F. ROBERT REEDER (2710)
WILLIAM J. EVANS (5276)
VICKI M. BALDWIN (8532)
CORY D. SINCLAIR (11158)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
Attorneys for UIEC, an Intervention Group

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority to Increase Its Retail Electric Utility Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations.	Docket No. 10-035-124
In the Matter of the Application of the Utah Association of Energy Users for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment.	Docket No. 10-035-14
In the Matter of the Application of Rocky Mountain Power for Approval of Its Proposed Energy Cost Adjustment Mechanism.	Docket No. 09-035-15

OPPOSITION OF UIEC TO THE MOTION OF ROCKY MOUNTAIN POWER FOR DETERMINATION OF RATEMAKING TREATMENT OF DEFERRED ACCOUNTS

Pursuant to R746-100-3.H of the Utah Administrative Code, the group of electricity customers known in the above-referenced dockets as the Utah Industrial Energy Consumers ("UIEC") submits this opposition to the motion submitted by Rocky Mountain Power ("RMP" or the "Company") to the Utah Public Service Commission ("Commission") for determination of ratemaking treatment of certain deferred accounts. In support thereof, UIEC states as follows.

TABLE OF CONTENTS

Page

INTRODUCTION

It is blatantly unfair for the Company to hold hostage the revenues from the renewable energy certificates ("REC") that have been collected, but which RMP has refused to openly disclose and allocate to rate payers. Rate payers are currently paying the costs associated with the resources that created these revenues and should be getting the benefit of them. The Commission concluded that they should be dealt with in a general rate case and testimony was timely filed in Docket No. 10-035-124 addressing the issue. These costs are completely unrelated to the costs RMP has been accruing as a result of the deferral order issued in 09-035-15 and their recovery should be addressed separately.

The terms of the energy balancing account ("EBA") statute, the Commission's EBA Order, and the rule against retroactive ratemaking prohibit recovery from Utah rate payers of the costs accruing in the deferral account established as a result of a settlement in the EBA docket. RMP's motion provides the vehicle for the Commission to make that ruling as a matter of law at this time.

In event that the Commission determines not to deny recovery of those costs, due process prohibits the recovery of the costs RMP has been accruing as a result of the deferral order issued in 09-035-015 in the ongoing general rate case, Docket No. 10-035-124. Instead, a separate docket and schedule should be used to address them.

BACKGROUND

1. On June 23, 2009, the Company filed an application for an increase in its rates and charges in Docket No. 09-035-23 ("2009 GRC"). The Company used the Revised Protocol

for the inter-jurisdictional cost allocations necessary for preparing the filing. Application, Docket No. 09-035-23 (June 23, 2009).

2. On February 18, 2010, the Commission issued its Report and Order on Revenue Requirement, Cost of Service and Spread of Rates in the 2009 GRC. Pursuant to the information provided by RMP in its application, Utah was allocated $9,896,404 in REC revenues. It has since been disclosed by the Company that RMP's actual Utah REC revenues earned but not allocated to rates were $53,901,571.[1] *See* RMP's M. to Dismiss & Resp. Op'g UIEC's App. at 7, Docket No. 11-035-46 (April 20, 2011).

3. On February 22, 2010, the Utah Association of Energy Users ("UAE") filed an application for a deferred accounting order for the significant amount of REC revenues UAE had discovered RMP failed to incorporate into the 2009 GRC projections or disclose to the Commission in the 2009 GRC. UAE requested that the revenues be accrued starting on the date of its application, February 22, 2010. UAE alleged that the REC revenues had dramatically increased in an unprecedented, unforeseeable, and extraordinary manner. Application for Deferred Acct'g Order for Incremental REC Rev., Docket No. 10-035-14 (Feb. 22, 2010). The Division of Public Utilities ("DPU" or the "Division") informed the Commission that discovery would be needed before a determination could be made as to whether the issue warranted deferred accounting treatment. Memo from DPU to Comm'n, Docket No. 10-035-14 (Feb. 25, 2010). No opposition was filed in response to UAE's application.

1 After discovering additional significant REC revenues RMP failed to incorporate in other previous general rate cases or disclose to the Commission, UIEC filed an application for a deferred accounting order to collect the revenues from January 2009 through February 21, 2010, as well. That application has been designated Docket No. 11-035-46.

4. On March 16, 2009, the Company filed an application for approval of its proposed Energy Cost Adjustment Mechanism ("ECAM"), ***requesting*** that it go into effect at the conclusion of its next general rate case. This was assigned Docket No. 09-035-15. The Company subsequently filed the 2009 GRC.

5. The Company had initiated its proposed ECAM by filing an application and direct testimony, consisting of only about thirteen pages from two witnesses. As a result of scoping recommendations, the Commission established a bifurcated proceeding in which Phase I would address whether an ECAM was even in the public interest (a requirement of the EBA statute),[2] and Phase II would explore the design of an ECAM, if one could be found to be in the public interest. *See* Notice of Scheduling Conference and Procedural Order, Docket No. 09-035-15 (June 18, 2009). In January 2010, a hearing was held to address Phase I issues and only the Company supported its ECAM. In fact, all intervenors except the Division urged the Commission to find that an ECAM was not in the public interest, and the docket need not proceed to Phase II. The Division's position was that while the Company's proposed ECAM was not in the public interest, one could possibly be designed to be in the public interest. On February 8, 2010, the Commission moved the proceeding into Phase II. The Commission concluded that the evidence of Phase I did not preclude designing an EBA that was in the public interest. Report & Order, Docket No. 09-035-15 (Feb. 8, 2010).

6. The following day, February 9, 2010, the Company filed its application for a deferred accounting order, requesting that it be authorized to record in FERC Account 182 the difference between net power costs ("NPC") ordered in the 2009 GRC (which order had not yet

2 To be eligible for ratemaking treatment and to overcome the rule against retroactive ratemaking treatment, an EBA must first be held to be in the public interest. *See* Utah Code Ann. § 54-7-13.5(4)(c).

issued) and actual NPC incurred on a monthly basis until the Commission approved an ECAM. RMP's M. for Deferred Acct'g Order, Docket No. 09-035-15 (Feb. 9, 2010). RMP represented that the "amount deferred would be calculated as described in the Company's [ECAM] application and testimony in this [ECAM] docket." *Id.* ¶ 7.

7. The Division, the Office of Consumer Services ("OCS"), UAE, and UIEC each filed an opposition to the Company's request. UIEC pointed out that RMP's proposed deferred accounting did not conform to the EBA statute and was in violation of the rule against retroactive ratemaking. In addition, the Company's NPC consisted of many elements that were not authorized under the EBA statute. *See* UIEC's Op. to M. for Deferred Acct'g Order, Docket No. 09-035-15 (Feb. 23, 2010). The Division pointed out that RMP's application sought to implement the Company's proposed ECAM, which had been rejected by all the parties, and that the deferral did not meet accounting standards because the costs sought to be deferred were not extraordinary or unforeseen and/or of future net benefit to ratepayers. *See* Op. of Div. to RMP's M. for a Deferred Acct'g Order, Docket No. 09-035-15 (Feb. 24, 2010).

8. Thereafter, the Commission noticed a scheduling conference in the ECAM docket to set the schedule for Phase II of that docket. *See* Notice of Sched. Order, Docket No. 09-035-15 (March 9, 2010). No mention of the Company's request for a deferred accounting order was made in that Notice.

9. On March 9, the Commission noticed a scheduling conference specifically to set the schedule for UAE's request for a REC deferral order. *See* Notice of Sched. Order, Docket No. 10-035-14 (March 9, 2010).

10. During the course of the scheduling conferences in Docket Nos. 09-035-15 and 10-035-14, and in subsequent settlement conferences, the parties decided to jointly move for the Commission to approve UAE's request for a REC deferral order and the Company's request for deferral of the 2009 GRC NPC. Stip. & J.M. for Deferred Acct'g Orders, Docket Nos. 09-035-15, 10-035-14 (May 4, 2010). The parties agreed that the Commission should issue a deferred accounting order "directing the Company to defer incremental NPC in accordance with the Company Motion, commencing February 28, 2010, pending the Commission's final determination of the ratemaking treatment of the deferred balance." *Id.* at 3 ¶ 9. The parties also agreed that the Commission should issue a deferred accounting order "directing the Company to defer incremental REC revenue in accordance with the UAE Application, commencing February 22, 2010, pending the Commission's final determination of the ratemaking treatment of the deferred balance." *Id.* at 3 ¶ 10. The parties agreed that the deferred accounting orders did not "create any presumption regarding future ratemaking treatment of the deferred amounts." *Id.* at 4 ¶ 14. Aside from the joint settlement of the two deferral requests, the REC deferred balancing account and the 2009 GRC NPC deferred balancing account have no relationship and nothing in common. The Commission approved the joint settlement on July 14, 2010, ordering the Company to "record incremental NPC and incremental REC revenues in separate deferred accounts in accordance with the terms and conditions of the Stipulation." *See* Report & Order on Deferred Acct'g Stip., Docket Nos. 09-035-15, 10-035-14 (July 14, 2010).

11. Since establishment of the REC deferred balancing account, the parties have agreed to the ratemaking treatment of a small portion of the accrued REC revenues. The parties, including RMP, agreed to establish a customer sur-credit of $3.0 million, representing

incremental REC revenues not reflected in Utah rates after the 2009 GRC, to be booked against the REC deferred balancing account so as to offset the rate increases that occurred from RMP's two 2010 major plant addition ("MPA") cases. Order Approving Settlement Stip., Docket Nos. 10-035-13, 10-035-14, 10-035-89 (Dec. 21, 2010).

12. On January 24, 2011, the Company filed the current general rate case ("Current GRC"), designated Docket No. 10-035-124, using the Revised Protocol for the inter-jurisdictional cost allocations necessary for preparing the filing. The Company requested a $228.8 million price increase with a Rate Mitigation Premium of $ 3.6 million for a total requested increase of $232.4 million. Application, Docket No. 10-035-124 (Jan. 24, 2011). No testimony was filed by the Company regarding the ratemaking treatment of the 2009 GRC NPC deferred balance.

13. On March 3, 2011, the Commission issued its Corrected Report & Order in the EBA case, denying the proposed ECAM. The Commission found that the Company's proposed ECAM was not in the public interest. Corrected Report & Order at 63, Docket No. 09-035-15 (March 3, 2011) ("EBA Order").

14. The Commission instead concluded that an EBA structured as the Commission authorized in its order was in the public interest and ordered that it be implemented on a pilot basis. *Id.* at 67, 80. The Commission ruled that "this order defines and approves ***this*** [EBA] to be implemented at the conclusion of the Company's [Current GRC]." *Id.* at 64 (emphasis added).

15. The Commission approved "implementation of ***this approved EBA*** on the first day of the month following [its] decision in the Company's [Current GRC], filed January 24,

2011, in Docket No. 10-035-124. The base net power cost used to determine the 'revenues collected' for calculating the monthly deferred amounts will be determined ***based on the outcome of [the Current GRC]***. . . . [T]he ***starting date for EBA accruals*** will coincide with the ***date rates are made effective in the [Current GRC]***." *Id.* at 77 (emphasis added).

16. The authorized EBA, *inter alia*, (a) includes a 70/30 sharing component; (b) excludes financial swap hedging transactions;[3] (c) includes wholesale wheeling revenues; (d) excludes REC revenues; (e) includes incremental revenue for NPC due to Utah load growth; (f) includes wind integration costs; (g) differs from the Company's proposed ECAM, which assumes all power-related expenses and revenues are allocated to Utah based on Utah's relative use of total-Company energy use; (h) to ensure rates reflect cost causation and cost-based rates, must be based on the allocation factors approved in the Current GRC to determine Utah's allocated share of the power-related expenses and revenues approved; (i) must collect or refund its balance based on cost of service; (j) has an annual carrying charge of 6% ; (k) uses a different balancing account calculation than that proposed by the Company; (k) must use the rolled-in allocation factors. *Id.* at 72-78.

17. The Commission ordered formation of an EBA working group to address, *inter alia*, the (a) data, transactions and other information the Company ***must*** file to constitute a complete filing; and (b) identification of the monthly information to be provided to the Division for its ongoing review. *Id.* at 78.

---

3 On May 9, 2011, the Commission granted RMP's request for rehearing on the issue of whether financial swap hedging transactions should be excluded. However, hearing on that issue is not scheduled until November 1-2, 2011. That will be well after the briefing of RMP's instant motion and the Current GRC have concluded. Therefore, pursuant to § 54-7-15(2)(e), financial swap hedging transactions are excluded for purposes of the Current GRC.

18. With respect to the Company's 2009 GRC NPC deferred balancing account, the Commission ordered as follows:

> ***We will address the ratemaking issues associated with the [2009 GRC NPC deferred balancing account] separately from this order***. We will also consider the balancing account treatment for the one percent premium above Utah's rolled-in share of total system costs approved in the last general rate case in the course of the [Current GRC] or other appropriate proceeding on the [2009 GRC NPC deferred balancing account].

Id. at 77-78 (emphasis added).

19. The Commission addressed the REC deferred balancing account completely separately and in a separate section of the Order from the 2009 GRC NPC. The Commission ordered as follows:

> ***We conclude REC revenues are better addressed in a general rate proceeding or other appropriate filing***. Consequently, we will treat the deferred REC revenues accruing pursuant to any future decision in Docket No. 10-035-14 in a separate proceeding.

Id. at 72 (emphasis).

20. On June 2, 2011, the Company filed its request for determination of the ratemaking treatment of the deferred accounts, erroneously suggesting that the 2009 GRC NPC deferred balancing account and the REC deferred balancing account are somehow inextricably intertwined. The Company has requested that amortization of both accounts begin as of the date the rates set in the Current GRC go into effect. RMP Br. at 2.

ARGUMENT

The Company's request should be denied. Recovery of the revenues accruing in the REC deferred balancing account should be determined based on the timely filed testimony in the

Current GRC regardless of what happens to the costs in the 2009 GRC NPC deferred balancing account.

Recovery of any of the amounts in the 2009 GRC NPC deferred balancing account should be denied as a matter of law. If the Commission determines not to deny recovery, addressing it in the Current GRC would raise serious due process issues, and the Company has not filed a complete application to do so. Instead, the matter should be moved to a new docket so that the prudence of the costs can be evaluated, the unauthorized elements can be removed, the differences between what the Company has been accruing and what was approved can be addressed, and issues such as rolled-in credit, the 70/30 sharing mechanism, and amortization can be determined.

I. RATEMAKING TREATMENT OF THE REC DEFERRED BALANCE IS COMPLETELY SEPARATE FROM RATEMAKING TREATMENT OF THE 2009 GRC NPC DEFERRED BALANCE AND SHOULD BE DETERMINED INDEPENDENTLY BASED ON THE TIMELY FILED TESTIMONY IN THE CURRENT GRC.

RECs are purchased and sold by the Company both unbundled and as a component of renewable energy. RECs are created by the production of energy from renewable energy resources such as wind, geothermal, and small hydro—resources for which rate payers pay 100% of the costs in base rates. Therefore, the full value of REC sales revenue should be apportioned to the Company's rate payers, and the full value of REC sales revenue apportioned to Utah should be credited to Utah customers.

For the last few years, there has been an extraordinary increase in the value of RECs, yet RMP has consistently projected extremely low values in its last few general rate cases so that Utah rate payers have not been credited the appropriate amount in setting rates. Once this was

discovered, UAE applied for the REC deferred balancing account that is, in part, the subject of RMP's request.

After discovering that these significant undisclosed revenues reach back even further than that captured with UAE's REC deferred balancing account, UIEC also filed for an additional REC deferred balancing account for these earlier REC Revenues.[4] If RMP had been more forthcoming, these REC revenues would have already been included in retail rates.

REC revenues have been excluded from the authorized EBA. The establishment of the REC deferred balancing account was in no way influenced by or related to the Company's proposed ECAM or the authorized EBA. Aside from the parties' stipulation settling the establishment of each, the REC deferred balancing account has no relationship to the 2009 GRC NPC deferred balancing account. RMP's suggestion otherwise is unsupported and simply incorrect.

These deferred REC revenues should already have been included in Utah rates. The Commission ***concluded*** in the EBA Order that they be addressed in a GRC, and they have been timely addressed in direct testimony in accordance with the schedule in the Current GRC. A small portion of the accrued REC revenues have already been included in the rates resulting from the MPA cases, and thus, ratemaking treatment has already been initiated for these accruals.

Because the REC revenues have nothing to do with the 2009 GRC NPC deferred balance, the Company should not be allowed to hold them hostage as it proposes in its motion. The timely testimony in the Current GRC regarding the ratemaking treatment of the deferred REC

4 It has also been discovered during the course of the Current GRC that the Company is hoarding millions of kWh in RECs at an untold value.

revenues should be considered by the Commission and a decision made regardless of the destiny of the costs held in the 2009 GRC NPC deferred balancing account.

II. RECOVERY OF RMP'S 2009 GRC NPC DEFERRED BALANCE IS IN VIOLATION OF THE EBA STATUTE.

The rule against retroactive ratemaking generally prohibits the recovery of past costs. However, the EBA statute has provided a statutory exception to that rule. However, the EBA statute prohibits recovery of RMP's GRC NPC deferred balance.[5]

The EBA statute provides:

> (b) An energy balancing account shall become effective upon a commission finding that the energy balancing account is:
>
> (i) in the public interest;
>
> (ii) for prudently-incurred costs; and
>
> (iii) implemented at the conclusion of a general rate case.

Utah Code Ann. § 54-7-13.5(2)(b).[6] An EBA cannot become effective until the Commission makes a finding that it is in the public interest, it must be for prudently-incurred costs, and it can only be implemented at the conclusion of a GRC. None of these requirements have been met for the Company's 2009 GRC NPC deferred balance. Therefore, recovery of those costs is prohibited as a matter of law.

---

5 The stipulation allowing the deferral reserved the right of the parties to argue whether the costs could be recovered when it provided that no presumption regarding future ratemaking treatment of the deferred amounts was created by creation of the deferred accounting order.

6 The EBA statute also provides that "an account maintained in accordance with [the statute] does not constitute impermissible retroactive ratemaking or single-issue ratemaking." *Id.* § 54-7-13.5(4)(c). Thus, to the extent the EBA authorized by the Commission operates to defer costs, the EBA statute represents an exception to the general rule that rates must be set prospectively. This provision is not applicable to the costs accruing in the 2009 GRC NPC deferred balancing account.

The costs accrued in the 2009 GRC NPC deferral balancing account were deferred pursuant to a stipulation that provided the Company could defer incremental NPC in accordance with the Company Motion, commencing February 28, 2010, pending the Commission's final determination of the ratemaking treatment of the deferred balance. The parties agreed that the deferred accounting order did not create any presumption regarding future ratemaking treatment of the deferred amounts. The necessary public interest standard was not met prior to the end of the 2009 GRC, and the amounts accruing in the 2009 GRC NPC deferral balancing account were not accrued according to an EBA that meets the public interest standard.

The Commission-approved EBA does not yet even exist, though it has been authorized. It has been determined to be in the public interest and it will be implemented on the first day of the month following the Commission's decision in the Current GRC. EBA accruals cannot begin to accrue until the date rates are made effective in the Current GRC.

The 2009 GRC NPC deferral balancing account has no basis except for a stipulation allowing accrual of certain costs, not their recovery. The costs accruing in the 2009 GRC NPC deferral balancing account have not been authorized for inclusion in the Commission-approved EBA and are not protected by the provision of the EBA statute granting immunity from the rule against retroactive ratemaking. As a result of the terms of the EBA statute and the Commission's rulings, recovery of the costs in the 2009 GRC NPC deferred balancing account is prohibited as a matter of law.

III. RECOVERY OF RMP's 2009 GRC NPC DEFERRED BALANCE VIOLATES THE RULE AGAINST RETROACTIVE RATEMAKING.

Sound ratemaking principles presume that rates should be set prospectively, and that the rule against retroactive ratemaking, and its exceptions and rationale, should apply when

determining whether a deferred accounting order is appropriate. *In the Matter of the Application of Rocky Mountain Power for a Deferred Accounting Order to Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization* at 13, Docket Nos. 06-035-163, 07-035-04, 07-035-14 (Jan. 3, 2008).

Ordinarily, the Commission is prohibited from permitting a utility to recover past costs or unrealized revenues. The Utah Supreme Court stated: "[As a] general rule [] . . . ***all ratemaking must be prospective in effect*** and rates may be fixed only in general rate proceedings. *Utah Dep't of Bus. Regulation v. Pub. Serv. Comm'n*, 720 P.2d 420, 423 (Utah 1986) (citations omitted) (emphasis added) (hereinafter referred to as the "*EBA Case*"). A "retroactive" rate adjustment is one that allows a utility to recoup from future rates "costs that were greater than projected." *MCI Telecomms. Corp. v. Pub. Serv. Comm'n*, 840 P.2d 765, 770 (Utah 1992). The rule against retroactive ratemaking is not constitutionally mandated, but it is a well-settled Utah rule based on "sound ratemaking policies."[7] The rule makes no exception for "overestimates" or "underestimates" of a utility's costs, or for mistakes in the ratemaking process based on the utility's inability to accurately forecast its revenues and expenses. *Stewart v. Utah Pub. Serv. Comm'n*, 885 P.2d 759, 778 (Utah 1994).

Except when "a utility's conduct undermines the integrity of the ratemaking process,"[8] the only generally recognized "exception" to the rule is when "an unforeseeable event results in

---

7 It is not only well established in Utah, but also throughout the United States. *See, e.g., In re Cent. Vt. Pub. Serv. Corp.*, 473 A.2d 1155 (Vt. 1984); *State ex rel. Util. Consumers Council of Mo., Inc.*, 585 S. W.2d 41 (en banc) (Mo. 1979).

8 *Stewart*, 885 P.2d at 779; *see, e.g., Industrial Customers of Northwest Utilities' Application for Deferred Accounting,* Docket No. UM 1465 (Oregon PUC, filed Dec. 31, 2009), in which the Applicants seek deferred accounting relief for PacifiCorp's alleged failure to account for revenue from its contracts with Kennecott Utah Copper, U.S. Magnesium and San Diego Gas and Electric, which Applicants contend should have been included in

an extraordinary increase or decrease in expenses or revenues." *MCI*, 840 P.2d at 771. An "unforeseeable" event is one which is "inherently unpredictable," and which is not a result of "company mismanagement or imperfect forecasts." *Id.* The Utah Supreme Court has ruled:

> [t]he extraordinary ***and*** unforeseeable nature of the expenses recognized under the exception differentiates them from expenses inaccurately estimated because of a misstep in the ratemaking process, ***such as the inability to predict precisely***, or from mismanagement. An increase or decrease in expenses that is unforeseeable at the time of a ratemaking proceeding, cannot, by hypothesis be taken into account in fixing just and reasonable rates."

Id. (Emphasis added). Thus, the "exception" is appropriate only when an event is sufficiently unpredictable that its effect cannot be accounted for in a rate case, ***and*** only when the effect is so extraordinary that it would be unjust and inequitable not to adjust rates accordingly. *See also Stewart*, 885 P.2d at 778 ("Because earnings or expenses caused by an unforeseeable event cannot be reasonably anticipated in the ratemaking process, justice and equity may require appropriate adjustments in future rates to offset extraordinary financial consequences.").

In the 2009 GRC, RMP proposed a future test year and projected costs that it claimed were a reasonable approximation of costs it would face during the rate-effective period. RMP then requested that the Commission allow it to defer accounting of NPC to relieve it of any misstep in its projection of costs. There was no authorized EBA at that time. There was never any demonstration (or even allegation) that those costs are, or were, "unforeseeable or extraordinary." Allowing the recovery of the balance in RMP's 2009 GRC NPC deferral account would simply allow RMP to recover NPC greater than those it projected in the 2009 GRC. Unlike a retroactive adjustment to preserve the integrity of the ratemaking process,

---

setting rates.

RMP's effort to recover these amounts is a text-book example of retroactive ratemaking to relieve the utility of the risk of its own imperfect forecasting. Recovery of these costs is barred by the rule, and there is no statutory immunity from this rule for the 2009 GRC NPC costs.

IV. THE COMMISSION'S EBA ORDER ESSENTIALLY DENIES RECOVERY OF THE 2009 GRC NPC DEFERRED BALANCE.

The Commission ***concluded*** in its EBA Order that the deferred REC revenues would be better addressed in a GRC or other appropriate filing. EBA Order at 72. In contrast, the Commission noted that it "will address the ratemaking issues associated with the stipulation on deferred net power cost separately from this order." *Id.* at 77.

The EBA Order specifically states that the approved EBA will start at the first day of the month following the decision in the Current GRC. *Id.* at 64, 77. More importantly, the Commission ordered that the starting date for EBA accruals will coincide with the date rates are made effective in the Current GRC. *Id.* at 77. Thus, the Commission has essentially denied the inclusion of the 2009 GRC NPC deferred accruals in the EBA. The EBA Order was not the appropriate vehicle to make that determination, but RMP's motion has provided an appropriate vehicle.

V. BASED ON THE COMPANY'S MOTION AND THE LEGAL PRECEPTS SURROUNDING THIS ISSUE, THE COMMISSION SHOULD DETERMINE THE RATEMAKING TREATMENT OF THE 2009 GRC NPC DEFERRED BALANCE AT THIS TIME BY DENYING RECOVERY.

The Commission ruled in the EBA Order that the ratemaking treatment of the 2009 GRC NPC deferred balance would be addressed separately. The Company has now moved to have the issue addressed. Based on the legal precepts explained above, RMP cannot recover the amounts

in the 2009 GRC NPC deferred balancing account as a matter of law. The Commission should so rule in response to the Company's motion, deny their recovery and close the account.

VI. SHOULD THE COMMISSION DETERMINE THAT RECOVERY OF THE 2009 GRC NPC DEFERRED BALANCE SHOULD NOT BE DENIED AS A MATTER OF LAW, DUE PROCESS REQUIRES THAT A SEPARATE DOCKET AND SCHEDULE BE ESTABLISHED TO ADDRESS ALL THE ISSUES SURROUNDING THE RATEMAKING TREATMENT FOR RECONCILING SUCH DEFERRED BALANCE WITH THE COMMISSION'S AUTHORIZED EBA.

Due to the limited time left in the Current GRC, and the myriad unresolved issues that must be determined in such a limited time, if recovery of the 2009 GRC NPC deferred balance is not denied as a matter of law, it must be dealt with in another docket because the complete lack of notice for the treatment of recovery in the Current GRC raises serious due process concerns. In addition, it would be impossible to do so in the Current GRC and still achieve just and reasonable rates.

The Current GRC is more than half over, leaving approximately three months before a final order must be issued. Now, at this late date, the Company has proposed that the ratemaking treatment of these costs be resolved in the Current GRC. RMP's motion is the first type of notice that this might occur. That raises serious due process concerns.

By the time briefing is completed on this issue, the Current GRC will be approximately two-thirds over. Until RMP filed its motion, there had been no testimony addressing the costs held in the 2009 GRC NPC deferred balancing account. The Company has certainly not filed a complete application for their recovery, in fact, the requirements for a complete application for recovery have not yet been defined.

There is very little time left for discovery regarding these costs even though UIEC has since issued some data requests. In any event, there has not been adequate notice and the Current GRC schedule does not provide for filing dates to deal with the treatment of these costs. Rebuttal testimony on revenue requirement is due in two weeks.

The costs held in the 2009 GRC NPC deferred balancing account likely do not resemble the costs approved to be recovered in the authorized EBA. These costs may include financial swap hedging costs, which must be excluded. They may not include wholesale wheeling revenues, which are supposed to be included. It has not yet been agreed as to how the 70/30 sharing mechanism should be established and how that will affect the costs in the 2009 GRC NPC deferred balancing account. It is unknown whether the costs include incremental revenue for NPC due to Utah load growth or wind integration costs, both of which must be included. The costs in the balancing account may have been based on the Revised Protocol allocation factors, not the rolled-in allocation factors as ordered by the Commission. The costs are based on the allocation factors of the 2009 GRC, not those of the Current GRC as ordered by the Commission, so Utah's allocated share of the power-related expenses and revenues are not correct. The costs were also calculated on a different balancing account calculation than ordered by the Commission. Treatment of capacity costs has not yet been resolved. The costs will need to be completely unwound and evaluated to ensure they match what has been approved for inclusion in the authorized EBA.

The costs have not been evaluated for prudence, as the statute requires. Furthermore, the costs will not be able to be evaluated for prudence until after the Commission's order is issued in

this case because the prudence of the transactions is dependent on the Commission's treatment of the testimony of certain witnesses in this case.

It is impossible to adequately evaluate the costs held in the 2009 GRC NPC deferred balancing account for ratemaking treatment in the short time left to resolve the Current GRC. Rushing to do so raises serious due process issues. Furthermore, filing requirements for recovery have not been followed. Therefore, if their recovery is not denied, UIEC requests that a separate docket be established to deal with them on their own schedule.

CONCLUSION

UIEC respectfully requests that the Commission deny the Company's motion in its entirety. UIEC asks that the Commission make its decision on how to treat rate payer recovery of the REC deferred balancing account amounts based on the testimony filed in the Current GRC, regardless of the ratemaking treatment of the deferred 2009 GRC NPC balance.

Based on the foregoing, UIEC asks that the Commission deny recovery of any of the amounts in the 2009 GRC NPC deferred balancing account and order the account closed. Alternatively, because to do otherwise raises serious due process issues, UIEC asks that the Commission open a separate docket and set a schedule for the Company to file a complete application, with sufficient supporting testimony, and rounds of direct, rebuttal and sur-rebuttal testimony for the determination of (a) prudence of the subject transactions; (b) how to adjust for rolled-in treatment; (c) which of the accrued costs actually meet the definition of an approved EBA; (d) what costs that were not captured and accrued should be included, if any; (e) amortization period; (f) carrying costs; and (g) any other relevant issues not identified herein.

DATED this 16th day of June, 2011.

/s/ Vicki M. Baldwin

F. Robert Reeder
William J. Evans
Vicki M. Baldwin
Cory D. Sinclair
PARSONS BEHLE & LATIMER
Attorneys for UIEC, an Intervention Group

CERTIFICATE OF SERVICE

(Docket Nos. 09-035-15, 10-035-14, 10-035-124)

I hereby certify that on this 16th day of June 2011, I caused to be emailed, a true and correct copy of the foregoing **OPPOSITION OF UIEC TO THE MOTION OF ROCKY MOUNTAIN POWER FOR DETERMINATION OF RATEMAKING TREATMENT OF DEFERRED ACCOUNTS** to:

Patricia Schmid
ASSISTANT ATTORNEYS GENERAL
500 Heber Wells Building
160 East 300 South
Salt Lake City, UT 84111
pschmid@utah.gov

Michele Beck
Executive Director
COMMITTEE OF CONSUMER SERVICES
Heber Wells Building
160 East 300 South, 2nd Floor
SLC, UT 84111
mbeck@utah.gov

David L. Taylor
Yvonne R. Hogle
Mark C. Moench
ROCKY MOUNTAIN POWER
201 South Main Street, Suite 2300
SLC,UT 84111
Dave.Taylor@pacificorp.com
yvonne.hogle@pacificorp.com
mark.moench@pacificorp.com
datarequest@pacificorp.com

Chris Parker
William Powell
Dennis Miller
DIVISION OF PUBLIC UTILITIES
500 Heber Wells Building
160 East 300 South, 4th Floor
Salt Lake City, UT 84111
chrisparker@utah.gov
wpowell@utah.gov
dennismiller@utah.gov

Paul Proctor
ASSISTANT ATTORNEYS GENERAL
500 Heber Wells Building
160 East 300 South
Salt Lake City, UT 84111
pproctor@utah.gov

Cheryl Murray
Dan Gimble
Danny Martinez
UTAH COMMITTEE OF CONSUMER SERVICES
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111
cmurray@utah.gov
dgimble@utah.gov
dannymartinez@utah.gov

Gary Dodge
Hatch James & Dodge
10 West Broadway, Suite 400
Salt Lake City, UT 84101
gdodge@hjdlaw.com

Kevin Higgins
Neal Townsend
ENERGY STRATEGIES
39 Market Street, Suite 200
Salt Lake City, UT 84101
khiggins@energystrat.com
ntownsend@energystrat.com

Peter J. Mattheis
Eric J. Lacey
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson St., N.W.
800 West Tower
Washington, D.C. 20007
pjm@bbrslaw.com
elacey@bbrslaw.com

Holly Rachel Smith, Esq.
Holly Rachel Smith, PLLC
Hitt Business Center
3803 Rectortown Road
Marshall, VA 20115
holly@raysmithlaw.com

Sophie Hayes
Sarah Wright
Utah Clean Energy
1014 2nd Avenue
Salt Lake City, UT 84111
sophie@utahcleanenergy.org
sarah@utahcleanenergy.org

Stephen F. Mecham
Callister Nebeker & McCullough
10 East South Temple Suite 900
Salt Lake City, Utah 84133
sfmecham@cnmlaw.com

Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY
36 E. Seventh St., Ste1510
Cincinnati, Ohio 45202
Kboehme@BKLLawfirm.com

Sharon M. Bertelsen
Ballard Spahr LLP
201 So. Main Street, Ste 800
Salt Lake City, Utah 84111
bertelsens@ballardspahr.com

Charles (Rob) Dubuc
Western Resource Advocates
& Local Counsel for Sierra Club
150 South 600 East, Suite 2A
Salt Lake City, UT 84102
rdubuc@westernresources.org

Steven S. Michel
Western Resource Advocate
409 E. Palace Ave. Unit 2
Santa Fe, NM 87501
smichel@westernresources.org

Nancy Kelly
Western Resource Advocates
9463 N. Swallow Rd.
Pocatello, ID 83201
nkelly@westernresources.org

Randy N. Parker, CEO
Utah Farm Bureau Federation
9865 South State Street
Sandy, Utah 84070
rparker@fbfs.com

Leland Hogan, President
Utah Farm Bureau Federation
9865 South State Street
Sandy, Utah 84070
leland.hogan@fbfs.com

Ryan L. Kelly, #9455
Kelly & Bramwell, P.C.
11576 South State St. Bldg. 1002
Draper, UT 84020
ryan@kellybramwell.com

Captain Shayla L. McNeill
Ms. Karen S. White
Staff Attorneys
AFLOA/JACL-ULFSC
139 Barnes Ave, Suite 1
Tyndall AFB, FL 32403
Shayla.mcneill@tyndall.af.mil
Karen.white@tyndall.af.mil

Mike Legge
US Magnesium LLC
238 North 2200 West
Salt Lake City, Utah 84106
mlegge@usmagnesium.com

Roger Swenson
US Magnesium LLC
238 North 2200 West
Salt Lake City, UT 84114
roger.swenson@prodigy.net

Bruce Plenk
Law Office of Bruce Plenk
2958 N St Augustine Pl
Tucson, AZ 85712
bplenk@igc.org

ARTHUR F. SANDACK, Esq
8 East Broadway, Ste 411
Salt Lake City, Utah 84111
asandack@msn.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716-0550
stephen.chriss@wal-mart.com

Stephen J. Baron
J. Kennedy & Associates
570 Colonial Park Drive, Ste 305
Roswell, GA 30075
sbaron@jkenn.com

Gerald H.Kinghorn
Jeremy R. Cook
Parsons Kinghorn Harris, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
ghk@pkhlawyers.com
jrc@pkhlawyers.com

Gloria D. Smith
Senior Attorney
Sierra Club
85 Second Street, 2nd Fl.
San Francisco, CA
gloria.smith@sierraclub.org

Janee Briesemeister
AARP
98 San Jacinto Blvd. Ste. 750
Austin, TX 78701
jbriesemeister@aarp.org

Sonya L. Martinez, CSW
Policy Advocate
Betsy Wolf
Salt Lake Community Action
Program
764 South 200 West
Salt Lake City, UT 84101
Smartinez@slcap.org
bwolf@slcap.org

/s/ Colette V. Dubois