- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Rocky Mountain Power for Approval of the Purchase and Transfer Agreement and the Power Supply Agreement with Navajo Tribal Utility Authority and Amendment of Certificate of Public Convenience and Necessity	DOCKET NO. 15-035-84 ORDER MEMORIALIZING BENCH RULINGS APPROVING SETTLEMENT, AMENDING CPCN NO. 1118 AND DENYING PETITION TO INTERVENE

ISSUED: June 10, 2016

1. PROCEDURAL BACKGROUND

This docket arises out of the Application 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 ("Application") that PacifiCorp dba Rocky Mountain Power ("RMP") filed with the Commission on December 21, 2015. The Commission granted two parties' requests for intervention: Navajo Tribal Utility Authority ("NTUA") and Resolute Natural Resources Company, LLC ("Resolute"). The Division of Public Utilities ("Division") and the Office of Consumer Services ("Office," and collectively with the Division, NTUA and RMP, the "Parties") also participated in the proceeding.

The Commission issued its Scheduling Order, Directive to Stipulate to Date for Technical Conference and Notices of Hearing and Public Witness Hearing ("Scheduling Order") on January 12, 2016, which established a schedule for the proceeding and set the date for hearing as May 19, 2016 with a public witness hearing to follow that same evening. Acting on the Commission's invitation in the Scheduling Order, Resolute filed a "Request for Public Witness Day On or Near the Areas Affected by [the] Application" on February 11, 2016. Consequently, the Commission issued a "Notice of Public Witness Hearing and Invitation to Submit Legal

Briefing" on February 29, 2016, providing notice of an additional public witness hearing to be held on May 17, 2016 in Bluff, Utah.

On March 30, 2016, RMP filed a "Joint Motion for Suspension of Procedural Schedule" ("Joint Motion"). The Joint Motion represented the Parties had reached a settlement, in principle, and requested the Commission suspend all procedural deadlines in the case but preserve the hearing dates. The Commission granted the Joint Motion on March 31, 2016. On May 10, 2016, Rap Catcher, LLC ("Rap Catcher") filed a Petition to Intervene, and on May 12, 2016, the Parties filed a Settlement Stipulation ("Settlement").

On May 17, 2016, the Commission held a public witness hearing in Bluff, Utah. On May 19, 2016, the Commission heard the Parties on the merits of their Settlement and held a second public witness hearing in Salt Lake City. At the conclusion of the second public witness hearing, the Commission issued a bench ruling approving the Settlement and attendant accounting order and denying Rap Catcher's Petition to Intervene. This Order memorializes those rulings.

2. FACTUAL BACKGROUND

a. The Application Seeks Approval of Agreements Between RMP and NTUA and Amendment of RMP's CPCN.

The Application explains RMP has provided service to customers located within a portion of the Navajo Nation ("Nation") in San Juan County, Utah, for many years. (Application at 3.) RMP has provided these services with the consent of the Nation. (*Id.*) With the exception of Resolute, RMP's customers within the Nation have generally been residential and small commercial customers located in small clusters and spread out over large geographical distances. (*Id.* at 3-4.) RMP's standard and approved line extension charges to bridge these geographical

gaps are beyond the means of many Nation residents. (*Id*. at 4.) Consequently, the number of Nation residents that remain without electricity is relatively high. (*Id*.)

In 1959, the Nation created NTUA and authorized it to provide utility services throughout the Nation. In addition to other utility services, NTUA presently serves approximately 39,600 electric customers. To obtain easements from the Nation to provide service within its boundaries, RMP's predecessor in interest, Utah Power & Light Company, agreed in 1959 that the Nation would have an option to purchase certain facilities serving customers within the Nation and to negotiate the purchase of other facilities. (*Id.* at 4-5, Ex. D to Ex. LPM-1.) Although NTUA and RMP and/or its predecessors have discussed the possible exercise of the Nation's option dating back to 1973, for more than thirty years these discussions did not result in exercise of the option. (*Id.* at 5.)

However, in 2009, RMP and NTUA resumed negotiations, culminating in their entering two agreements in December 2013: a Purchase and Transfer Agreement ("PTA") and Power Supply Agreement ("PSA," and collectively with the PTA, the "Agreements"). Closing on these transactions was delayed and both agreements were later amended. Specifically, the PTA was amended twice and the PSA was amended once before RMP filed the Application seeking their approval in this docket. (For simplicity, any reference to the PTA, PSA or the Agreements in this Order incorporates and includes all amendments to them that existed at the time RMP filed its Application.)

In addition to seeking the Commission's approval of the Agreements, the Application seeks modification of RMP's Certificate of Public Convenience and Necessity No. 1118 ("CPCN") to remove the portion of the Nation located in San Juan County, Utah from RMP's

service territory (the "NTUA Assumed Service Territory"). (PTA at 16, attached as Exhibit LPM-1 to Application.)

We expect the parties to the underlying Agreements carefully negotiated their terms and that the Parties to the Settlement were similarly deliberate in crafting its terms. We recognize the risk inherent in attempting to summarize more succinctly those terms here and will not endeavor to do so with specificity. Broadly, the PTA contemplates RMP will sell facilities it owns within the Nation to NTUA, and RMP – after specified time frames elapse – will not provide service to any customer located within the Nation. The transfer of facilities will render RMP unable to continue to serve approximately 14 customers located within its existing service territory adjacent to the Nation. (Application at 8.) RMP's witness, Loren Morse, testified at hearing that the nearest facilities RMP will own after the transfer of the subject facilities to NTUA are approximately ten miles away from these customers and the approximate cost to extend new power lines to serve them would be $1.3 million. (Hr'g Tr. at 15:18-22.) In light of these costs, the parties have agreed NTUA will provide service to these customers. (Application at 8.) RMP, however, reserves the right to resume service to these customers, with Commission approval, in the event facilities are constructed such that it becomes cost effective. (*Id.*) The PTA provides NTUA will provide service to these customers on the same terms and conditions as those similarly situated customers it serves within the Nation. (*Id.*)

The PTA also addresses the provision of power to Resolute, a commercial customer within the Nation that constitutes a significant portion of the demand RMP presently satisfies within the Nation. RMP provides power to Resolute pursuant to Master Electric Service Agreements ("MESAs"), set to expire on June 29, 2017. The PTA outlines the process by which

Resolute will become a customer of NTUA after the expiration of these MESAs. The PSA provides RMP will provide a firm supply of power to NTUA sufficient to serve the customers the PTA will transfer to NTUA subject to the terms and conditions specified therein.

b. The Parties Reached a Settlement that Includes Additional Amendments to the Underlying Agreements.

Resolute operates the Aneth Oil Field, which is primarily located within the Nation and consumes a majority of the load and energy consumption RMP proposes to transfer to NTUA in this docket. After RMP filed its Application, Resolute sought intervention because it was "concerned about the impact RMP's proposed transfer could have both on [Resolute's] electrical rates and the reliability of [Resolute's] future electrical supply." (Resolute's Petition to Intervene at 3.)

The Commission understands all of the Parties, including Resolute, participated in negotiations leading to the Settlement and all Parties are signatories to it. As a component of the Settlement, both the PTA and PSA were amended (collectively, the "Final Amended Agreements"). Specifically, a third amendment was added to the PTA and a second amendment was added to the PSA. The terms of the Final Amended Agreements are marked confidential and will not be enumerated in this Order. The Settlement asks the Commission to conditionally approve the Final Amended Agreements contingent on the following two events occurring: (1) transfer of the facilities being sold in the PTA and (2) an ancillary Electric Service Agreement that NTUA and Resolute entered on May 12, 2016 "becoming effective according to its terms." (Settlement at 4-5.) The Settlement makes representations that RMP will provide notice to the Commission concerning other state commissions' approval of the agreements and the progress of

certain milestones enumerated in the PTA. (*Id.* at 5.) Finally, the Parties stipulate the Commission should issue an accounting order concerning specified costs that RMP may defer relating to its performance under the PTA. (*Id.* at 6.)

The Division testified the Settlement and Final Amended Agreements are in the public interest for the following reasons: (i) they resolve long-standing uncertainty (*i.e.* uncertainty dating to 1959) relating to the Nation's option to purchase certain of RMP's facilities and should curtail costly litigation; (ii) they resolve disputes over expired and expiring right-of-way agreements within the Nation; (iii) they will not harm RMP's ratepayers; (iv) they resolve uncertainty concerning the means by which Resolute will obtain service after the expiration of its MESAs; (v) they include representations, on NTUA's behalf, concerning the rates and services it will provide to customers who will no longer receive service from RMP; and (vi) NTUA represents the transactions will assist the Nation in providing and expanding electric service within the Nation. (*See* Direct Test. Joni Zenger at 16:271-284.) At hearing, the Division emphasized that many Nation residents do not enjoy electric service and highlighted NTUA's representations that it will have resources unavailable to RMP to expand service in the area. (*See* Hr'g Tr. at 25:4-10.)

The Office's witness, Cheryl Murray, similarly testified the Office supported the Settlement and underlying agreements for the following reasons: (i) residents of the Nation that are presently within RMP's service territory who do not have access to electric service are expected to receive service more quickly through NTUA; (ii) potentially costly litigation and associated risks will be avoided; (iii) Utah RMP customers will likely benefit from revenues RMP will receive for the provision of electric service to NTUA for the period identified in the

Final Amended Agreements; and (iv) the Final Amended Agreements addressed certain concerns the Office had with the previous version. (Hr'g Tr. at 29:2-18.) Ms. Murray testified the Office "believes that this Settlement is just and reasonable in result and in the public interest" and "recommend[s] Commission approval." (*Id.* at 29:19-22.)

NTUA, Resolute and RMP all similarly join in and support the Settlement. No Party has opposed the Settlement or declined to join it.

3. DISCUSSION, FINDINGS AND CONCLUSIONS

As an initial matter and as declared in our bench ruling, we deny Rap Catcher's Petition to Intervene. We conclude that Rap Catcher has failed to articulate the substantial interest that Utah Code Ann. § 63G-4-207 requires to warrant intervention.

With respect to the merits, the Agreements, Settlement and attendant Final Amended Agreements are clearly the product of laborious negotiations involving numerous parties with substantial interests in this matter. Indeed, RMP, or its predecessor in interest, and NTUA appear to have been intermittently negotiating this matter for more than 30 years. No Party has presented any testimony or evidence in opposition to the Settlement or the Final Amended Agreements, and the Commission is unaware of any compelling reason to preclude the underlying transactions from moving forward.

Accordingly, and consistent with the bench ruling we issued at the conclusion of the second public witness hearing, we find the record before us supports the Division's and the Office's respective assessments that approving the Settlement and Final Amended Agreements is in the public interest. Having reviewed the Application, the Settlement, the Final Amended Agreements and the evidence presented at hearing, the Commission concludes that approving the

Settlement is just, reasonable and in the public interest. By extension, the Commission finds it is just, reasonable and in the public interest to amend RMP's CPCN to remove the NTUA Assumed Service Territory and to issue the accounting order the parties jointly request in Paragraph 21 of the Settlement. We note that we are heartened by the prospect of these transactions facilitating expanded service within the Nation and wish NTUA and the Nation complete success in their efforts to do so.

4. ORDER

For the reasons discussed above, we order as follows:

(1) The Settlement is approved;

(2) The Final Amended Agreements are conditionally approved and found to be prudent and in the public interest — specifically, the PTA and its First, Second and Third Amendments are approved as is the PSA and its First and Second Amendments;

(3) The sole conditions to the conditional approval granted in Ordering Paragraph 2 are (i) completion of the transfers of facilities and customers from RMP to NTUA as provided in the PTA and (ii) the Electric Service Agreement entered into between NTUA and Resolute dated May 12, 2016 becoming effective according to its terms;

(4) RMP will notify the Commission of approval of its applications regarding the PTA and PSA by the Idaho, Oregon and Wyoming state commissions within 15 days following the last of those approvals;

(5) RMP will notify the Commission of the Closing, Interim Changeover and Resolute Changeover, each as defined in the PTA, within 15 days of their realization;

(6) RMP may discontinue electric service to the 14 customers identified in the PTA located adjacent to the Nation who are being transferred to NTUA in accordance with the PTA;

(7) The Final Amended Agreements and Settlement are approved as written and speak for themselves, nothing in this Order or these Ordering Paragraphs should be construed to interpret, clarify or decide any ambiguity or ambiguities that may be later argued to exist;

(8) RMP's CPCN is amended to remove the NTUA Assumed Service Territory subject to the terms of the PTA, including that RMP may continue to provide service to Resolute through the balance of its MESAs;

(9) RMP is authorized to defer costs that it incurs in accordance with the following sections of the PTA: (i) Section 2.2.4 through the Rate-Effective Date as defined in the Settlement; (ii) Section 2.2.5 of the PTA subject to the maximum amount specified therein and subject to a true-up of the amortization of such amount to the amount actually incurred in the event RMP incurs less than the maximum amount; and (iii) Section 2.7.2 to the extent RMP incurs transaction costs in excess of the amount NTUA is required to reimburse under this section through the Rate Effective Date;

(10) The amounts deferred pursuant to Ordering Paragraph 9 shall not bear carrying charges during the period of the deferral and shall be amortized beginning with the Rate-Effective Date over a period of time the Commission approves in RMP's next general rate case with the unamortized balance included in the rate base; and

(11) Rap Catcher's Petition to Intervene is denied.

DATED at Salt Lake City, Utah, June 10, 2016.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#277289

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on June 10, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

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