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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

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Director

To: Utah Public Service Commission

From: Office of Consumer Services
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Copies To: Rocky Mountain Power
Dave Taylor, Manager Regulatory Affairs
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Division of Public Utilities
Chris Parker, Director

Date: September 13, 2012

Re: In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and US Magnesium LLC – Docket No. 11-035-182.

The Master Service Agreement, which is the subject of these comments, is deemed confidential by Rocky Mountain Power. Confidential information has been redacted.

Background

On July 12, 2012, Rocky Mountain Power (Company) filed with the Utah Public Service Commission (Commission) an application for approval of an amendment (Amendment) to the existing Electric Service Agreement between PacifiCorp and US Magnesium LLC (US Mag) dated October 18, 2011.

On August 14, 2012 the Company filed an errata Application to address issues in the original application identified by the Office of Consumer Services (Office) and the Division of Public Utilities (Division).

As described in the Application the purpose of Amendment No. 1 is to modify the credit requirements in the current Master Electric Service Agreement (MESA) which the Company states are more stringent than the standard MESA typically used by the Company.

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Discussion: Proposed Change to MESA

According to the Application US Mag has provided additional information to the Company regarding its creditworthiness and following extensive review the Company has agreed to modify the existing MESA. The Amendment replaces current section 3.11 with less stringent requirements which the Company states more closely align with standard MESAs. Section 3.15 regarding [Begin Confidential] Redacted [End Confidential] is added to the Agreement.

In reviewing documents associated with the original MESA the Office found no discussion or information as to why more stringent credit requirements were initially imposed however in the confidential response to DPU data request 2.1 the Company identifies the type of information it has reviewed that led it to agree, per US Mag's request, to modify the credit requirements in the MESA. The Office does not dispute the Company's assertion regarding US Mag's credit situation.

Energy Cost Adjustment Mechanism (ECAM)

As part of its review of the proposed contract amendment, the Office identified another important issue to be addressed: the appropriate implementation of a Commission-approved ECAM.

Background: ECAM or EBA Applicability to Special Contracts

Section 3.12 of the MESA reads:

> [Begin Confidential] Redacted [End Confidential]

Subsequent to Commission approval of the MESA between Rocky Mountain Power and US Mag in 2009, the Commission approved an Energy Balancing Account (EBA) for the Company in Docket No. 09-035-15. The Commission's Order in Docket No. 11-035-T10, at pages 14 – 15, regarding RMP's proposed Schedule 94, EBA Pilot Program Tariff addressed special contract customer language as follows:

> Based on the Company's testimony that the language is not intended to go beyond the statutory language, and to minimize further confusion, we find use of the statutory language is reasonable.

The Office believes the statutory language to which the Commission refers is found at Public Utilities Statute 54-7-13.5. Energy balancing accounts (2)(f) The collection of costs related to an energy balancing account from customers paying contract rates shall be governed by the terms of the contract.

In keeping with the statutory language the Company's Schedule 94, Original Sheet No. 94.1 under **Application:** reads in part: "The collection of costs related to an energy balancing account from customers paying contract rates shall be governed by the terms of the contract." Contracts are also mentioned on Sheet 94.2, 94.8 and 94.9.

Assignment of EBA Costs to US Magnesium

When asked by the Office in OCS Data Request 1.5 if the Company would allocate costs associated with the EBA to US Mag the Company responded:

Response to OCS Data Request 1.5

> Not at this time. The Commission has not issued an order applying EBA costs to US Magnesium. The relevant language from Section 3.12 in US Magnesium's current MESA is provided as Confidential Attachment OCS 1.5. Confidential information is provided subject to Utah PSC Rule 746-100-16.

In a further response the Company stated that "Per Section 3.12 of the current MESA, the Commission would need to ***make a finding and order*** the Company to apply the EBA costs to US Magnesium." *Emphasis added.*

The Office has previously asserted that special contract customers should be subject to their fair share of costs associated with EBAs and other similar charges. Although the statute, the US Mag MESA, the Commission's EBA order and the Company's Schedule 94 tariff contemplate assignment of EBA costs to special contract customers, in this instance the Company's responses make clear that it does not intend to allocate any EBA costs to US Mag until the Commission specifically orders the Company to do so.

Categories of costs the Company incurs in providing service to special contract customers are similar to those of retail tariff customers who are subject to the EBA. Therefore, in keeping with the principle of cost causation special contract customers should be subject to their appropriate share of costs to be allocated through the Company's Energy Balancing Account as well.

The Office concludes that it is not only appropriate but essential that the Commission take this opportunity to "make a finding and order the Company to assign the EBA costs to US Magnesium".

OCS Recommendation

The Office recommends that in its order regarding the Application the Commission specifically state that US Magnesium is now subject to its appropriate share of costs to be allocated through the Company's Energy Balancing Account.