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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 **RESPONSE OF ROCKY MOUNTAIN POWER IN OPPOSITION TO UIEC'S MOTION AND UAE'S REQUEST**

Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or "Company"), pursuant to Utah Admin. Code R746-100-4.D, hereby responds in opposition to UIEC's Motion Challenging Completeness of Filing and Proposed Test Year ("Motion") dated February 7, 2011 and UAE's Request for Prompt Test Period Hearing and Expedited Consideration ("Request") dated February 10, 2011.

INTRODUCTION

Rocky Mountain Power filed its Application in this docket on January 24, 2011, accompanied by the testimony of 17 witnesses, seeking an increase in the Company's retail

electric service rates effective September 21, 2011. Consistent with Utah Code Ann. §§ 54-4-4(3) and 54-7-12 and Utah Admin. Code R746-700, the Company filed historical results of operations for the period from July 1, 2009 through June 30, 2010 and adjustments to that data for a proposed test period from July 1, 2011 through June 30, 2012. The Company also filed adjustments to the historical results of operations for an alternate period from July 1, 2010 through June 30, 2011 as required by R746-700-10.A.2. Attachment A to the Application identified the location in the testimony accompanying the Application of each of the items required for a complete filing under rules R746-700-10, R746-700-20, R746-700-21, R746-700-22 and R746-700-23.

The Motion essentially acknowledges that the Application and accompanying testimony comply with the complete filing requirement of section 54-7-12. "UIEC does not argue that the technical requirements of rule R746-700-1, *et seq.*, have not been met." Motion at 3. Nonetheless, UIEC argues that the filing is incomplete because the test period selected by the Company is too far in the future to forecast accurately and the Company's testimony, acknowledging that certain components of revenue requirement may be updated, illustrates "insufficiencies" in the Company's evidence. *Id.* at 1-3. UIEC argues that a 2011 calendar-year test period should be adopted by the Commission because using that test period "*may* help with some of these insufficiencies *to some extent*." *Id.* at 2 (emphasis added). Thus, UIEC's real argument is that because it does not like the test period proposed by the Company, the Commission ought to conclude that the Application is incomplete and should restart the 240-day period for rates to go into effect when the Company has refiled using the test period favored by UIEC.

The Request does not claim that the Application is not a complete filing, but instead requests that the Commission schedule an evidentiary hearing on test period at the earliest practicable date. Request at 1, 3. UAE bases the Request on misunderstandings about the Company's position and the requirements of the statutes and rule. Like UIEC, UAE assumes that a 2011 calendar-year test period would be the "most obvious" alternative. *Id.* at ¶ 1.

This Response will demonstrate that the Motion and Request are actually collateral attacks on the statutes and rule which govern selection of test period and complete filing requirements. UIEC and UAE do not like the fact that the Company is authorized under Utah law to seek rate relief based on costs that will be incurred during the rate-effective period. They do not like the fact that the Commission did not accept their recommendation that several alternative test periods were required for a complete filing. Fundamentally, UIEC wishes to delay the setting of just and reasonable rates, and both parties would prefer that rates be set lower than the amount necessary to reflect costs that will be incurred during the rate-effective period. The Commission should reject these arguments and set just and reasonable rates based on the Company's proposed test period.

ARGUMENT

I. The Statutes and Rules Have Already Resolved the Issues Raised by UIEC and UAE.

During the 1970s and 1980s, rate cases were typically based on future test periods or test periods that were future when filed, but were partially updated during the course of the case. In the 1990s, the Commission, apparently not recognizing that historic test periods are just another type of forecast of costs and revenues in a future rate-effective period,[1] required that rates be set

[1] As widely-respected regulator and economist Professor Alfred Kahn observed 35 years ago:

based on historic test periods. The Commission further limited known and measurable adjustments to annualizations of changes in expenses or revenues that occur during the test period.

In response to consistent underearning by the Company and Questar Gas Company, the Legislature amended section 54-4-4 in 2003 to make it clear that future test periods were authorized, that known and measurable changes should be incorporated, even if occurring outside the test period, and finally that a future test period could extend up to 20 months following the filing of the application. L. Utah 2003, ch. 200, § 1. Assuming rate changes are effective 240-days after filing, a test period ending 20 months from the date of filing actually corresponds with the first year of the rate-effective period.

Even with this legislative guidance, problems still arose regarding selection of test period and the running of the 240-day period during which rate cases must be resolved. In the Company's 2007 general rate case, after the Company filed for rate relief using a test period that extended just over 18 months from the date of filing, various parties, including UIEC and UAE, claimed that the Company's filing was deficient, that forecasts for a test period that far in the future were unreliable, that rates should be set based on various test periods closer in time to the filing, and that the Company should be required to file a new test period. In fact, UAE pursued a path in that rate case virtually identical to the path it has pursued in this case; it filed a data

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> The fact is … regulatory commissions have always been in the business of projecting, whether they knew it or not. When they used historic test year statistics, fully verifiable and verified, graven in stone, as the basis of future rates, they were in fact projecting. They were assuming that the future would be similar to the past. It is no more speculative, then, to make the best possible estimate of future costs when setting future rates; and honesty compels it.

A. Kahn, "Between Theory and Practice: Reflections of a Neophyte Public Utility Regulator," *Public Utilities Fortnightly* 29 (Jan. 2, 1975).

request asking the Company to provide UAE's proposed test period and a motion requesting the Commission to hold a hearing to determine test period on an expedited basis. Following submission of testimony and argument in the 2007 case, the Commission accepted UAE's position and ordered the Company to file a test period ending just over 12 months from the date of the filing.[2]

In response to that order, the Company filed the new test period and reduced its rate increase request by $40 million due to the change in test period. This reduction had nothing to do with any ability to better forecast the new test period; it had everything to do with the fact that the new test period did not include costs that would be incurred during the first year of the rate-effective period. As the Commission is aware, the Company only earned an 8.6 percent return on equity in the June 30, 2009 results of operations,[3] the closest 12-month period to the rate-effective period in the 2007 rate case, even though it was authorized to earn 10.25 percent in the 2007 rate case. In the June 30, 2009 results, a $40 million test period change equated to a decrease of approximately 110 basis points on equity[4] and effectively capped the Company's earnings at 9.15 percent.

Given the fact that the change in test period in the 2007 rate case would already result in revenues below costs, the Company filed its 2008 rate case before the revenue requirement order was issued in the 2007 case. This led to motions to dismiss or to restart the 240-day clock after the Company made a further filing on the ground that the Company's application was deficient. Ultimately, the Commission ordered that the 240-day clock would restart when the Company

[2] Order on Test Period, Docket No. 07-035-93 (Utah PSC Feb. 14. 2008) at 5.

[3] June 30, 2009 Utah Results of Operations, Page 1.0, column 3, Type 1 ROE

[4] 100 basis points on equity for June 30, 2009, type 1 results is approximately $36 million.

made an amended filing that incorporated the results of the 2007 rate case.[5] The Commission also ordered the Company to file for determination of test period prior to filing its application in future general rate cases.[6] The Company sought reconsideration of this ruling on the ground that it extended the 240-day period for rates to become effective.

The Legislature amended section 54-7-12 in 2009 to deal with the problems that had arisen in the 2007 and 2008 rate cases. The amendment clarified that the 240-day clock commences when the public utility files a complete application. The amendment directed the Commission to adopt a rule defining minimum filing requirements. L. Utah 2009, ch. 319, § 2.

The Commission instituted a rulemaking proceeding both to specify the minimum requirements for a "complete filing" and to resolve questions about the relationship between test period determination and the 240-day period. It solicited the written comments of all interested parties and held public meetings to discuss the comments. During that process, UIEC and UAE recommended that the Commission require the filing of four alternative test periods for a complete filing. The Company, Questar Gas and other parties opposed this requirement. The Commission initially adopted the recommendation of UIEC and UAE in its first draft of a preliminary rule. However, following receipt of additional comments and another public meeting, the Commission published rule R746-700.

The rule provides two options for an applicant proposing a future test period. First, "[a]n applicant planning to file an application may first request Commission approval of a test period to be used prior to filing an application." Utah Admin. Code R746-700-10.B.1. "Subsequent to

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[5] Order on Motions to Dismiss or Address 240-Day Time Period, Docket No. 08-035-38 (Utah PSC Sep. 23, 2008) at 26-27.

[6] Order on Motion for Approval of Test Period, Docket No. 08-035-38 (Utah PSC Oct. 30, 2008) at 7.

the Commission's approval of a test period, the applicant may then submit an application, using as the test period for the case the test period previously approved by the Commission and need not provide the alternative test period demonstration required by R746-700-10.A.2." *Id.* R746-700-10.B.2. Second, an applicant may propose a future test period in its application. However, if this option is followed, the applicant must also provide an alternative test period demonstration for "the 12-month period ending on the last day of June or December, whichever is closest, following the filing date of the application if this alternative period does not have an end date beyond the test period used in the general rate case application." *Id.* R746-700-10.A.2.

The Company chose the second option in this case and did exactly as the rule requires. In addition to filing its proposed test period, extending nearly 18 months from the date of filing, the Company filed the alternative test period ending June 30, 2011. Had the Company filed the 2011 calendar-year test period supported by UIEC and UAE rather than the June 30, 2011 test period, it would have violated the rule. Had it done so in addition to the June 30, 2011 test period, it would have lost the benefit of the Commission's resolution of the dispute regarding how many alternative test periods must be filed. UIEC and UAE lost on that issue and should not be allowed to avoid that loss simply by asking for the additional alternative test period as soon as a case is filed compliant with the rule.

As acknowledged by UIEC and implicitly acknowledged by UAE, the Application substantially complies with the minimum filing requirements established by the Commission. Utah Code Ann. § 54-7-12(1)(b)(i). However, both parties still contend, contrary to the rule and statutes, that the Company should be required to file another alternative test period. UIEC claims that the 240-day period for new rates to go into effect should not start until the alternative test period is filed. UAE claims, just as it did in the 2007 rate case, that the Company should be

required to file another alternative test period preferred by UAE in response to a discovery request and that the Commission should immediately schedule a hearing for determination of the test period to be used in the case. Both the Motion and the Request are inconsistent with the statutory amendments and the rule.

UIEC argues that a test period extending 18 or 20 months in the future could never be used because it is "extreme" and "reaches too far" into the future. Motion at 1. However, the Utah Legislature has already determined that such a test period may be used. Section 54-4-4(3)(b) states:

> In establishing the test period determined in Subsection (3)(a), the commission may use: (i) a future test period that is determined on the basis of projected data not exceeding 20 months from the date a proposed rate increase or decrease is filed with the commission under Section 54-7-12.

Acceptance of UIEC's argument would render this provision meaningless.

UIEC also argues that the Company's Application is "materially incomplete" because it is not based on a test period ending approximately 12 months from the date of filing, Motion at 1-3, and UAE argues that an early hearing is required in part because the Company failed to file "[t]he most obvious alternative test period." Request at ¶ 1. Rule R746-700-10.A.2 has already determined the test periods that the Company is required to file. As explained above, the Company complied precisely with that rule. If the relief sought by UIEC and UAE is granted, the statutory amendments and rulemaking will have been for naught. The Commission should not afford these parties a second bite at the apple through granting their motions.

II. The Application Is Complete.

UIEC acknowledges that the Application complies with the technical requirements of rule R746-700. That should be the end of the inquiry. The rule was established to define the "minimum" filing requirements for a general rate case with which a public utility must

"substantially compl[y]." Utah Code Ann. § 54-7-12(1)(b)(i). Technical compliance with those minimum requirements certainly constitutes substantial compliance. In addition, the Division of Public Utilities has thoroughly reviewed the filing and concludes that it "is substantially in compliance with the Commission's filing rules."[7]

Nonetheless, UIEC argues that the Application is incomplete because the Company's proposed test period "is too far out" and "the costs and expenses [for the test period] are unknowable." Motion at 3. In support of this argument, UIEC cites claimed "insufficiencies" in the testimony of Company witnesses on a few subjects. Even assuming for the sake of argument that UIEC's claims were correct, these insufficiencies do not amount to a failure to make a complete filing. Instead, they go to the weight of the evidence and can be used by UIEC witnesses as a basis for proposing adjustments to the Company's test period results.

In addition, UIEC is confusing known and measurable changes to historic results with accuracy of forecasting. If the Commission elects to use a historic test period or a test period that is partially historic and partially forecast in setting rates, the Commission is required to consider known and measurable changes to factors in the test period. Utah Code Ann. § 54-4-4(3)(c). However, if the Commission elects to use a fully-forecast test period, as proposed by all parties, all aspects of revenue requirement will, by definition, be forecast. Forecasts should be made using reasonable assumptions of future conditions, but they will not typically be known and measurable. Thus, the Company's forecasts cannot be claimed to be insufficient because they are not known with certainty. The purpose of any test period is to "best reflect[] conditions that a public utility will encounter during the period when the rates determined by the

[7] Division of Public Utilities Action Request Response, Docket No. 10-035-124 (Utah PSC Feb. 7, 2011).

[C]ommission will be in effect." *Id.* § 54-4-4(3)(a). The issue is whether forecast elements provide a reasonable estimate of future costs and revenues, not whether they reflect known and measureable changes to historic costs.

Furthermore, the fact that the Company candidly states in its testimony that it will update a few of its forecasts if and when events take place in the future that affect them does not render the filing incomplete as claimed by UIEC. *See* Motion at 3. The Company has provided the best forecasts it can based on information currently available. The Company is aware that pending events may provide better information and that forecasts may possibly then be updated. Such updating is common in general rate case proceedings. UIEC and other parties are not hampered in their analysis of the Application and in developing their own positions on the anticipated level of investment, revenues and expenses during the test period because a few components may be updated. Updating is simply a way to assure that rates will reflect costs to be incurred during the rate-effective period. As demonstrated in recent rate cases, parties such as UIEC regularly propose adjustments based on updated data themselves and are free to object to updates proposed by the Company if they believe they are prejudiced by lack of time to examine the updates. This will be the case regardless of the test period selected. UIEC's argument of prejudice because forecasts may be updated is premature and speculative.

It is ironic that UIEC has based its argument on insufficiency of the Application on factors that will affect its proposed test period as well as the Company's. For example, UIEC refers to the anticipated change in BPA wheeling charges in October 2011, a Federal Energy Regulatory Commission transmission rate case to be filed in June 2011, expiration of purchase power contracts and possible future sales of renewable energy credits. *See* Motion at 4-5. An appropriate forecast of either test period would require a forecast relating to each of these factors.

On the BPA wheeling charges, UIEC argues that its proposed test period is better than the Company's because the forecast will be in effect for only three months of the test period rather than nine months. *Id.* In so arguing, UIEC overlooks the fact that the BPA change will be in effect during over 11 months of the first year of the rate-effective period. Thus, by including the change for only three months rather than nine, UIEC assures that rates will diverge from anticipated costs by a greater amount during the rate-effective period than by including it for nine months. The same argument applies to each of the other changes mentioned by UIEC and illustrates why the appropriate issue for the Commission is the reasonableness of the forecasts of the changes, not whether the effects of the changes should be limited to a small fraction of the rate-effective period simply because they must be forecast. Whether the Commission uses a historic or future test period, it is forecasting revenue requirement for the rate-effective period.

Finally, UIEC argues that "the requirements of R746-700-23.C.8.t *may* have been omitted." Motion at 4, n. 1 (emphasis added). This portion of the rule requires the Company to file "documents, workpapers, data or other information used . . . in determining, setting or calculating any [power cost model] input or constraint, etc.." Exhibit A to the Application identifies on row 153 exactly where this information was provided in the filing. Thus, the information was provided. Furthermore, it is telling that of the hundreds of filing requirements, this is the only one that UIEC even questioned.

UIEC is grasping at straws in its attempt to argue that the Application is incomplete and that the 240-day period should restart once the Company files an Application using UIEC's preferred test period. It is apparent that UIEC real intent is to delay a rate increase which is required to assure that rates are just and reasonable. Its request that the Commission conclude that the Application is incomplete made to accomplish that goal should be denied.

III. The Company's Proposed Test Period Will Better Reflect Conditions During the Rate-effective Period than UIEC's and UAE's.

The standard for selection of test period is that the Commission is to "select a test period that, on the basis of evidence, the [C]ommission finds best reflects the conditions that a public utility will encounter during the period when the rates determined by the [C]ommission will be in effect." Utah Code Ann. § 54-4-4(3)(a). The Commission has previously identified factors that it would consider in selecting a test period under this standard. *See, e.g.*, Order on Motion for Approval of Test Period. These factors include the general level of inflation, changes in the utility's investment, revenues or expenses, changes in utility services, availability and accuracy of data to the parties, ability to synchronize the utility's investment, revenues and expenses, whether the utility is in a cost increasing or cost declining status, incentives to efficient management and operation and the length of time new rates are expected to be in effect. *Id.* at 4.

Contrary to the arguments of UIEC, consideration of these factors supports the Company's proposed test period. This is particularly the case because all parties recommend use of a fully-forecast test period. Some of the Commission's factors address the choice between a historic or partially-historic test period and a fully-forecast test period. Those considerations are not relevant in this case. For example, the availability and accuracy of data to parties may be a factor when a historic period is considered, but it is not meaningfully different when both test periods are fully-forecast. Likewise, ability to synchronize is not different between test periods that are both fully-forecast, although a test period corresponding to the rate-effective period does allow better synchronization of these factors with actuals during the rate-effective period.

The Company acknowledges that the current rate case is not motivated by the general level of inflation. However, that fact does not diminish the need to have a test period that best reflects conditions during the rate-effective period. The main drivers for the rate case are

substantial increases in net power costs ("NPC") and investment beyond investment that may be addressed in major plant addition cases. Thus, it is apparent that forecasts of these factors should be for as much of the rate-effective period as is reasonably possible. By recommending a test period that ignores six months of the rate-effective period, UIEC and UAE hope to have rates set based on costs that are lower than those that will be experienced during the rate-effective period.

The remaining issues are the length of time the new rates may be in effect and the impact of the test year on management incentives. While the Company anticipates annual rate filings, it is not appropriate to set rates below prudent cost of service simply because they are anticipated to be in effect only for a year. Setting rates below cost on the basis that they will be changed next year is a never-ending condition that assures rates will always be unjust and unreasonable. It is reasonable to assume that setting rates lower than prudently anticipated costs will motivate management to cut costs in areas over which it has control. Whether this is in the public interest is questionable. Cutting costs below a prudent level may ultimately have the effect of reducing the quality and reliability of service provided to customers. What is not questionable is that management incentives cannot result in cutting costs in areas over which management has no control such as the significantly volatile and unpredictable aspects of NPC. Thus, setting rates based on NPC lower than the prudent NPC that will be incurred during the rate-effective period, as would be the case if UIEC's and UAE's test period is adopted, does not provide any management incentive to cut these costs. Instead, it places management in the untenable position of being unable to earn the authorized rate of return and weakens the financial integrity of the Company.[8]

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[8] If the Commission adopts the Energy Cost Adjustment Mechanism ("ECAM") as proposed by the Company with no dead band or sharing mechanism, the discrepancy between NPC used in setting rates and actual prudent NPC incurred will be less important than it is now because the Company will

The foregoing argument exposes the real motivation of UIEC and UAE in seeking to have the test period moved nearer in time by six months. The motivation is to have rates that produce revenues lower than prudent costs that will be incurred in the rate-effective period. Such rates would not be just and reasonable.[9]

Even assuming that forecasts for a period closer in time by six months may be marginally more accurate than those for a later test period, the Commission must recognize that it is not trying to determine the most accurate test period, it is trying to determine the test period that most accurately reflects conditions during the rate-effective period. In any event, it is not reasonable to assume that forecasts for a period ending 11 months from the present would be materially more accurate than those for a period ending 17 months from the present.

UIEC and UAE have not presented any compelling reason for the Commission to order a 2011 calendar-year test period. If they believe the Company's forecasts for components of revenue requirement for the test period proposed by the Company are unreasonable, they are free to raise those issues in their testimony. Accuracy of forecasts is an issue in the case regardless of the test period used. Therefore, the Commission should deny UIEC's Motion and UAE's Request.

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eventually recover prudent NPC. Nonetheless, it is important that NPC included in rates reflect as accurately as possible the actual prudent NPC that will be incurred to minimize rate adjustments resulting from the ECAM.

[9] *See Stewart v. Public Service Comm'n*, 885 P.2d 759, 767 (Utah 1994) ("To avoid confiscatory rates on the one hand and exploitive rates on the other, the Commission must determine what a just and reasonable rate is . . . based on a utility's cost of service. A cost-of-service standard mandates that rates produce enough revenue to pay a utility's operating expenses plus a reasonable return on capital invested.") *See also Utah Dep't of Business Regulation v. Public Service Comm'n*, 614 P.2d 1242, 1248 (Utah 1980) ("A just and reasonable rate is one that is sufficient to permit the utility to recover its cost of service and a reasonable return on the value of property devoted to public use.")

IV. UAE's Discovery Issue Is Premature and Should Be Dealt with Separately If It Becomes an Issue.

UAE argues that its Request should be granted because the Company has indicated that it proposes to object to UAE's data request asking the Company to file all information and to make a demonstration of all adjustments necessary for a test period ending December 31, 2011. Request at ¶ 4. UAE argues that this will "leave the parties and the Commission with no practicable alternative but to default to [the Company's] preferred test period." *Id.* at ¶ 5. This argument misunderstands the Company's position.

The Company has informed UAE that it will object to the data request. However, the purpose of the objection is not to withhold relevant data from UAE. Instead, the Company will likely object to the data request because it essentially requires the Company to spend approximately six weeks performing a special study for UAE. The Company has never stated that it would withhold information in its possession from UAE. The Company will comply with its obligations under the Commission's rules and the Utah Rules of Civil Procedure to provide data reasonably available to it to UAE for UAE to use for whatever legitimate purpose it chooses consistent with rule R746-100-16. The Company anticipates that the parties will be able to satisfactorily resolve any discovery issue. However, if they are unable to do so, the appropriate time for the Commission to get involved will be when the parties reach impasse. It is inappropriate for UAE to anticipate a discovery dispute and use it as the basis to request a hearing.

V. The Appropriate Time to Consider Test Period Is When There Is a Dispute Based on Evidence Presented.

UAE also argues that its Request should be granted because the Company opposed setting a hearing date for a determination of appropriate test period during the scheduling

conference held on February 9, 2011. *Id.* at ¶ 4. This argument does not reflect what took place at the scheduling conference and misunderstands the Company's position.

Although UAE raised the possibility of setting a hearing to determine test period during the scheduling conference, no one proposed any date for such a hearing. This was most likely because following brief discussion about UIEC's Motion and the Request to be filed by UAE, Commission counsel stated that the Commission would rule on those issues after they and any timely responses to them were received.

Now that UAE's Request has been filed, Rocky Mountain Power can respond and explain why it opposes the Request. The Company opposes the Request because it is inconsistent with the statutes and the rule adopted by the Commission. As explained above, after considering the positions of the parties, the Commission required the Company either to request a determination of test period before filing its Application or to file its proposed future test period and one alternative test period as part of its Application. The Company complied precisely with the rule. Had it filed the alternative test period considered obvious by UAE rather than the June 30, 2011 test period, the Company would have been in violation of the rule and would not have made a complete filing. It is inconsistent with the rule to require the Company to now file an alternative test period or to hold a hearing to determine test period which would have the same effect. If UAE wishes to propose adjustments to the Company's test period or to propose an alternative test period, it should do so after conducting discovery and compiling evidence in support of its position.

CONCLUSION

UIEC filed the Motion and UAE filed the Request in an attempt to either delay rate changes that are justified or to reduce those rate changes by ignoring costs that will be incurred during the rate-effective period. Neither position is reasonable or fair and both ignore the

statutory changes and rulemaking process that resolved these issues. Proceeding with the case using the test period recommended by the Company will not deprive UIEC or UAE of the ability to recommend adjustments based on claims that forecasts are not reasonably accurate. In addition, UIEC and UAE may, if they wish, construct their own test period based on data provided by the Company in the Application and additional data reasonably available to the Company provided in response to discovery. Accordingly, the Motion and Request should be denied.

DATED: February 15, 2011.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2011, a true copy of the foregoing **RESPONSE OF ROCKY MOUNTAIN POWER IN OPPOSITION TO UIEC'S MOTION AND UAE'S REQUEST** was served by email on the following:

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