

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Potential Amendments to R746-100-3	<u>DOCKET NO. 16-R100-01</u>
In the Matter of Potential Amendments to Utah Administrative Code R746-100	<u>DOCKET NO. 16-R100-02</u> <u>RESPONSE TO FINAL COMMENTS</u>

ISSUED: December 28, 2016

The Public Service Commission of Utah (PSC) provides the following information in response to final comments submitted by Rocky Mountain Power and the Utah Office of Consumer Services (Office).

1. **Rocky Mountain Power requests that the SFTP server be set up to provide a confirmation of receipt with a time and date stamp to confirm that filing has taken place.**

A confirmation of successful upload can be provided. This confirmation will not constitute legal evidence that the filing is complete or otherwise legally sufficient. The confirmation will establish:

- the file name of the document that was successfully uploaded to the SFTP server;
- the date of successful upload; and
- the time of successful upload.

A person who wishes to receive a confirmation of successful upload must provide the PSC with the e-mail address to which the confirmation should be sent and ensure that the e-mail address on file with the PSC remains current.

2. **Rocky Mountain Power requests that it be able to encrypt a document before uploading it to the SFTP server.**

Pre-upload encryption will be permitted. A person who wishes to exercise this option must provide the PSC with the passphrase for decryption, and must update the passphrase annually.

- 3. Rocky Mountain Power requests that uploaded documents be encrypted while they remain on the SFTP server.**

Uploaded documents will remain encrypted while on the SFTP server. Successfully uploaded documents will be copied from the SFTP server, decrypted, and then stored on the PSC's internal server. It is anticipated that the SFTP server will be swept daily.

- 4. Rocky Mountain Power requests that uploaded documents be encrypted during transfer from the SFTP server to the PSC's internal server.**

Decryption will be accomplished before uploaded documents are placed on the PSC's internal server for long-term storage and access.

- 5. Rocky Mountain Power requests that documents being stored on the PSC's internal server be encrypted.**

Perpetual encryption is not currently occurring. The Commission's internal server is a working database maintained by a vendor, which staff access regularly. The Commission has been storing confidential and highly confidential documents on this server for many years with no security breaches. The Commission has sufficient budget currently to establish and maintain the planned SFTP server that has been requested by parties who wish to eliminate paper filings. That current project's scope and budget does not include an encryption upgrade to the existing database. Nevertheless, the Commission has obtained a bid from its database vendor to maintain the database on an encrypted server and intends to move forward on that project during 2017, but does not see a reason to delay the establishment and use of the SFTP server in the meantime.

- 6. Rocky Mountain Power requests that R746-1-203(1)(a) be modified to require that all documents uploaded to the SFTP server be presented as portable document files (PDFs).**

The PSC will modify the subsection to clarify that PDFs will be accepted. However, the PSC will also accept Word documents and any other documents that are both functional and searchable. Embedded calculations must be accessible. A simple scan of a document that contains embedded calculations will be rejected.

- 7. Rocky Mountain Power requests that abbreviations be permitted in electronic file names. See R746-1-203(1)(c).**

The PSC will recognize reasonable abbreviations and has modified the rule accordingly.

8. **Rocky Mountain Power requests language to establish that failure of the SFTP server will not result in a filing being deemed untimely. See R746-1-203(5).**

The PSC has added the requested caveat.

9. **Rocky Mountain Power requests that confidential and highly confidential information be designated not by yellow and pink highlighting, but by being placed on a yellow or pink background and highlighted in grey or designated through a text box, a border, or asterisks.**

The PSC agrees that simply highlighting confidential information is less obvious, and therefore more likely to be overlooked, than is colored paper or a colored background. The PSC has modified the rule to adopt this suggestion.

10. **The Office requests that the rules set forth a minimum requirement regarding the timing of objections to discovery requests, rather than leaving this issue to be addressed in scheduling orders. See R746-1-501.**

The PSC understands the Office's concern, but does not consider it appropriate to put a default discovery objection deadline in rule because each docket is likely to require unique timing. The PSC urges parties to come to the scheduling conference prepared to request all necessary deadlines. The PSC generally does not require briefing regarding the schedule, either before or after the scheduling conference.

11. **The Office requests that the rules governing discovery set forth the PSC's subpoena power. The Office also requests that R746-1-701 be titled "Subpoenas to Compel Attendance at a Hearing" rather than "Witness Subpoenas."**

The PSC's subpoena power is set forth in Utah Code § 54-7-3 and need not be re-established in rule. The PSC will include in R746-1-501, which governs discovery, a process whereby a party may request a subpoena for discovery purposes.¹

The PSC is unaware of whom, other than witnesses, the Office might wish to subpoena for hearing, and considers the title of R746-1-701 to be accurate.

12. **The Office requests that R746-1-203 refer to and incorporate Rule 11, Utah R. Civ. P.**

The PSC has adopted this suggestion.

¹ We cannot adopt the Office's proposed language: "... the Commission may issue subpoenas to assist in discovery..." because such language may be misinterpreted as an attempt by the PSC to grant authority to itself.

13. **The Office requests that "prompt" action be required under R746-1-601(2) and that parties be required to negotiate regarding measures to protect confidential information before any motion for protection is allowed.**

The PSC has added the word "promptly" to the rule, but does not wish to require negotiations as urged by the Office. The PSC would prefer to adjudicate a motion for protection over a complaint that a party has failed to negotiate sufficiently, to negotiate in good faith, etc.

14. **The Office requests that, where confidential information is offered as evidence, the offering party be required to serve it not just on counsel for the Office and the Division of Public Utilities (Division), but also on Office and Division staff and retained experts who have signed a nondisclosure agreement. See R746-1-605.**

R746-1-605 deals strictly with confidential information that is offered into the record as evidence and mandates that such information be served on counsel for each party. In most cases, such evidence will have been distributed to all parties through pre-hearing testimony, and the receipt into evidence will be merely a formality. Further, this rule does not affect R746-1-602, Persons Entitled to Review Confidential and Highly Confidential Information. R746-1-602 states that counsel and staff of the Division and the Office are entitled to review such information. It also states that expert witnesses are entitled to review confidential information after signing a non-disclosure agreement. The PSC does not consider it necessary to duplicate these provisions in R746-1-605, nor does the PSC consider it necessary to require service on individuals rather than parties. Should a party offer, as evidence at hearing, confidential information that has never been provided to the other parties, the requirement to provide the new evidence to counsel should be sufficient.

15. **The Office requests that it be allowed to retain confidential information without being subject to disclosure restrictions.**

The Utah Government Records Access and Management Act restricts the Office's disclosure of confidential information. The PSC may not change the statutory restrictions through rule.

16. **The Office requests a definition of the term "SFTP" server.**

The PSC has added the words "secure file transfer protocol" in R746-1-203(1)(b)(ii), which is the first time the term SFTP is used in the rules.

17. **The Office requests that the phrase "et seq." be eliminated from the rules.**

The PSC has adopted this suggestion.

18. **The Office requests that Utah Code § 68-3-8 be identified as a statutory provision that governs computation of time.**

The PSC has adopted this suggestion.

19. **The Office requests that attorneys who file pleadings be required to include their bar numbers in the pleading title, and that all persons who file pleadings be required to provide an e-mail address. See R746-1-202(2).**

The PSC has adopted this suggestion.

20. **The Office requests that R746-1-206 be clarified as governing responses to initial pleadings only.**

The PSC has adopted this suggestion.

21. **R746-1-603(2) governs treatment of confidential information that has been received through a PSC proceeding, and is thereafter required by law to be disclosed in a non-PSC proceeding. The rule mandates that the person required to produce the information cooperate with the person who first provided it to obtain a protective order or similar assurance of confidentiality. The Office requests that this requirement be stated as applying "within the confines of good faith."**

The PSC cannot adopt this suggestion. First, to require "good faith" in only one section of the rules might be read to imply that good faith is not required throughout. Second, while this rule might be persuasive to a person presiding over a non-PSC proceeding, it would not be binding. The PSC considers that the rule is appropriate as stated, when understood as persuasive authority.

The PSC notes that the rule governing administrative proceedings, as currently in effect, utilizes 9,718 words. The replacement rule, which has been under development for a year and has been thoroughly scrutinized and vetted by affected parties, utilizes 3,793 words. That is a reduction of 5,925 words, or approximately 61% of the language. The PSC believes that the new rule will be far more accessible and thanks all those who have taken time to participate in this

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process and provide the insightful comments and questions that have helped to hone the final product.

The new rule will be submitted to the Division of Administrative Rules by January 3, 2017, so as to be published in the Utah State Bulletin on January 15, 2017. A 30-day comment period will follow, and the first possible effective date will be February 21, 2017, a date that happens to fall not far from the 100th anniversary of the date on which the Public Utilities Commission of Utah was created.

DATED at Salt Lake City, Utah, December 28, 2016.

/s/ Jennie T. Jonsson
Presiding Officer

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#290980

CERTIFICATE OF SERVICE

I CERTIFY that on December 28, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

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