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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF ROCKY MOUNTAIN POWER'S NOTICE OF INTENT TO FILE A GENERAL RATE CASE/NOTICE OF PROPOSED FORECAST TEST PERIOD	Docket No. 13-035-184 **UTAH DIVISION OF PUBLIC UTILITIES COMMENTS ON THE PROPOSED CONFIDENTIAL INFORMATION CERTIFICATE**

On December 20, 2013 Rocky Mountain Power ("Company") filed a proposed Confidential Information Certificate commonly referred to as the non-disclosure agreement or "NDA." The proposed certificate language differs from the previous NDAs and the standard language suggested by the Commission. On December 27, 2013, Utah Industrial Energy Consumers ("UIEC") filed a letter objecting to the proposed NDA. On December 31, 2013 the Company filed a response agreeing to provide confidential information in the rate case docket to parties who sign the Commission approved NDA. On January 3, 2014 the Office of Consumer Services ("Office") filed a Joinder to the UIEC's Objection to Proposed Confidential Information Certificate.

The Utah Division of Public Utilities ("Division") recognizes that the Company is no longer requesting parties who seek confidential information sign the proposed NDA, but rather is willing to accept the Commission approved version. This solves the immediate issue regarding consultants retained by the Division in the rate case docket. However, the underlying issues regarding the return of Confidential Information under Utah Admin. Code R.746-100-16(3)(e) and applicability of the provision to the Division's consultants remain unresolved. The Division therefore requests that the Commission clarify some of the ambiguity contained in the current rule with respect to the handling of Confidential Information in this docket.

First, the Division requests that the Commission clarify that Division's consultants are treated as part of the Division for purposes of the exception granted to the Division. The Rule states in relevant part that "In order to facilitate their ongoing responsibility, this provision shall not apply to the Commission, the Division of Public Utilities or the Office of Consumer Services, which may retain Confidential Information obtained under this rule or Protective Order subject to the other terms of this rule or Protective Order." The Division's consultants are often part of long term contractual agreements. They work with the Division on an ongoing basis and effectively supplement the Division staff with needed expertise. The continued retention and access to confidential information is often necessary to efficiently carry out the Division's responsibilities. Considering Division consultants as part of the Division so long as they remain under contract with the Division is consistent with the language and intent of the rule. Upon termination of the contractual relationship, materials should be returned to the Division or destroyed.

If the Commission concludes that the consultants are subject to the return provisions, the Division requests that the Commission clarify the trigger for the 30 day return time for those

subject to it. While the first two clauses require that Confidential Information will either be "returned to the providing person or counsel for the providing person within 30 days after final order, settlement, or other conclusion of the matters in which they are used" or the holder "may certify, within 30 days… that the Confidential Information has been destroyed." The final part of the provision states that "Any party that intends to use or disclose Confidential Information… in any subsequent Commission dockets or proceedings, shall do so in accordance with the terms of this rule…"

The final clause is difficult to understand in light of the first two clauses requiring the Confidential Information be returned or destroyed. If the rule was an absolute requirement that such action take place, both the attorney exception and the use in subsequent proceedings would be rendered without meaning. How could a party use the information in a subsequent proceeding if it had been previously returned or destroyed?

This inconsistency may prove difficult for parties to comply with. For example, the September 19, 2012 Report and Order entered by the Commission in Docket No. 11-035-200 could reasonably be considered a "final order, settlement, or other conclusion." Yet the docket remains open, and as recently as November 2013, over a year after the Report and Order, the Company filed its stress factor analysis. The filing included a cover letter and 20 exhibits – all of which are either designated as "Confidential" and redacted or "Proprietary."

The Office suggests that the answer may be found in properly defining the triggering event. By concluding that dockets may be simply awaiting an "other conclusion" parties would be permitted to retain Confidential Information for ongoing use. This is a reasonable interpretation that provides more flexibility in retention of the documents. It also raises a new question about what is the "other conclusion" and when that occurs. If the Commission chooses

to consider the return rule triggered by a later event, the Division requests that the Commission clarify what constitutes an "other conclusion." Furthermore, it may be wise to specifically allow a party to seek a Commission order on return or destruction of documents. This would allow the Commission to be the arbiter of finality and address any considerations should the information later be needed in connection with the same or another docket.

The rule's intent regarding document return is clear with respect to the Division; the Division is entitled to keep Confidential Information so that it may carry out its statutory functions. The Division's consultants should be properly considered exempt from the return rule so long as they are under contract by the Division. If the Commission determines that the consultants are not covered by the exception, the Division requests clarification on when the Confidential Information must be returned or destroyed.

Submitted this 7th day of January, 2014.

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