

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF PURCHASE AND TRANSFER AGREEMENT AND POWER SUPPLY AGREEMENT WITH NAVAJO TRIBAL UTILITY AUTHORITY AND AMENDMENT OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY	DOCKET NO. 15-035-84 EXHIBIT NO. DPU 1.0 DIR
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DIRECT TESTIMONY OF JONI ZENGER, PHD

ON BEHALF OF THE

DIVISION OF PUBLIC UTILITIES

DEPARTMENT OF COMMERCE

May 16, 2016

REDACTED

1 Introduction

2 **Q. Will you please identify yourself for the record?**

3 A. My name is Joni Zenger. I am a technical consultant in the Energy Section in the Division
4 of Public Utilities (Division). My business address is 160 East 300 South, Heber M. Wells
5 Building, Fourth Floor, Salt Lake City, Utah.

6 **Q. On whose behalf are you testifying?**

7 A. The Division.

8 **Q. Would you please summarize your educational and professional experience?**

9 A. I hold a doctorate degree in economics from the University of Utah. Prior to joining the
10 Division, I taught various courses in microeconomics, macroeconomic theory, law and
11 economics, and business economics at both the undergraduate and graduate levels. I
12 joined the Division in 2000 and have since attended several professional courses or
13 conferences dealing with a variety of regulatory issues. On behalf of the Division, I have
14 testified or reported on a variety of topics including transmission projects, integrated
15 resource planning, electric industry and gas industry general rate cases, contracts, and
16 Certificate of Public Convenience and Necessity (CPCN) proceedings. In addition, I
17 testified in Docket No. 07-035-22, an application where PacifiCorp requested an
18 amendment to its electric service territory within a municipality. I have, along with
19 other Division staff, represented the Division on various committees and
20 subcommittees.

21 **Q. What is the purpose of your testimony?**

22 A. My testimony provides support for the Confidential Settlement Stipulation, (Stipulation)
23 filed on May 12, 2016, in response to Rocky Mountain Power's (Company or RMP),
24 proposal to sell certain electrical transmission and distribution assets to the Navajo
25 Tribal Utility Authority (NTUA) and to amend its CPCN in this proceeding. Specifically, in
26 its Application, the Company requests that the Commission grant its Application to (a)
27 approve the Purchase and Transfer Agreement (PTA) as amended, (b) approve the
28 Power Supply Agreement (PSA) as amended, (c) find the entire proposed transaction,
29 including the PTA and PSA, prudent, and (d) amend the Company's Certificate of
30 Convenience and Necessity (CPCN) No. 1118 to remove the NTUA Assumed Service
31 Territory.¹

32 The Stipulation has been executed by all the parties to this docket: Resolute
33 Natural Resources Company, LLC (Resolute), NTUA, RMP, the Office of Consumer
34 Services (OCS), and the Division (Parties).²

35 **Q. Please summarize the conclusions and recommendation in your testimony.**

36 A. I offer the following conclusions and recommendations:

- 37 • I conclude that the Stipulation entered into by the Parties, taken as a whole, is just
38 and reasonable in result and recommend that it be approved by the Commission.

¹ Application, December 21, 2015, p. 16.

²Docket No. 15-035-84, Settlement Stipulation, May 13, 2016. On May 10, 2016, Mr. Daniel Zerull, RAP Catcher LLC, petitioned to intervene in this docket. To date, that intervention has not been granted.

58 A. The Company currently serves approximately 1,045 customers located within the
59 Navajo Nation with 29.79 miles of transmission lines, 335 miles of distribution lines, and
60 four substations.⁵ It also provides service to approximately 137 customers in “pocket
61 areas” within the boundary of the Navajo Nation and 14 customers adjacent to the
62 Nation.⁶ The Company obtained its 20-year franchise to serve in San Juan County on
63 October 18, 2004.⁷

64 **Q. Please describe the type of customers currently served in the subject territory by the**
65 **Company.**

66 A. The majority of the load that the Company serves in the subject territory comes from
67 the current operator of the Aneth Oil Field, Resolute. The remaining customers are
68 primarily residential and small commercial customers spread out over large
69 geographical areas in small clusters. Together, the 2014 total load in this area was
70 approximately 40.86 megawatts and total consumption was 286,235 megawatt hours.⁸

71 **Q. In a few sentences, could you summarize what led to the application’s filing?**

72 A. Yes. The Company has been serving customers in the Navajo Nation since 1959, under
73 the terms of a set of 1959 letter agreements (Letter Agreement) exchanged between
74 the Company’s predecessor and the Navajo Nation Council.⁹ In order to obtain
75 easements from the Nation for the Company to serve these customers located within

⁵ Application, December 21, 2015, p. 4.

⁶ DPU data request to RMP #3.4 and #3.5, respectively, dated March 7, 2015.

⁷ DPU data request to RMP #4.2, 1st Supplemental, dated March 24, 2016.

⁸ Application, December 21, 2015, p. 4.

⁹ Id.

76 the Nation, the Company “agreed in 1959 that the Nation would have an option to
77 purchase certain Company facilities serving customers within the Nation and negotiate
78 to purchase other facilities at some future date.”¹⁰

79 Over the years NTUA approached the Company several times (in 1973, 1981, and
80 1989) regarding the possibility of exercising its option to acquire the Company’s facilities
81 used to provide service to customers within the Nation.¹¹ None of these efforts were
82 productive, as there were many disagreements over the terms and the interpretation of
83 the Letter Agreement.¹² [REDACTED]

84 [REDACTED]¹³ The Nation is
85 now seeking to exercise its option in the Letter Agreement. As I describe in more detail
86 below, that is what led to this filing.

87 **Q. Please describe more recent activities.**

88 A. In 2009, NTUA and the Company again commenced discussions regarding the
89 acquisition of the Company’s facilities within the Nation and have resolved a number of
90 issues.¹⁴ “The Parties pursued discussions and negotiations in good faith, addressing
91 and ultimately resolving a number of difficult issues.”¹⁵ On December 4, 2013, the
92 Company entered into the PTA and PSA with NTUA, subject to approval by state

¹⁰ Id. at pp. 4-5.

¹¹ Id. at p. 5.

¹² Id.

¹³ Company’s confidential data response to OCS #1.17, January 25, 2016.

¹⁴ Application at p. 5.

¹⁵ Id.

93 regulatory agencies and approval by the Navajo Nation Council.¹⁶ Both agreements
94 have since been amended several times to accommodate continuing negotiations and
95 resolution of timing and other issues among the Company, NTUA, and Resolute.
96 Because the subject area is within the Company's certificated service area, in
97 connection with the above-described transactions, the Company also needs to amend
98 its certificate. Therefore, on December 21, 2015, the Company filed its Application
99 pursuant to Utah Code Ann. § 54-4-25 and Utah Admin. Code R746-100-3.A.

100 Most recently, in support of the Stipulation, the Company filed Supplemental
101 Testimony¹⁷ of its witness, Mr. Loren P. Morse, with the following accompanying
102 exhibits: the Third Amendment to the PTA and the Second Amendment to PSA.¹⁸ I will
103 refer to these exhibits as the Amended PTA and the Amended PSA. The recent
104 Stipulation, signed by the Parties was filed on May 12, 2016.

105 The Purchase and Transfer Agreement

106 **Q. Will you please discuss the key terms of the PTA and its iterations?**

107 A. Yes. Per the PTA, the Company will sell to NTUA, and NTUA will purchase certain
108 transmission and distribution facilities and easements of the Company located on the
109 Navajo Nation used to provide electric service to customers in and adjacent to the
110 Nation, and NTUA will provide service to customers in the service territory previously

¹⁶ Id.

¹⁷ Confidential Supplemental Testimony of Loren P. Morse, RMP Exhibit (LPM-S), April 26, 2016.

¹⁸ Confidential Third Amendment to the Power Transfer Agreement, Exhibit RMP (LPM-1S Confidential), March 28, 2016 and Confidential Second Amendment to the Power Supply Agreement, Exhibit RMP (LPM-2S Confidential), March 28, 2016.

111 served by the Company.¹⁹ NTUA agrees to accept the Company’s facilities and their
112 associated easements in their current condition, without any warranties of any kind,
113 subject to certain qualification through which the Company agrees to reimburse NTUA
114 for certain costs it may incur as provided in the PTA.²⁰

115 The confidential purchase price of the assets is described in the PTA, as well as a
116 full description of the assets to be transferred. The Company will perform an updated
117 inventory of the facilities to be sold in connection with the transfer of facilities at closing
118 as contemplated in the PTA.²¹

119 The transferred assets consist of 29.79 miles of transmission line, 335 miles of
120 distribution line, and four substations. With the exception of the sale of a 69 kV line and
121 associated facilities classified as “transmission” facilities that are system allocated, the
122 remaining majority of the assets are situs-assigned to Utah.²²

123 [REDACTED]
124 [REDACTED]
125 [REDACTED]
126 [REDACTED]

¹⁹The 1.59 mile segment of 69 kV line and the Goosenecks substation are located on Navajo Nation lands but are not part of the transaction (OCS #6.6 to RMP, April 14, 2016). The 1.59 mile, 69 kV Abajo-Mexican Hat (Bluff-Mexican Hat) transmission line is not part of the transaction (OCS #6.7 to RMP, April 14, 2016). The Company will retain its 345 kV line from Four Corners to Pinto and the 1.59 mile segment from Mexican Hat to the NTUA substation (OCS #6.4 to RMP, April 14, 2016).

²⁰ See Application at p. 6 and Confidential Direct Testimony of Loren P. Morse, Exhibit RMP (LPM Confidential), December 4, 2013, pp. 9-10, lines 191-220.

²¹Confidential Power and Transfer Agreement, First Amended, Exhibit RMP (LPM-1 Confidential), March 4, 2015, Section 2.2.2.

²² The sale of the approximately \$145,864 69 kV transmission line and associated transmission only assets are system allocated. (OCS Confidential Attachment #1.4 to RMP, January 25, 2016.)

127 [REDACTED]

128 [REDACTED]

129 The First Amendment to the PTA, effective March 4, 2015,²³ contains [REDACTED]

130 [REDACTED]

131 [REDACTED]

132 [REDACTED]

133 [REDACTED]

134 [REDACTED]

135 [REDACTED]²⁴

136 In order to clarify the Council Resolution and the additional time required for the
137 transaction to close with the amendments, NTUA and the Company entered into the
138 Second Amendment to the PTA on December 2, 2015.²⁵ [REDACTED]

139 [REDACTED]

140 [REDACTED]

141 [REDACTED]

142 [REDACTED]

143 The Third Amendment to the PTA (known as the Amended PTA) signed on March
144 28, 2016, arose out of further negotiated settlement agreements between the Company
145 and NTUA, as each worked to arrive at an equitable solution for the larger whole. I will

²³ Direct Testimony of Loren P. Morse, Confidential Exhibit RPM (LPM-4 Confidential), March 4, 2015.

²⁴ Application, December 21, 2015, p, 12, Section VI. Council Resolution.

²⁵ Direct Testimony of Loren P. Morse, Confidential Exhibit RPM (LPM-3 Confidential), March 4, 2015.

146 discuss the Amended PTA later in my testimony because its terms specifically relate to
147 the Parties' Stipulation.

148 The Power Supply Agreement

149 **Q. Are there also several amendments to the PSA? Please describe the original PSA and**
150 **the amendments.**

151 A. Yes. The PSA originated on December 4, 2013 when [REDACTED]
152 [REDACTED]
153 [REDACTED]
154 [REDACTED]
155 [REDACTED]
156 [REDACTED]
157 [REDACTED]
158 [REDACTED]
159 [REDACTED]
160 [REDACTED]
161 [REDACTED]
162 [REDACTED]
163 [REDACTED]
164 [REDACTED]
165 [REDACTED]
166 [REDACTED]

167 [REDACTED]

168 [REDACTED]

169 [REDACTED]

170 [REDACTED]

171 [REDACTED]

172 [REDACTED]

173 [REDACTED]

174 [REDACTED]

175 [REDACTED]

176 [REDACTED]

177 [REDACTED]

178 [REDACTED]

179 [REDACTED]

180 [REDACTED]

181 [REDACTED]

182 [REDACTED]

183 [REDACTED]

184 [REDACTED]

185 [REDACTED]

The Division's Participation

186

187 **Q. Describe the Division's participation in this docket?**

188 A. The Division reviewed the Company’s application, accompanying testimony, and filed
189 exhibits, including all amendments to the exhibits. In addition, the Division submitted
190 data requests to the Company, NTUA, and to Resolute and reviewed answers to its data
191 requests, as well as those asked by others. The Division participated in technical
192 conferences on February 9, 2016 and March 14, 2016. The Division met with the
193 Company, NTUA, Resolute, and the Office of Consumer Services (Office) to discuss issues
194 and concerns of the Division and of the Office. The Division participated in settlement
195 discussions with the Parties on April 19, 2016, April 29, 2016, and on May 5, 2016 to
196 narrow down issues and to ask follow up questions. This process took place over the
197 course of many months.

198 **Q. What are the Division’s objectives in a docket such as this?**

199 A. The Division advocates for the public interest in utility regulation before the Commission
200 and is guided by Utah Code Ann. Section 54-4a-6, which outlines the objectives that the
201 Division, in performance of its duties, power, and responsibilities, should follow. These
202 duties are summarized below:

- 203 (1) Promote the safe, healthy, economic, efficient, and reliable operation of all
204 public utilities and their services, instrumentalities, equipment, and facilities;
205 (2) Provide for just, reasonable, and adequate rates, charges, classifications,
206 rules, regulations, practices, and services of public utilities; and,

207 (3) Make the regulatory process as simple and understandable as possible so
208 that it is acceptable to the public; feasible, expeditious, and efficient to apply;
209 and designed to minimize controversies over interpretation and application.²⁶

210 In this docket, the Division also considered Utah Code Ann. Section 11-
211 203-204(7), the Interlocal Cooperation Act. Although this docket does not
212 involve an interlocal entity or municipality, there are many similarities between
213 the transfers involving municipalities and customers and the transfer here.
214 Under the Interlocal Cooperation Act, the transferred customers are afforded
215 certain rights pertaining to the rates, conditions of service, and customer
216 protections. Subsection (7)(a)(i)(B) of that act lists requirements that must be in
217 place before a franchise agreement is granted to the interlocal entity. While
218 those provisions are not applicable to NTUA, the Division has sought to ensure
219 the policies underlying those rights are reflected as much as possible in the
220 various agreements comprising the proposed transaction.

221 **Q. What are some of the issues the Division analyzed at the outset of this case?**

222 A. The Division considered how the proposed transaction, in its entirety, would affect the
223 Company's ratepayers in general, as well as the Company's customers being transferred
224 to NTUA. The Division was concerned with, and thus investigated, how notification was
225 given to affected customers and if any of the transferring customers expressed concerns
226 about the transfer of service.²⁷

²⁶ Utah Code Ann. Section 54-4a-6.

²⁷ DPU #1.3 to RMP, January 21, 2016.

227 The Division analyzed the Amended PTA, the Amended PSA, and the negotiated
228 terms of the agreements to ensure that Utah ratepayers would be no worse off due to
229 the transaction. Underlying the Division’s analysis in this case, are the stated objectives
230 above.

231 **Q. Please discuss the outreach efforts made by the Company to notify current RMP**
232 **customers of the proposed transfer of service.**

233 A. As far as providing public notice and outreach to the customers being transferred, the
234 Division is satisfied that the Company, in conjunction with NTUA, attempted to notify
235 the transferred customers and answer questions or alleviate any concerns that
236 customers might have had.

237 The Company mailed out letters in December 2015 to each affected customer
238 and followed up with customers when letters were returned. NTUA representatives and
239 Company representatives met with individual residents to answer questions and explain
240 what the transfer of service meant to them.²⁸

241 The Company worked with a native Navajo-speaking translator to communicate
242 the changes to those customers who did not write or speak English in order to make
243 sure that language was not a barrier. Posters were distributed to the affected Chapter
244 Houses, public messages were delivered on the local radio stations, and NTUA held a
245 series of meetings in the Chapter houses in December 2015 and again in March 2016.²⁹

²⁸Company response to DPU #1.2, January 21, 2016; NTUA response to DPU #2.11 and DPU #2.13, respectively, March 7, 2016.

²⁹ NTUA Response to DPU #2.11, March 7, 2016.

246 The Commission has scheduled a Public Witness hearing on May 17, 2016 in
247 Bluff, Utah in order to give local residents an opportunity to speak or ask questions, and
248 the Division understands an interpreter will be made available at the hearing. The
249 Division intends to participate at that hearing. To date, the Division is satisfied that
250 proper notification has been provided and the Company has been responsive to
251 questions from the affected customers.

252 The Division's Support of the Stipulation

253 **Q. Could you please generally explain the process leading to this Stipulation?**

254 A. Yes. As I previously mentioned, the Parties met numerous times and responded to
255 discovery and clarified questions that the Division and the Office had. Where concerns
256 existed, the Parties have mutually worked to resolve those issues to their satisfaction.
257 This docket did not merely begin in December 2015, when the Company's Application
258 was filed. Rather negotiations and disputes between the Company and the Navajo
259 Nation have transpired over the past fifty years. The delicate negotiation among all the
260 Parties took tremendous effort and understanding to arrive at the Stipulation that all
261 Parties could accept.

262 The Division's primary goals were as follows: (1) the Company will be able to
263 continue to provide safe and reliable services to its remaining customers at just and
264 reasonable rates; (2) there should be reasonable rates and conditions of service for the
265 customers being transferred as compared to the rates and conditions of service for

266 similarly situated customers that already receive service through NTUA;³⁰ and, (3) the
267 customers being transferred [REDACTED]

268 [REDACTED]³¹ These three things are to be
269 considered by the Commission in a contested certificate proceeding,³² and the Division
270 notes that these things are addressed in the Application, the PTA, and the PSA.

271 **Q. Why does the Division support the Stipulation?**

272 A. For the following reasons, summarized here and discussed in more detail below, the
273 Division supports the Stipulation and believes that it is in the public interest:

- 274 • The Stipulation resolves a long-standing uncertainty regarding the Letter
275 Agreement and avoids future dispute.
- 276 • The Stipulation resolves disputes over expired and expiring right-of-way
277 agreements within the Navajo Nation.
- 278 • The Stipulation will not harm remaining Company ratepayers.
- 279 • The Stipulation resolves uncertainty about how Resolute will obtain power and
280 service after the expiration of the MESAs.
- 281 • NTUA has made certain representations concerning the rates and service it will
282 provide to customers who will no longer receive service from the Company.

³⁰Confidential Third Amended PTA, Exhibit RMP (LPM-1S Confidential), April 26, 2016, Section 2.5.6.

³¹ Confidential Testimony of Loren P. Morse, Exhibit RMP (LPM-1 Confidential), December 4, 2013.

³² Utah Code Ann. Section 54-4-25.

- 283 • NTUA has made certain representations that the Stipulation assists the Navajo
284 Nation in pursuing its stated goal of providing electrical service within the
285 Nation.

286 Letter Agreement

287 **Q. Please explain what the long-standing uncertainty is concerning the Letter Agreement.**

288 A. Arguably, the terms of the Letter Agreement are not clear and subject to differing
289 interpretation. Such differences often lead to dispute.

290 **Q. How does the Stipulation resolve this issue?**

291 A. In conjunction with the process resulting in the Stipulation, the Navajo Nation Council
292 issued a resolution [REDACTED]

293 [REDACTED]

294 [REDACTED]

295 [REDACTED]

296 [REDACTED]

297 [REDACTED]³³

298 Additionally, the Stipulation recommends approval of the PTA, as amended. A

299 PTA recital states:

300 [REDACTED]

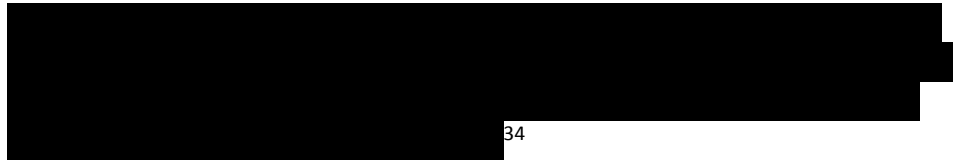
301 [REDACTED]

302 [REDACTED]

303 [REDACTED]

³³ Confidential Power Transfer Agreement, RMP Exhibit RMP (LPM-1 Confidential), December 4, 2013, pp. 33-34.

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305
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34

308 **Q. Why is resolving the dispute concerning the Letter Agreement in the public interest?**

309 A. It seems that resolving issues of contract interpretation usually requires going to court,
310 and court battles most often are long and costly. Adding to the complexity of resolving
311 issues concerning the Letter Agreement are jurisdictional issues. How does the Nation's
312 sovereignty affect seeking resolution and what entity has jurisdiction--in the Navajo
313 Nation's courts or elsewhere? The Stipulation resolves these unanswered questions in a
314 less costly and timelier manner than litigation. Additionally, by settling, the Parties have a
315 known resolution to the issues and are not faced with the uncertainty of awaiting the
316 decision of a court, or courts.

317 Additionally, as part of the package deal embodied in the Stipulation, the
318 Company asserts that it is able to retain its 345 kV transmission line and the associated
319 easements with its line that runs from the Pinto substation to the Four Corners area,
320 crossing a piece of the Nation territory.³⁵

321 Right-of-way issue

322 **Q. Please explain the right-of-way issues that are resolved by the Stipulation.**

³⁴Id.

³⁵ Confidential Power Transfer Agreement, RMP Exhibit RMP (LPM-1 Confidential), Exhibit B, December 4, 2013, p. 57.

323 A. As stated in the testimony of Mr. Loren P. Morse,³⁶ [REDACTED]

324 [REDACTED]

325 [REDACTED]

326 [REDACTED]

327 [REDACTED]³⁷

328 **Q. Why is the Stipulation’s resolution of right-of-way issues in the public**
329 **interest?**

330 A. I am not a lawyer, but it seems that issues involving expired, and expiring,
331 right-of-way agreements are complex. Some of the issues may be what are
332 the damages for having facilities remain on expired rights-of-way; what
333 should be done with facilities that are still on expired rights-of-way; and
334 what would be “appropriate” past due payments and future payments?

335 Like questions of interpretation, it seems that these rights-of-way
336 issues often are resolved by going to court. Again, there are issues dealing
337 with which court would have jurisdiction and issues involving the Navajo

³⁶ Confidential Testimony of Mr. Loren P. Morse, December 4, 2013, p, 10, lines 207-220.

³⁷ Confidential PTA, Exhibit RMP (LPM-1), December 3, 2015, Section 2.2.5; Confidential Direct Testimony of Steven R. McDougal, December 3, 2015, p, 7, lines 146-150.

338 tribe's sovereignty. Here too, going to court would be expensive, and it
339 probably would take a long time to resolve the issues.

340 Resolving right-of way-issues, even out of court, especially those
341 involving a sovereign nation, can be expensive. For example, in 2009, El
342 Paso Natural Gas settled right-of-way disputes with the Navajo Nation, and
343 the settlement involved El Paso paying the Nation a \$350 million payment
344 (approximately \$18 million per year for 20 years) and another \$50,000 per
345 year into a scholarship fund.³⁸

346 No harm to remaining ratepayers

347 **Q. You state that the Stipulation is in the public interest because it will not harm the**
348 **Company's remaining ratepayers. Please explain.**

349 A. First of all, as a follow-up from the right-of-way issue, a negotiated resolution, embodied
350 in the Stipulation, resolves the right-of-way issues with certainty and in a timely manner.
351 This protects the Company's remaining ratepayers from the risk of prolonged and
352 expensive litigation that might otherwise be required but for the Stipulation. Per the
353 Stipulation, the Company's remaining ratepayers are not harmed financially or put into
354 a situation of unnecessary exposure to risk.

³⁸ See, "Navajo Nation settles with El Paso Natural Gas over pipeline easement," Navajo-Hopi Observer, February 4, 2009, <http://nhonews.com/main.asp?SectionID=74&subsectionID=393&articleID=11250>.

355 Second, the Division reviewed the transaction costs in the RMP/NTUA asset
356 exchange. Based on the Company’s Semi-Annual Results of Operations recently filed
357 with the Commission, the transfer of assets to NTUA is expected to have little to
358 minimal impact on the Company’s Results of Operations and in the Company’s ability to
359 provide safe and reliable service to the rest of the Company’s customers. The
360 transaction will not materially affect the Company’s income statement and thus will
361 have minimal impact on current customer rates.³⁹

362 Third, the subject area has relatively few customers scattered over a large
363 geographic area. [REDACTED]

364 [REDACTED]

365 [REDACTED]

366 [REDACTED]

367 [REDACTED]

368 [REDACTED]

369 [REDACTED]

370 [REDACTED]

371 [REDACTED]

372 Resolute’s Concerns

373 **Q. What were Resolute’s concerns that were resolved in the Stipulation?**

³⁹ Docket No. 15-035-51, Rocky Mountain Power’s Results of Operations Report for the Utah Jurisdiction for the twelve months ended June 30, 2015, filed October 30, 2015.

374 A. Resolute constitutes the majority of the load RMP currently serves in the subject
375 territory. Resolute was concerned about its ability to acquire power and service, and its
376 cost, if the Company's facilities and obligation to serve, were transferred to NTUA.⁴⁰

377 **Q. Please discuss the importance of engaging Resolute in the negotiations with the**
378 **Parties.**

379 A. At this time, it appears that, out of the customers that would be transferred from the
380 Company to NTUA, only Resolute initially objected to the transfer and did not want to
381 be served by NTUA.⁴¹ As of the date of the filing of this testimony, the Division is not
382 aware of any other customer who would be transferred who objects to being served by
383 NTUA. On February 11, 2016, Resolute filed a motion with the Commission requesting
384 an additional public witness hearing be held on or near the areas affected by
385 Application.

386 **Q. How did the Company, NTUA, and the Parties, through the Stipulation, satisfy**
387 **Resolute's and the Parties' concerns?**

388 A. As I noted above, many aspects of the options and payments in the PTA and PSA have
389 morphed since the original Application was filed, as a result of the productive
390 negotiations that have taken place by the Parties for several months leading to the
391 Stipulation. [REDACTED]

392 [REDACTED]

⁴⁰ See generally Petition to Intervene of Resolute Natural Resources Company, LLC, filed January 8, 2016 in this docket.

⁴¹ RMP Response to DPU 1.4, January 21, 2016.

393 [REDACTED]

394 [REDACTED]

395 [REDACTED]

396 [REDACTED]

397 [REDACTED]

398 [REDACTED]

399 [REDACTED]

400 [REDACTED]

401 [REDACTED]

402 [REDACTED]

403 [REDACTED]

404 [REDACTED]

405 [REDACTED]

406 [REDACTED]

407 [REDACTED]

408 [REDACTED]

409 [REDACTED]

410 [REDACTED]

411 [REDACTED]

412 [REDACTED]

413 [REDACTED]

414 [REDACTED]

415 [REDACTED]

416 [REDACTED]

417 [REDACTED]

418 [REDACTED]

419 [REDACTED]

420 [REDACTED]

421 [REDACTED]

422 [REDACTED]

423 [REDACTED]

424 [REDACTED]

425 [REDACTED]

426 [REDACTED]

427 [REDACTED]

428 [REDACTED]

429 [REDACTED]

430 [REDACTED]

431 [REDACTED]

432 [REDACTED]

433 [REDACTED]

434 [REDACTED]

435

[REDACTED]

436

[REDACTED]

437

[REDACTED]

438

[REDACTED]

439 NTUA's representations

440 **Q. You state above that NTUA has made certain representations that support finding the**
441 **Stipulation in the public interest. Please explain representations concerning the**
442 **transfer process.**

443 A. It is important to the Division that the process for transferring customers to NTUA would
444 be seamless, with only reasonable charges to transferring customers' bills, at least in the
445 near term.⁴² NTUA represents that transferred customers will not have to pay any fees
446 at the time of the close of the transaction, and new customers of NTUA will be subject
447 to the normal deposits and connection fees charged to all new customers.⁴³

448 Since the same lines and poles will be used to serve the newly transferred
449 customers, there should be no interruptions of power or outages as a result of the
450 transfer. The quality of service should be equal or better than the service currently
451 provided by the Company, as NTUA will have its own facilities on site to dispatch for
452 outages and maintenance.

⁴² To the extent NTUA's customers are beyond the Commission's jurisdiction, after the transition the Division's interest in those customers' rates and service must necessarily yield.

⁴³Confidential Direct Testimony of Mr. Walter W. Haase, RMP (Exhibit WWH-1 Confidential), p. 4 lines 79-84:

[REDACTED]

453 **Q. Please explain other representations made by NTUA.**

454 A. NTUA has made several important representations dealing with all transferred

455 customers. [REDACTED]

456 [REDACTED]

457 [REDACTED]

458 [REDACTED]

459 [REDACTED]⁴⁴ The schedule of

460 rates and conditions of service are posted on NTUA's website,⁴⁵ and [REDACTED]

461 [REDACTED]

462 [REDACTED]

463 [REDACTED]

464 [REDACTED]⁴⁶

465 **Q. Has NTUA made any representations specifically concerning the 14 customers outside**
466 **the Nation and the "pocket" customers?**

467 A. Yes. NTUA represents that the [REDACTED]

468 [REDACTED]

469 [REDACTED]

470 [REDACTED]

⁴⁴Confidential Third Amended PTA, Exhibit RMP (LPM-1S Confidential), April 26, 2016, p. 16; Confidential Second Amended PSA, Exhibit RMP (LPM-2S Confidential) April 26, 2016, p. 14; and NTUA's response to DPU #1.3, February 2, 2016.

⁴⁵http://www.ntua.com/utility_rate.html.

⁴⁶Id.

471

[REDACTED]

472

[REDACTED]

473 **Q. Are there other agencies that oversee NTUA?**

474 A. Yes. The Government Services Committee of the Navajo Nation Council oversees
475 NTUA's rates and operations, while the Budget and Finance Committee receives
476 financial and annual reports and has authority to order an audit of NTUA. NTUA is also
477 subject to environmental, health, and safety laws imposed by the Navajo Nation
478 Environmental Protection Agency.⁴⁷ Finally, NTUA is subject to rules and regulations
479 imposed by the Rural Utilities Service (RUS) of the United States Department of
480 Agriculture, to the extent that its projects are built with federal financial assistance.⁴⁸

481 **Q. Do all the above representations and facts help promote the finding that the**
482 **Stipulation is in the public interest?**

483 A. Yes. NTUA's representations give the Division some assurance that departing customers
484 will be fairly treated and have adequate resort to adequate processes after the transfer.

485 NTUA's representations concerning the Navajo Nation's goal regarding electric
486 service to its own people

487 **Q. What does NTUA say about its responsibility involving the Navajo Nation's goal**
488 **regarding electric service?**

489 A. "As an enterprise of the Nation, NTUA is obligated to extend service to as many
490 members of the Nation as reasonably possible consistent with the Nation's policies and

⁴⁷ Direct Testimony of Walter W. Haase, Exhibit WWH-1 and Exhibit WWH-2, December 12, 2015.

⁴⁸ Confidential Amended PTA, April 18, 2016, p 17, paragraph 2.7.4 and NTUA's response to OCS 4.17, dated April 18, 2016.

491 goals.”⁴⁹ After the transfer, customers desiring service no longer will need to comply
492 with the Company’s extension policies.⁵⁰ In addition, it is believed that it will be easier
493 for NTUA to obtain easements from the Nation than it has been for the Company.⁵¹ In
494 addition, the PSA assures NTUA “that it will have the opportunity to have an adequate
495 source of reasonably priced power to the customers for many years.”⁵²

496 **Q. Do the above representations help promote the finding that the Stipulation is in the**
497 **public interest?**

498 A. Yes.

499 **Q. Does this conclude your pre-filed testimony in support of the Stipulation?**

500 A. Yes.

⁴⁹ Direct Testimony of Mr. Walter W. Haase, NTUA General Manager, December 21, 2015, p. 3.

⁵⁰ Id. at p. 4.

⁵¹ Id. at pp. 3-4.

⁵² Id. at p. 4.