

WILLIAM J. EVANS (5276)
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	UIEC'S RESPONSE TO RMP'S MOTION TO ALLOW PARTIES TO RESPOND TO THE PRE-FILED DIRECT TESTIMONY OF JONATHAN A. LESSER IN LEGAL BRIEFS AND IN PHASE II
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Docket No. 13-035-184

The Utah Industrial Energy Consumers (“UIEC”) intervention group, pursuant to the provision at Utah Admin. Code R746-100-4(J) and R746-100-4(D), hereby submits this Response to Rocky Mountain Power’s (“RMP” or the “Company”) Motion to Allow Parties to Respond to the Pre-Filed Direct Testimony of Jonathan A. Lesser in Legal Briefs and in Phase II (“Motion”).

I. DR. LESSER’S TESTIMONY DOES NOT OFFER “LEGAL OPINIONS.”

1. The Company’s Motion is directed at the Direct Testimony of Dr. Jonathan Lesser filed in the revenue requirement phase of this case on May 1, 2014, in which Dr. Lesser responds to the Direct Testimony of Rick Walje, filed in support of the Company’s Application.

2. In his Direct Testimony, Mr. Walje testified that RMP is currently in a transition period, “similar to what happened in the natural gas industry almost thirty years ago.” Walje

Direct, at ll. 212-13. He testified that “large vertically integrated natural gas utilities underwent structural changes driven by Federal Energy Regulatory Commission orders to open access to markets ...” *Id.* at ll. 213-15, and that FERC open access orders “ultimately resulted [in] gas utilities restructuring with the distribution function narrowly focused on facilitation the distribution (sic) of gas to end-use customers.” *Id.* at ll. 215-17. Apparently relying on his business background¹ and his own understanding of the FERC’s orders, Mr. Walje’s testimony draws a comparison between the Company’s current circumstances and those of natural gas utilities resulting from FERC natural gas restructuring and observes that electric regulation may follow the path of natural gas regulation and restructuring. *Id.* at 212-25.

3. Dr. Lesser, who is a well-credentialed economist,² agreed with Mr. Walje’s comparison between the Company’s current circumstances and conditions in the natural gas industry resulting from FERC open access orders. Lesser Direct, at ll. 151. Dr. Lesser echoed Mr. Walje’s testimony, testifying that “in 1985, FERC issued Order No. 436, which implemented voluntary open access on US interstate pipeline systems, allowing competing shippers to use transportation capacity.” *Cf.* Lesser Direct, at ll. 164-66 *w.* Walje Direct, at ll. 212-17. Dr. Lesser, exploring the subject introduced by Mr. Walje, reviewed the economic policies and risk allocation principles that, in his opinion, underlie the FERC restructuring orders (the consequence of which both witnesses apparently agree). Dr. Lesser’s testimony, in direct response to Mr. Walje’s testimony, offers an economic analysis of the antecedents and consequences of FERC orders, not

¹ Mr. Walje holds a B.S. in electrical engineering an M.B.A., and has extensive experience working for Rocky Mountain Power. Walje Direct at ll. 8-20.

² Dr. Lesser holds M.A and PhD degrees in economics, and is the coauthor of a widely-used textbook, *Fundamentals of Energy Regulation*. Lesser Direct, at ll. 35-41; UIEC Exh. 1.1. The second edition of his textbook, which was published in late 2013, contains an extensive discussion of the economic implications of many FERC and court orders.

a legal opinion. If Mr. Walje disagrees with Dr. Lesser's economic analysis, there does not appear to be any reason that Mr. Walje, who introduced the comparison, cannot respond with testimony expressing a different view based on his expertise.

4. Although RMP's Motion points to several statements from Dr. Lesser's testimony that it contends raise legal issues, it is difficult to tell what "legal issue" RMP believes has been raised and why it is relevant to the decision the Commission must render in this case. For example, RMP's Motion observes that Dr. Lesser testified about "the restructuring of the natural gas industry by the Federal Energy Regulatory Commission ("FERC") and FERC orders implementing voluntary open access." Motion at 2. Apart from overlooking the fact that Mr. Walje testified on the same subject, RMP does not state that it disagrees with anything Dr. Lesser said about natural gas restructuring, nor does it explain exactly what "legal issue" is raised. Moreover, these statements appear to be factual questions on which Mr. Walje opined and to which Dr. Lesser responded.

5. Likewise, RMP contends that Dr. Lesser's "interpretation of case law" raises legal issues. Motion at 3. But, it does not say why it objects to his "interpretation." In Commission proceedings, expert witnesses are expected to offer testimony on matters in the context of the regulatory environment. As Mr. Walje's testimony illustrates, this entails that the witness have a working understanding of the impact that relevant laws and orders have on the subject matter of the testimony. For example, in addition to his testimony about the regulatory impact of FERC natural gas pipeline orders, Mr. Walje testified that "Utah Senate Bill 12 allows customers to receive the output of off-site customer or third party owned renewable generation by paying for delivery of the electricity to their facility," *id.* at 206-08, and that the Company's net metering

program “is consistent with Utah Code Ann. § 54-15-101 to 106 and R746-312.” *Id.* at ll. 292-93. These are Mr. Walje’s opinions of the regulatory effect of laws and regulations, which he has offered based on his expertise. However, according to the logic of the Company’s Motion, Mr. Walje is not qualified to “interpret” any of these laws or regulations, and the conclusions he asserts should be left for legal briefing.

6. It is, of course, within the Commission’s discretion to ask for legal briefs when the interpretation of a law, regulation or order is at issue. But, the statement of expert witnesses as to their understanding of the effect of a regulation or order within their area of expertise usually does not amount to a “legal opinion” or automatically require legal briefing.

7. Notwithstanding the UIEC’s disagreement with RMP’s assertion that Dr. Lesser’s testimony raises any relevant “legal issues,” the UIEC has no objection to the Commission requesting legal briefs from the parties on any issue that would be necessary or helpful to the Commission in adjudicating this case. The UIEC respectfully suggests, however, that briefing be left until post-hearing, by which time it may become clear what issues should be briefed and why they are relevant to the Commission’s decision.

II. DR. LESSER’S TESTIMONY ON “RATE DESIGN” ISSUES.

8. RMP also complains in its Motion that a portion of Dr. Lesser’s testimony in the revenue requirement phase of this docket includes testimony “regarding Utah rate design issues that this Commission has ordered be addressed in Phase II of this docket.” Motion at 3 (citing Lesser Direct at lines 566-94). That very limited portion of Dr. Lesser’s testimony is meant to support his revenue requirement testimony which states that RMP should not be guaranteed recovery of 100% of its fixed costs. Dr. Lesser points out that any shortfall in RMP’s fixed cost

recovery is exacerbated by the inefficient practice of recovering a portion of fixed costs based on energy consumption. Lesser Direct, at 11. 90-94; *see also id.* at 11 404-409; 583-86 (agreeing with Company witness Walje that reduced energy consumption exacerbates under-recovery of fixed costs, and agreeing with Company witness Steward that recovery of fixed costs on volumetric energy charges distorts price signals).

9. The inefficiency of recovering fixed costs on energy consumption is addressed in greater detail in Dr. Lesser's Direct Cost of Service and Schedule 31 Testimony, filed in the cost of service/rate design phase of this docket. Therefore, to the extent that Lines 566-94 in his Direct Revenue Requirement Testimony address matters of rate design, the UIEC has no objection to allowing the parties to address those matters in Phase II of this docket.

DATED this 30th day of May, 2014.

/s/ William J. Evans

WILLIAM J. EVANS

VICKI M. BALDWIN

PARSONS BEHLE & LATIMER

Attorneys for UIEC, an Intervention Group

CERTIFICATE OF SERVICE

(Docket No. 13-035-184)

I hereby certify that on this 30th day of May 2014, I caused to be e-mailed, a true and correct copy of the **UIEC's Response to RMP's Motion to Allow Parties to Respond to the Pre-Filed Direct Testimony of Jonathan A. Lesser in Legal Briefs and In Phase II** to:

Patricia Schmidt
Justin Jetter
Assistant Attorneys General
500 Heber Wells Building
160 East 300 South
Salt Lake City, UT 84111
pschmid@utah.gov
jjetter@utah.gov
Attorneys for Utah Division
of Public
Utilities

Brent Coleman
Assistant Attorney General
160 East 300 South, Fifth
Floor
P.O. Box 140857
Salt Lake City, Utah 84114-
0857
brentcoleman@utah.gov
Attorneys for Utah Office of
Consumer
Services

Michele Beck
Executive Director
Office of Consumer Services
500 Heber Wells Building
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111
mbeck@utah.gov

Chris Parker
William Powell
Dennis Miller
Utah 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

Cheryl Murray
Dan Gimble
Gavin Mangelson
Utah Office of Consumer
Services
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111
cmurray@utah.gov
dgimble@utah.gov
gmangelson@utah.gov

Dave Taylor
R. Jeff Richards
Yvonne R. Hogle
Data Request Response
Center
Rocky Mountain Power
201 South Main Street, Suite
2300
Salt Lake City, UT 84111
dave.taylor@pacificorp.com
Robert.richards@pacificorp.com
Yvonne.hogle@pacificorp.com
datarequest@PacifiCorp.com

Gary A. Dodge
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101
gdodge@hjdllaw.com

Meshach Y. Rhoades, Esq.
Greenberg Traurig
1200 17th Street, Suite 2400
Denver, Colorado 80203
Phone: (303) 572-6500
Fax: (303) 572-6540
rhoadesm@gtlaw.com

Sophie Hayes
Utah Clean Energy
1014 2nd Avenue
Salt Lake City, UT 84111
801-363-4046
sophie@utahcleanenergy.org

Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite
1510
Cincinnati, Ohio 45202
Ph: 513-421-2255
Fax: 513-421-2764
kboehm@BKLawfirm.com
Jkylercohn@BKLawfirm.com

Brian W. Burnett, Esq.
(3772)
Callister Nebeker &
McCullough
Zions Bank Building
10 East South Temple, Suite
900
Salt Lake City, Utah 84133
Ph: 801-530-7300 Fax:
801-364-9127
brianburnett@cnmlaw.com

Stephen J. Baron
J. Kennedy & Associates
570 Colonial Park Drive,
Suite 305
Roswell, GA 30075
Ph: 770-992-2027
Fax: 770-992-0806
sbaron@jkenn.com

Arthur F. Sandack, Esq
8 East Broadway, Ste 411
Salt Lake City, Utah 84111
801-595-1300
asandack@msn.com

Travis Ritchie, Staff Attorney
Gloria D. Smith, Senior
Attorney
Sierra Club
85 Second Street, Second
floor
San Francisco, CA 94105
(415) 977-5727
(415) 977-5532
travis.ritchie@sierraclub.org
gloria.smith@sierraclub.org

David Wooley
Keyes, Fox & Wiedman LLP
436 14th Street Suite 1305
Oakland, California
94612(510) 314-8200
dwooley@kfwlaw.com

Roger Swenson
E-Quant Consulting LLC
1592 East 3350 South
Salt Lake City, UT
Telephone: 801-541-2272
Facsimile: 801-534-1407
roger.swenson@prodigy.net

Kevin Higgins
Neal Townsend
Energy Strategies
215 S. State Street, #200
Salt Lake City, UT 84111
Telephone: 801-355-4365
Facsimile: 801-521-9142
khiggins@energystrat.com
ntownsend@energystrat.com

Peter J. Mattheis
Eric J. Lacey
Brickfield, Burchette, Ritts &
Stone, P.C.
1025 Thomas Jefferson
Street, N.W.
800 West Tower Washington,
D.C. 20007
pjm@bbrslaw.com
elacey@bbrslaw.com

Jeremy R. Cook
Parsons Kinghorn Harris, P.C
111 East Broadway, 11th
Floor
Salt Lake City, UT 84111
jrc@pkhlawyers.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE Tenth Street
Bentonville, AR 72716-0550
Stephen.Chriss@wal-mart.com

Anne Smart
Executive Director
The Alliance for Solar
Choice
595 Market St, 29th Floor
San Francisco, CA 94105
Phone: 408-728-7166
anne@allianceforsolarchoice.com

Michael D. Rossetti
13051 Shadowlands Lane
Draper, Utah 84020-8785
801-879-6453
solar@trymike.com

/s/ Colette V. Dubois