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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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**IN THE MATTER OF THE  
APPLICATION OF ROCKY MOUNTAIN  
POWER TO INCREASE RATES BY \$29.3  
MILLION OR 1.7 PERCENT THROUGH  
THE ENERGY BALANCING ACCOUNT**

**Docket No. 12-035-67**  
**BRIEF OF THE UTAH  
ASSOCIATION OF ENERGY  
USERS**

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Pursuant to the procedural schedule adopted in this matter, Intervenor Utah Association of Energy Users (“UAE”) hereby files its brief on the availability of interim rate procedures or mechanisms in the context of an EBA true-up docket.

UAE has reviewed Utah statutes, Utah Supreme Court rulings and Commission rules and orders in an attempt to determine whether any applicable legal authority exists in Utah for the use of an interim or retroactively adjustable rate mechanism in the context of an EBA true-up docket. Based on that review, UAE could not identify any Utah legal authority for an exception to Utah’s general ban on retroactive ratemaking to permit the use of an interim or adjustable rate

mechanism in the context of an EBA true-up docket. Accordingly, UAE agrees with the arguments advanced by UIEC in this docket that an EBA adjustment can only be made on the basis of a final Commission Order, after allowing appropriate discovery and public hearings.

Applicable Utah statutes and case law permit retroactive ratemaking only under a few narrowly-limited circumstances, including an interim rate increase in the context of a general rate case, Utah Code § 54-7-12 (4)(a)(i)-(iii), and the long-standing “191 balancing account mechanism” established in Questar Gas Company’s tariff, *Questar Gas Co. vs. Utah Public Service Commission*, 34 P.3d 218, 223 (Utah 2001). *See Utah Department of Business Regulation v. Public Service Commission*, 720 P.2d 420, 423 (Utah 1986); *Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d 1242, 1246 - 1250 (Utah 1980).

None of the circumstances contemplated by applicable Utah statutes and case law applies in this context to permit retroactive ratemaking in an EBA true-up docket. EBA adjustments may thus lawfully be implemented in Utah only after a hearing and issuance of a final Commission order.

DATED this 29<sup>th</sup> day of May, 2012.

HATCH, JAMES & DODGE

/s/ \_\_\_\_\_  
Gary A. Dodge  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 29<sup>th</sup> day of April, 2012, on the following:

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