F. ROBERT REEDER (2710)
VICKI M. BALDWIN (8532)
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 **REPLY IN SUPPORT OF UIEC'S MOTION CHALLENGING COMPLETENESS OF FILING AND PROPOSED TEST YEAR**

In accordance with the provisions of R746-100-3.H and R746-100-4.D of the Utah Administrative Code, UIEC, submits to the Utah Public Service Commission ("Commission") this Reply in support of its motion.

I. THE RESPONSES OF ROCKY MOUNTAIN POWER AND THE DIVISION OF PUBLIC UTILITIES IGNORE THE INITIAL BURDEN THE COMPANY MUST BEAR IN ITS APPLICATION.

UIEC would be perfectly comfortable using a historic test year, as permitted under Utah Code Ann. § 54-4-4. UIEC would also be perfectly comfortable using the alternative test year ending in June 2011 provided by Rocky Mountain Power ("RMP" or the "Company") in its application, as long as it is updated with the required information that the Division of Public

Utilities ("Division") noted was missing from the filing1—the cost of service/rate design information and power cost information.[2] *See* Division's Action Request Response at 3 (Feb. 7, 2011). UIEC proposed the calendar year 2011 because it balances the opportunity for better estimates but gives the Company a future test year, as it so obdurately demands despite the fact that it has threatened to file a new rate case every year for the foreseeable future.[3] *See* RMP Br. at 13.

1. There is no presumption for or against either a historical or future test period.

The Company's oft-repeated argument that the test year must always be a completely future test year in order for it to best reflect the conditions to be encountered during the period when rates will be in effect, nullifies the majority of Section 54-4-4(3) and ignores the legislative intent of the 2003 amendment to Section 54-4-4. *See* Senate Journal, Feb. 18, 2003, Day 30, Intent Language to S.B. 61 (noting that there should be no presumption for or against either a historical or future test period) (hereinafter "Intent Language") (attached as Ex. A). While the statutory amendment permitted the use of a future test year, it kept the options of historic test years and combinations of future and historic test years. Utah Code Ann. § 54-4-(3)(b)(ii), (3)(b)(iii), (3)(c). That would not have been the case if it was contemplated that a future test year is what would always best reflect the conditions to be encountered during the period when rates

1 This is further evidence that the Company has no intention of providing the parties with sufficient information to evaluate anything but the test year it wants adopted.

2 The 240-day clock should be restarted from the time the Company actually files a complete application based on the test year selected by the Commission.

3 The Company also continues to reiterate its threat to cut the quality and reliability of service to customers, contrary to its regulatory promise.

will be in effect. The Intent Language shows this is clearly not the case and the Company's argument to the contrary should be disregarded.

2. Defaulting to a test year that the Company admits is dependent on numerous updates being made in the future does not conform to the requirements of Section 54-4-4.

What is critical in evaluating the proper test year, and what RMP and the Division ignore, is that the test year must be "based on the best evidence presented." Intent Language; *see also* 54-4-4(3)(a) (stating "the commission shall select a test period that, on ***the basis of evidence*** . . . ." (emphasis added)). Defaulting to a test year that the Company admits is dependent on numerous updates being made in the future does not conform to the requirements of Section 54-4-4. *See also Utah Dep't of Bus. Regulation v. Public Serv. Comm'n*, 614 P.2d 1242, 1245-46 (Utah 1980) (noting that before the Commission "can act advisedly [it] must be informed of all relevant facts").

Under the statute, the Company bears the burden of filing in the first place enough evidence that demonstrates its proposed test year is in fact the most representative. In this case, the Company's application does not present "the best evidence" for selection of its proposed test year. Even the Division admits that the deficiencies in the Company's application can really only be remedied through changes in the test year. Div. Br. at 2; *see also* Division 6th Set of Data Requests to RMP at 6.26-6.31 (Feb. 14, 2011) (attached as Ex. B).

In fact, the Company's proposed test year is not only not supported by its application, the proposed test year appears to be completely arbitrary and punitive. In the Company's Wyoming general rate case, filed only two months prior to its filing in Utah, the Company claims that the primary drivers are the same as those in the Utah general rate case, but the Wyoming test period

is not nearly as aggressive as that proposed in Utah. *See* Division 6th Set of Data Requests to RMP at 6.30. If there are similar drivers for two nearly simultaneous general rate cases, the proposed test year should be the same for each. Why should Wyoming ratepayers be guaranteed more certainty than Utah ratepayers?

The Company wastes time and space arguing history, claiming the Commission did not know what it was doing when it used historic test years, RMP Br. at 3, and making ad hominem attacks on the motives of UIEC and UAE, *see generally id.*, without contributing real substance to the issue. The fact remains that the Company has an obligation to file its case-in-chief when it files its application. *See* Order on Motions to Dismiss or Address 240-Day Time Period at 21, Docket No. 08-035-38 (Sept. 23, 2008); *see also Utah Dep't of Bus. Regulation v. Public Serv. Comm'n*, 614 P.2d at 1245-46. It must put a stake in the ground with the application and defend its position. The regulators and intervenors cannot and should not be expected to continually chase after what the case may be as it develops over the 240 days allowed to reach a decision.

3. The Commission will have to select a test year before it can determine whether an application is complete, or the test year must be based on the most complete information filed.

It is only logical that in order for the Commission to determine whether an application is complete, it must determine which test year is to be used. In this case, the Commission has not determined the appropriate test year, it has not evaluated the best evidence supporting a possible test year. It follows, therefore, that the Commission will necessarily have to select the test year before it can possibly determine whether the Company's application is complete. Alternatively, the Commission must by default select the test year based on the most complete information that was filed by the Company, which in this case is a historic period.

4. The Company admits that it intends to file a general rate case every year for the foreseeable future.

Furthermore, the Company admits that it intends to file a general rate case every year for the foreseeable future. RMP Br. at 13. All indications are that when the Company goes to the Commission every year for a rate increase, there is no reason to have such an extreme test period as that proposed by the Company in this case. The Company is never made accountable for its poor forecasts and we are never able to determine whether our rates are just and reasonable. What is the great need of a future test year, especially one as extreme as that proposed by the Company, when there is going to be a rate increase application filed every year?

5. The Company's application in this case makes a mockery of the Commission's rules and Supreme Court rulings and is attempting to circumvent the Commission's rules and established policies by making updates a requirement.

The Company's application in this case makes a mockery of the Commission's rules and Utah Supreme Court rulings regarding updates to a general rate case filing. Certainly, when someone finds an error, it should be corrected, but in this case, the Company filed its application on January 24, 2011, with major gaps, knowing that amendments to an application filed at that time would be necessary. The Company has attempted in a number of rate cases to include post-filing updates in rebuttal and surrebuttal testimony. *See, e.g.*, Report & Order on Rev. Reqmt., et al. at 57-60, Docket No. 09-035-23 (Feb. 18, 2010); Report & Order on Rev. Reqmt. at 50-54, Docket No. 07-035-93 (Aug. 11, 2008). In these cases, the Commission denied the post filing of updates. Report & Order on Rev. Reqmt., et al. at 57-60, Docket No. 09-035-23 (Feb. 18, 2010); Report & Order on Rev. Reqmt. at 50-54, Docket No. 07-035-93 (Aug. 11, 2008). Now in this case, the Company is attempting to circumvent the Commission's rules and established policies by making updates a requirement in order to achieve a complete case, and the Division appears

to have abdicated its duty when it comes to ensuring that amendments to a rate case filing do not result in prejudice to the consumers. Hopefully the Commission will ensure this does not happen and prohibit the use of the Company's proposed test year.

The Company did not have to make the filing when it did requesting the extreme test period it did. It could have requested a future test year for which it had more surety; it could have used a historic test year; it could have used a combination future or past test year; it could have waited to file until it had more certain information. It chose to file in January without sufficient evidence to support the test year it would like. Accordingly, the Commission should find its application incomplete unless a completely historic test period is used, because that is the only case for which a complete filing was made.

CONCLUSION

Based on the foregoing, UIEC requests that the Commission order that (a) the deficiencies of the Company's filing are material and the filing is incomplete; (b) the Company should adopt a historic test period, the period ending June 2011, or the calendar year 2011; (c) the Company should update its filing for the ordered test period; and (d) the 240-day clock will re-start once this updated filing is made.

DATED this 17th day of February, 2011.

/s/ Vicki M. Baldwin

F. Robert Reeder
Vicki M. Baldwin
PARSONS BEHLE & LATIMER
Attorneys for UIEC, an Intervention Group

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February 2011, I caused to be e-mailed, a true and correct copy of the foregoing **REPLY IN SUPPORT OF UIEC'S MOTION CHALLENGING COMPLETENESS OF FILING AND PROPOSED TEST YEAR** to:

PatriciaSchmidt
Felise Thorpe Moll
ASSISTANT ATTORNEYS GENERAL
500 Heber Wells Building
160 East 300 South
Salt Lake City, UT 84111
pschmid@utah.gov
fthorpemoll@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
UTAH COMMITTEE OF CONSUMER SERVICES
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111
cmurray@utah.gov
dgimble@utah.gov

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

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

Ryan L. Kelly, #9455
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

/s/ Colette V. Dubois