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

UIEC'S RESPONSE TO THE REPLY OF ROCKY MOUNTAIN POWER FOR DETERMINATION OF RATEMAKING TREATMENT OF DEFERRED ACCOUNTS

Due to the egregious misstatements and misleading factual allegations in Rocky Mountain Power's ("RMP" or the "Company") reply brief, the group of customers known in the above-captioned dockets as the Utah Industrial Energy Consumers ("UIEC") are compelled to submit this response to RMP's reply supporting its request that the Utah Public Service

Commission ("Commission") determine the ratemaking treatment of certain deferred accounts. In support thereof, UIEC states as follows.

ARGUMENT

I. RMP'S ALLEGATIONS REGARDING THE DELAY IN IMPLEMENTATION OF AN EBA ARE IN DIRECT CONTRADICTION TO THE FACTS.

Contrary to the picture RMP has tried to paint in its reply brief, RMP, and only RMP, is responsible for the length of time taken to address the matter of approval of an energy balancing account ("EBA"). RMP's seriously insufficient filing predetermined that, in fact, any EBA that might be approved would not go into effect with the 2009 general rate case ("GRC").

On March 16, 2009, the Company initiated its proposed Energy Cost Adjustment Mechanism ("ECAM") by filing an application and direct testimony consisting of merely thirteen pages from two witnesses. The Company ***requested*** that it go into effect at the conclusion of its next GRC. The Company subsequently filed the 2009 GRC as though that was all that was necessary to get EBA treatment of its 2009 net power costs.

Despite RMP's inferences, there was no implication in Commitment U 23 of Docket No. 05-035-54 that an EBA would be approved, that the particular EBA filed by the Company would be approved, or that the EBA would be approved to go into effect at the end of the particular GRC requested by the Company—in this case, the 2009 GRC. Commitment U 23 merely provided, in relevant part:

> PacifiCorp also commits that any request for Commission approval of a PCAM mechanism (or any net power cost adjustment mechanism) will be filed at least three months in advance of a general rate case filing and that intervener testimony deadlines will be the same as those established in the general rate case.

Commitment U 23, Docket No. 05-035-54. Thus, Commitment U 23 provides no support for RMP's recovery of the 2009 GRC deferred net power cost ("NPC") balance ("2009 Deferred NPC Costs").

The Company's proposed ECAM filing did not come close to meeting the requirements of an EBA under the statute. It was the Company's burden to initially prove the necessity of an EBA and that an EBA would be in the public interest, not just in RMP's interest. This threshold question had to be considered before any specific mechanisms could be considered. Nothing in the Company's scant initial direct testimony addressed this issue.

It was argued by UIEC, Utah Associated Energy users ("UAE"), the Office of Consumer Services ("Office"), and several other parties that the Company's application failed to meet its burden and that the application should be dismissed. Rather than dismissing the application, however, the Commission instead set the docket to be addressed in two phases, with Phase I to address the initial question of whether the Company's request for an EBA was in the public interest. Scheduling Order at 1, Docket No. 09-035-15 (Aug. 4, 2009). Due to the extreme insufficiencies of the Company's initial application, RMP was ordered to provide additional testimony on this subject. *Id.* at 2.

Thus, the delay in the process of evaluating an EBA was due to the Company's failure to take the requirements of the EBA statute seriously and to instead file in the first instance a completely insufficient application for an EBA that was not in the public interest. That alone caused the recovery under any EBA to be impossible in conjunction with the 2009 general rate case.

II. RMP'S ARGUMENT IGNORES THE PLAIN LANGUAGE OF THE STIPULATION

In its reply brief, RMP states that by stipulating to deferred accounting of the NPC, the parties are prohibited from arguing against its recovery. RMP R. Br. 8-9. This is in direct violation of the specific terms of the stipulation, and therefore should be disregarded. Pursuant to the stipulation:

> The Parties agree that the ***deferred accounting orders*** contemplated herein ***do not create any presumption regarding future ratemaking treatment of the deferred amounts***. Accordingly, ***by agreeing to issuance of the deferred accounting orders*** contemplated herein, the Parties are ***not stipulating or agreeing to any facts or legal arguments offered in support*** of or in opposition to either the Company Motion or the UAE Application.

Stipulation & Joint Motion for Deferred Acct'g Orders ¶ 14, Docket Nos. 09-035-15, 10-035-14 (May 4, 2010); *see also* Report & Order on Deferred Acct'g Stip. at 5, Docket Nos. 09-035-15, 10-035-14 (July 14, 2010). The Company cannot now argue against the very terms upon which a settlement was reached. The stipulation did not guarantee recovery; that was the intent of the stipulation; and the Company's arguments to the contrary should be ignored.

III. RMP'S EXPLANATION OF THE EBA ORDER IS INCORRECT.

The EBA order states with respect to the Stipulation on Deferred Net Power Cost:

> We will address the ratemaking issues associated with the stipulation on deferred net power cost ***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 pending general rate case*** or other appropriate proceeding on the deferred net power cost balance. As to any deferred net power cost balance prior to the conclusion of the ***next general rate case***, we will require use of the rolled-in allocation factors and appropriate

> treatment of the MSP stipulation mechanisms, unless the Company can demonstrate continued use of the MSP stipulation.

Corrected Report & Order, Docket No. 09-035-15 ("EBA Order") at 77-78 (March 3, 2011) (emphasis added). The Company tries to argue that this entire paragraph addresses how the 2009 GRC Deferred NPC ratemaking issues will be addressed and that it provides further support that the Company was meant to recovery them in the current general rate case. RMP R. Br. at 14 ("In fact, with respect to the Deferred NPC Account, the Commission specifically referred to the currently pending 2011 General Rate Case."). A plain reading of the paragraph belies any such interpretation. The Commission is very clear in its use of "last" case, "pending" case, and "next" case. EBA Order at 77-78. The Commission has clearly ordered that ratemaking treatment of the deferred net power costs will be addressed ***separately*** from the EBA Order. That is its only discussion of these costs. *Id.*

In discussing 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***, Docket No. 09-035-23, the Commission ordered that the premium would be addressed in the course of the ***pending general rate case***, Docket No. 10-035-124. *Id.* The clear meaning of the Commission's order is that 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***, Docket No. 09-035-23, may be addressed in the ***pending*** general rate case. There is no suggestion that any deferred 2009 NPC would be considered.

The Commission also stated that any deferred net power cost balance prior to the conclusion of the ***next general rate case*** (which would necessarily be the general rate case subsequent to the pending case of 10-035-124) must use a rolled-in methodology. Subsequent to

the currently pending rate case, there will be an EBA as ordered by the Commission. The EBA Order clearly means, therefore, that any deferred net power cost balance from the currently pending rate case that is in the EBA prior to the conclusion of the next rate case must use the rolled-in allocation method. The Company's argument to the contrary ignores the plain language of the EBA Order.

IV. THE COMPANY'S ARGUMENTS ARE IN DIRECT CONTRADICTION OF UTAH LAW.

The Company has attempted to blur the lines between deferred accounting and retroactive ratemaking to confuse the issues at hand. RMP R. Br. at 5-7. In Utah, past energy costs are only recoverable through a statutory process or an exception to the retroactive ratemaking principle. *See generally Stewart v. Utah Pub. Serv. Comm'n*, 885 P.2d 759, 778 (Utah 1994); *MCI Telecomms. Corp. v. Pub. Serv. Comm'n*, 840 P.2d 765, 770 (Utah 1992); *Utah Dep't of Bus. Regulation v. Pub. Serv. Comm'n*, 720 P.2d 420, 423 (Utah 1986). The EBA statute specifically provides that it is an exception to the rule against retroactive ratemaking. Utah Code Ann. § 54-7-13.5(4)(c). The Company has provided no exception to the rule against retroactive ratemaking for these 2009 Deferred NPC Costs.

The EBA statute also requires that any recovery must pass the public interest standard. *Id.* at § 54-7-13.5(92)(b)(i). This requires that the Company demonstrate that "the transaction provides a ***net positive benefit*** to the public." *In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp. and US West Communications, Inc.* ("*Qwest Merger*"), Report and Order at 14, Docket No. 99-049-41, 2000 Utah PUC LEXIS 228, (Utah PSC, June 9, 2000) (emphasis added); *see also In the Matter of the Application of PacifiCorp and Scottish Power plc for an Order Approving the Issuance of*

PacifiCorp Common Stock; *Qwest Merger*, 2000 Utah PUC LEXIS 228 (citing Utah Code Ann. §§ 54-4-28, 54-4-29 and 54-4-30). The Company has not provided any evidence that the 2009 Deferred NPC Costs meet the statutory requirements of the EBA statute—a positive showing of public benefit. In fact, the Commission held that the Company's ECAM as proposed is not in the public interest. EBA Order at 63.

CONCLUSION

UIEC requests that the Commission take into consideration the clarifications noted above in analyzing the Company's motion for determination of ratemaking treatment of the 2009 Deferred NPC costs.

DATED this 5th day of July, 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 5th day of July 2011, I caused to be emailed, a true and correct copy of the foregoing **UIEC'S RESPONSE TO THE REPLY OF ROCKY MOUNTAIN POWER FOR DETERMINATION OF RATEMAKING TREATMENT OF DEFERRED ACCOUNTS** to:

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