Mark C. Moench (2284)
Yvonne R. Hogle (7550)
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone: (801) 220-4050 (Hogle)
Facsimile: (801) 220-3299
mark.moench@pacificorp.com
yvonne.hogle@pacificorp.com

Gregory B. Monson (2294)
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 578-6946
Facsimile: (801) 578-6999
gbmonson@stoel.com

Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism	Docket No. 09-035-15
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 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

REPLY OF ROCKY MOUNTAIN POWER
TO UIEC'S UNAUTHORIZED RESPONSE

Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or "Company"), hereby replies to UIEC's Response to the Reply of Rocky Mountain Power for

Determination of Ratemaking Treatment of Deferred Accounts ("Second Response") dated July 5, 2011. The Second Response is not authorized by the Commission's rules and is not contemplated in established practice. Furthermore the arguments in the Second Response are deficient. Therefore, the Second Response should be disregarded by the Commission.

I. INTRODUCTION

The Commission has likely heard about as much as it wishes to on the Motion of Rocky Mountain Power for Determination of Ratemaking Treatment of Deferred Accounts ("Motion"). The Company filed the Motion; the Division of Public Utilities ("DPU"), Office of Consumer Services ("OCS"), UAE Intervention Group ("UAE") and Utah Industrial Energy Consumers ("UIEC") filed Responses in opposition to the Motion; and the Company filed a Reply to the Responses. All of the foregoing was consistent with Utah Administrative Code R746-100-4.D and established procedure before the Commission and courts, and the Company understood the Motion was submitted to the Commission for decision.

Not satisfied with the normal process, UIEC filed the Second Response. The Second Response is not only unauthorized in the Commission's rules, it departs from the well-established pattern in litigation that the moving party gets the last word. UIEC's excuse for its departure from this norm is that the Company's reply contained "egregious misstatements and misleading factual allegations." Second Response at 1. Even assuming that were true, UIEC may have been entitled to file a motion to strike, but it was not entitled to respond to the Reply's arguments and to argue its position.

It is not surprising that the parties have a different perspective on several matters. The Commission will, of course, decide what it believes is accurate, fair and reasonable and what it meant by language in its orders that the parties interpret differently. The Company briefly

replies to the Second Response only to clarify its intent and position and to respond to new arguments.

II. ARGUMENT

A. It Is Unreasonable for the Other Parties to Argue Delay in Adoption of the EBA Bars Recovery of the Deferred NPC Account.

UIEC claims that the Company's argument that delay in adoption of the energy balancing account ("EBA") justifies a finding that recovery of the Deferred NPC Account is not barred as a matter of law is "in direct contradiction to the facts." UIEC alleges that "RMP, and only RMP, is responsible for the length of time taken to address the matter of approval of an [EBA]" and that there was no implication in Commitment U 23 in Docket No. 05-035-54 that the EBA would go into effect at the conclusion of any particular rate case. Second Response at 2-3.

The Company will not reiterate all of the argument from Docket No. 09-035-15 ("ECAM Docket") on whether the Company's application was sufficient, but again notes that an essentially identical application (with only about thirteen pages of testimony from two witnesses) was sufficient in Idaho to put an EBA in place promptly. And the Commission itself noted on the record that it was essentially hearing the same evidence over and over again in the three phases of the ECAM Docket. In addition, the Company believes it is obvious that the reason Commitment U 23 required the Company to file a request for approval of an EBA three months in advance of a rate case and required intervenors to file testimony on the EBA on the same schedule established in the rate case was so that, if the Commission approved an EBA, it would be implemented at the conclusion of the same rate case on the base net power costs ("NPC") found just and reasonable in the case. The Company understood that the inclusion of the requirement in section 54-7-13.5(2)(b)(iii) contemplated that same process.

The point is that when it became apparent that the ECAM Docket was going to extend well past the conclusion of Docket No. 09-035-23 ("2009 General Rate Case") with which it was paired, the Company sought deferred accounting for incremental NPC following the date rates set in that case were effective specifically to avoid any prejudice resulting from the fact that the ECAM Docket was prolonged. In these circumstances, it is unreasonable for the opposing parties to argue that the Deferred NPC Account cannot be recovered because the EBA will not be implemented until the conclusion of Docket No. 10-035-124 ("2011 General Rate Case").

B. The Company Did Not Ignore the Stipulation.

UIEC claims that the Company's foregoing argument ignores the plain language of the Stipulation and Joint Motion for Deferred Accounting Orders ("Stipulation") in the ECAM Docket and Docket No. 10-035-14. Second Response at 4. In the Reply, the Company noted that parties had reserved the right to oppose recovery of either deferred account, but argued that it was disingenuous and misleading for the opposing parties to enter into the Stipulation if they intended to argue that recovery was barred because the EBA was not implemented at conclusion of the 2009 General Rate Case. Reply at 8-9, n.11. They entered into the Stipulation two and one-half months after the rates set in the 2009 General Rate Case went into effect, and, as the Commission discussed in its Report and Order in Docket Nos. 06-035-163, 07-035-04 and 07-035-14 ("*Deferred Accounting Order*"), deferred accounting should only be granted if there is a likelihood of recovery of the amounts deferred. *Deferred Accounting Order* at 16-17.

C. The EBA Order Speaks for Itself

UIEC laboriously argues that the Corrected Report and Order ("EBA Order") in the ECAM Docket refers to the EBA and not the Deferred NPC Account in discussing "any deferred net power cost balance prior to conclusion of the *next general rate case*" and that the next general rate case refers to a case following the 2011 General Rate Case. Second Response at 4-6

(emphasis in original). The apparent point of this argument is to attempt to rebut the Company's contention in the Reply that the claim of the opposing parties in their Responses that the Motion was rejected by the EBA Order was incorrect. Reply at 13-14. The Company believes that UIEC's interpretation of the EBA Order and its argument regarding the impact of the EBA Order on the Motion is likely *not* consistent with the Commission's intent. If the Commission intended to bar recovery of the Deferred NPC Account in the EBA Order, why did it specifically state that it would deal with the issue separately from the order? Furthermore, the Company argued that the suggestion in the Responses that the EBA Order contemplated recovery of the Deferred REC Account, but not the Deferred NPC Account, in the 2011 General Rate Case was unsupported by any language in the EBA Order. In any event, the EBA Order speaks for itself, and the Commission knows what it intended.

D. Recovery of a Deferred Account Is Not Retroactive Ratemaking and Has Nothing to Do With the Net Positive Benefit Standard.

UIEC continues to argue that recovery of a deferred account is only justified if it satisfies one of the exceptions to the rule against retroactive ratemaking. Second Response at 6. It also makes the new argument that recovery of the Deferred NPC Account must satisfy the net positive benefit standard. *Id.* at 6-7.

The Company has already demonstrated in the Reply that the first argument is incorrect. *See* Reply at 5-10. In summary, granting recovery of a deferred account is not retroactive ratemaking precisely because the account has already been deferred for later ratemaking treatment.

As to the new argument, the net positive benefit standard is a standard adopted by the Commission for approval of mergers or similar transactions. *See* cases cited in Second Response at 6-7. It has nothing to do with ratemaking. While the net positive benefit standard may relate

to a determination of the public interest in the context of approving a merger or acquisition of a public utility, it is not the public interest standard applied in ratemaking or adoption of an EBA. That public interest standard is whether rates set are just and reasonable and whether adoption of an EBA will result in rates that are just and reasonable.

III. CONCLUSION

For the foregoing reasons, the Commission should ignore the Second Response of UIEC and grant the Motion.

DATED: July 7, 2011.

RESPECTFULLY SUBMITTED,

ROCKY MOUNTAIN POWER

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Mark C. Moench
Yvonne R. Hogle
Rocky Mountain Power

Gregory B. Monson
Stoel Rives LLP

Attorneys for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2011, a true copy of the foregoing **REPLY OF ROCKY MOUNTAIN POWER TO UIEC'S UNAUTHORIZED RESPONSE** was served by email on the following:

Patricia Schmid
Assistant Attorney General
Heber M. Wells Bldg., 5th Floor
160 East 300 South
Salt Lake City, UT 84111
pschmid@utah.gov

Paul Proctor
Assistant Attorney General
Heber M. Wells Bldg., 5th Floor
160 East 300 South
Salt Lake City, UT 84111
pproctor@utah.gov

Chris Parker
William Powell
Dennis Miller
Division of Public Utilities
Heber M. Wells Building
160 East 300 South, 4th Floor
Salt Lake City, UT 84111
ChrisParker@utah.gov
wpowell@utah.gov
dennismiller@utah.gov

Cheryl Murray
Michele Beck
Utah Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111
cmurray@utah.gov
mbeck@utah.gov

Gary A. 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

F. Robert Reeder
William J. Evans
Vicki M. Baldwin
Parsons Behle &, Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
bobreeder@parsonsbehle.com
vbaldwin@parsonsbehle.com
bevans@parsonsbehle.com

Peter J. Mattheis
Eric J. Lacey
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
800 West Tower
Washington, D.C. 2007
pjm@bbrslaw.com
elacey@bbrslaw.com

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

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

Steven Michel
Western Resource Advocates
2025 Senda de Andres
Santa Fe, NM 87501
smichel@westernresources.org

Rob Dubuc
Western Resource Advocates
150 South 600 East, Suite 2A
Salt Lake City, UT 84102
rdubuc@westernresources.org

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

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

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

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

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

Arthur F. Sandack
8 East Broadway, Ste 510
Salt Lake City, UT 84111
asandack@msn.com

Kurt J. Boehm, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
kboehm@BKLlawfirm.com

Brian W. Burnett, Esq.
CALLISTER NEBEKER &
McCULLOUGH
Zions Bank Building
10 East South Temple, Suite 900
Salt Lake City, UT 84133
brianburnett@cnmlaw.com

Randy N. Parker, CEO
Leland Hogan, President
Utah Farm Bureau Federation
9865 South State Street
Sandy, UT 84070
rparker@fbfs.com
leland.hogan@fbfs.com

Gloria D. Smith
Sierra Club
85 Second Street, Second floor
San Francisco, CA 94105
gloria.smith@sierraclub.org

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

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

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

Roger Swenson
US Magnesium LLC
238 North 2200 West
Salt Lake City, UT 84114-6751
roger.swenson@prodigy.net

Torry R. Somers
CenturyLink
6700 Via Austi Parkway
Las Vegas, NV 89119
Torry.R.Somers@CenturyLink.com

Sharon M. Bertelsen
Ballard Spahr LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, UT 84111
bertelsens@ballardspahr.com

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

Sophie Hayes
Utah Clean Energy
1014 Second Avenue
Salt Lake City, UT 84103
sophie@utahcleanenergy.org

Sarah Wright
Executive Director
Utah Clean Energy
1014 2nd Avenue
Salt Lake City, UT 84103
sarah@utahcleanenergy.org
kevin@utahcleanenergy.org
brandy@utahcleanenergy.org