 able to improve customer service for current customers, eliminate wasteful duplication of  
681 services and facilities, limit the environmental impact of facilities, enhance public safety  
682 and community aesthetics and provide customers with certainty regarding the provider  
683 authorized and obligated to provide service to them. This will assist both companies in  
684 planning to meet their service obligations in an efficient and effective manner.

685 The interests of customers in economic, safe and reliable service has been  
686 protected in the Settlement Agreement. The transfer of service will be done in a  
687 coordinated manner designed to minimize disruption of service. Customers to be served  
688 by Heber Light & Power outside the municipal boundaries of its members will be  
689 afforded the protections required by section 11-13-204(7)(c) and will have access to a  
690 neutral arbiter or ombudsman to resolve complaints. The service territory may be  
691 adjusted in the future if a customer requests an adjustment, the parties agree and the  
692 Commission approves the change.

693 For these reasons, Rocky Mountain Power recommends that the Commission  
694 grant the Application, approving the Settlement Agreement and amending Rocky  
695 Mountain Power's current certificate to exclude the HLP Service Area. Rocky Mountain  
696 Power requests that the Commission consider the Application on an expedited basis so  
697 that the companies can make full use of the 2011 construction season to implement their

698 transition to the new service territory boundaries and so that service to new customers  
699 may be provided in an efficient manner consistent with the companies' ultimate service  
700 territories.

701 **Q. Does this conclude your testimony?**

702 A. Yes.

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